

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 30-00008

LIS No. 21-073

ACME BRICK COMPANY
-PERLA PLANT
22436 US HIGHWAY 67 NORTH
MALVERN, AR 72104

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.*, Pollution Control and Ecology Commission (PC&EC) Regulation 7, PC&EC Regulation 8, PC&EC Regulation 18, and PC&EC Regulation 19 and PC&EC Regulation 26.

The issues herein having been settled by agreement of Acme Brick Company- Perla Plant (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 clay brick manufacturing facility located at 22436 Highway 67 North in Malvern, Hot Spring County, Arkansas.

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.

ORIGINAL

2. There are three Air Permits referenced in this CAO. 1154-AOP-R5 (Permit R5) was issued on May 8, 2019 and voided on August 21, 2019. 1154-AOP-R6 (Permit R6) was issued on August 21, 2019 and voided on June 29, 2020. 1154-AOP-R7 (Permit R7) was issued on June 29, 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 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 June 30, 2020, DEQ personnel conducted a routine compliance inspection of Respondent’s facility for the reporting period of June 1, 2019 through May 31, 2020.

7. During the inspection, Respondent failed to provide the semi-annual compliance reports for the Eastgate Tunnel Kiln (SN-14) and the Westgate Tunnel Kiln (SN-18) for the reporting periods of July 1, 2019, through December 31, 2019. Specific Conditions 44 and 45 of R5, R6, and R7, as well as 40 C.F.R Part § 63.8485 of Subpart JJJJ: National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

(Subpart JJJJ) require Respondent to provide semi-annual compliance reports for SN-14.

Respondent did not include Subpart JJJJ semi-annual information when the Title V Semi-Annual Monitoring (SAM) Reports were submitted to DEQ on December 23, 2019. Such failures violate Specific Conditions 44 and 45 of Permits R5, R6 and R7 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such failures also violate 40 C.F.R Part § 63.8485 of Subpart JJJJ.

8. Respondent is required to conduct a Method 9 performance test at Crusher and Material Transfer (SN-22 and SN-23, respectively) as required by Specific Condition 100 (Permit R5 & R6), Specific Condition 101 (Permit R7), and Table 3 of 40 C.F.R Part § 60.672(b) Subpart OOO: Standards of Performance for Nonmetallic Mineral Processing Plants (Subpart OOO). The inspection revealed Respondent failed to conduct a performance test at SN-22 and SN-23 within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Such failure violates Specific Condition 100 of Permits R5 and R6 and Specific Condition 101 of Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. This failure also violates Subpart OOO.

9. In correspondence dated July 22, 2020, DEQ informed Respondent of the issues identified during the inspection conducted on June 30, 2020. This letter was intended to provide Respondent with the opportunity to review the issues identified and submit additional information Respondent deemed appropriate.

10. In an email response on August 18, 2020, Respondent provided semi-annual compliance information for July 1, 2019, through December 31, 2019. Respondent also stated in the email that they have closely reviewed the Preliminary Inspection Findings Report and it has

worked to resolve these issues to better maintain compliance moving forward. In regards to the violation of Specific Condition 100 (Permit R5 & Permit R6) and Specific Condition 101 (Permit R7), Respondent stated that a Method 9 test had not been conducted at SN-22 (Impact Crusher) and SN-23 (Material Transfer), but was scheduled to be completed on September 10, 2020.

11. In a protocol submitted by Respondent, Method 9 testing was set to be performed at SN-22 and SN-23 on September 10, 2020.

12. In correspondence dated September 24, 2020, DEQ informed Respondent that the issues identified during the inspection were proceeding through formal enforcement channels. This letter was intended to provide Respondent the opportunity to submit additional information regarding the issues identified.

13. In a compliance test report dated October 9, 2020, Respondent provided opacity results from SN-22 and SN-23 (Impact Crusher and Material Transfer). The results showed that the Visible Emissions (VE) at the sources were within the requirements of Specific Condition 101 and Subpart OOO of Permit R7.

14. In a response dated October 27, 2020, Respondent provided additional detail and explanations to the violations found during the June 30, 2020 inspection. The response outlined that the facility misinterpreted the 40 CFR Part 63 reporting requirements and thought that the Title V SAM report would suffice for these requirements. Respondent stated that during an internal audit, it was discovered that SN-22 and SN-23 were subject to Subpart OOO requirements. To correct this violation, Respondent submitted a permit modification on May 11, 2018 and completed testing requirements on September 10, 2020.

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 for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FOUR THOUSAND THREE HUNDRED TWENTY DOLLARS (\$4,320.00)**. 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 PC&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 relieves 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 22 DAY OF July, 2021.

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

APPROVED AS TO FORM AND CONTENT:

ACME BRICK COMPANY
-PERLA PLANT

BY: Lynn Borchfield (Signature)

LYNN BORCHFIELD (Typed or printed name)

TITLE: Regional Production Mgr

DATE: 7/12/20