



# ARKANSAS

## ENERGY & ENVIRONMENT

March 31, 2022

Email: [tommy.smith2@gapac.com](mailto:tommy.smith2@gapac.com)

Tommy Smith, Vice President-Manufacturing  
Georgia-Pacific Consumer Operations LLC-Crossett Paper Operations  
P.O Box 3333  
Crossett, AR 71635

**RE: NPDES Permit No. AR0001210, AFIN 02-00013  
Executed Consent Administrative Order LIS 22-031**

Dear Mr. Smith,

Enclosed is your signed copy of Consent Administrative Order (CAO) LIS 22-031. The Chief Administrator signed the Order on March 17, 2022. The Order will be sent for Public Notice on or about April 10, 2022. The effective date of the Order will be thirty (30) days after the Order has been sent for Public Notice, which will be May 10, 2022.

Per the Order and Agreement Section of CAO LIS 22-031, Georgia-Pacific Consumer Operations LLC-Crossett Paper Operations has agreed to:

- Use an accredited consulting laboratory for regulatory compliance samples until the conditions set forth in Paragraphs 3, 4, 5, and 6 of this Order and Agreement and receive authorization from DEQ to reinstate the use of the in-house laboratory for NPDES compliance samples.
- Submit corrected DMRs for the period beginning September 1, 2018, to August 31, 2021 for parameters BOD and TSS to reflect Laboratory Error (NODI Code P) by **May 10, 2022**.
- Pay a civil penalty in the amount of \$10,000.00 on or before **June 9, 2022**.

Please refer to CAO LIS 22-031 in any written correspondence to DEQ. Should you have any questions, please feel free to contact me directly at (501) 682-0736, or you may e-mail [thomas.harrington@adeq.state.ar.us](mailto:thomas.harrington@adeq.state.ar.us).

Sincerely,

A handwritten signature in blue ink that reads "Thomas Harrington".

Thomas Harrington  
Enforcement Analyst, Office of Water Quality  
5301 Northshore Drive, North Little Rock, AR 72118

CC: Sarah M. Ross, PE, Environmental and Compliance Leader, [Sarah.Ross@GAPAC.com](mailto:Sarah.Ross@GAPAC.com)

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Georgia-Pacific Consumer Operations LLC  
Crossett Paper Operations  
100 Mill Supply Road  
Crossett, AR 71635

LIS No. 22- **031**  
Permit No. AR0001210  
AFIN 02-00013

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Georgia-Pacific Consumer Operations LLC (Respondent) and 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 operates a laboratory in conjunction with its kraft paper mill located at 100 Mill Supply Road, Crossett, Ashley County, Arkansas.

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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 Department of Energy and Environment.

2. Respondent discharges treated wastewater from Outfall 001 and from the outfall structure at the discharge location identified at SMS 002.<sup>2</sup> When the Ouachita River exceeds a gage heights of 65 ft. at Felsenthal Lock & Dam (65 FLD), Respondent discharges treated wastewater from Outfall 001 to the Ouachita River.<sup>3</sup> When the Ouachita River recedes, Respondent discharges treated wastewater from the outfall structure at the discharge location identified at SMS 002 into Coffee Creek, then into Ouachita River in Segment 2D of the Ouachita River Basin.<sup>4</sup>

3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. Pursuant to Ark. Code Ann. § 8-2-203 (7)(A), “Laboratory” means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or that performs any other analyses related to environmental quality evaluations required by the division or which will be submitted to the division.

5. Ark. Code Ann. § 8-2-205(a) provides,

Any person that violates any provision of this chapter or of any rule or order issued pursuant to this subchapter or that commits an unlawful act under this subchapter shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*

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<sup>2</sup> This discharge location is identified as Outfall 2 in the EPA-issued permits for this facility.

<sup>3</sup> When the Ouachita River exceeds 65 FLD, Mossy Lake is inundated by the Ouachita River.

<sup>4</sup> NPDES Permit Number AR0001210 requires monitoring at the discharge location identified at SMS 002 when Mossy Lake is not flooded. A flooded state is defined as the period the Ouachita River exceeds 62 FLD and also for the two weeks following the recession of flood waters below 62 FLD.

