

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 30-00008

LIS No. 18-078

ACME BRICK COMPANY
d/b/a ACME BRICK COMPANY (PERLA PLANT)
US HIGHWAY 67 NORTH
MALVERN, AR 72104

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 Acme Brick Company d/b/a Acme Brick Company (Perla Plant) (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 clay brick manufacturing facility located at US Highway 67 North in Malvern, Hot Spring County, Arkansas.
2. The investigation noted in this CAO covered Air Operating Permit 1154-AOP-R4

(the Permit). The Permit was issued on March 27, 2015, and was currently still in effect at the time of investigation.

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 April 5, 2018, ADEQ personnel conducted a routine compliance inspection of Respondent's facility for the reporting period of March 2017 through February 2018.

7. During the inspection, it was found that Respondent failed to perform monthly opacity observations for sources SN-09 (Rotary Dryer), SN-10 (Rotary Kiln), SN-12 (East Gate Dryer), SN-13 (East Gate Dryer), SN-14 (East Gate Tunnel Kiln), SN-17 (West Gate Dryer), and SN-18 (West Gate Tunnel Kiln). The opacity is to be conducted by personnel familiar with the permittee's visible emissions and trained in EPA Reference Method 9. The following table (Table 1) reflects the months Respondent failed to provide documentation of opacity readings at the above sources. Such failures violate Specific Conditions 4, 11, 17, and 21 of the Permit and

therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

Table 1		
Source Number (SN):	Specific Condition:	Deficiency:
SN-09 (Rotary Dryer)	4	Documentation of opacity was not available for August 2017.
SN-10 (Rotary Kiln)	11	Documentation of opacity was not available for July 2017 and August 2017.
SN-12 (East Gate Dryer)	17	Documentation of opacity was not available for September 2017.
SN-13 (East Gate Dryer)	17	Documentation of opacity was not available for September 2017.
SN-17 (West Gate Dryer)	17	Documentation of opacity was not available for September 2017.
SN-14 (East Gate Tunnel Kiln)	21	Documentation of opacity was not available for September 2017.
SN-18 (West Gate Tunnel Kiln)	21	Documentation of opacity was not available for September 2017.

8. The records provided by Respondent during the inspection revealed that there were two (2) failing pressure drop readings at SN-19 (East Gate Standby Generator 2,200 HP) for the months of October and November in 2017. Specific Condition 48 and 40 CFR Part §63.6650 (Subpart ZZZZ- National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines) of the Permit requires Respondent to include instances of monthly pressure drop readings in the report as deviations. Respondent is to submit semi-annual compliance reports if there were instances of any deviations or malfunctions during the reporting period. The reports were submitted on January 30, 2018, and did not include the two (2) pressure drops. Such failure violates Specific Condition 48 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304 and 40 CFR Part §63.6650.

9. In correspondence dated April 11, 2018, ADEQ informed Respondent of the

issues identified in the inspection conducted April 5, 2018. This letter was intended to provide Respondent with the opportunity to review the issues identified and submit additional information Respondent deemed appropriate.

10. In correspondence dated May 30, 2018, ADEQ informed Respondent that the issues identified during the inspection were proceeding through formal enforcement. This letter was intended to provide Respondent the opportunity to submit additional information regarding the issues identified.

11. On June 1, 2018, Respondent contacted ADEQ about the formal enforcement correspondence and the issues identified during the inspection. Respondents' response was an explanation for the lack of response to the April 11th correspondence.

12. On May 11, 2018, Respondent submitted a permit modification to ADEQ. In the modification, Respondent requested to incorporate the results of engineering performance tests conducted and to incorporate Subpart JJJJJ into the Permit.

13. In a temporary variance request letter dated June 26, 2017, Respondent stated that after multiple engineering stack tests, it was found that the emission levels were above the permitted limits for one or more pollutants. The purpose of the multiple tests was to evaluate emissions and to provide updated emission factors for re-permitting purposes.

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. Until such time as ADEQ issues a final air permitting decision on the Permit Modification application referenced herein, Respondent may, at its own risk and with no

guarantee that a final permit will be issued, operate in accordance with the Permit Modification application as it existed at the time ADEQ deemed it administratively complete on May 18, 2018.

2. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit to ADEQ annual visible emissions for the opacity limits assigned for SN-09, SN-10, SN-11, SN-12, SN-13, SN-14, SN-17, and SN-18 for the months of March through August 2018 to show compliance with Specific Conditions 4, 11, 17, and 21.

3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to ADEQ a revised Subpart ZZZZ Semi-Annual Compliance Report for the year 2017 to include the two (2) monthly pressure drops at SN-19 and any other pressure drop deviations to show compliance with Specific Condition 48 and 40 CFR Part §63.6650 (Subpart ZZZZ).

4. All records shall be mailed to:

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

5. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **TWO THOUSAND FOUR HUNDRED DOLLARS (\$2,400.00)**. 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.

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 shall 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 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 31 DAY OF August, 2018.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

ACME BRICK COMPANY
d/b/a ACME BRICK COMPANY (PERLA PLANT)

BY: Ed Watson (Signature)

ED WATSON (Typed or printed name)

TITLE: SR. V.P. PRODUCTION

DATE: 8/20/18