

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 35-00116

LIS No. 21-064

U.S. ARMY, PINE BLUFF ARSENAL  
10020 KABRICH CIRCLE  
PINE BLUFF, AR 71602-9500

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Pollution Control and Ecology Commission (PC&EC) Regulation 7, PC&EC Regulation 8, PC&EC Regulation 18, PC&EC Regulation 19, and PC&EC Regulation 26.

The issues herein having been settled by agreement of U.S. Army, Pine Bluff Arsenal (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates a military manufacturing and depot installation located at State Highway 365 South, Jefferson County, Arkansas.
2. The Permit referenced in this CAO, 1113-AOP-R19 (the Permit), was issued on

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<sup>1</sup>Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Arkansas Department of Energy and Environment.

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April 14, 2020.

3. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

...

4. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

6. Specific Condition EMGEN-3 and Subpart ZZZZ: National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines requires Respondent to maintain records for preventative maintenance at emergency generators.

7. In a letter dated September 22, 2020, Respondent requested consideration under DEQ’s Environmental Self-Disclosure Incentive Policy (Policy) for the non-compliance issues associated with failing to maintain preventative maintenance records for an emergency generator located at building 13-020. These non-compliance issues were discovered during a third-party audit conducted on September 2, 2020.

8. The third-party audit revealed that between February 2016 and September 2020, Respondent failed to maintain preventative maintenance records for an emergency generator at

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Location 13-020. Such failures violate Specific Condition EMGEN-3 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304 and 40 CFR § 63.6605 and 40 CFR § 63.6655 (Subpart ZZZZ).

9. Respondent stated that it immediately performed an annual inspection of the generator at building 13-020 and conducted all required annual maintenance on the generator on the same day to correct and address the non-compliance issue.

10. In a correspondence dated January 11, 2021, DEQ informed Respondent that it had completed its review of Respondent's self-disclosure and found that Respondent met all of the conditions of the Policy. Therefore, DEQ may mitigate up to 100% of the gravity-based component of any civil administrative penalty in a CAO regarding the self-disclosed violations.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations contained in the FINDINGS OF FACT. DEQ will not issue any civil administrative penalty with regards to the self-disclosed violations contained in the FINDINGS OF FACT.

2. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

3. Failure to meet the limits, requirements, or deadlines of this CAO or the

applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ civil penalties according to the following schedule:

- |  |                      |
|--|----------------------|
| (a) First day through the fourteenth day:    | Up to \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | Up to \$500 per day  |
| (c) More than thirty days:                   | Up to \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of DEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above; provided, however, that under no circumstances shall DEQ be entitled to double recovery of penalties or fines under this CAO and pursuant to its enforcement authority.

4. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify DEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

5. DEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of

Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

6. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d). However, this CAO shall become effective upon execution by Respondent and the Director of DEQ.

7. As provided by PC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

8. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

9. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

10. Settlement of this matter shall not constitute an admission of liability in any administrative or judicial proceeding. Settlement of this matter, to include Respondent remitting any payment, shall not constitute or be considered a waiver of federal sovereign immunity, or an

admission of such a waiver, or an admission that the United States is liable to pay administrative or civil penalties or fines assessed by state or local regulatory authorities implementing programs for the control and abatement of air pollution. The issue of federal sovereign immunity from state-levied penalties assessed under state Clean Air Act air pollution prevention and control programs is subject to conflicting decisions in the courts. Nevertheless, Respondent believes it appropriate at this time and under the circumstances presented here to resolve this disputed matter by agreement.

11. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 28 DAY OF June, 2021.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

U.S. ARMY, PINE BLUFF ARSENAL

BY: [Signature] (Signature)

Patrick S. Daulton (Typed or printed name)

TITLE: COL, CM; Commanding

DATE: 20 June 2021

*06/20/2021*