

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

El Dorado Chemical Company
P.O. Box 1414
El Dorado, Arkansas 71731

LIS No. 18 - 085
Permit No. AR0000752
AFIN 70-00040

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the El Dorado Chemical Company (“Respondent”) and the Arkansas Department of Environmental Quality (ADEQ or “Department”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent is a corporation that manufactures sulfuric acid, nitric acid, anhydrous ammonia, ammonium nitrate fertilizers, and industrial grade ammonium nitrate products and operates a wastewater treatment plant located at 4500 North West Avenue, Union County, El Dorado, Arkansas (“Facility”).
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. Pursuant to the federal Clean Water Act, 33 U.S.C. §1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. §1342(a).

4. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

5. 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

6. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

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

8. NPDES Permit Number AR0000752 (“Permit”) was issued to the Respondent on May 31, 2002. This Permit was modified twice. Respondent appealed the second modification to the Permit. Respondent’s appeal was consolidated with appeals filed by the other joint-pipeline participants into a single docket, APC&EC Docket 07-006-P. Ultimately, that second modification of the Permit was affirmed by the Arkansas Supreme Court in its October 7, 2010 decision upholding the issuance of the Permit as outlined in APC&EC Minute Order 08-23.¹

9. During this period, Respondent’s coverage under this Permit was administratively continued pursuant to APC&EC Reg. 6.201 pending issuance of a new permit.

¹ Louisiana v. Joint Pipeline Group, 2010 Ark. 374.
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10. On September 6, 2013, Respondent notified the Department that the first discharge to the joint pipeline would begin on September 9, 2013.

Effluent violations before September 9, 2013

11. On February 25, 2016, the Department conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent prior to the connection to the joint pipeline on September 9, 2013.

12. The review revealed that Respondent reported a total of three hundred thirty five (335) violations of the permitted effluent discharge limits from January 1, 2011, through August 31, 2013. These are violations of Part I Section A of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217 (a)(3).

Outfall	Pollutant	# of Violations
001	Total Recoverable Cooper	7
001	Ammonia Nitrogen	1
001	Nitrate Nitrogen	1
001	pH	9
001	Total Dissolved Solids	26
001	Total Suspended Solids	3
001	Temperature	8
002	Total Recoverable Cooper	4
002	Total Recoverable Lead	5
002	Ammonia Nitrogen	7
002	Nitrate Nitrogen	4
002	Total Recoverable Zinc	1
003	pH	1
006	Total Recoverable Lead	37
006	pH	1
006	Total Dissolved Solids	46
006	Total Recoverable Zinc	46
007	Total Recoverable Lead	36
007	pH	5
007	Total Dissolved Solids	44
007	Total Recoverable Zinc	42
SUM	Nitrate Nitrogen	1

Outfall 001 – treated process and contaminated stormwater and domestic wastewater.

Outfall 002 – overflow pond (process water and stormwater).

Outfall 003 – treated domestic wastewater.

Outfalls 006 & 007 – contaminated stormwater.
 SUM - combination of Outfalls 001, 002 and 010.

Effluent violations after September 9, 2013

13. On June 8, 2017, the Department conducted a review of the certified DMRs submitted by Respondent after connection to the joint pipeline on September 9, 2013.

14. The review revealed that Respondent reported a total of four hundred ten (410) violations of the permitted effluent discharge limits from September 1, 2013 through September 30, 2017. These are violations of Part I Section A of the Permit and therefore violations of Ark. Code Ann. § 8-4-217 (a)(3).

Outfall	Pollutant	# of Violations
001	Total Dissolved Solids	1
002	Total Recoverable Lead	8
002	Ammonia Nitrogen	4
002	Total Recoverable Copper	3
002	Nitrogen Nitrate	2
002	pH	1
003	Ammonia Nitrogen	7
003	pH	2
003	Fecal Coliform	3
006	Total Recoverable Lead	76
006	Total Recoverable Zinc	75
006	Total Dissolved Solids	52
007	Total Dissolved Solids	65
007	Total Recoverable Zinc	39
007	Total Recoverable Lead	43
007	pH	5
010	Total Recoverable Zinc	11
010	pH	3
010	Total Suspended Solids	4
010	Oil & Grease	1
010	Nitrogen Nitrate	1
010	Flow, in conduit /thru plant	1
010	Carbonaceous Biochemical Oxygen Demand	1
SUM	Nitrogen Nitrate	1
SUM	Ammonia Nitrogen	1

Outfall 001 – treated process and contaminated stormwater and domestic wastewater.

Outfall 002 – overflow pond (process water and stormwater).

Outfall 003 – treated domestic wastewater.

Outfalls 006 & 007 – contaminated stormwater.

Outfall 010 – combination of outfalls 001, 006, 007 (pipeline).

SUM - combination of Outfalls 001, 002 and 010.

