

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 54-00160

LIS No. 17-114

HELM FERTILIZER TERMINAL, INC.
645 PHILLIPS ROAD
– SLACK WATER HARBOR
HELENA-WEST HELENA, ARKANSAS 72342

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 Helm Fertilizer Terminal, 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 fertilizer storage and distribution facility located at 645 Phillips Road 422 – Slack Water Harbor in Helena-West Helena, Phillips County, Arkansas.

2. The investigation noted in this CAO covered Air Permit 1765-A (the Permit). The Permit was issued on March 11, 1999 and was still in effect at the time of inspection.

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 May 2, 2017, ADEQ personnel conducted a full compliance inspection of Respondent's facility.

7. The inspection covered the reporting period of May 2013 through March 2017.

8. The inspection revealed that Respondent exceeded the yearly emissions rate limit for Particulate Matter/Particulate Matter less than ten (10) microns in diameter (PM/PM₁₀) at the facility. The permitted emissions rate limit for PM/PM₁₀ at the facility is 35.2 tons per year. Emissions rate records reviewed during the inspection indicated that Respondent's yearly PM/PM₁₀ emissions rate for 2016 was 48.89 tons per year. Such act violates Specific Condition 1 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code

Ann. § 8-4-304.

9. The inspection revealed that Respondent exceeded the 12-month rolling total limit for the amount of products received at the facility. The permitted 12-month rolling total limit for the amount of products received at the facility is 108,500 tons per year. Respondent exceeded the 12-month rolling total limit for the reporting period of April 2016 through March 2017 (12 months). Such act violates Specific Condition 4 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

Table 1

Month	Actual products received by barge Rolling 12-Month Rolling totals (Limit 108,500 tpy)	Actual products received by truck Rolling 12-Month Rolling totals (Limit 108,500 tpy)
Apr-2016	116,928	119,315
May-2016	147,900	162,249
Jun-2016	116,854	143,360
Jul-2016	118,196	144,921
Aug-2016	122,942	145,856
Sep-2016	126,216	148,053
Oct-2016	138,450	159,129
Nov-2016	144,611	164,545
Dec-2016	145,847	164,339
Jan-2017	150,245	164,473
Feb-2017	142,405	171,793
Mar-2017	126,401	152,287

10. The inspection revealed that Respondent installed twelve (12) unpermitted sources without first submitting a permit modification application to incorporate the sources into the Permit. The twelve (12) unpermitted sources at the facility include eleven (11) hoppers and one (1) vertical blender. Respondent also failed to notify the Director within thirty (30) days of construction commencing, completion of construction, the equipment being placed into operation, and the equipment first reaching the target production rate. Such acts violate General Conditions 2 and 3 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as

referenced by Ark. Code Ann. § 8-4-304.

11. In a letter dated June 26, 2017, ADEQ informed Respondent of the compliance issues identified during the inspection conducted on May 2, 2017. This letter was intended to give Respondent an opportunity to review the issues and submit any additional information Respondent deemed appropriate.

12. To date, ADEQ has not received a response to the June 26, 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. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit a Permit Modification Application to ADEQ to increase the PM/PM₁₀ emissions rate limit, to increase the Maximum Production/ Operation Rates limit, and to incorporate the twelve (12) unpermitted sources into the Permit.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **TEN THOUSAND SIX HUNDRED DOLLARS (\$10,600.00)**, or one-half of the penalty, **FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300.00)** if this CAO is signed and returned to Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **December 13, 2017**. 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 be entitled to attorneys' fees and costs associated with collection.

3. 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.

4. 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.

5. 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 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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 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 4th DAY OF December, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

HELM FERTILIZER TERMINAL, INC.

BY: Charles M. Edwards (Signature)

Charles M. Edwards (Typed or printed name)

TITLE: President / CEO

DATE: 11/21/17