

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

THE CHEMOURS COMPANY FC, LLC
322 SOUTHFIELD CUTOFF ROAD
EL DORADO, ARKANSAS 71730

EPA ID No. ARR000017574
AFIN 70-01302

LIS 17- 098

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein having been settled by the agreement of The Chemours Company FC, LLC (“Respondent”) and the Arkansas Department of Environmental Quality (ADEQ or “Department”), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondent operates a chemical manufacturing facility at 322 Southfield Cutoff Road, El Dorado, Union County, Arkansas (“the Site”).
2. Respondent manufactures fluorinated chemical products including heptafluoropropane, trifluoropropene, 2-bromo 1,1-difluoroethane, and Pharma-227.
3. Respondent is a Large Quantity Generator of hazardous waste, some of which is shipped offsite and some of which is treated onsite before being transferred to a neighboring facility for deep well injection.

4. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes ADEQ to assess an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act (“the Act”) and any regulation or permit issued pursuant to the Act.
5. Ark. Code Ann. § 8-7-205(1) states, “It shall be unlawful for any person to ... [v]iolate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter....”
6. On July 12, 2016, ADEQ conducted a Compliance Evaluation Inspection (CEI) at the Respondent’s facility. ADEQ mailed the CEI Report to Respondent on August 8, 2016, and the CEI Report is incorporated herein by reference.
7. Based on the findings of the July 12, 2016 CEI, ADEQ identified the following violations of APC&EC Regulation 23:
 - a. **Respondent failed to determine if a solid waste was a hazardous waste:** Respondent maintains a <90-day hazardous waste container storage area (“<90-day storage area”) at the Site immediately west of their warehouse. During the CEI, sixty-five (65) containers were located in the <90-day storage area. Respondent’s employees indicated that the containers held hazardous waste but that sampling was needed to identify the specific contents and make specific hazardous waste determinations. Some of the containers were labeled, “Contents Unknown,” but had handwritten information that was believed by Respondent’s employees to identify contents. However, sampling was needed to confirm contents and establish waste profiles. Failure to make a hazardous waste determination is a violation of APC&EC Regulation No. 23 § 262.11, which states in part, “A person who generates a solid waste . . . must determine if that waste is a hazardous waste.” This also is a violation of Ark. Code Ann. § 8-7-205(1).
 - b. **Respondent accumulated hazardous waste on-site for greater than ninety (90) days without a permit or interim status:** Of the sixty-five (65) containers located in Respondent’s <90-day storage area, twenty-one (21) containers did not have an accumulation start date or the accumulation start date was illegible, and so have an unknown storage time, and forty-four (44) containers had dates indicating storage for longer than ninety (90) days. Several of these containers were labeled with accumulation start dates in excess of a year prior to the CEI,

dating back to February 4, 2012. Accumulating hazardous waste on-site for greater than ninety (90) days without a permit and without having interim status is a violation of APC&EC Regulation No. 23 § 262.34(a), which states in part, “a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status.” This also violates Ark. Code Ann. § 8-7-205(1).

- c. **Respondent failed to maintain adequate aisle space to allow the unobstructed movement of personnel and equipment in the event of an emergency:** This violation was noted in the warehouse area where universal waste-consumer electronic items were stored. This area had inadequate aisle space to allow for the unobstructed movement of personnel or equipment. This violation was also noted in the <90-day storage area, which lacked adequate aisle space to allow for the unobstructed movement of personnel or equipment between rows and within the exterior sidewalls of the structure. Failure to maintain adequate aisle space to allow the unobstructed movement of personnel and equipment in an emergency is a violation of APC&EC Regulation No. 23 § 265.35, which states, “The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.” This also violates Ark. Code Ann. § 8-7-205(1).
- d. **Respondent failed to inspect, at least weekly, areas where containers are stored:** During the CEI, ADEQ requested inspection sheets for the <90-day storage area for the period of March 1, 2016, to July 12, 2016. On the day following the CEI, Respondent provided fifteen (15) inspection sheets dated from March 2, 2016, to June 30, 2016. All fifteen (15) of these inspection sheets listed the aisle space, container condition, container labels, and accumulation start dates as “Acceptable” and contained no notes or comments to indicate otherwise. However, during the CEI, some of the containers in Respondent’s <90-day storage area were not in acceptable condition: several were observed to be bulging and the sides and tops of others were collapsing inward. Additionally, as described above in Paragraphs 7.a., 7.b., and 7.c. above, containers of hazardous waste were missing labels and accumulation start dates, and the storage area lacked adequate aisle space. Therefore, the weekly inspections of the <90-day storage area had not been adequately conducted because Respondent failed to note: inadequate aisle space; poor container condition; missing, inadequate, or illegible container labels; missing accumulation start dates; and some accumulation start dates in excess of the ninety (90) day storage limit. There also were no inspection sheets for the period from July 1, 2016, to the date of the CEI, July 12, 2016. Upon request, Respondent’s employee provided an additional inspection sheet dated July 7, 2016, and asserted that it was for the first week of July. In contrast to the fifteen (15) preceding inspection sheets, this inspection sheet noted the missing container labels and accumulation start dates. Failure to adequately inspect areas where containers are stored, at least weekly, is a

violation of APC&EC Regulation No. 23 § 265.174, which states, “At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.” This also violates Ark. Code Ann. § 8-7-205(1).

8. On September 7, 2016, ADEQ received a response to the CEI Report from Respondent with the following information regarding the violations identified in the CEI. The CEI Response is incorporated herein by reference.