15. On February 20, 2015, a letter was sent to Respondent requesting a Corrective Action Plan (CAP) stamped by a Professional Engineer (P.E.) to address the effluent violations. The CAP was to include a milestone schedule and a final date of compliance.

16. On March 19, 2015, Respondent submitted a CAP.

17. On March 24, 2015, ADEQ sent Respondent a letter stating that the CAP was received, and ADEQ had no comments at this time.

Remedial Action Plan for Groundwater

18. The conditions for assessing and remediating the groundwater identified in CAO LIS 06-153 and the Remedial Action Plan (RAP) developed pursuant to CAO LIS 06-153 are hereby incorporated, and the terms of this Order supersede the those terms of CAO LIS 06-153 that relate to the RAP.

Current Permit Status

19. On August 30, 2017, ADEQ reissued Respondent's permit with NPDES Permit Number AR0000752. This latest version of Respondent's Permit has an effective date of October 1, 2017. Respondent appealed parts of this permit. Pursuant to APC&EC Regulation 8.612, those parts of the permit were stayed pending the resolution of the permit appeal. Those parts of the Permit that were not challenged in the appeal effective October 1, 2017.

20. Since October 1, 2017, Respondent has reported the three (3) violations of the permitted effluent discharge limits. These are violations of Part I Section A of the Permit and therefore violations of Ark. Code Ann. § 8-4-217 (a)(3).

<u>Outfall</u>	<u>Pollutant</u>	<u># of Violations</u>
010	Total Suspended Solids	1
010	Ammonia Nitrogen	1
010	Carbonaceous Biochemical Oxygen Demand	1

21. Respondent believes that it can maintain compliance with the Permit.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall within thirty (30) calendar days of the effective date of this Order submit to the Department a written certification stating that Respondent is in full compliance and will stay in compliance with the permitted effluent limits on a consistent basis.

2. Respondent shall continue to implement the Remedial Action Plan (RAP) approved pursuant to CAO LIS 06-153. Within ninety (90) days of the effective date of this Order, Respondent shall submit to ADEQ an Evaluation Report of the data and effectiveness of the groundwater remedy. This Evaluation Report shall include the following:

- a. A trend analysis for the historical data set;
- b. A written evaluation of what constituents are being monitoring at the site;
- c. A written evaluation of the facility's ground water recovery system;
- d. An evaluation to determine if the groundwater target goals in the RAP is exceeding at the property boundary and at the downgradient of monitoring wells ECMW-17 and ECMW-22; and
- e. Review and update the findings of the 2007 Human Health Risk Assessment (HHRA);
 - i. Identification of environmental data gaps and
 - ii. Establish project end points to achieve site closure.

3. Respondent shall, within ninety (90) calendar days of receiving any written notification by ADEQ of any deficiencies in the Evaluation Report, submit to ADEQ a revised RAP to accomplish remediation sufficient to protect human health and the environment. The revised RAP shall include an implementation schedule, plan to address any data gaps and an assessment of alternative corrective action remedies, and a schedule to implement an alternative corrective action remedy. The Respondent shall implement the RAP upon receiving ADEQ approval and report the findings thereof in accordance with approved implementation schedule.

4. Respondent shall continue to conduct semi-annual groundwater monitoring on the monitoring and recovery wells and shall continue to submit annual groundwater monitoring reports to ADEQ by April 1 of each year. These reports shall include the semi-annual data on the laboratory analysis for the constituents approved in the 2014 Annual Groundwater Monitoring Report. The reports shall also include location, potentiometric and constituent concentration maps, and trend analyses, as well as an evaluation of the effectiveness of the remedial activities in reaching the target goals or any additional information needed by ADEQ to properly evaluate the groundwater data. Respondent agrees to amend the constituent monitoring list based on the findings of the approved Evaluation Report referenced above.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Hundred Twenty Four Thousand Dollars (\$124,000.00). Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

Arkansas Department of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

Full payment is due within thirty (30) calendar days of the effective date of this Order. In the event that Respondent fails to pay any part of civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection.

6. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If the Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of failure by the Respondent to comply with the requirements of this Order.

7. If any event, including but not limited to an act of nature, occurs which causes or may cause a delay in the achievement of compliance by the Respondent with the requirements or deadlines of this Order, the Respondent shall so notify ADEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. 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.

8. ADEQ may grant an extension of any provision of this Order, provided that the 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 the 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 the Respondent and the length of the delay attributable to such circumstances shall rest with the Respondent. Failure to notify the ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency (NOD) within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Regulation No. 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

11. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate the Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Respondent of its responsibilities for obtaining any necessary permits.

12. By virtue of the signature appearing below, the individual represents that he or she is an
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Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 12 DAY OF October, 2018.

Becky W. Keogh
BECKY W. KEOGH

APPROVED AS TO FORM AND CONTENT:

El Dorado Chemical Company

BY: John M. Carver
(Signature)

JOHN M. CARVER
(Typed or printed name)

TITLE: VP Safety & Environmental Compliance

DATE: 10-10-18