

**Leath, Mary**

---

**From:** Stuart-Leslie, Laura  
**Sent:** Monday, April 24, 2006 3:07 PM  
**To:** Benson, Dennis; Leath, Mary; Brown, Keith; Shafii, Mo; Maner, Martin; Drown, Steve; Guthrie, Dawn  
**Subject:** RE: EDCC Groundwater CAO

Attached is my review of the CAO. I have no problems with the modifications to the ground water portions as stated here. I made a few changes to number 9 in the Findings of Fact and to number 3 in the Order and Agreement to clarify the termination of any bioremediation and require the submission of a report detailing the construction and operation of the recovery system.

Any questions, please let me know.  
Laura

-----Original Message-----

**From:** Benson, Dennis  
**Sent:** Thursday, April 13, 2006 1:35 PM  
**To:** Leath, Mary; Brown, Keith; Stuart-Leslie, Laura; Shafii, Mo; Maner, Martin; Drown, Steve  
**Subject:** FW: EDCC Groundwater CAO

FYI....

*Dennis Benson*

Technical Assistance Manager  
NPDES Enforcement Section  
501-682-0640

-----Original Message-----

**From:** Guthrie, Dawn  
**Sent:** Thursday, April 13, 2006 12:56 PM  
**To:** Benson, Dennis  
**Subject:** FW: EDCC Groundwater CAO

I haven't had a chance to look at the draft, but thought would forward to you asap.

Dawn R. Guthrie  
Attorney Specialist  
Legal Division, ADEQ  
501-682-0884

-----Original Message-----

**From:** Chuck Nestrud [mailto:cnestrud@cnjlaw.com]  
**Sent:** Thursday, April 13, 2006 10:34 AM  
**To:** Guthrie, Dawn  
**Cc:** John Carver; Wes Morgan; Greg Withrow  
**Subject:** EDCC Groundwater CAO

**Attached is a redline with EDCC's comments. The major revisions are:**

**Par 6 of the Findings of Fact. It appears from your draft, that there is an attempt to avoid any discussion of deadlines and extensions ., Based on our recent meeting it is my understanding that**

ADEQ will address this issue separately. For that reason, I have deleted all references to deadlines and extensions from the CAO.

Par 1 of the Order. There are CAO's referenced in the findings of fact that have now been terminated or superceded. I don't think you intended to revive a terminated or superceded CAO.

Par 3 of the Order. EDCC has met with Laura Stewart - Leslie, and my understanding is that she is in agreement with the recovery wells as a substitute for bioremediation. Please check with her to confirm. If I am mistaken, we may need to meet with Laura to clarify this issue.

Thanks for your patience in working through this matter.

**Chuck**

Charles R. Nestrud  
[cnestrud@cnjlaw.com](mailto:cnestrud@cnjlaw.com)  
Chisenhall, Nestrud & Julian, P.A.  
400 W. Capitol, Suite 2840  
Little Rock, AR 72201  
Phone: 501-372-5800  
Fax: 501-372-4941

This message is being sent by or on behalf of a lawyer. It may include attorney client work product or other privileged, proprietary or confidential information and is only for the intended recipient. Any distribution, copying or other use of this message or any of its contents by anyone other than the intended recipient is unauthorized and strictly prohibited. If you have received this message by mistake, please inform the sender immediately by e-mail response and then delete the message.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

EL DORADO CHEMICAL COMPANY  
P.O. BOX 231  
EL DORADO, ARKANSAS 71731-0231  
EPA ID No. ARD001700657

LIS NO. 06-\_\_\_\_\_  
AFIN7000040

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order ("CAO") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, A.C.A. § 8-4-101 et seq., and the regulations promulgated thereunder. The issues herein having been settled by agreement of EL DORADO CHEMICAL COMPANY ("EDCC") and the Director of the Arkansas Department of Environmental Quality ("ADEQ"), without EDCC either admitting or denying any of the statements contained in the FINDINGS OF FACT, it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered herein.