- a. APC&EC Regulation No. 23 § 262.11 – Failure to determine if a solid waste is a hazardous waste. Respondent submitted documentation that waste determinations had been made for the containers stored in the <90-day storage area. The submitted documentation also included a site-specific waste disposal manual describing waste characterization, labeling, and thirteen (13) waste profiles approved subsequent to the CEI.
- b. APC&EC Regulation No. 23 § 262.34(a) – Accumulating hazardous waste on-site for greater than ninety (90) days without a permit and without having interim status. Respondent submitted documentation, including shipment manifests, that all containers of waste stored in the <90-day storage area had been shipped off-site, except four (4) drums that began accumulation the week of August 22, 2016.
- c. APC&EC Regulation No. 23 § 265.35 – Failure to maintain adequate aisle space to allow the unobstructed movement of personnel and equipment in an emergency. Respondent submitted photographic documentation that the <90-day storage area had adequate aisle space.
- d. APC&EC Regulation No. 23 § 265. 174 – Failure to inspect, at least weekly, areas where containers are stored. Respondent stated that the protocol for inspecting the <90-day storage area had been revised to require at least two (2) personnel to perform the weekly inspection, including one person from the

warehouse and one person from management. Respondent submitted documentation that a revised inspection form was in use and that the system for data entry had been revised.

ORDER AND AGREEMENT

Wherefore, Respondent and the Arkansas Department of Environmental Quality do hereby stipulate and agree as follows:

1. Upon the effective date of this CAO, Respondent shall submit documentation to ADEQ that there is adequate aisle space for the unobstructed movement of personnel and equipment *to any area of facility operation* in an emergency in accordance with APC&EC Reg. No. 23 § 265.35. This includes, but is not limited to, the warehouse area where universal waste-consumer electronic items are stored.
2. Upon the effective date of this CAO, Respondent shall conduct an Internal Compliance Audit of all hazardous waste management units and related activities. The Internal Compliance Audit shall be of sufficient scope to identify any instances of noncompliance with applicable hazardous waste management requirements, whether identified by the aforementioned CEI Report or not.
3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a report to ADEQ describing actions taken to maintain compliance with respect to the Internal Compliance Audit. The report will be subject to ADEQ approval. If ADEQ does not approve the report, in whole or in part, because the actions taken by Respondent were insufficient to achieve compliance with applicable requirements, Respondent shall undertake any additional actions identified by ADEQ in order to achieve and maintain compliance with the applicable requirements.
4. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall conduct a Pollution Prevention Study (PPS) to investigate ways to reduce the amount of

waste from the facility and submit a Report of Findings specific to the PPS to ADEQ for review and approval.

5. Respondent shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this CAO.
6. All submittals required by this CAO, excluding the requirement for the payment submittal in Paragraph 8 below, shall be electronically emailed to nicol@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Julie Nicol, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
7. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
8. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of THIRTY-NINE THOUSAND DOLLARS (\$39,000.00) of which THIRTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$13,650.00) may be used for one (1) or more Supplemental Environmental Project(s) (SEP) to be approved by the Director as provided for in Paragraph 9 of the Order and Agreement.
9. As part of the administrative civil penalty as set forth in Paragraph 8 of this CAO, Respondent may fund one (1) or more SEP(s) totaling THIRTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$13,650.00) to be approved by the Director. Respondent has thirty (30) calendar days from the effective date of this CAO to submit the SEP proposal(s). Completion of the SEP(s) shall be due within one hundred eighty (180) calendar days from ADEQ's SEP approval letter, unless an extension is granted by the Director. Respondent shall be obliged to pay the difference to ADEQ as a civil penalty of THIRTEEN THOUSAND SIX HUNDRED FIFTY DOLLARS (\$13,650.00) if:
 - a. Respondent fails to complete the SEP(s) within the approved time frame;

- b. ADEQ discovers or determines that Respondent was required by any federal, state, or local obligation, rule, law, regulation, or statute to perform the SEP(s); or
- c. Expenditures by Respondent in completing the SEP(s) are less than the amount required by the approved SEP(s).

If a SEP(s) is approved, the total amount of the monetary penalty of TWENTY-FIVE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$25,350.00) shall be due within thirty (30) calendar days of the approval of the SEP(s). In addition, upon completion of the SEP(s), Respondent shall submit to ADEQ copies of all documents verifying payment and full implementation of the approved SEP(s). Penalty payment shall be made payable to ADEQ and mailed to the attention of Fiscal Division, ADEQ, 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 attorney's fees and costs associated with collection.

- 10. All requirements of the Order and Agreement are subject to approval by ADEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies within the timeframe specified by ADEQ. Failure to adequately respond in writing within the timeframe specified by ADEQ constitutes a failure to meet the requirements established by this CAO.
- 11. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, ADEQ may assess stipulated penalties for delay in the following amounts:
 - a. First day through the fourteenth day: \$250 per day
 - b. Fifteenth day through the thirtieth day: \$1,250 per day
 - c. Each day beyond the thirtieth day: \$2,500 per day

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.

12. Respondent shall notify ADEQ within five (5) calendar days of knowledge of any delay or potential delay in complying with any provision of this CAO, specifying in detail the anticipated length of the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay. Such notification or request for extension shall be made in writing and prior to the deadline.
13. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requested such an extension in writing and provided that the delay has been, 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 no 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 fault of Respondent, and the length of delay that is attributable to such circumstances, shall rest with Respondent.
14. Nothing contained in this CAO shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this CAO exonerate past, present, or future conduct that is not expressly addressed herein. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this CAO be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.
15. This CAO is subject to public review and comments in accordance with Ark. Code Ann. § 8-4-103(d) and is therefore 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 or based on any other considerations that may subsequently come to light. Additionally, this CAO is

subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the Commission.

16. 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 8th DAY OF November 2017.

Becky W Keogh

BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

THE CHEMOURS COMPANY FC, LLC

BY: Signature Donald Kuhlmann

Print or Type Name DONALD KUHLMANN

Title PLANT MANAGER

Date 10-23-2017