

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 23-00244

LIS No. 17-099

TOKUSEN U.S.A., INC.  
1500 AMITY ROAD  
CONWAY, ARKANSAS 72032

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO 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.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Tokusen U.S.A., Inc. (Respondent) 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.

**FINDINGS OF FACT**

1. Respondent owns and operates a steel tire cord manufacturing facility located at 1500 Amity Road in Conway, Faulkner County, Arkansas.
2. The investigation noted in this CAO covered Air Permit 0992-AR-5 (the Permit). The Permit was issued on August 20, 2014, and is currently still in effect.

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3. 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

4. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 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.

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

6. On January 24, 2017, ADEQ personnel conducted a full compliance inspection of Respondent's facility.

7. The inspection covered the reporting period of October 2015 – December 2016 (15 months).

8. The inspection revealed that Respondent had failed to record the date, time, and corrective actions taken when the scrubber flow rate dropped below the permitted minimum flow rate. Records reviewed during the inspection indicated that Respondent had failed to record 162 Scrubber minimum flow rate excursions at SN-01A & SN-01B (Pickling Scrubbers), SN-05 (Brass Plating Scrubber), and SN-10 (Brass Plating Scrubber) during the reporting period covered by the inspection (Table 1). Such failures violate Specific Condition 8 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

**Table 1**

<b>DATE</b>	<b>TIME</b>	<b>SOURCE NUMBER</b>	<b>FLOW RATE (GPM)</b>	<b>MINIMUM FLOW RATE (GPM)</b>
October 7, 2015	1700	SN-01A (HP-1)	213	225
October 12, 2015	2000	SN-01B (HP-2)	185.3	200
October 16, 2015	1900	SN-01A (HP-1)	217.8	225
October 22, 2015	0200	SN-01A (HP-1)	210.1	225
October 22, 2015	1900	SN-01A (HP-1)	212.2	225
October 22, 2015	2200	SN-01A (HP-1)	216.4	225
October 23, 2015	0400	SN-01A (HP-1)	8.4	225
October 27, 2015	0000	SN-01B (HP-2)	191.9	200
November 1, 2015	0600	SN-01A (HP-1)	4.8	225
November 3, 2015	0500	SN-01B (HP-2)	10.0	200
November 4, 2015	0200	SN-01A (HP-1)	6.5	225
November 4, 2015	0300	SN-01A (HP-1)	5.9	225
November 4, 2015	0400	SN-01A (HP-1)	2.8	225
November 6, 2015	0500	SN-01A (HP-1)	6.0	225
November 9, 2015	0100	SN-01A (HP-1)	211.5	225
November 9, 2015	0200	SN-05 (PP-3)	122.5	125
November 19, 2015	1900	SN-05 (PP-3)	124.0	125
November 21, 2015	1200	SN-05 (PP-3)	121.0	125
November 30, 2015	0600	SN-05 (PP-3)	123.8	125
December 3, 2015	0400	SN-05 (PP-3)	124.1	125
December 3, 2015	0800	SN-05 (PP-3)	123.9	125
December 5, 2015	0400	SN-05 (PP-3)	124.9	125
December 5, 2015	0700	SN-05 (PP-3)	124.3	125
December 8, 2015	2300	SN-01A (HP-1)	216.8	225
December 10, 2015	0300	SN-01A (HP-1)	7.6	225
December 21, 2015	1600	SN-01A (HP-1)	218.7	225
December 31, 2015	0100	SN-01A (HP-1)	223.1	225
January 5, 2016	2200	SN-01B (HP-2)	184.3	200
January 18, 2016	2300	SN-01A (HP-1)	221.5	225
January 20, 2016	0600	SN-01B (HP-2)	199.2	200
January 22, 2016	0500	SN-01B (HP-2)	199.4	200
January 30, 2016	2000	SN-01A (HP-1)	211	225
February 6, 2016	2200	SN-01A (HP-1)	220.8	225
February 19, 2016	0400	SN-01A (HP-1)	35.6	225
February 19, 2016	0500	SN-01A (HP-1)	18.0	225
February 21, 2016	0500	SN-01A (HP-1)	1.9	225
February 23, 2016	0300	SN-01A (HP-1)	3.6	225
February 23, 2016	0400	SN-01A (HP-1)	16.8	225
February 23, 2016	0500	SN-01A (HP-1)	24.9	225