**FINDINGS OF FACT**

1. EDCC is a corporation which manufactures sulfuric acid, nitric acid, ammonium nitrate fertilizers, and industrial grade ammonium nitrate products at its chemical manufacturing facility in El Dorado, Union County, Arkansas (hereinafter the "facility").
2. EDCC previously operated a wastewater treatment system pursuant to Arkansas NPDES Permit Number AR0000752, issued effective July 1, 1990 (hereinafter the "1990 Permit").

3. In August 1998, ADEQ and EDCC entered into Consent Administrative Order LIS No. 98-119, which addressed various compliance issues at the facility. Paragraph 2 of the Order and Agreement Section of CAO LIS No. 98-119 ordered EDCC to implement interim measures to reduce the concentration of nitrates in the shallow groundwater, and to submit a work plan within sixty (60) days of the effective date of the Order for in situ bioremediation for all the existing groundwater monitoring wells which exhibited nitrate concentrations in excess of 10 mg/L.

4. EDCC submitted a Bioremediation Work Plan to address nitrates in groundwater as required by Paragraph 4(b) of the Order and Agreement Section of CAO LIS No. 98-119, however, based upon the bioremediation pilot study, the implementation of the in-situ bioremediation plan was terminated in March 2001.

5. In April of 2002, EDCC and ADEQ entered into CAO LIS No. 02-059, which addressed compliance issues at the facility. Paragraph 2 of the Order and Agreement Section of CAO LIS No. 02-059, amended the compliance schedules included in CAO LIS 98-119. Other amendments to the 1998 CAO include CAO LIS Nos. 98-119-1, 98-119-2, and 98-119-3.

6. On March 8, 2002, ADEQ issued a Draft Permit to renew the 1990 Permit. The Draft Permit was published for a 30-day comment period, and EDCC timely filed comments. ADEQ issued a Final Permit renewing the 1990 Permit on May 31, 2002 ("2002 Permit"). EDCC timely filed a Request for Review and Adjudicatory Hearing and the matter was eventually settled by Permit Appeal Resolution ("PAR") LIS No. 03-067, dated June 5, 2003. The PAR has been

implemented through the issuance of the renewal NPDES Permit, Permit Number AR0000752, issued effective June 1, 2004 (hereinafter the "2004 Permit").

**Deleted:** The deadline specified in the 2004 Permit for compliance with the all final effluent limits for Outfalls 001, 002, 003, 004, 005, 006 and 007, both technology based and water quality based, is June 1, 2007. The 2004 Permit provides in Part IB that compliance with the more restrictive water technology based effluent limits in the 2004 Permit for Outfalls 001, 002, 003, 004, 005, 006 and 007 is extended to June 1, 2007 pursuant to Paragraph 2 of the Order and Agreement Section of CAO LIS No. 02-059, and that is the only provision of CAO LIS No. 02-059 that continues in effect. Nothing in this CAO shall be construed as waiver by EDCC of any right it may have to request an extension.

7. Pursuant to Paragraph I(b) of the Order and Agreement Section of PAR LIS No. 03-067, EDCC and ADEQ agreed to enter into a consent administrative order which requires EDCC to evaluate the presence of nitrates in the upper aquifer, to conduct a risk assessment, and to implement such remedial action as may be appropriate to address such risks as may be identified in the risk assessment.

8. By letter dated July 8, 2003, ADEQ memorialized EDCC's agreement to commit to the following tasks: (1) A site characterization to install new monitoring wells, including perimeter monitoring down gradient from the plant and Lake Kildeer; (2) completion of a workplan for the site characterization; (3) the execution of a CAO between EDCC and ADEQ which includes time frames for groundwater monitoring and a plan for remediation; and (4) EDCC's intention to implement a bioremediation test at monitoring wells MW-8 and MW-17 with "microbes/bacteria".

