

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 35-00116

LIS No. 20-169

U.S. ARMY, PINE BLUFF ARSENAL  
10020 KABRICH CIRCLE  
PINE BLUFF, AR 71602-9500

**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, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of U.S. Army, Pine Bluff Arsenal (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (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 military manufacturing and depot installation located at State Highway 365 South, Jefferson County, Arkansas.
2. The review noted in this CAO covered Air Operating Permit 1113-AOP-R17 (the Permit). The Permit was issued on November 29, 2018, and was still in effect at the time of review.

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 Energy and Environment, Division 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 DEQ 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. Specific Condition BCX-1 of the Permit limits the Carbon Monoxide (CO) and Nitrogen Oxide (NO<sub>x</sub>) at SN-34-125-BLR2a (22.2 MMBtu/hr boiler) to 0.9 lb/hr per pollutant. The emission limits are based on an operation rate of 8,760 hours per year.

7. Between April 26, 2019, and May 13, 2019, Respondent exceeded emissions of NO<sub>x</sub> at 441.4 lb and emissions of CO at 370.8 lb at SN-34-125-BLR2a due to the Flue Gas Recirculation (FGR) system not operating properly. This was reported in an Upset Condition Report dated May 1, 2019. Respondent stated that if the FGR had been operating properly, the emissions for the unit would have been 166.6 lb for NO<sub>x</sub> and CO and the uncontrolled emissions at maximum capacity would be 2.2lb/hr of NO<sub>x</sub> and 1.9 lb/hr of CO.

8. On May 2, 2019, Respondent hand-delivered a minor modification application to remove the FGR system from boilers SN-34-125-BLR1a and SN-34-125-BLR2a and to raise emission limits for the boilers. The minor modification application was approved on May 13,

2019. The FGR was bypassed and eventually removed from the facility.

9. In a letter dated May 20, 2019, Respondent requested consideration under DEQ's Environmental Self-Disclosure Incentive Policy (Policy) for the non-compliance issues associated with Specific Condition BCX-1 of the Permit. Respondent identified the source of non-compliance as the FGR-system not operating properly and stated that the noncompliance was discovered through a contractor bypassing the FGR-system on April 30, 2019. Also, Respondent discovered that the boiler house operators were improperly reporting natural gas usage for the boilers.

10. In correspondence dated November 14, 2019, DEQ informed Respondent that it had completed its review of Respondent's self-disclosure and found that it did not meet all eight (8) conditions of the Policy. The violation must have been discovered through either (a) an environmental audit, or (b) an environmental management system that reflects due diligence in preventing, detecting and correcting violations. Though these factors were not satisfied for full eligibility under the Policy, DEQ encourages and may offer partial penalty mitigation for those who voluntarily disclose, expedite a return to compliance, and cooperate fully through the enforcement process.

#### **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 thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to DEQ reports of natural gas usage at the boilers for three (3) months.
2. All records shall be mailed to:

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

3. In compromise and full settlement for matters specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FIVE HUNDRED DOLLARS (\$500.00)**. Payment is due within sixty (60) 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.

4. It is the anticipation of the Parties to this CAO that all obligations of Respondent arising under this CAO will be fully funded. Respondent agrees to seek sufficient funding to fulfill its obligations under this CAO. However, any requirement for the payment or obligation of funds by Respondent established by the terms of this CAO shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

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 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:    | Up to \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | Up to \$500 per day  |
| (c) More than thirty days:                   | Up to \$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; provided, however, that under no circumstances shall DEQ be entitled to double recovery of penalties or fines under this CAO and pursuant to its enforcement authority.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

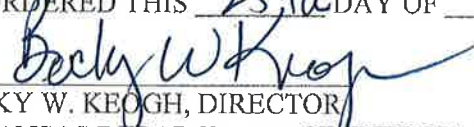
13. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent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

14. Settlement of this matter shall not constitute an admission of liability in any

administrative or judicial proceeding. Settlement of this matter, to include Respondent remitting payment, shall not constitute or be considered a waiver of federal sovereign immunity, or an admission of such a waiver, or an admission that the United States is liable to pay administrative or civil penalties or fines assessed by state or local regulatory authorities implementing programs for the control and abatement of air pollution. The issue of federal sovereign immunity from state-levied penalties assessed under state Clean Air Act air pollution prevention and control programs is subject to conflicting decisions in the courts. Nevertheless, Respondent believes it appropriate at this time and under the circumstances presented here to resolve this disputed matter by agreement.

15. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 25<sup>th</sup> DAY OF August, 2020.

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

APPROVED AS TO FORM AND CONTENT:

U.S. ARMY, PINE BLUFF ARSENAL

BY: 

TITLE: JMC, CG

DATE: 9 JUN 2020