

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

IN THE MATTER OF:

AFIN: 70-00039

LIS No. 21-028

MARTIN OPERATING PARTNERSHIP L.P.
484 EAST 6TH STREET
SMACKOVER, AR 71762

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 and APC&EC Regulation 26.

The issues herein having been settled by agreement of Martin Operating Partnership L.P. (Respondent) and the Director of the Arkansas Department of Energy and Environment, 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 an oil refinery located at 484 East 6th Street in Smackover, Union County, Arkansas.
2. This CAO references three (3) Air Operating Permits. 1227-AOP-R5 (Permit R5)

¹Pursuant 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.

was issued on September 29, 2017, and voided on March 12, 2019. 1227-AOP-R6 (Permit R6) was issued on March 12, 2019, and voided on July 12, 2019. 1227-AOP-R7 (Permit R7) was issued on July 12, 2019.

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. In a letter dated April 1, 2019, Respondent submitted a 2019 Annual Compliance Certification (ACC) Report to DEQ personnel for review. The report covered March 1, 2018 through February 28, 2019.

7. On January 28, 2020, DEQ personnel performed a full compliance inspection of Respondent’s facility. The reporting period for the inspection covered January 2019 through December 2019.

8. Based on the 2019 ACC Report and the records reviewed during the January 28, 2020 inspection, the following violations were noted (See TABLE 1). This table is outlined by

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Specific Condition (SC) or Plantwide Condition (PWC), Source Number (SN), and Violation.

TABLE 1		
Specific Condition(s)	Source Number(s)	Violation
a. SC 10 (R5)	SN-02	Respondent exceeded the throughput limit at SN-02 (Vacuum Tower Charge Heater) for two (2) months, January 2019 and February 2019.
b. SC 28, PWC 16, Subpart J, and Subpart Ja (R5)	SN-12 and SN-02	Respondent exceeded Hydrogen Sulfide (H ₂ S) hourly concentrations at SN-02 (Vacuum Tower Charge Heater) and SN-12 (Stripper Charge Heater No.1). There were 211 deviations cited on the 2019 ACC Report for March 2018 through February 2019 (12 months).
c. SC 46 (R5), SC 35 (R6), and SC 31 (R7)	SN-23	Respondent exceeded the control count previously reported at SN-23 (Fugitive Emissions Facility Wide), resulting in one (1) deviation from March 2018 through February 2019.
d. SC 167, 168, 176, PWC 22, and Subpart Ja (R5)	SN-40	Respondent combusted fuel gas at SN-40, which resulted in one (1) deviation from March 2018 through February 2019.
e. PWC 31 and Subpart FF (R5)	Facility	Respondent failed to sample total benzene quantity from facility waste at the correct locations from March 2018 through February 2019.

- a. During the inspection, it was found that Respondent exceeded the throughput limit at SN-02, which is a violation of Specific Condition 10 (R5).
- b. The violation of Specific Condition 28 (R5) is also a violation of 40 CFR §60.104(a)(1), Subpart J- Standards of Performance for Petroleum Refineries. Subpart J requires Respondent to burn fuel gas that contains less than 230 mg/dscm (0.10gr/dscf) of hydrogen sulfide (H₂S) at SN-12. The violation of

Plantwide Condition 16 (R5) is also a violation of 40 CFR §60.102a(g)(1)(ii) Subpart Ja- Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. Subpart Ja requires Respondent to burn fuel that contains less than 162 ppmv on a 3-hour rolling average basis and less than 60 ppmv determined daily on a 365 calendar day rolling average for hydrogen sulfide (H₂S) at SN-02.

- c. Respondent also exceeded the control count at SN-23, which is a violation of Specific Condition 46 (R5), Specific Condition 35 (R6), and Specific Condition 31 (R7).
- d. The violation of Specific Conditions 167, 168, and 176 are also violations of Plantwide Condition 22 (R5) and 40 CFR §60.108(d) Subpart Ja, which requires Respondent to correctly report excess flaring at SN-40 in an Excess Emission Report (EER), as outlined in the subpart.
- e. The violation of Plantwide Condition 31 (R5) is also a violation of 40 CFR §61.355(a) and 40 CFR §61.357(a)(1), Subpart FF- National Emission Standard for Benzene Waste Operations. Subpart FF requires Respondent to determine the total annual benzene quantity from facility waste and comply with all record keeping requirements.

Such failures violate Specific Conditions 10, 28, 46, 167, 168, 176, and Plantwide Conditions 16, 22, and 31 of Permit R5, Specific Condition 35 of Permit R6, and Specific Condition 31 of Permit R7, and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code

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Ann. § 8-4-304 and Subparts J, Ja, and FF.

9. In a letter dated March 9, 2020, DEQ notified Respondent of the violations found in the ACC Report and during the compliance inspection. The letter identified permit limit exceedances at multiple sources, as referenced in paragraphs 8a through 8e above. This was intended to provide Respondent with the opportunity to review the violations and submit additional information deemed appropriate regarding the violations in Permits R5, R6, and R7.