9. Tasks 1 and 2 outlined in paragraph 8 above have been completed by EDCC as of the date of this Order. On April 7, 2004, ADEQ received EDCC's 2003 Annual Report on Groundwater monitoring. On June 24, 2004, ADEQ received EDCC's Geologic Investigation Report, otherwise known as the site characterization. On July 7, 2005, the ADEQ received the 2004 Annual Ground Water Report. On October 14, 2005, the ADEQ received proposed modifications to the parameters in the ground water sampling program, which was approved on October 24, 2005. The 2005 Ground Water Report as submitted on March 27,

2006: Task 4, outlined in paragraph 8 has been eliminated due to the unfeasibility of bioremediation at the site, and will be replaced by a ground water recovery system. A risk assessment work plan and a remedial action plan to implement such remedial action to address such risks identified in the risk assessment will be developed and implemented thereafter.

10. Since June 2004, EDCC has reported an unpermitted discharge in the area of Outfall 003 which occurred and was corrected in January of 2005, and the following violations of the minimum pH limit at Outfalls 002, 003, 006 and 007:

<u>DATE/OUTFALL</u>	<u>PARAMETER</u>	<u>REPORTED</u>	<u>PERMITTED</u>
June 2004/006	pH (minimum)	3.4 SU	6.0 SU
June 2004/007	pH (minimum)	2.7 SU	6.0 SU
August 2004/006	pH (minimum)	4.01 SU	6.0 SU
August 2004/007	pH (minimum)	3.85 SU	6.0 SU
November 2004/006	pH (minimum)	5.21 SU	6.0 SU
November 2004/007	pH (minimum)	4.88 SU	6.0 SU
February 2005/007	pH (minimum)	4.91 SU	6.0 SU
April 2005/002	pH (minimum)	4.8 SU	6.0 SU
April 2005/007	pH (minimum)	5.0 SU	6.0 SU
May 2005/003	pH (minimum)	5.3 SU	6.0 SU
May 2005/007	pH (minimum)	5.3 SU	6.0 SU

## ORDER AND AGREEMENT

Without admitting or denying the Findings of Fact stated above, EDCC agrees to the following in full satisfaction for the violations identified in the Findings of Fact:

1. All previous CAOs referenced herein are hereby incorporated by reference, to the extent that such CAOs have not been terminated or superceded.

2. EDCC shall continue to conduct semi-annual groundwater monitoring on the twenty-two (22) existing groundwater monitoring wells which shall be performed during May and October of each year. The constituents for analysis, at a minimum, shall include the following: nitrates, sulfates, ammonia, TDS, pH, temperature, conductivity, total and dissolved lead, and total and dissolved chromium. The constituents may be modified based upon the ADEQ review of the annual groundwater reports. Should old wells be discovered or additional monitoring wells become necessary, these wells will be included in the monitoring program. Based on the ADEQ review of the annual groundwater reports, individual wells and/or individual parameters may be removed from the monitoring network.

3. EDCC 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 noted in Paragraph 2 of this Order and Agreement, and shall include location, potentiometric, water level, and constituent concentration maps, or any additional information as needed by ADEQ to properly evaluate the groundwater data. Within ninety (90) days of the effective date of this CAO, EDCC shall install a ground water recovery system in the area of

**Formatted:** Indent: Left: 0", First line: 0", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Tab after: 1.25" + Indent at: 1.25", Tabs: 0.5", List tab + Not at 1.25"

**Deleted:** .

MW-7 and MW-8, and recycle such groundwater. A work plan describing the recovery system installation shall be submitted to ADEQ 30 days prior to construction. A report detailing the construction and operation of the recovery system shall be submitted to ADEQ within 90 days after the system is installed. Such report shall include, but not limited to, the following: location and construction specifications of each well, logs performed during well construction, volumes treated and recycled, methods for recycling of the ground water, equipment specifications (i.e., pumps and control systems, etc.) and a discussion of the maintenance schedule of the system.

