

BEFORE THE ARKANSAS COMMISSION ON POLLUTION CONTROL AND
ECOLOGY

Deltic Timber Company
1720 US 82
Waldo, AR 71770

LIS _____

NPDES PERMIT NO. AR0047953

REQUEST FOR ADJUDICATORY
HEARING AND COMMISSION REVIEW

Comes Deltic Timber Company (“Deltic”), by its attorneys, Chisenhall, Nestrud & Julian, P.A., and hereby requests an adjudicatory hearing and the opportunity to present evidence and oral argument before the Arkansas Commission on Pollution Control and Ecology (the “Commission”) regarding the Arkansas Department of Environmental Quality’s February 29, 2016 decision to renew **NPDES PERMIT NO. AR0047953**, for the reasons enumerated below.

1. Deltic Timber Company owns and operates a lumber and chip mill located at 1720 Highway 82 West in Waldo, Columbia County, Arkansas.
2. On February 29, 2016 the Arkansas Department of Environmental Quality (“ADEQ”) issued a renewal of **NPDES PERMIT NO. AR0047953**. Attached as Exhibit I is a copy of the February 29, 2016 **NPDES PERMIT NO. AR0047953 (Exhibit 1, the “2016 Permit”)**.
3. Deltic timely submitted comments regarding the draft of the 2016 Permit, and the Director of ADEQ, through her delegee, the Associate Director of the Office of Water Quality, responded to those comments as part of the February 29, 2016 decision. The

responsive summary, found at Exhibit 1, failed to adequately respond to the comments raised.

4. Deltic Timber brings this Request for Adjudicatory to have **NPDES PERMIT NO. AR0047953** reviewed.
5. The Director's decision is arbitrary, capricious, not supported by a preponderance of the evidence, the decision did not include a written explanation of the rationale for the decision, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices, the decision is not supported by generally accepted scientific knowledge and engineering practices, the decision was not adopted in accordance with the applicable procedural requirements, and does not comply with existing law.
6. For the reasons stated above, and as more fully described below, Deltic requests an adjudicatory hearing and Commission review of the specific issues enumerated below relating to **NPDES PERMIT NO. AR0047953**.
7. On March 31, 2010 ADEQ renewed **NPDES PERMIT NO. AR0047953** for a five (5) year period, expiring on March 30, 2015. The March 31, 2010 **NPDES PERMIT NO. AR0047953** is attached hereto as Exhibit 2 (**Exhibit 2, the "2010 Permit"**). The 2010 Permit authorized the following influent sources to be treated and discharged through Outfall 001: "wet decking area runoff, storm water runoff, boiler blowdown, kiln condensate, cooling water, equipment washdown water, and fueling and air compressor station runoff." The 2010 Permit also included Condition 4 to further describe what sources were authorized for Outfall 001 as "stormwater." In particular, the 2010 Permit included the following Condition 4 on Page I of Part II.

Best Management Practices.

Stormwater runoff co-mingling with other process wastewater discharged from outfall 001 shall be managed in accordance with Best Management Practices (BMPs) in the form of a stormwater pollution prevention plan (SWPPP) to control the quality of stormwater discharges associated with industrial activity that are authorized by this permit.

8. To comply with Condition 4 of the 2010 Permit, the facility prepared a SWPPP which described the BMPs for management of the stormwater. Attached as Exhibit 3 is a copy of the SWPPP (**Exhibit 3, the "SWPPP"**). The SWPPP includes a site plan which identifies the drainage area that provides the stormwater influent to Outfall 001, and which identifies all of the activities and sources found in the Outfall 001 drainage basin. In particular, the SWPPP provides the following written description of the Outfall 001 drainage basin:

