

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 46-00985

LIS No. 20-195

PERFORMANCE PROPPANTS, LLC
2561 MILLER COUNTY 4
DODDRIDGE, ARKANSAS 71834

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 Performance Proppants, LLC (Respondent) and the Director of the Division of Environmental Quality¹ (DEQ), 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 sand plant located at 2561 Miller County 4 in Doddridge, Miller County, Arkansas.
2. The Air Permit referenced in this CAO is 2400-AR-1 (the Permit). The Permit

¹Pursuant 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 newlycreated Arkansas Department of Energy and Environment.

was issued on April 15, 2020.

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 or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

4. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

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. In a letter dated July 6, 2020, Respondent requested consideration under DEQ’s Environmental Self-Disclosure Incentive Policy (Policy) for installing and operating five (5) fuel tanks that were not addressed in the Permit. The five (5) tanks were:

Table 1

TANK CONTENTS	CAPACITY (gallons)
Diesel - Red Dyed	10,000
Diesel - Red Dyed	8,000
Diesel - Red Dyed	4,000
Diesel - Clear	1,000
Gasoline	1,000

7. On July 28, 2020, Respondent submitted an email to DEQ to correct the number of tanks and their capacities that were listed in the July 6, 2020 Self-Disclosure letter. The email

stated that the correct number of tanks and their capacities that are in operation at the facility that are not addressed in the Permit are:

Table 2

TANK CONTENTS	CAPACITY (gallons)
Diesel - Red Dyed	10,000
Diesel - Red Dyed	8,000
Diesel - Red Dyed	5,300
Diesel - Red Dyed	5,300
Diesel - Red Dyed	500
Diesel - Red Dyed	500
Diesel - Clear	1,000
Gasoline	1,000

8. On July 29, 2020, Respondent submitted an Air Permit Modification application to DEQ to add the tanks listed in Paragraph 7, Table 2 of the Finding of Facts section of this CAO to the Permit. The Permit Modification application was deemed administratively complete on July 30, 2020.

9. After a review of the Air Permit Modification application by DEQ personnel, it was determined that the six (6) Diesel - Red Dyed tanks and the one (1) Diesel - Clear tank will be added to the Permit as Insignificant Activities. The Gasoline tank is subject to 40 C.F.R. Part 63, Subpart CCCCCC- National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities and will be added to the Permit as Source Number 22.

10. After a review of the July 6, 2020 letter and the Air Permit Modification application, it was determined that Respondent had installed and operated an unpermitted source (Gasoline tank). Such act violates General Condition 16 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. On October 14, 2020, DEQ issued Respondent Air Operating Permit 2400-AR-2

which contains the six (6) Diesel - Red Dyed tanks and the one (1) Diesel - Clear tank as Insignificant Activities and the Gasoline tank as SN-22.

12. In correspondence dated August 12, 2020, DEQ informed Respondent that it had completed its review of Respondent's self-disclosure and found that Respondent met all eight (8) conditions of the DEQ Self-Disclosure Policy. Therefore, DEQ may mitigate up to a 100% of the civil administrative penalty for the violation addressed in this CAO.

ORDER AND AGREEMENT

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

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. All applicable submissions required by this CAO are subject to approval by DEQ.

In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately 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.

3. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ 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 DEQ'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 that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

4. 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 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 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.

5. DEQ 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 DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

ORIGINAL


6. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d). However, this CAO shall become effective upon execution by Respondent and the Director of DEQ.

7. 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.

8. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

9. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

10. 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 that individual as duly ratified by the governing body of the entity.



SO ORDERED THIS 17TH DAY OF DECEMBER, 2020.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

PERFORMANCE PROPPANTS, LLC

BY: WSB (Signature)

William G. Bowdon (Typed or printed name)

TITLE: President

DATE: 12/12/20