

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 88-00972

LIS No. 16-038

HATTIEVILLE ROCK, LLC
36 HUNT CLUB LANE
HATTIEVILLE, ARKANSAS 72063

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, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Hattievilke Rock, LLC (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 a rock crushing facility located at 36 Hunt Club Lane in Hattievilke, Conway County, Arkansas.
2. ADEQ granted Respondent coverage under the Minor Source General Air Permit for Rock Crushing Facilities, Permit Number 1916-AGP-000 (hereinafter "the Permit"). Respondent was issued Permit Tracking Number 1916-AGP-066 on March 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. ADEQ personnel conducted a compliance inspection of Respondent on August 05, 2015.

7. During the inspection, ADEQ reviewed Respondent's list of all process emissions sources (crushers, screens, conveyors and any other aggregate sizing equipment) present at the facility. In accordance with Specific Condition 16 of the Permit, the list should indicate whether or not each source is subject to 40 C.F.R. Part 60 Subpart OOO – Standards of Performance for Nonmetallic Mineral Processing Plants (hereinafter "Subpart OOO") and if applicable, list the date of successful performance testing. Respondent's list failed to identify applicability to Subpart OOO, or show dates of successful passing of the performance test. Based on manufacture dates provided by Respondent, each piece of equipment was manufactured after the pertinent Subpart OOO applicability date of April 22, 2008 and is therefore subject to Subpart OOO. Such failures violate Specific Condition 16 of the Permit and therefore violate Ark. Code

Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Similar findings were noted in an inspection conducted on December 11, 2011.

8. During the inspection, ADEQ noted Respondent was operating process emissions sources without functional wet dust suppression equipment. In accordance with Specific Condition 24 of the Permit, Respondent shall not operate any process emissions sources without functional wet dust suppression equipment except on days of sufficient rainfall to ensure adequate visible emission control. No rainfall was noted on the date of inspection. Such acts violate Specific Condition 24 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. During the inspection, ADEQ noted that conveyors, identified by serial numbers 2018 and 2032, contained wet suppression equipment. In accordance with Specific Condition 43, Respondent shall perform monthly periodic inspections to verify water is flowing to discharge spray nozzles in the wet suppression system. In addition to the inspections, Respondent must record the date of inspection, any corrective actions, and note such actions in a logbook. ADEQ requested the monthly inspection logs for the conveyors. Respondent was unable to provide the requested records. Such failures violate Specific Condition 43 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. During the inspection, ADEQ requested Respondent's performance testing records regarding compliance with Specific Condition 39 and of the Permit. Specific Condition 39 establishes that all permitted sources must meet fugitive emission limits and compliance requirements within sixty (60) days after achieving the maximum production rate at which the facility will be operated, but not later than one hundred eighty (180) days after initial startup.

Based on production records obtained during an inspection conducted on December 06, 2011, Respondent began initial startup on June 07, 2010; therefore, establishing a one hundred eighty (180) day testing deadline of December 04, 2010. Respondent has failed to conduct the initial performance testing. Such failure violates Specific Condition 39 and General Condition 7 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In correspondence dated August 14, 2015, ADEQ notified Respondent of the findings discovered during the inspection.

12. In response dated August 31, 2015, Respondent stated that actions are currently underway to demonstrate compliance with Specific Conditions 16, 24, 39, 43 and General Condition 7 of the Permit.

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. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit records to demonstrate compliance with Specific Conditions 16, 24, and 43 to the ADEQ Air Enforcement Environmental Program Coordinator.

2. Within sixty (60) days of the effective date of this CAO, Respondent shall demonstrate compliance with the emission limits and testing requirements in accordance with Specific Condition 39 and General Condition 7 and Subpart OOO by conducting and successfully passing emission testing.

3. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **TEN THOUSAND FIFTY DOLLARS**

(\$10,050.00), or one-half of the penalty, **FIVE THOUSAND TWENTY-FIVE DOLLARS** (\$5,025.00), 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 **May 6, 2016**. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than a Managing Member 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 6th DAY OF May, 2016.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

HATTIEVILLE ROCK, LLC

BY: [Signature] (Signature)

MIKE MILLER (Typed or printed name)

TITLE: OWNER

DATE: 5/4/2016