4.1.1 Areas That Drain to NPDES Outfall 001

The Outfall 001 drainage basin includes the eastern portion of the facility. Discharges from Outfall 001 are covered under NPDES Permit AR0047953. The outfall is permitted to discharge wet deck runoff, storm water runoff, boiler blowdown, kiln condensate, cooling water, equipment washdown water, and fueling and air compress station runoff. The drainage basin includes the Log Storage Area, Boiler House, Debarker, Timber Dock, and Green Sorter. Other potential sources include scrap metal/equipment storage areas (S1), the boiler ash handling area (S2), dumpsters (S3), petroleum filled tanks (S4), and the wood log handling area (ML4). Ash is collected at the boiler building in bins/dumpsters and transferred to the ash storage area where is it stored temporarily and then hauled away a third party contractor. The ash is stored in a recessed area constructed entirely of concrete and surrounded by a containment walls on all sides. Dumpsters are often stored within or near this drainage basin and are used for typical waste metal/trash disposal. Petroleum storage tanks and hydraulic units stored in this area are equipped with means of secondary containment to control potential spills or leaks. Runoff from this basin generally flows east into the wet deck settlement ponds before discharging from the outfall.

9. The SWPPP then lists the Authorized Non-Stormwater Discharges that may be found in any of the drainage areas, including the drainage area that flows to Outfall 001:

6.0 AUTHORIZED NON-STORM WATER DISCHARGES

The SWPPP must include a certification that discharges have been tested or evaluated for the presence of non-storm water discharges. Sources of authorized non-storm water that are combined with storm water discharges from the industrial activity area must be identified in the SWPPP in order to be authorized under the Permit. Pollution prevention measures are required for allowable non-storm water discharges and are discussed in Section 5.0. Authorized non-storm water discharges are as follows:

[list of the 15 Authorized Non-Stormwater Discharges]

10. Section 5.0 of the SWPPP describes the BMPs that apply to the Authorized Non-Stormwater Discharges, including those Authorized Non-Stormwater Discharges that are discharged through Outfall 001. The SWPPP and BMPs, prepared to comply with Condition 4 of the 2010 Permit, specifically authorized any or all of the 15 categories of Authorized Non-Stormwater Discharges to be discharged through Outfall 001.

11. 2010 Permit also included a compliance schedule requiring the facility to “obtain alternate permit coverage for the stormwater runoff from this facility within one year of the effective date of the permit.” SECTION B. PERMIT COMPLIANCE, Condition 3, page 1 of Part 1B. Permit coverage for the stormwater runoff that was discharged through stormwater outfalls was obtained on April 12, 2011 by obtaining coverage under the Industrial Stormwater General Permit, No. ARR000744. A copy of the Notice of Coverage for Permit ARR000744 is attached as Exhibit 4 (**Exhibit 4, the “IGP Stormwater Permit NOC”**). The current IGP is found as Appendix A to Exhibit 3, the SWPPP (**the “IGP Stormwater Permit”**) The IGP Stormwater Permit includes, as Condition 1.6, a number of “non-stormwater discharges that are authorized to be

discharged through a stormwater outfall by this permit” (the “Allowable Non-Stormwater Discharges”), which are as follows:

1.6 Allowable Non-stormwater Discharges. The following non-stormwater discharges are authorized by this permit:

- 1.6.1 discharges from emergency firefighting activities;*
- 1.6.2 fire hydrant flushings;*
- 1.6.3 potable water sources including waterline flushings;*
- 1.6.4 runoff from irrigation using non-process water;*
- 1.6.5 landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;*
- 1.6.6 routine external building washdown which does not use detergents;*
- 1.6.7 pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;*
- 1.6.8 air compressor condensate;*
- 1.6.9 steam condensate;*
- 1.6.10 uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids (such as the discharge of thawed condensate from the surface of liquid nitrogen tanks stored outdoors);*
- 1.6.11 incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., “piped” cooling tower blowdown or drains);*
- 1.6.12 uncontaminated ground water or spring water (See Note Below);*
- 1.6.13 foundation or footing drains where flows are not contaminated with process materials such as solvents (See Note Below);*
- 1.6.14 excavation dewatering (See Note Below); and*
- 1.6.15 non-process water used for dust suppression on roads.*

12. The SWPPP prepared pursuant to the 2010 Permit was also prepared to satisfy the requirements of the IGP Stormwater Permit, and also describes, through the Site Plan and written descriptions, the drainage basin for the stormwater outfalls, Outfalls 002, 003, 004, 005, 006 and 007. The SWPPP further specifies that any or all of the 15 categories of Allowable Non-Stormwater Discharges may be discharged through the stormwater outfalls.

