

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 58-00272

LIS No. 17-063

JW ALUMINUM COMPANY  
777 TYLER ROAD  
RUSSELLVILLE, AR 72802

**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, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of JW Aluminum Company (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 an aluminum foil rolling mill located at 777 Tyler Road in Russellville, Pope County, Arkansas.
2. The investigation noted in this CAO covered Air Operating Permit 1659-AOP-R5 (the Permit). The Permit was issued on July 30, 2013, and is currently still in effect.

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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 March 15, 2017 and March 20, 2017, ADEQ personnel conducted a compliance inspection of Respondent's facility for the reporting period of June 2015 through February 2017.

7. On March 24, 2017, in response to the compliance inspection, Respondent submitted records of the daily opacity readings for the Holding Furnace #1 (SN-131), Holding Furnace #2 (SN-132), and Melting Furnace #1 (SN-134). Specific Condition 19 of the Permit requires Respondent to conduct daily observations of the opacity from sources SN-131 and SN-132 and to keep records of these observations. Specific Condition 24 of the Permit requires Respondent to conduct daily observations of the opacity from source SN-134 and to keep records of these observations.

8. A review of the records revealed that Respondent failed to record daily

observations of opacity from sources SN-131, SN-132, and SN-134 during the entire months of June 2015 through December 2015, totaling 214 days, as well as 152 days during the 2016 calendar year. Such failures violate Specific Conditions 19 and 24 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Table 1 lists the days during 2015 and 2016 that these opacity observations were not recorded.

Table 1, Days Opacity Observations Were Not Recorded at SN-131, SN-132, and SN-134		
Month/Year	Day	Number of Days
June 2015	1-30	30
July 2015	1-31	31
August 2015	1-31	31
September 2015	1-30	30
October 2015	1-31	31
November 2015	1-30	30
December 2015	1-31	31
<b>TOTAL DAYS DURING 2015</b>		<b>214</b>
January 2016	1	1
February 2016	23, and 27-29	4
March 2016	3-4, 8-9, 12-14, 17-18, 22-28, & 31	17
April 2016	1, and 29	2
May 2016	3-4, 7-9, 12-13, 17-18, and 21-23	12
June 2016	4-6, 8-20, and 28-30	19
July 2016	1-4, 7-8, 11-13, 26-28, and 30-31	14
August 2016	1, 5, 9-10, 13-15, 18-19, 23-24, and 27-29	14
September 2016	1-2, 6-8, 10-12, 14-16, 20-21, 24-25, and 29-30	17
October 2016	3-5, 7-10, 13-14, 18-19, 22-25, 27-28, and 31	18
November 2016	1-2, 5-7, 10-11, 15-16, 19-20, 24, and 26-30	17
December 2016	2-5, 8-9, 13-14, 16-23, and 31	17
<b>TOTAL DAYS DURING 2016</b>		<b>152</b>
<b>TOTAL DAYS DURING 2015 AND 2016</b>		<b>366</b>

9. In an email correspondence dated March 30, 2017, Respondent stated that it was unable to locate the opacity observation records for 2015.

10. In correspondence dated April 3, 2017 and May 16, 2017, ADEQ informed Respondent of the compliance issues identified during the March 2017 compliance inspection.

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These correspondences were intended to provide the facility with an opportunity to review violations and submit information Respondent deemed appropriate regarding the compliance issues.

11. In correspondence dated June 7, 2017, Respondent stated that SN-131 and SN-132 are both Group 2 furnaces. Accordingly, only clean material with no organics can be charged into those furnaces, thus eliminating the potential for generating opacity. All charge material records for those sources were reviewed for 2016 and confirmed that only clean material was charged.

12. Respondent stated that SN-134 is a Group 1 furnace; however, it has an opacity monitor in the Secondary Oxidation Chamber (SOC) that is integral to the furnace control logic to minimize the potential for opacity to be emitted. Due to the design of SN-134, any residual organics are destroyed in the SOC through the assistance of air injection when required to ensure complete combustion.

13. Respondent stated that to prevent a reoccurrence of the absence of visible emission records, it has retrained the appropriate personnel as to the permit requirements and management has made it clear that disciplinary action will be taken should records not be appropriately maintained in the future.

### **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 set forth in the FINDINGS OF FACT.
2. In compromise and full settlement for instances of noncompliance specified in the

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FINDINGS OF FACT, Respondent agrees to pay the sum of **FIVE THOUSAND SEVEN HUNDRED DOLLARS (\$5,700.00)**. 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 8th DAY OF September, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

JW ALUMINUM COMPANY

BY: Mike Whitten (Signature)

Mike Whitten (Typed or printed name)

TITLE: Plant Manager

DATE: 8-30-17

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