10. In a letter dated April 7, 2020, Respondent addressed the areas of concern found in the 2019 ACC Report and the 2020 inspection. Respondent provided the following information in regard to the areas of concern.

- a. In regards to the areas of concern found in Paragraph 8a above, Respondent stated that the throughput limit at SN-02 was removed from the permit and therefore removed the requirements of Specific Condition 10 from Permit R5.
- b. Respondent also stated that fuel and natural gas are mixed and burned at SN-12. Since these fuel types are mixed and burned at SN-12, distinguishing between them cannot be made; therefore, SO₂ emission exceedances are assumed as stated in Paragraph 8b. To prevent future emission exceedances, Respondent installed monitors to identify instances of excess emissions events.
- c. Respondent also stated that the violation of the control count stated in Paragraph 8c was assumed to be variable based on the language in the permit. The component counts were based on estimates of proposed processes that were never constructed.

- d. The violation found at SN-40, as stated in Paragraph 8d, was the result of Respondent incorrectly permitting the Crude Unit Flare (SN-40) for the combustion of pilot gas and hydrogen reformer gas. SN-40 should have been permitted to allow for the combustion of fuel gas instead. Permit R6 increased the permit limit at SN-40 and the combustion of fuel gas.
- e. The violation stated in Paragraph 8e of benzene quantity from facility waste was due to sampling being done at the wrong locations at the facility. Due to this finding, Respondent stated that sampling at all nine locations would begin April 2019. Respondent responded that though valid sampling was not conducted, the facility does not feel that the limit would have been exceeded.

11. In an emailed letter dated May 7, 2020, DEQ notified Respondent that the violations found during the inspection and review of the 2019 ACC report were routing through formal enforcement channels.

12. In an email response dated July 15, 2020, Respondent provided a summary of H2S deviations. The summary showed the reduction in mixed gas hours deviated after the new analyzer installation. Respondent stated that the facility plans to make additional improvements to the NaHS unit with a project to replace the existing low-pressure filter system, make modifications to the high-pressure caustic pumps, and install additional pH probes. These improvements are meant to improve the operating controls and reduce caustic plugging in the NaHS unit.

13. In a correspondence dated December 9, 2020, Respondent provided a response to the Proposed CAO dated October 21, 2020. In the response, Respondent requested that the

violations to Plantwide Condition 16, Specific Condition 28, and Subparts J and Ja only include violations that occurred after the installation of the H2S analyzer. The H2S analyzer was installed around March and April 2019. After installation a RATA was completed May 22, 2019. After the installation and RATA completion, Respondent states that only fifteen (15) deviations occurred during the reporting period. Respondent also stated in the response that the violation to Plantwide Condition 35 and Subpart FF are due to a misinterpretation of the permit requirements.

Respondent stated that the permit only requires the keeping of records and not annual testing, unless the process has changed. According to records provided in the response, the process has not changed since 2017 and the records are sufficient to comply with the permit.

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. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit the annual count record required to demonstrate compliance with Specific Condition 31 of Permit R7.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit three (3) months of records for SN-40 to demonstrate compliance with Specific Condition 99 and Plantwide Condition 29 of Permit R7.
3. These record should be mailed to:

DEQ, Office of Air Quality
Enforcement Section
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317.

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4. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **TWENTY-NINE THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$29,790.00)**. 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.

5. DEQ agrees that **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** of the civil penalty of outlined in paragraph 4 of the ORDER AND AGREEMENT of this CAO may be held in abeyance and dismissed in the event that Respondent demonstrates full compliance with the emission limits of Plantwide Conditions 29 and completes the requirements of paragraph 2 of the ORDER AND AGREEMENT.

6. In the event that Respondent fails to demonstrate compliance with emission limits for Plantwide Conditions 29 in paragraph 2 of the ORDER AND AGREEMENT, then payment of the civil penalty specified in paragraph 4 of the ORDER AND AGREEMENT will be due.

7. 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.

8. Failure to meet the limits, requirements, or deadlines of this CAO or the

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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.

9. 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.

10. 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

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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.

11. 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.

12. 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.

13. 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.

14. 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 relieves Respondent of the responsibilities for obtaining any necessary permits.

15. By virtue of the signature appearing below, the individual represents that he or she is a General Partner of Respondent, being duly authorized to execute and bind Respondent to the



terms contained herein. Execution of this CAO by an individual other than a General Partner of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by all general partners of the entity.

SO ORDERED THIS 1ST DAY OF APRIL, 2021.

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

APPROVED AS TO FORM AND CONTENT:

MARTIN OPERATING PARTNERSHIP L.P.

BY: Matt A. Yost (Signature)

Matt A. Yost (Typed or printed name)

TITLE: SVP

DATE: 3/26/2021

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