

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 88-01315

LIS No. 17-010

JET ASPHALT & ROCK CO., INC.  
-FORDYCE PLANT  
2958 NORTH HIGHWAY 167  
FORDYCE, AR 71742

**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 Jet Asphalt & Rock Co., Inc. – Fordyce 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 hot mix asphalt facility located at 2958 North Highway 167 in Fordyce, Dallas County, Arkansas.
2. ADEQ granted Respondent coverage under the Minor Source General Air Permit

for Hot Mix Asphalt Facilities, Permit Number 1912-AGP-000 (the Permit). Respondent was issued Permit Tracking Number 1912-AGP-076 on August 26, 2009.

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 January 14, 2016, ADEQ personnel conducted an inspection of Respondent's facility for the reporting period covering January 2015 through December 2015. During the review of Respondent's records, it was discovered that Respondent had failed to conduct emissions testing on the Hot Mix Asphalt Plant Stack (SN-01) within the last five (5) years. Specific Condition 17 of the Permit requires the testing of SN-01 every five (5) years. The last emissions test conducted on SN-01 was performed on December 13-14, 2010. Respondent was required to perform emissions testing on SN-01 by December 14, 2015. Respondent has failed to conduct emissions testing on SN-01 in accordance with the Permit. Such failure violates Specific Condition 17 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as

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

7. In a letter dated January 25, 2016, ADEQ informed Respondent of the compliance issues identified in the inspection conducted on January 14, 2016. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

8. In correspondence dated January 29, 2016, Respondent stated that a stack test company had been contracted to conduct the necessary emissions testing on SN-01. Respondent also stated that it would be late March or early April before the Plant could be run for testing.

9. On June 30, 2016, Respondent submitted to ADEQ a compliance test protocol form for the testing of SN-01 on August 4, 2016.

10. On September 1, 2016, Respondent submitted stack test results for the emissions testing conducted at SN-01 on August 4, 2016. The results of the emissions test indicated that at the time of testing, SN-01 was in compliance with the permitted emission limits.

11. In correspondence dated September 9, 2016, ADEQ notified Respondent that after a review of the stack test results, it was determined that SN-01 was in compliance with the permitted emission rate limits at the time of testing.

### **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. This CAO addresses all violations referenced in the Findings of Fact.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **EIGHT HUNDRED DOLLARS**

(\$800.00), or one-half of the penalty, **FOUR HUNDRED DOLLARS (\$400.00)** 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 **February 18, 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 7th DAY OF Feb, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

JET ASPHALT & ROCK CO., INC.  
- FORDYCE PLANT

BY: Jim W. Bennett (Signature)

Jim W. Bennett (Typed or printed name)

TITLE: President

DATE: 1/31/17