

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

IN THE MATTER OF:

AFIN: 47-01028

LIS No. 20-194

MID-CONTINENT COAL & COKE COMPANY
5974 EAST STATE HIGHWAY 18
BLYTHEVILLE, ARKANSAS 72315

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 Mid-Continent Coal & Coke Company (Respondent) and the Director of the Division of Environmental Quality¹ (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 carbon processing facility located at 5974 East State Highway 18 in Blytheville, Mississippi County, Arkansas.
2. The Air Permit referenced in this CAO is 2369-AR-1 (the Permit). The Permit

¹ 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 newlycreated Arkansas Department of Energy and Environment.

was issued on May 7, 2020.

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 August 27, 2020, Respondent submitted emissions test results to DEQ for emissions testing conducted at the Carbon System Air Heater with Baghouse (SN-01) on June 30, 2020.

7. SN-01 is subject to 40 C.F.R., Part 60 – Standards of Performance for New Stationary Sources, Subpart Y – Standards of Performance for Coal Preparation and Processing Plants.

8. A review of the emissions test results indicated that SN-01 exceeded the permitted and Subpart Y emissions rate limit for Particulate Matter (PM) during the emissions testing. The permitted and Subpart Y emissions rate limit for PM at SN-01 was 0.01 gr/dscf. The average PM

emissions rate recorded at SN-01 during the test was 0.021 gr/dscf. Such act violates Specific Condition 14 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such act also violates Subpart Y.

9. In a letter dated August 31, 2020, DEQ informed Respondent that after a review of the emissions test results submitted on August 27, 2020, that SN-01 was out of compliance with the permitted and Subpart Y emissions rate limit for PM at the time of testing.

10. On September 10, 2020, Respondent submitted emissions test results to DEQ for emissions re-testing at SN-01 conducted on August 25, 2020.

11. A review of the emissions re-test results indicated that SN-01 was in compliance with the permitted and Subpart Y emissions rate limit for PM at the time of re-testing. The permitted and Subpart Y emissions rate limit for PM at SN-01 was 0.01 gr/dscf. The results of the re-test indicated that the average PM emissions rate recorded at SN-01 during the re-test was 0.0024 gr/dscf.

12. In a letter dated September 14, 2020, DEQ informed Respondent that after a review of the emissions re-test results submitted on September 10, 2020, that SN-01 was in compliance with the permitted and Subpart Y emissions rate limit for PM at the time of re-testing.

13. On September 17, 2020, DEQ emailed Respondent a Formal Enforcement Letter for the exceedance of the PM emissions rate limit at SN-01.

14. On September 18, 2020, Respondent submitted an email response to the September 17, 2020 Formal Enforcement Letter. Respondent stated that after the failed emissions test, the facility began changing the bags out. Respondent also conducted an engineering test on

July 15, 2020, and found additional bag issues due to a third-party supplier. Respondent then contacted the original baghouse manufacturer to do a study on the facility's dust particle size and ordered a new set of bags. The new bags were installed and a re-test of SN-01 was performed on August 25, 2020. The results of the re-test indicated that SN-01 was in compliance with the permitted and Subpart Y emissions rate limit for PM at the time of re-test.

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. This CAO addresses all violations contained in the FINDINGS OF FACT.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **NINE HUNDRED SIXTY DOLLARS (\$960.00)**, or one-half of the penalty, **FOUR HUNDRED EIGHTY DOLLARS (\$480.00)** if this CAO is signed and returned to Air Enforcement Section, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **December 18, 2020**. 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 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.

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 17TH DAY OF DECEMBER, 2020.

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

APPROVED AS TO FORM AND CONTENT:

MID-CONTINENT COAL & COKE COMPANY

BY: Chad A Rhodes (Signature)

Chad A. RHODES (Typed or printed name)

TITLE: VICE PRESIDENT

DATE: DECEMBER 3, 2020