13. Through the SWPPP, which was submitted pursuant to both the 2010 Permit and the IGP Stormwater Permit, any or all of the 15 Allowable Non-Stormwater Discharges may be discharged through Outfall 001 or any of the stormwater outfalls.
14. The 2016 Permit describes the influent sources to Outfall 001 using the exact same language as was found in the 2010 Permit, which is as follows: “wet decking area runoff, make-up water (well water),¹ storm water runoff, boiler blowdown, kiln condensate, cooling water, equipment washdown water, and fueling and air compressor station runoff.” See, 2016 Permit, SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: OUTFALL 001, Page 1 of Part IA.
15. The 2016 Permit slightly revised the Best Management Practices permit condition, Condition 4 of the 2010 Permit, which is now found at Condition 4 on Page 1 of Part II of the 2016 Permit, and which reads as follows:
- 4. Best Management Practices (BMPs), as defined in Part IV.6, must be implemented for the facility to prevent or reduce the pollution of waters of the State from stormwater runoff, spills or leaks, and/or waste disposal. The permittee must amend the BMPs whenever there is a change in the facility or a change in the operation of the facility.*
16. Deltic did not change its facility or operations in any manner that impacted the drainage basin that contributes stormwater discharged through Outfall 001, and the SWPPP still includes the list of the 15 categories of Allowable Non-Stormwater Discharges as being included and authorized as sources that may be combined with the stormwater runoff in the Outfall 001 drainage basin and discharged through Outfall 001.
17. Although the SWPPP addressed the drainage basin for the process wastewater outfall, as well as the drainage basins for the stormwater outfalls, there was some concern that an

¹ Make up water (well water) was added as an additional authorized influent source.

ADEQ inspector may observe that all references to the stormwater outfalls had been removed from the 2016 Permit, and fail to consult the SWPPP for reference to the Allowable Non-Stormwater Discharges that would be combined with stormwater diverted to the Outfall 001 discharge.

18. To avoid the perceived risk, and out of an abundance of caution, NPDES permit holders that had “stormwater” listed as an influent source to the process wastewater outfall began commenting on draft renewal permits that moved the stormwater outfalls from the individual permit to the IGP, requesting that ADEQ add the list of Allowable Non-Stormwater Discharges to the list of authorized influent sources, to avoid any confusion as to whether the facility could continue to commingle the Allowable Non-Stormwater Discharges with stormwater and discharge such stormwater through the process water outfall. ADEQ consistently accommodated these requests, when raised as a comment to an NPDES Permit renewal, through a response to comment and a change from the draft permit. For example, in the permitting decision for the Nucor-Yamato Steel Company (Limited Partnership), NPDES Permit No. AR0043117 (the “**Nucor Permit**”, **Responsive Summary attached as Exhibit 5**), ADEQ provided the following response to a comment that was virtually identical to Comment No. 2 to the draft of the 2016 Permit:

The draft permit lists the sources for Outfall 002 as storm water runoff, backwash water from sand filters associated with deep water wells, slag quenching water reuse basin overflow (including treated sanitary wastewater), and water from shallow dewatering wells.

Not all Outfall 002 sources that were included in the application were included in the source description. Also, the storm water language (including allowable nonstormwater discharges) was removed from the draft permit. Thus, those nonstormwater discharges that are occurring at the facility are no longer

covered. Therefore, NYS request that the following be added to the sources for Outfall 002:

[list of the 15 categories of Allowable Non-Wastewater Discharges]

Response: According to NYS, all of the listed sources [the 15 Allowable Non-Stormwater Discharges] exist at this facility. Therefore, all the above sources are included in the final permit as sources of water discharged at Outfall 002. This list of allowable non-stormwater discharges will be placed in Part II and will be referenced in the list of sources above the effluent limit table for Outfall 002 in Part IA.

