

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 47-00235

LIS No. 20-180

POINSETT RICE AND GRAIN, INC.  
-OSCEOLA DIVISION  
1926 E. COUNTY ROAD 718  
OSCEOLA, AR 72370

**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, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Poinsett Rice and Grain, Inc. – Osceola Division (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (DEQ), 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 terminal grain elevator located at 1926 E. County Road 718 in Osceola, Mississippi County, Arkansas.

---

<sup>1</sup>Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Arkansas Department of Energy and Environment.

ORIGINAL

2. The Air Permit referenced in this CAO is 1207-AR-4 (the Permit). The Permit was issued on March 31, 2017.

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 or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

4. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

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 November 19, 2019, DEQ personnel conducted a routine compliance inspection of Respondent’s facility for the reporting period of November 1, 2017 through October 31, 2019.

7. Specific Condition 8 of the Permit requires Respondent not to exceed 50,004 tons of grain throughput per rolling twelve (12) month period for source group SN-07 through SN-15 and 7,167 tons of grain throughput per rolling twelve (12) month period for source group SN-16 through SN-18.

8. Specific Condition 9 of the Permit requires Respondent to maintain monthly

records to demonstrate compliance with Specific Condition 8 of the Permit. The records of the grain throughput per rolling twelve (12) month totals and each individual month's throughput totals are to be maintained on-site and made available to DEQ personnel upon request.

9. Using monthly grain throughput totals provided by Respondent, DEQ personnel calculated rolling twelve (12) month totals for the purpose of determining Respondent's compliance with Specific Condition 8 of the Permit. The calculated grain throughput per rolling twelve (12) month totals calculations for source group SN-07 through SN-15 and source group SN-16 through SN-18 are presented in Table 1 and Table 2, respectively.

10. As presented in Table 1, the calculated rolling twelve (12) month totals for source group SN-07 through SN-15 reveal that Respondent exceeded the grain throughput limit of 50,004 tons of grain per rolling twelve (12) months in December 2017 through November 2018, May 2019, and October 2019, a total of fourteen (14) months that the grain throughput limit was exceeded. Such acts violate Specific Condition 8 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. As presented in Table 2, the calculated rolling twelve (12) month totals for source group SN-16 through SN-18 reveal that Respondent exceeded the grain throughput limit of 7,167 tons of grain per rolling twelve (12) months in December 2017 through November 2018 and March 2019 through September 2019, a total of nineteen (19) months that the grain throughput limit was exceeded. Such acts violate Specific Condition 8 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 – Source Group SN-07 Through SN-15 Grain Throughput, Limit: <b>50,004</b>											
Jan.	Feb.	Mar.	Apr.	May.	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
November 2017 through December 2017											
-	-	-	-	-	-	-	-	-	-	-	<b>61,775</b>
January 2018 through December 2018											
<b>64,875</b>	<b>69,184</b>	<b>75,838</b>	<b>75,838</b>	<b>74,783</b>	<b>76,969</b>	<b>77,701</b>	<b>77,907</b>	<b>78,672</b>	<b>63,715</b>	<b>57,221</b>	43,646
January 2019 through December 2019											
41,539	38,230	31,576	35,630	<b>51,110</b>	49,893	49,161	47,700	45,515	<b>54,612</b>	-	-
Grain throughput is reported as tons of grain per rolling twelve (12) month totals. Values in bold indicate exceedance.											

Table 2 – Source Group SN-16 Through SN-18 Grain Throughput, Limit: <b>7,167</b>											
Jan.	Feb.	Mar.	Apr.	May.	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
November 2017 through December 2017											
-	-	-	-	-	-	-	-	-	-	-	<b>16,187</b>
January 2018 through December 2018											
<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>9,905</b>	<b>10,144</b>	<b>11,137</b>	<b>9,042</b>	4,744
January 2019 through October 2019											
4,744	6,644	<b>8,895</b>	<b>8,895</b>	<b>8,895</b>	<b>8,895</b>	<b>8,895</b>	<b>8,895</b>	<b>7,707</b>	4,151	-	-
Grain throughput is reported as tons of grain per rolling twelve (12) month totals. Values in bold indicate exceedance.											

12. APC&EC Reg. 18.301 states that “[n]o person shall cause or permit the operation, construction, or modification of a stationary source... without first obtaining a permit from the Department.”

13. The inspection revealed that in July 2018, Respondent, without first obtaining a permit modification from the Division, constructed and operated a stationary source identified as a barge loadout. Such act violates APC&EC Reg. 18.301 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

14. In correspondence dated December 18, 2019, DEQ informed Respondent of the compliance issues identified during November 19, 2019 compliance inspection. This was intended to provide Respondent with the opportunity to review the violations and submit

information Respondent deemed appropriate regarding the compliance issues.

15. In correspondence dated February 20, 2020, Respondent stated that its record keeping spreadsheet has been updated and will be kept up to date.

16. In correspondence dated March 9, 2020, DEQ informed Respondent that the compliance issues in this matter were proceeding through formal enforcement channels.

17. On April 6, 2020, Respondent submitted a permit modification application. In the application, Respondent requested that the unpermitted barge loadout that was identified during the routine compliance inspection that was conducted on November 19, 2019, be included in the Permit. The application has been deemed administratively complete and is currently in review.

### ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. Until such time as DEQ issues a final permitting decision, Respondent shall operate under the throughput, emission, and operational limits outlined in the administratively complete permit modification application and keep records to demonstrate compliance with these limits. Should Respondent's application for permit modification be denied, Respondent shall immediately cease operation of the barge loadout and continue to operate under the conditions of permit 1207-AR-4.

2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FIVE THOUSAND TWO HUNDRED TWENTY DOLLARS (\$5,220.00)**. Payment is due within thirty (30) calendar

days of the effective date of this CAO. Such payment shall be made payable to:

DEQ, 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, DEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately 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 this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ 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 DEQ'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 that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ 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 DEQ 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. DEQ 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 DEQ 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. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) 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. Except as specifically provided herein, nothing contained in this CAO shall 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 DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that 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 that individual as duly ratified by the governing body of the entity.



SO ORDERED THIS 15<sup>th</sup> DAY OF October, 2020.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

POINSETT RICE AND GRAIN, INC.  
-OSCEOLA DIVISION

BY: Ryan Carwell (Signature)

Ryan Carwell (Typed or printed name)

TITLE: President

DATE: 10-2-20