February 24, 2016	2000	SN-01B (HP-2)	199.4	200
February 25, 2016	0400	SN-01A (HP-1)	13.3	225
February 25, 2016	0500	SN-01A (HP-1)	8.1	225
February 27, 2016	0400	SN-01A (HP-1)	4.1	225
March 16, 2016	2100	SN-10 (PP-4)	198.4	200
March 16, 2016	2300	SN-10 (PP-4)	199.6	200
March 17, 2016	0900	SN-10 (PP-4)	199.7	200
March 17, 2016	1000	SN-10 (PP-4)	199.1	200
March 31, 2016	0300	SN-01A (HP-1)	212.5	225
April 4, 2016	0500	SN-01B (HP-2)	4.4	200
April 25, 2016	0100	SN-01A (HP-1)	212.2	225
April 25, 2016	1300	SN-01B (HP-2)	184	200
April 29, 2016	0200	SN-01A (HP-1)	217.3	225
May 2, 2016	0000	SN-01A (HP-1)	220.5	225
May 13, 2016	2200	SN-01A (HP-1)	220.0	225
May 21, 2016	1600	SN-10 (PP-6)	199.6	200
May 24, 2016	1400	SN-10 (PP-6)	198.5	200
May 28, 2016	1200	SN-10 (PP-6)	199.8	200
May 28, 2016	1500	SN-01B (HP-2)	39.4	200
May 28, 2016	1600	SN-01B (HP-2)	35.5	200
May 28, 2016	1700	SN-01B (HP-2)	35.4	200
June 4, 2016	0600	SN-01A (HP-1)	200.3	225
June 5, 2016	0000	SN-01A (HP-1)	220.9	225
June 14, 2016	1100	SN-10 (PP-6)	198.9	200
June 22, 2016	0100	SN-10 (PP-6)	199.6	200
June 24, 2016	0800	SN-10 (PP-6)	199.4	200
June 24, 2016	1200	SN-10 (PP-6)	197.1	200
June 26, 2016	1800	SN-10 (PP-6)	198.5	200
June 27, 2016	1300	SN-05 (PP-3)	0.3	125
July 6, 2016	0400	SN-01A (HP-1)	205.9	225
July 14, 2016	1000	SN-10 (PP-4)	199.6	200
July 18, 2016	1300	SN-05 (PP-2)	0.4	160
July 18, 2016	1900	SN-01A (HP-1)	209.7	225
July 20, 2016	0300	SN-01A (HP-1)	41.7	225
July 22, 2016	0600	SN-10 (PP-6)	198.4	200
July 22, 2016	0800	SN-05 (PP-1)	193.6	200
July 22, 2016	1700	SN-10 (PP-6)	199.2	200
July 30, 2016	2200	SN-01A (HP-1)	215.8	225
August 3, 2016	2100	SN-01A (HP-1)	3.9	225
August 7, 2016	0000	SN-01A (HP-1)	208.0	225
August 7, 2016	0000	SN-10 (PP-6)	196.5	200
August 14, 2016	1300	SN-10 (PP-4)	196.3	200
August 16, 2016	0500	SN-10 (PP-6)	198.1	200



August 31, 2016	0900	SN-10 (PP-4)	198.4	200
September 7, 2016	2000	SN-10 (PP-6)	198.2	200
September 18, 2016	0000	SN-01A (HP-1)	221.7	225
October 1, 2016	0400	SN-01A (HP-1)	52.9	225
October 2, 2016	0400	SN-01A (HP-1)	53.6	225
October 2, 2016	0500	SN-01A (HP-1)	53.0	225
October 3, 2016	0200	SN-01A (HP-1)	64.1	225
October 3, 2016	0300	SN-01A (HP-1)	23.5	225
October 3, 2016	0400	SN-01A (HP-1)	104	225
October 3, 2016	0500	SN-01A (HP-1)	74.4	225
October 4, 2016	0400	SN-01A (HP-1)	52.9	225
October 4, 2016	0500	SN-01A (HP-1)	52.1	225
October 5, 2016	0300	SN-01A (HP-1)	80.4	225
October 5, 2016	0400	SN-01A (HP-1)	105.4	225
October 5, 2016	0500	SN-01A (HP-1)	105.7	225
October 5, 2016	2000	SN-01A (HP-1)	214.7	225
October 6, 2016	0300	SN-01A (HP-1)	3.7	225
October 6, 2016	0400	SN-01A (HP-1)	56.6	225
October 6, 2016	0500	SN-01A (HP-1)	68.0	225
October 7, 2016	0100	SN-01A (HP-1)	53.0	225
October 7, 2016	0200	SN-01A (HP-1)	52.9	225
October 7, 2016	0400	SN-01A (HP-1)	53.1	225
October 7, 2016	0500	SN-01A (HP-1)	53.0	225
October 7, 2016	2100	SN-01A (HP-1)	199.5	225
October 8, 2016	0200	SN-01A (HP-1)	52.9	225
October 8, 2016	0300	SN-01A (HP-1)	2.0	225
October 8, 2016	0400	SN-01A (HP-1)	53.9	225
October 8, 2016	0500	SN-01A (HP-1)	52.9	225
October 9, 2016	0500	SN-01A (HP-1)	52.9	225
October 9, 2016	2200	SN-01A (HP-1)	223	225
October 10, 2016	0200	SN-01A (HP-1)	53.0	225
October 10, 2016	0300	SN-01A (HP-1)	52.7	225
October 10, 2016	0400	SN-01A (HP-1)	54.2	225
October 10, 2016	2300	SN-01A (HP-1)	218.7	225
October 11, 2016	0000	SN-01A (HP-1)	211.2	225
October 11, 2016	0400	SN-01A (HP-1)	53.0	225
October 11, 2016	0500	SN-01A (HP-1)	53.0	225
October 11, 2016	1800	SN-01B (HP-2)	48.1	200
October 12, 2016	0300	SN-01A (HP-1)	52.9	225
October 12, 2016	0400	SN-01A (HP-1)	53.4	225
October 14, 2016	0300	SN-01A (HP-1)	52.9	225
October 14, 2016	0400	SN-01A (HP-1)	53.0	225
October 14, 2016	0500	SN-01A (HP-1)	52.9	225