6. 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).

7. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

8. 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 [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

9. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 rule or permit issued pursuant to the Act.

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

11. DEQ issued NPDES Permit Number AR0001210 (“Permit”) to Respondent on September 30, 2010, with an effective of November 1, 2010. A major modification to the Permit became effective on July 1, 2011, and a second major modification to the Permit became effective on October 30, 2015. The Permit expired on October 31, 2015.

12. On May 4, 2015, DEQ received a Permit renewal application from Respondent, with additional information received on May 13, 2015. The Permit renewal application was deemed

complete on May 15, 2015, and Respondent's coverage was administratively continued pursuant to APC&EC Rule 6.201.

13. Respondent operates an in-house laboratory to perform analyses related to environmental quality as required by Part I, Section A of the Permit.

14. Respondent submits the results of those analyses to DEQ on its monthly Discharge Monitoring Report (DMR).

15. Respondent performs the following analyses: Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and pH.

16. On March 23, 2021, DEQ sent a letter to Respondent requesting monthly flow records, chain of custody records, and lab results for its DMRs for the monitoring periods beginning with January 2021 and continuing through January 2023.

17. DEQ conducted a review of monthly flow records, chain of custody records, and lab results for DMRs for the monitoring periods from January 2021 through April 2021. On June 3, 2021, DEQ sent a letter to Respondent requesting the following be submitted by June 15, 2021:

- a. Lab records for TSS, BOD, and pH. The lab records should include bench sheets, chain of custody records, and quality control information;
- b. Laboratory analysis reports for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (Dioxin) for the March 2021 monitoring period; and
- c. The link to the gauge Respondent uses at Felsenthal Lock and Dam to determine whether Mossy Lake is flooded.

18. On June 11, 2021, Respondent requested an extension to submit the information requested by DEQ in its letter dated June 3, 2021. DEQ granted Respondent an extension to June 30, 2021.

19. On June 25, 2021, Respondent notified DEQ via telephone that issues with the laboratory's adherence to certain Quality Assurance (QA) and Quality Control (QC) requirements had been found, as well as issues with BOD analyses.

20. On June 30, 2021, Respondent submitted the information requested by DEQ in its letter dated June 3, 2021. Additionally, Respondent identified specific QA/QC issues with their BOD analysis, provided below, and outlined corrective actions to address the QA/QC issues:

- a. The glucose-glutamic acid standard (GGA) associated with the May 26, 2021 sample was below the acceptable range of  $198 \text{ mg/L} \pm 30.5$ .
- b. The GGA was analyzed weekly instead of daily with each set of samples; therefore, there is no GGA associated with samples analyzed on May 4, 2021; May 6, 2021; May 11, 2021; May 13, 2021; May 18, 2021; May 20, 2021; May 25, 2021; and May 27, 2021. The dilution water blank for each of these samples met the depletion criteria of less than or equal to 0.2 mg/L.
- c. The minimum dissolved oxygen depletion of 2.0 mg/L was not met for the following sample dates: May 18, 2021; May 19, 2021; May 26, 2021; and May 27, 2021.
- d. Between January 1, 2021, and April 30, 2021, the dilution water blank depletion was greater than 0.2 mg/L six times and the GGA was outside of the acceptable range three times.

21. DEQ reviewed the information submitted by Respondent. Respondent's BOD analyses do not comply with the approved method set forth in 40 C.F.R. § 136.3, Table IB. DEQ identified the following deficiencies in the BOD analyses:

- a. BOD Blanks were greater than 0.2 mg/L on six (6) occasions with four (4) of the six (6) Blank exceedances occurring within an eight-day period. The bench sheets do not indicate that Respondent has evaluated the cause and made appropriate corrections. Standard Methods 5210-B requires that the average dissolved oxygen (DO) uptake in five (5) days must not be more than 0.2 mg/L and if the average dilution-water blank is more than 0.2 mg/L, evaluate the cause and make appropriate corrections.
- b. Respondent does not seed its compliance samples. The bench sheets indicate that Respondent adjusts the pH of the compliance sample before analyzing BOD. Standard Methods 5210-B requires that pH-adjusted samples be seeded.
- c. Dissolved oxygen depletion for samples does not consistently meet the minimum DO uptake of 2.0 mg/L or more after five-day incubation based on the dilutions used. Standard Methods 5210-B states that “only bottles whose DO depletion is 2.0 mg/L or greater and residual DO is 1.0 mg/L or greater after five days of incubation are considered to produce valid data.”
- d. The bench sheets are not complete for each day of analysis. For example, on March 11, 2021, the bench sheet for the seed and glucose-glutamic acid standard do not contain the incubator temperature when the samples were removed, the technician that read the final DOs for the samples, or the dilution water blank temperature and initial DO reading.
- e. The bench sheets do not provide enough information for DEQ to determine how the seed and glucose-glutamic acid standard were calculated.

Part I, Section A of the Permit requires that discharges from the specified discharge locations (Outfall 1 and SMS 002) “shall be limited and monitored by the permittee as specified [in Part I, Section A].” Part III, Section C, Condition 3 of the Permit and 40 C.F.R. § 136.1 requires the use of approved methods in 40 C.F.R. § 136.3 for laboratory analyses that are submitted pursuant to NPDES permits. Each failure to comply with the methods set forth in 40 C.F.R. § 136.3 is a violation of 40 C.F.R. § 136.1, as incorporated by APC&EC Rule 6, and Part III, Section C, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

22. On June 30, 2021, and on July 6, 2021, DEQ requested that Respondent submit their methods and standard operating procedures for TSS, BOD, and pH and past Proficiency Test (PT) results with the bench sheets and raw data.

23. On July 8, 2021, Respondent submitted the requested standard operating procedures, PT sample results, and PT bench sheets with raw data.

24. On July 14, 2021, DEQ and Respondent met via conference call to discuss the information submitted by Respondent concerning the laboratory results.

25. On July 14, 2021, Respondent submitted revised information pertaining to the corrective actions taken to address the QA/QC issues.

26. On August 4, 2021, Respondent submitted an email notifying DEQ that the Third Party Audit is scheduled for August 2021; Respondent received split BOD sample analyses results from American Interplex; and Respondent completed a comprehensive review to assess BOD compliance over a five (5) year period.

27. On August 9, 2021, DEQ sent Respondent a letter requesting the following be submitted by August 30, 2021:



- a. A list of all invalid sampling data by month, outfall, parameter, and monitoring frequency for the last three (3) years;
- b. A copy of the updated SOPs for all NPDES parameters performed in-house and documentation that the lab personnel have received training on the correct procedures; and
- c. The timeframe for completing the Third-Party Audit of the lab and submission of the results of the audit including root causes and corrective actions.

28. On August 30, 2021, Respondent submitted all information requested in DEQ's letter dated August 9, 2021, and stated that the Third-Party Audit is scheduled for August 31, 2021.

29. On September 1, 2021, Respondent notified DEQ that the auditor found that Respondent was preparing TSS and BOD samples for analysis by running those samples through a 150-micron sieve. This action deviates from the Guidelines Establishing Test Procedures for the Analysis of Pollutants, 40 C.F.R. § 136.3, Table IB. Part III, Section C, Condition 3 of the Permit and 40 C.F.R. § 136.1 requires the use of approved methods in 40 C.F.R. § 136.3 for laboratory analyses that are submitted pursuant to NPDES permits. Failure to comply with the methods set forth in 40 C.F.R. § 136.3 is a violation of 40 C.F.R. § 136.1, as incorporated by APC&EC Rule 6, and Part III, Section C, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

30. Respondent's failure to comply with 40 C.F.R. § 136, as documented in Respondent's August 30, 2021 submission and audit finding that Respondent was preparing TSS and BOD samples for analysis by running those samples through a 150-micron sieve, resulted in a total of 468 TSS and BOD tests that deviated from the approved method from August 2018 to August 2021.

