

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 39-00023

LIS No. 12-142

U.S. ARMY CORPS OF ENGINEERS  
- W.G. HUXTABLE PUMPING STATION  
5825 LEE COUNTY ROAD 501  
MARIANNA, ARKANSAS 72360

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (hereinafter "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 (hereinafter "the Act"), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (hereinafter "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 CORPS OF ENGINEERS (hereinafter "Respondent") and the Director of the Arkansas Department of Environmental Quality (hereinafter "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 the W.G. Huxtable Pumping Plant (hereinafter "Huxtable"), a floodwater pumping station located at 5825 Lee County Road 501 in Marianna, Lee County, Arkansas. Huxtable is located between the Mississippi and St. Francis River levees

and operates as both a gravity flow structure and pumping plant for conveying storm water from the St. Francis River Basin into the Mississippi River. When operating, Huxtable regulates flood waters on a 2,013 square mile drainage area. Huxtable strictly operates in accord with an operational plan adopted in 1978 and revised in 1985, which requires Respondent to operate the pumping aspects of the plant when the landside water elevation is 177 NGVD until the landside elevation reaches 175 NGVD. Emissions are created by 10 diesel engines (3600 bhp each) and 2 CAT generators (750 bhp each).

2. ADEQ issued Air Operating Permit 1793-AOP-R2 (hereinafter “the Permit”) to Respondent on November 10, 2010.

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) 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. Section V of the Permit requires that Respondent install Selective Catalytic Reduction (hereinafter “SCR”) on each engine (SN-01 through SN-10) and each generator (SN-11 and SN-12). This control equipment with associated NO<sub>x</sub> analyzer was required to be

installed according to the following schedule:

Calendar Year	Install SCR On
2010	5 engines and 2 generators
2011	5 engines

Respondent was also required to increase the stack heights of each engine (SN-01 through SN-10) and each generator (SN-11 and SN-12) to forty-two (42) feet. This stack height increase was required to be conducted according to the following schedule:

Calendar Year	Increase Stack Height On
2010	5 engines and 2 generators
2011	5 engines

7. On January 20, 2011, Respondent contacted ADEQ indicating that Huxtable was out of compliance with the Compliance Plan and Schedule outlined in Section V of the Permit. Because Huxtable only operates intermittently and had not operated since June 2010, Respondent indicated in its letter that compliance was expected to occur by February 28, 2011.

8. Respondent began pumping operations on March 2, 2011.

9. On March 17 and 19, 2011, Respondent informed ADEQ via phone and email that the SCR shells and stacks for the 5 pump engines had been installed but were not operational, as the catalysts themselves had not been installed. In that email, Respondent asked ADEQ about the possibility of modifying the schedule in the permit to address the delayed construction schedule.

10. ADEQ personnel conducted a routine compliance inspection at Huxtable on June 9, 2011 covering the reporting period of May 2010 through April 2011.

11. In the preliminary inspection findings, ADEQ concluded that Respondent had failed to install SCR and increase stack height for five (5) engines and two (2) generators by the

2010 deadline. Such acts violate Section V of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. Huxtable pumping operations stopped on July 8, 2011. In correspondence to ADEQ dated August 5, 2011, Respondent provided an upset condition report for the non-compliance condition covering the entire period of deviation from March 2, 2011 through July 8, 2011. Respondent stated that based on continued pumping conditions, Huxtable operated without SCRs installed from March 2, 2011 through July 8, 2011. Respondent also stated that SCR installation was in progress and scheduled for completion in September 2011 for all sources.

13. In correspondence dated February 3, 2012, Respondent stated that as of February 3, 2012, all components of the SCR system, including diesel oxidation catalysts, were installed. However, the piping elements responsible for carrying the catalyst for the system were not fully operational. Work to remedy the piping issue was expected to commence on February 6, 2012 with an estimated completion date in late February or early March 2012. Respondent also stated that as of February 3, 2012, Huxtable had to be placed back into operation. Respondent admitted that as of the date of the correspondence, Huxtable was still out of compliance with Section V of the Permit. Such act violates Section V of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

14. In correspondence dated March 22, 2012, Respondent provided an upset condition report for the non-compliance condition covering the entire period of deviation from February 3, 2012 through February 10, 2012. Respondent stated that they are continuing to work on issues associated with the installation and operation of the SCR, but that they are still out of compliance with Section V of the Permit.

15. During the 2012 pumping season, Respondent discovered that the non-SCR beds were clogging the SCR beds of the catalysts and that a crank case ventilation (CCV) system would need to be installed in order to allow the SCR catalysts to function. Respondent estimates that CCV can be installed at Huxtable on all catalysts no later than November 30, 2013.

### ORDER AND AGREEMENT

WHEREFORE, Respondent and ADEQ do hereby agree and stipulate as follows:

1. Respondent shall operate under the original Phase I emissions schedule as listed in Section V of the Permit until CCV is installed no later than November 30, 2013. Should pumping operation occur in the middle of CCV installation, Respondent shall operate all engines with CCV installed first before engaging the other engines. If CCV is installed and the entire SCR system on all sources is tested and found operational prior to November 30, 2013, Phase III will begin on that date.

2. If Respondent discovers further construction or testing issues rendering it non-compliant with the terms of the Permit or this CAO, Respondent shall provide ADEQ written notice within fifteen (15) calendar days of such discovery.

3. Respondent shall provide quarterly construction updates starting in September 2012 through CCV project completion.

4. Respondent shall notify ADEQ of the date that CCV construction is completed on each source within fifteen (15) calendar days.

5. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **NINE THOUSAND SIX HUNDRED DOLLARS (\$9,600.00)**. The total amount shall be made payable to the Arkansas Department of Environmental Quality and mailed to:

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

Unless otherwise notified, in writing, by ADEQ, Respondent shall pay the settlement amount within sixty (60) calendar days after the effective date of this CAO.

6. 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.

7. 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.

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 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.

9. 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.

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. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-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.

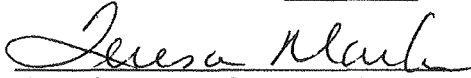
12. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided

herein, shall this CAO 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 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.

14. By virtue of the signature appearing below, the individual represents that he/ she is the District Commander and is duly authorized to execute and bind Respondent to the terms contained herein.

SO ORDERED THIS 26<sup>th</sup> DAY OF October, 2012.

  
TERESA MARKS, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

U.S. ARMY CORPS OF ENGINEERS, MEMPHIS DISTRICT

BY:  (Signature)

VERNIE L. REICHLING  
COLONEL, CORPS OF ENGINEERS  
DISTRICT COMMANDER

DATE: 23 OCT 12