

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 58-00272

**JW ALUMINUM COMPANY
777 TYLER ROAD
RUSSELLVILLE, ARKANSAS 72801**

LIS 05-082

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("CAO") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Act 472 of 1949, as amended (the "Act"), codified at A.C.A. §8-4-101 et seq. (the "Code"), Arkansas Pollution Control and Ecology Commission Regulation Number 8, Arkansas Pollution Control and Ecology Commission Regulation Number 18, Arkansas Pollution Control and Ecology Commission Regulation Number 19, and Arkansas Pollution Control and Ecology Commission Regulation Number 26.

The issues herein having been settled by agreement of **JW ALUMINUM COMPANY ("JWA")** and the Director of the Arkansas Department of Environmental Quality ("**ADEQ**") it is hereby agreed and stipulated that the following **FINDINGS OF FACT** and **ORDER AND AGREEMENT** be entered herein.

FINDINGS OF FACT

1. **JWA** owns and operates a facility, located in Russellville, Pope County, Arkansas, which manufactures aluminum foil.
2. **ADEQ** issued air permit number 1659-AOP-R1 to Alumax Foils, Incorporated (Alumax) on March 29, 2002; **JWA** is a successor in business interest to Alumax and currently conducts operations under this air permit.

3. Alumax used a solvent for milling aluminum; the plant used a regenerative catalytic oxidizer (RCO) to control air emissions resulting from this process. Accordingly, regarding Source Number 22A (SN-22A), the air permit provides, in part:

The finish foil mill (SN-22A) produces approximately 21,300 tons of rolled aluminum sheet per year. Emissions from this source are generated through the cutting of the aluminum sheets, evaporation of the rolling oil on the sheets, and the products of combustion. Emissions at this source are controlled through the use of a mist cyclone and a regenerative catalytic oxidizer (RCO). The RCO utilizes the heating value of the VOCs in the mill exhaust to sustain combustion. The RCO is also supplemented with natural gas to:

1. Preheat the unit after mill shutdowns, and
2. Maintain the destruction temperature in the chamber to account for fluctuations in the outside temperature, variability in the VOC concentration vented to the RCO, and short duration mill operation interruptions such as starting or ending a run.

4. General Provision 23 of the air permit provides:

Pursuant to A.C.A. §8-4-203 as referenced by §8-4-304 and §8-4-311, this permit authorizes only those pollutant emitting activities addressed herein.

5. **JWA** now proposes using a different production process which will eliminate the necessity of the RCO to control air emissions. The new process involves using a different oil or solvent, an Exxon product called NORPAR, which contains no aromatics. Use of this process at other similar facilities in the country has shown dramatic reductions in air pollutants. At present, in order to operate the new process and eliminate use of the RCO, **JWA** would be in violation of the above cited air permit Conditions. Because of this, **JWA** requests that it be authorized, pending the completion of such time as is necessary to complete necessary air permit modifications, to conduct production operations using NORPAR, thus obviating the need for the

RCO. For this reason, **JWA** requests that it presently be allowed to conduct operations without use of the RCO.

6. General Provision 2 of the air permit provides:

Pursuant to 40 CFR 70.6(a)(2) and §26.701(B) of the Regulations of the Arkansas Operating Air Permit Program (Regulation 26), effective August 10, 2000, this permit shall be valid for a period of five (5) years beginning on the date this permit becomes effective and ending five (5) years later.

7. General Provision 3 of the air permit provides:

Pursuant to §26.406 of Regulation #26, it is the duty of the permittee to submit a complete application for permit renewal at least six (6) months prior to the date of permit expiration. Permit expiration terminates the permittee's right to operate unless a complete renewal application was submitted at least six (6) months prior to permit expiration, in which case the existing permit shall remain in effect until the Department takes final action on the renewal application. The Department will not necessarily notify the permittee when the permit renewal application is due.

8. The permit issuance date referred to in paragraph 2 above is the date of the last revision of the air permit; the initial issuance predates this, and the five year term of the air permit expires on May 29, 2005. **JWA** has not timely filed a renewal application in accordance with the provisions of General Provisions 2 and 3 of the air permit; violations of these Provisions are therefore established.