19. When Deltic provided the same comment on the draft of the 2016 Permit, the comment was rejected by ADEQ, for the following stated reason:

The permittee stated that they have received coverage under the general permit for stormwater associated with industrial activity for those stormwater streams which are not routed to the pond system associated with Outfall 001. As language pertaining to stormwater discharges has been removed from the permit covering Outfall 001, the permittee requested that "allowable non-stormwater discharges" be added to the authorized discharges section of the individual permit. Allowable non-stormwater discharges include:

[List of Allowable Non-Stormwater Discharges]

Response: NPDES Permit No. AR0047953 is for discharges occurring through Outfall 001 only. The permittee did not include any of the above waste streams [Allowable Non-Stormwater Discharges] as operations contributing flow on EPA Form 2C.

All other discharges may be covered under the general permit for stormwater runoff associated with industrial activity (IGP). Streams listed as "allowable nonstormwater discharges" in Part I, Item 1.6 of the IGP qualify for coverage under the IGP.

The facility already has coverage under the IGP. (See tracking number ARR000744.) Therefore, unless the listed streams are discharged through Outfall 001, the permittee will only need to revise their SWPPP to have coverage for these discharges. If the facility wishes to discharge any of the streams listed in Comment 2, they will need to modify their individual permit.

20. Deltic did not describe the Allowable Non-Stormwater Discharges as operations contributing flow on EPA Form 2C because those sources had been included as operations that may contribute flow to Outfall 001 in the SWPPP, as required by the 2010 Permit, and now the 2016 Permit. ADEQ's new interpretation and apparent new "policy," as described in its response to Comment 2 on the Draft Permit, is contrary to law, contrary to the terms of the permits issued for this facility, and contrary to past practice. ADEQ's decision to reject Comment No. 2 should be reversed and ADEQ's response to Comment No. 2 should be rejected because the term "stormwater," as that term is used to describe an approved influent source for Outfall 001, includes runoff from any source listed in the SWPPP, which specifically includes all of the 15 categories of Approved Non-Stormwater Discharges. Alternatively, the 2016 Permit should be reversed and remanded to ADEQ, with instructions to modify Permit No. **AR0047953**, as requested by Comment No. 2, to specifically include the 15 categories of Approved Non-Stormwater Discharges as described in the SWPPP for discharge through Outfall 001.

21. ADEQ's decision that the 15 categories of Approved Non-Stormwater discharges are no longer authorized to be discharged through Outfall 001 is stayed pursuant to Regulation No. 8, Section 8.612(A)(2).

WHEREFORE, Deltic requests an adjudicatory hearing and the opportunity to present evidence and oral argument before the Arkansas Commission; that the decision to reject Comment No. 2 be reversed, that ADEQ's response to Comment No. 2 be rejected because the term "stormwater" as that term is used to describe an approved influent source for Outfall 001 includes any of the 15 categories of Approved Non-Stormwater Discharges that are listed on the

SWPPP, or alternatively that the 2016 Permit be reversed and remanded to ADEQ with instructions to modify Permit No. **AR0047953** as requested by Comment No. 2, and for such other relief to which it may be entitled.

Respectfully submitted,

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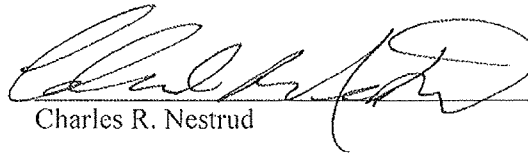
By:


Charles R. Nestrud, ABA No. 77095

CERTIFICATE OF SERVICE

I, Charles R. Nestrud, do hereby certify that I have served a copy of the foregoing pleading upon the following attorneys of record by U.S. Mail, postage prepaid, this 23 day of March, 2016.

Mr. Lorielle Gutting, Chief
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