

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 54-00013

LIS No. 18-062

ADM GRAIN RIVER SYSTEM, INC.
445 PHILLIPS 200 ROAD HIGHWAY 20 SOUTH
HELENA-WEST HELENA, AR 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 ADM Grain River System, 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 grain elevator located at 445 Phillips 200 Road Highway 20 South in Helena-West Helena, Phillips County, Arkansas.
2. The investigation noted in this CAO covered Air Permit 0800-AR-15 (the Permit). The Permit was issued on December 18, 2015, and was still in effect at the time of the

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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 December 12, 2017, ADEQ personnel conducted a routine compliance inspection of Respondent's facility for the reporting period of January 2016 through November 2017.

7. General Condition 16 of the Permit authorizes only those pollutant emitting activities addressed in the Permit. The inspection of the facility revealed that the activity of moving grain, using a portable auger, from the three (3) temporary ground piles is a pollutant emitting activity that is not addressed in the Permit. Such act violates General Condition 16 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

8. In correspondence dated December 19, 2017, ADEQ informed Respondent of the

compliance issues identified during the December 12, 2017 routine compliance inspection. This was intended to provide Respondent with the opportunity to review the violation and submit information Respondent deemed appropriate regarding the compliance issue.

9. In correspondence dated February 8, 2018, Respondent stated that it had evaluated emissions associated with the activity of removing grain from the temporary ground piles and confirmed the historical accounting of those emissions through emission point SN-03 – Internal Handling (No Control). Nevertheless, Respondent would submit a permit modification application to more expressly track these fugitive emissions.

10. On February 22, 2018, the ADEQ Office of Air Quality received Respondent's permit application requesting to add new emission points associated with the activity of removing grain from the temporary ground piles.

11. In correspondence, *Enforcement Referral*, dated February 26, 2018, the ADEQ District Air Inspector stated, regarding Respondent's February 8, 2018 response, that SN-03 only accounts for emissions of the grain handling once received at the permanent storage, not the handling at the temporary ground piles when the grain is loaded onto trucks.

12. In correspondence dated March 2, 2018, ADEQ informed Respondent that the compliance issue noted in ADEQ's December 19, 2017 correspondence, *Preliminary Inspection Findings*, was proceeding through formal enforcement channels.

13. On March 5, 2018, Respondent replied to ADEQ's March 2, 2018 correspondence by providing information, already considered by ADEQ, that was included in Respondent's February 8, 2018 correspondence and its permit modification application received by the ADEQ Office of Air Quality on February 22, 2018.

14. On March 12, 2018, ADEQ deemed the permit modification application administratively complete. With this modification, ADEQ is adding an existing portable auger at the temporary ground piles to the permit as SN-10B, SN-11B, and SN-12B. With this change the facility's permitted annual emissions are increasing by 5.9 tpy PM and 2.0 tpy PM₁₀.

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 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 March 12, 2018.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **FOUR HUNDRED FIFTY DOLLARS (\$450.00)**, or one-half of the penalty, **TWO HUNDRED TWENTY-FIVE DOLLARS (\$225.00)** 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 **July 10, 2018**. 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.

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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 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.

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 15 DAY OF July, 2018.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

ADM GRAIN RIVER SYSTEM, INC.

BY: Cynthia I. Ervin SM (Signature)

Cynthia I. Ervin (Typed or printed name)

TITLE: Vice President & Asst. Secretary

DATE: June 29, 2018

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