

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

MAPCO Express, Inc.
801 Crescent Centre Drive, Suite 300
Franklin, TN 37067

LIS No. 18-045
Permit No. AR0046752
AFIN 62-00109

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("Order") 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.*, 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 MAPCO Express, Inc. ("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 operates a Travel Center ("Facility") located at 1030 Hwy 78 North, Wheatley, St. Francis County, Arkansas.
2. Respondent discharges stormwater to an unnamed tributary, thence to Flat Fork Creek, thence to Big Creek, thence to the White River in Segment 4A of the White River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. 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).

5. 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.

6. 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].

7. 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.

8. 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.”

9. The Department issued NPDES Permit Number AR0046752 (“Permit”) to Respondent on June 28, 2013, with an effective date of July 1, 2013, and a minor modification to the Permit was issued on April 14, 2017, with an effective date of May 1, 2017. The Permit will expire on June 30, 2018.

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.
11. Respondent intends to operate this facility beyond the expiration date of the current permit, June 30, 2018.
12. A complete Permit renewal application was due to the Department by January 1, 2018.
13. The complete Permit renewal application was not received by January 1, 2018. Failure to submit the Permit renewal application by January 1, 2018, is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
14. The Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from January 1, 2015 through January 31, 2018:
 - a. Six (6) violations for Chemical Oxygen Demand; and
 - b. Seven (7) violations for Total Suspended Solids.
15. Each of the thirteen (13) discharge limitation violations listed in Paragraph 14 above constitutes a separate Permit violation for a total of thirteen (13) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
16. The Department's review of the certified DMRs submitted by Respondent in accordance with the Permit also revealed that Respondent failed to submit the DMRs in accordance with Part III, Section C, Condition 5 of the Permit from December 1, 2014, to December 31, 2017. Failure to timely submit DMRs violates Part III, Section C, Condition 5 of the Permit. The following DMRs were not submitted timely:

- a. October 2016,
- b. December 2016,
- c. April 2017,
- d. June 2017,
- e. August 2017,
- f. September 2017,
- g. October 2017, and
- h. November 2017.

17. Each of the eight (8) reporting violations listed in Paragraph 16 above constitutes a separate Permit violation for a total of eight (8) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. On April 13, 2018, the Department received Respondent's application for renewal of the Permit. On April 20, 2018, the Department notified Respondent by certified mail the permit renewal application was deemed administratively incomplete.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. Respondent shall submit DMRs in accordance with Part III, Section C, Condition 5 of the Permit.
3. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than March 31, 2019, and the CAP

shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 14 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in this Order and the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Seven Hundred Dollars (\$3,700.00), or one-half of the full civil penalty of One Thousand Eight Hundred Fifty Dollars (\$1,850.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) days from receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. 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

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

5. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If Respondent should fail to meet any such requirements or deadlines, 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 Respondent to comply with the requirements of this Order.

6. 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 Respondent with the requirements or deadlines of this Order, 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.

7. ADEQ may grant an extension of any provision of this Order, 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 ADEQ promptly, as provided in the preceding Paragraph of this Section, shall be grounds for a denial of an extension.

8. 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 within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

9. 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.

10. 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 Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order 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 24th DAY OF May, 2018.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

MAPCO Express, Inc.

BY: [Signature]
(Signature)

KEITH SLATER
(Typed or printed name)

TITLE: VP PROCUREMENT

DATE: 5/18/18