9. **ADEQ** and **JWA** entered into CAO LIS 04-161 effective October 29, 2004, which authorizes the construction and operation of a Secondary Aluminum facility that is subject to 40 CFR Part 63, Subpart RRR, *National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production* (NESHAP Subpart RRR). The **CAO** authorizes **JWA** to operate the Secondary Aluminum facility once a draft permit is issued on the air

permit application submitted by JWA on September 8, 2004. **JWA** did not include in this application an election for demonstrating compliance with NESHAP RRR.

ORDER AND AGREEMENT

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

1. Upon receipt of an administratively complete air permit application for the renewal of its Title V air permit, which includes documentation of how **JWA** will demonstrate compliance with each provision of NESHAP Subpart RRR for the affected Secondary Aluminum facility, **ADEQ** will provide **JWA** a separate written authorization to conduct operations using NORPAR as a solvent, until such time as is necessary to complete **ADEQ** permitting requirements for a final air permit to authorize such operation. When NORPAR is used for production operations, **JWA** is hereby authorized to cease operation of the RCO; in any circumstance where another solvent may be used, **JWA** must adhere to the provisions of the existing air permit. Until such time as the current air permit may be revised, this is the only authorized variation in operation from the provisions of the current air permit, except as provided by CAO LIS 04-161.

2. This **CAO** does not address continued operation by **JWA** once Air Permit Number 1659-AOP-R1 expires on May 28, 2005.

3. In compromise and full settlement for instances of non-compliance specified in the **FINDINGS OF FACT**, **JWA** agrees to pay the sum of **FIVE THOUSAND DOLLARS (\$5,000.00)**. The total amount shall be made payable to the Arkansas Department of

Environmental Quality and mailed to:

Fiscal Division, ADEQ
P.O. Box 8913
Little Rock, Arkansas 72219-8913.

Unless otherwise notified, in writing, by **ADEQ**, **JWA** shall pay the settlement amount within thirty (30) days after the effective date of this **CAO**.

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

5. Failure to meet the limits, requirements, or deadlines of this **CAO** or the approved schedules provided for herein constitutes a violation of said **CAO**. If **JWA** should fail to meet any such limits, requirements, or deadlines, **JWA** consents and agrees to pay, on demand, to **ADEQ** civil penalties according to the following schedule:

- | | |
|---|----------------|
| (a) First day through the tenth day: | \$500 per day |
| (b) Eleventh day through the twentieth day: | \$1000 per day |
| (c) Twenty-first day through the thirtieth day: | \$1500 per day |
| (d) Each day beyond the thirtieth day: | \$2000 per day |

Stipulated penalties shall be paid within thirty (30) days of receipt of **ADEQ'S** demand to **JWA** 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 which may be available

to **ADEQ** by reason of **JWA'S** failure to comply with the requirements of this **CAO**. **ADEQ** 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 **ADEQ** be entitled to double recovery of penalties or fines under this **CAO** and pursuant to its enforcement authority.

6. If any event, including but not limited to an occurrence of nature, causes or may cause a delay in the achievement of compliance by **JWA** with the requirements or deadlines of this **CAO**, **JWA** 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 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.

7. **ADEQ** may grant an extension of any provision of this **CAO**, provided that **JWA** 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 **JWA**. 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 **JWA** and the length of the delay attributable to such circumstances shall rest with **JWA**. Failure to notify **ADEQ** promptly, as provided in the previous Paragraph of the **ORDER AND AGREEMENT**, shall be grounds for a denial of an extension.

8. This **CAO** is subject to public review and comment in accordance with A.C.A. §8-4-

103(d) and is, therefore, not final until thirty (30) days after public notice of the **CAO** is given. **ADEQ** retains the right and discretion to rescind this **CAO** based on comments received within the **thirty-day** public comment period.

9. As provided by Arkansas Pollution Control and Ecology Commission Regulation Number 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.

10. Nothing contained in this **CAO** shall relieve **JWA** of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this **CAO** be deemed in any way to relieve **JWA** of responsibilities contained in the permit.

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

12. This **CAO** shall apply to and be binding upon **ADEQ** and upon **JWA**, their successors and assigns. Any changes in ownership or corporate status of **JWA**, including but not limited to any transfer of shares, assets or other real or personal property, shall in no way alter **JWA'S** obligations under this **CAO**.

13. 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 15th DAY OF April, 2005

Marcus C. Devine
MARCUS C. DEVINE, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

JW ALUMINUM COMPANY

BY: Melvin P. Lee (Signature)

Melvin P. Lee (Typed or printed name)

TITLE: General Manager

DATE: April 11, 2005