4. EDCC shall submit to ADEQ for review and approval a remedial action workplan (RAP) to address groundwater remediation at the site. The RAP shall be developed within one (1) year of the effective date of this Order, and shall implement such remedial action to address such risks identified in the risk assessment. The risk assessment shall be a human health and ecological risk assessment, following the EPA risk assessment guidance documents referenced in Appendix E of ADEQ's Brownfields Program User's Guide, June, 2004. EDCC shall submit the risk assessment report to ADEQ within six (6) months of the effective date of this CAC, and shall implement the RAP upon approval by ADEQ.

5. EDCC has submitted documentation which demonstrates that a compacted liner is present in Lake Lee which meets the liner integrity requirements for a neutralization pond. EDCC submitted an application to land apply the Lake Lee pond bottom sludges, and EDCC has completed the sludge removal activities.

**Deleted:** EDCC shall submit a work plan by July 1, 2006, for implementation of a bioremediation test with "microbes/bacteria" at monitoring wells MW-8 and MW-17, and any other wells identified as appropriate for this test as a result of the groundwater monitoring conducted pursuant to paragraph 3 above. Such bioremediation test shall be completed and the report submitted by June 1, 2007.



6. All submittals required by this Order shall be provided to: Dennis Benson, Branch Manager, NPDES Enforcement Section, Water Division. All submittals required by this Order are subject to approval by ADEQ. In the event of any deficiency, EDCC shall, within thirty (30) days of notification by ADEQ, respond to any request for any additional information. Failure to adequately respond to the notice of deficiency within thirty (30) days constitutes a failure to meet a deadline and is subject to the civil penalties established in paragraph 7 below.

7. Failure to meet the requirements or deadlines of this Order or the approved schedules provided for herein constitutes a violation of said Order. If EDCC should fail to meet any such requirement or deadline, the EDCC consents and agrees to pay to ADEQ civil penalties according to the following schedule:

- (a) First day through the tenth day: \$500.00 per day
- (b) Eleventh day through twentieth day: \$1,000.00 per day
- (c) Twenty-first day through thirtieth day: \$1,500.00 per day
- (d) Each day beyond the thirtieth day: \$2,000.00 per day.

These stipulated penalties may be imposed for delay in performance and shall be in addition to any other remedies or Sanctions which may be available to ADEQ by reason of EDCC's failure to comply with the requirements of this CAO. ADEQ reserves the right to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

8. If any event occurs which causes or may cause delay in the achievement of compliance by EDCC with the requirements or deadlines of this Order, EDCC shall so notify ADEQ, in writing, as soon as reasonably possible after it is apparent that

delay will result, but in no case after the due dates specified in the schedules above. 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.

9. ADEQ may grant an extension of any deadline for submitting any of the reports or deadlines required by this Order, provided that EDCC requests such an extension in writing and provided that the delay or anticipated delay is caused by circumstances beyond the control of EDCC. 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 EDCC and the length of the delay attributable to such circumstances shall rest with EDCC. Failure to notify ADEQ promptly, as provided in paragraph 8, shall be grounds for denial of an extension.

10. This CAO is subject to public review and comment in accordance with A.C.A. § 8-4-103(d), however this CAO is effective immediately upon signature of the Director. ADEQ retains the right and discretion to rescind this CAO based upon comments received during the thirty (30) day comment period.

11. As provided by Arkansas Pollution Control and Ecology Commission Regulation 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.

12. Nothing contained herein shall relieve EDCC of any obligation imposed by any other applicable local, state, or federal laws, nor, except as specifically

provided for herein, shall this CAO be deemed in anyway to relieve EDCC of responsibilities contained in the Permit.

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

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
Marcus C. Devine, Director

**APPROVED AS TO FORM AND CONTENT:**

El Dorado Chemical Company

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_