October 15, 2016	0200	SN-01A (HP-1)	23.8	225
October 15, 2016	0300	SN-01A (HP-1)	20.1	225
October 15, 2016	0400	SN-01A (HP-1)	16.9	225
October 15, 2016	0500	SN-01A (HP-1)	53.0	225
October 15, 2016	0600	SN-01A (HP-1)	52.9	225
October 15, 2016	0700	SN-01A (HP-1)	52.8	225
October 15, 2016	0800	SN-01A (HP-1)	52.9	225
October 15, 2016	1800	SN-01A (HP-1)	52.9	225
October 15, 2016	1900	SN-01A (HP-1)	52.8	225
October 15, 2016	2000	SN-01A (HP-1)	52.9	225
October 15, 2016	2100	SN-01A (HP-1)	44.4	225
October 15, 2016	2200	SN-01A (HP-1)	21.2	225
October 16, 2016	0500	SN-01A (HP-1)	53.0	225
October 16, 2016	1400	SN-01B (HP-2)	55.9	200
October 16, 2016	1500	SN-01B (HP-2)	48.0	200
October 16, 2016	1600	SN-01B (HP-2)	33.1	200
October 16, 2016	1700	SN-01B (HP-2)	36.1	200
October 17, 2016	0700	SN-01A (HP-1)	51.5	225
October 17, 2016	1300	SN-01B (HP-2)	36.1	200
October 17, 2016	1400	SN-01B (HP-2)	24.3	200
October 17, 2016	1500	SN-01B (HP-2)	28.0	200
October 17, 2016	1600	SN-01B (HP-2)	30.6	200
October 17, 2016	1700	SN-01B (HP-2)	42.4	200
October 20, 2016	1800	SN-01A (HP-1)	219.6	225
October 23, 2016	0200	SN-01A (HP-1)	221.4	225
October 25, 2016	1800	SN-01A (HP-1)	224.9	225
October 26, 2016	0900	SN-01A (HP-1)	223.8	225
November 2, 2016	1600	SN-05 (PP-1)	195.1	200
November 20, 2016	1300	SN-01A (HP-1)	52.8	225
November 20, 2016	1800	SN-01A (HP-1)	223.5	225
November 23, 2016	2100	SN-01A (HP-1)	223.6	225
November 26, 2016	1000	SN-05 (PP-1)	0.2	200
December 15, 2016	1700	SN-01A (HP-1)	200.9	225
December 18, 2016	1300	SN-01A (HP-1)	220.3	225
December 19, 2016	1700	SN-01A (HP-1)	224.1	225
December 19, 2016	1800	SN-01A (HP-1)	215.2	225
December 26, 2016	2200	SN-01A (HP-1)	224.2	225

9. In a letter dated February 10, 2017, ADEQ informed Respondent of the compliance issues identified in the inspection conducted on January 24, 2017. This letter was intended to give Respondent an opportunity to review the issues identified and submit any

additional information Respondent deemed appropriate.

10. To date, Respondent has not submitted a response to the February 10, 2017, letter.

### ORDER AND AGREEMENT

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

1. Respondent shall immediately begin complying with the Permit.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit the Specific Condition 8 required records of the date and time of the water flow rate excursions at SN-01A, SN-01B, SN-05, and SN-10 and what corrective actions were taken to correct the low flow rate. The records shall be submitted for a period of three (3) months beginning with the month following the effective date of this CAO.

3. All records shall be mailed to:

ADEQ, Office of Air Quality  
- Enforcement Section  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317

4. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **SIX THOUSAND DOLLARS (\$6,000.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO.

Such payment shall be made payable to:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall

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be entitled to attorneys' fees and costs associated with collection.

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

6. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent 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 Respondent'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.

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

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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 CAO, 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 previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

9. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar 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.

10. As provided by APC&EC Regulation 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.

11. Nothing contained in this CAO shall relieve Respondent 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 Respondent of responsibilities contained

in the permit.

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

13. 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 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 13 DAY OF November, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

TOKUSEN U.S.A., INC.

BY: Charles Smith (Signature)

Charles Smith (Typed or printed name)

TITLE: VP OPERATIONS

DATE: 11/1/17