

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 20-00058

LIS No. 18-063

RAY WHITE LUMBER COMPANY  
318 NORTH COMMERCE STREET  
SPARKMAN, ARKANSAS 71763

**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 Ray White Lumber 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 a lumber facility located at 318 North Commerce Street in Sparkman, Dallas County, Arkansas.
2. The investigation noted in this CAO covered Air Operating Permit 1468-AOP-R5 (the Permit). The Permit was issued on April 4, 2014, and was still in effect at the time of

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 March 12, 2018, ADEQ personnel conducted a compliance inspection of Respondent's facility for the reporting period of February 2017 through January 2018. Respondent's facility is subject to the Prevention of Significant Deterioration (PSD) requirements.

7. During the inspection, it was discovered that Respondent had constructed a source at the facility that was not covered by the Permit. The unpermitted source, a Hurst 550-HP wood fuel boiler, is not yet operational. Such act violates the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 26.301(C) and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Further, commencing on-site construction of the Hurst 550-HP wood fuel boiler without first obtaining a PSD permit is a violation of 40

C.F.R. Part 52.21(a)(2)(iii).

8. During the inspection, it was also discovered that Respondent had installed and operated a Peerless 62 Unit Chip Bin (Peerless 62) at the facility that was not covered by the Permit.

9. In a letter dated March 19, 2018, ADEQ informed Respondent of the compliance issues identified in the inspection conducted on March 12, 2018. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

10. On April 16, 2018, Respondent submitted a response to the March 19, 2018 letter. The response letter and subsequent emails stated that the Hurst wood-fueled boiler was a pre-owned boiler that was purchased with the intent of eventually permitting and operating it when financially feasible. The boiler was purchased in the fall of 2016, delivered to the facility on October 31, 2016, and stored in a field on the mill yard until it was placed in a newly built building on June 12, 2017. Respondent further stated that the boiler has not been operated or connected to utilities and no unpermitted emissions have resulted. In regards to the Peerless 62, Respondent stated that it was purchased in March 2017, installed in the fall of 2017 and made operational in December 2017. Respondent proposed as corrective action to submit a permit application to ADEQ prior to connecting utilities to the boiler and submit information to ADEQ to show that the chip bin can be included as part of the existing Insignificant Activities section already contained in the Permit. Respondent requested that ADEQ use enforcement discretion for both unpermitted sources.

11. On April 26, 2018, Trinity Consultants on behalf of Respondent submitted

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emission calculations to ADEQ for the Peerless 62 unit chip bin to be evaluated as an insignificant activity.

12. After a review of the emission calculations for the Peerless 62, it was determined that the chip bin qualifies as an insignificant activity.

13. In an April 27, 2018 email, ADEQ informed Respondent that the Peerless 62 does qualify as an insignificant activity.

### 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. Respondent shall submit a Title V Permit renewal application that includes the Hurst 550-HP Boiler and the Peerless 62 unit chip bin to ADEQ by October 3, 2018.

2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **TWO THOUSAND ONE HUNDRED DOLLARS (\$2,100.00)**. 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

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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

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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 13 DAY OF July, 2018.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

RAY WHITE LUMBER COMPANY

BY: Donny White (Signature)

Donny White (Typed or printed name)

TITLE: Manager

DATE: 7-5-18