31. On October 5, 2021, Respondent submitted to DEQ, via email, the Third Party Audit report for the facility.

### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall use a consulting laboratory, accredited pursuant to Ark. Code Ann. § 8-2-201 *et seq.*, for regulatory compliance samples until Respondent meets the conditions set forth in Paragraphs 3, 4, 5, and 6 of this Order and Agreement and receives authorization from DEQ to reinstate the use of the in-house laboratory for NPDES compliance samples. The conditions set forth in Paragraphs 3, 4, and 5 must be satisfied before Respondent submits the documentation required in Paragraph 6. In the alternative, Respondent can certify that Respondent will use a consulting laboratory, accredited pursuant to Ark. Code Ann. § 8-2-201 *et seq.*, for regulatory compliance samples and that Respondent will not reinstate the use of the in-house laboratory for NPDES compliance samples unless Respondent meets the conditions set forth in Paragraphs 3, 4, 5, and 6 of this Order and Agreement and receives authorization from DEQ.
2. On or before the effective date of this Order, Respondent shall correct the DMRs for the period beginning September 1, 2018 to August 31, 2021, for parameters BOD and TSS to reflect Laboratory Error (NODI Code P).
3. Respondent shall update its SOPs to comply with the approved methods in 40 C.F.R. § 136.3 for laboratory analyses that are submitted pursuant to NPDES permits. The updated SOPs shall be reviewed and by the Third Party Auditor and certified to be compliant with the approved methods in 40 C.F.R. § 136.3.
4. Respondent shall submit to DEQ the updated SOP and certification from the Third Party Auditor that the updated methods are compliant with the approved methods in 40 C.F.R. § 136.3.

5. Respondent shall submit a Corrective Action Report (CAR) to DEQ for each instance of noncompliance identified by the Third-Party Audit to include a root-cause analysis and describe the actions taken to correct each noncompliance and achieve and maintain compliance with 40 C.F.R. § 136 and the Permit.

6. Respondent shall submit the following to DEQ for review and approval and for DEQ's consideration in the reinstatement of the in-house laboratory for NPDES compliance sample analysis:

- a. SOPs to comply with the approved methods in 40 C.F.R. § 136.3 for laboratory analyses that are submitted pursuant to NPDES permits including a certification for each parameter by the Third Party Auditor stating that the method complies with the approved methods in 40 C.F.R. § 136.3.
- b. Documentation that each analyst has received training in general laboratory practices.
- c. Documentation that each analyst has received training on the approved methods in 40 C.F.R. § 136.3 for each parameter to be performed by the analyst at the in-house laboratory.
- d. Documentation that each analyst has passed two (2) PTs for each parameter analyzed at the in-house laboratory. Analysis of PT samples for the same parameter must not be performed within thirty (30) calendar days of the most recent PT. All bench sheets and quality control data associated with the PTs shall be submitted to DEQ. PT results shall be submitted to DEQ by the PT provider.
- e. Plan for continued laboratory training and PTs for each analyst.
- f. Sample bench sheet with example calculations for each parameter.

- g. For each parameter to be analyzed at the in-house laboratory, documentation of split samples for each regulatory sample for a period of twelve (12) months with one sample performed by the in-house laboratory and the other sample performed by an accredited consulting laboratory. Documentation should include all bench sheets for in-house laboratory generated data and a percent difference comparison of the split sample results. Documentation shall be submitted to DEQ quarterly.
- h. Quality control and quality assurance records for in-house laboratory parameters for a period of twelve (12) months. Documentation shall be submitted to DEQ quarterly.
- i. All NIST certificates for laboratory instrumentation.
- j. Written request to DEQ seeking authorization to reinstate the in-house laboratory for analysis of NPDES compliance samples.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Ten Thousand Dollars (\$10,000.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and either transferred electronically or mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

8. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent

consents and agrees to pay on demand to DEQ 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 that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

9. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so 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 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.

10. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

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

12. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) 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 Rule 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.

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


14. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member 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 17<sup>th</sup> DAY OF MARCH, 2022.

  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Georgia-Pacific Consumer Operations LLC

BY:   
(Signature)

Tommy D. Smith  
(Typed or printed name)

TITLE: VICE PRESIDENT OF MANUFACTURING

DATE: MAR 14, 2022