

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 88-00906

LIS No. 21-040

NORTH CENTRAL ARKANSAS QUARRY, INC.
311 COUNTY ROAD 603
MOUNTAIN HOME, ARKANSAS 72654

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 North Central Arkansas Quarry, Inc. (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 Hot Mix Asphalt facility located at 311 County Road 603 in Mountain Home, Baxter County, Arkansas.

2. The Air Permit referenced in this CAO is Tracking No. 1912-AGP-058, which

¹ Pursuant 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 newly created Arkansas Department of Energy and Environment.

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indicates authority to operate under the General Air Permit for Minor Source Hot Mix Asphalt Facilities (the Permit). The Permit was issued on June 14, 2005.

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. On October 1, 2020, DEQ conducted a full compliance inspection of Respondent’s facility. The inspection covered the reporting period of September 2019 through August 2020.

7. Specific Conditions 5 and 16 of the Permit require Respondent to control the visual emissions (VE) emitted by the facility. Specific Condition 5 states that “the permittee shall not conduct operations in such a manner as to unnecessarily cause air contaminants and other pollutants to become airborne.” Specific Condition 16 of the Permit states that “the permittee shall water all processes, storage piles, and haul roads as needed to ensure that no visible

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emissions extend beyond the property line of the facility.” During the inspection, it was observed that a significant amount of Particulate Matter (PM) dust was being emitted from the haul roads on the plant site as well as from the entrance road to the facility. This dust was being picked up by the wind and carried by the moving trucks all the way to County Road 603 and beyond the facility property line. Such act violates Specific Conditions 5 and 16 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

8. Specific Condition 18 of the Permit requires Respondent to test the asphalt plant exhaust stack for PM and opacity every five years. For units which have previously been tested, the testing shall be repeated within five years of the most recent documented test. During the inspection, it was discovered that Respondent failed to conduct emissions testing at the asphalt plant exhaust stack within the required time period. The asphalt plant exhaust stack was last tested on September 27, 2013. The next test was to be conducted on or before September 26, 2018. On August 8, 2018, Respondent requested and received an extension to the testing deadline until March 31, 2019. As of October 1, 2020, Respondent had not conducted the required emissions testing at the asphalt plant exhaust stack. Such failure violates Specific Condition 18 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. In a letter dated October 8, 2020, DEQ informed Respondent of the compliance issues identified in the inspection conducted on October 1, 2020. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

10. On November 30, 2020, Respondent submitted a response to the October 8, 2020

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letter and provided the following information:

- A. Regarding the compliance issues listed in Paragraph 7 above, Respondent stated that “This was a very windy day and particulate matter (dust) was being picked up by the wind. County Road 603 is connected to the property line and also the parking area of the quarry scale house. There is a water truck permanently on site at all times and will be used, in a more timely manner, to avoid violating S.C. #5 & S.C. #16.”
- B. Regarding the compliance issues listed in Paragraph 8 above, Respondent stated that “We have been in contact with Environmental Services Company, Inc. out of Little Rock and we are working out a date to have the stack tested. We have to take into account the production availability, the weather, and also the employees that can be present, on all sides, as pertains to all the current Covid-19 rules and regulations. We will be in contact with the Department as soon as a date is scheduled.”

11. On December 18, 2020, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the October 1, 2020 compliance inspection.

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. Within fifteen (15) calendar days of the effective date of this CAO, Respondent shall submit a test protocol for PM and Opacity testing at the asphalt plant exhaust stack.

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2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall conduct emissions testing at the asphalt plant exhaust stack for PM and Opacity.

3. Within ninety (90) calendar days of the effective date of this CAO, Respondent shall submit the emissions test results to DEQ.

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 FIVE HUNDRED EIGHTY DOLLARS (\$3,580.00)**, or one-half of the penalty, **ONE THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$1,790.00)** if this CAO is signed and returned to Air Enforcement Section, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **May 8, 2021**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

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

5. 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.

6. 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

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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.

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 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.

8. 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.

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. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) 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. 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.

12. 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.

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

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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 13th DAY OF May, 2021.

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

APPROVED AS TO FORM AND CONTENT:

NORTH CENTRAL ARKANSAS QUARRY, INC.

BY: Vickie Dilbeck (Signature)

Vickie Dilbeck (Typed or printed name)

TITLE: Treasurer

DATE: 5-3-21