

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Albemarle Corporation
PO Box 729
Magnolia, AR 71754

LIS No. 21- 103
Permit No. AR0047635
AFIN 14-00011

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Albemarle Corporation (Respondent) and 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 operates a chemical manufacturing facility (“facility”) located at 1550 Highway 371 South, Magnolia, Columbia County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Dismukes Creek, thence to Big Creek, thence to Bayou Dorcheat in Segment 1A of the Red River Basin.

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 newly created Department of Energy and Environment.

3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).
5. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.
6. 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 [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].
7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 rule or permit issued pursuant to the Act.
8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”
9. DEQ issued NPDES Permit Number AR0047635 (“Permit”) to Respondent on August 5, 2016. The Permit became effective on September 1, 2016, and expires on August 31, 2021.
10. Section B.2 of Part IB of the Permit requires Respondent to certify that Respondent is in compliance with the Final Effluent Limitations for Total Recoverable Lead within three (3) years

after the effective date of the Permit. Respondent's Final Effluent Limitations for Total Recoverable Lead at Outfall 001 are the following:

Final Effluent Limitations for Total Recoverable Lead	
Monthly Avg. Mass (lbs/day)	0.0101
Daily Max. Mass (lbs/day)	0.0142
Monthly Avg. Concentration (ug/l)	2.67
Daily Max. Concentration (ug/l)	5.36

11. On August 5, 2019, DEQ received Respondent's Final Compliance Schedule Report. In that report, Respondent certified compliance with the final mass effluent limits for Total Recoverable Lead. Respondent's Final Compliance Schedule Report did not certify compliance with the final concentration effluent limits for Total Recoverable Lead.

12. Respondent did not provide certification that Respondent is in compliance with all Final Effluent Limitations for Total Recoverable Lead within three (3) years after the effective date of the Permit. Respondent's failure to certify compliance with the final concentration effluent limits for Total Recoverable Lead is a violation of Section B.2 of Part IB of the Permit, and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On August 20, 2019, DEQ conducted a review of Discharge Monitoring Reports submitted by Respondent for the reporting period of August 1, 2018, through June 30, 2019. The review revealed that Respondent reported values for monthly average of Total Recoverable Lead that exceeded the final concentration effluent limits for Total Recoverable Lead eight (8) times during this period.

14. On August 20, 2019, DEQ informed Respondent by letter that monitoring results for Total Recoverable Lead demonstrated that Respondent was not able to comply consistently with the final, monthly average concentration effluent limitations for Total Recoverable Lead. DEQ requested that Respondent submit a Corrective Action Plan (CAP) by September 13, 2019, to

address Respondent's failure to comply with the final concentration effluent limitations for Total Recoverable Lead in the Permit.

15. On September 11, 2019, Respondent requested an extension of the CAP submittal date and a meeting with DEQ to discuss the CAP and effluent limits. DEQ granted the request.

16. On October 2, 2019, DEQ met with Respondent and their representatives at the DEQ office in North Little Rock.

17. Respondent submitted a Request for Permit Modification to DEQ on October 8, 2019.

18. On June 4, 2020, DEQ, in response to Respondent's Request for Permit Modification, submitted a draft modified permit to the United States Environmental Protection Agency (EPA).

19. Following discussions with EPA about the draft modified permit, DEQ withdrew the draft modified permit.

20. DEQ discussed EPA's comments with Respondent and requested that Respondent provide an amended Request for Permit Modification.

21. On November 10, 2020, DEQ conducted a review of Discharge Monitoring Reports submitted by Respondent for the reporting period of September 1, 2019, through October 31, 2020. The review revealed Respondent reported the following violations of the permitted effluent discharge limitations:

- a. 3 violations of Lead, Total Recoverable, Monthly Average
- b. 1 violation of Lead, Total Recoverable, Daily Maximum
- c. 1 violation of Whole Effluent Toxicity, C. Dubia

22. Each of the five (5) discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of five (5) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. On February 18, 2021, Respondent submitted to DEQ a request to withdraw the modification application. DEQ approved this request by letter on February 24, 2021.

24. On February 24, 2021, Respondent submitted to DEQ a renewal application for the Permit. DEQ notified Respondent by letter on March 12, 2020, that the application was deemed complete.

25. On April 1, 2021, DEQ conducted a review of Discharge Monitoring Reports submitted by Respondent for the reporting period of November 1, 2020, through February 28, 2021. The review revealed Respondent reported the following violations of permitted effluent discharge limitations:

a. 2 violations of Lead, Total Recoverable, Monthly Average

26. Each of the two (2) discharge limitation violations listed in Paragraph 25 above constitutes a separate permit violation for a total of two (2) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance, and the CAP shall detail the methods and best available technologies that will be used to achieve compliance with the Permit. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the CAP. The approved CAP, milestone schedule, and final compliance date shall be fully enforceable as terms of this Order.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Dollars (\$4000.00), or one-half of the full civil penalty of Two Thousand Dollars (\$2000.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

5. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

6. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so 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 specified in this Order. 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.

7. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately.

The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative, or in the event a petition to set aside this Order is granted by the Commission.

10. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its 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 Order 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 4th DAY OF OCTOBER, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Albemarle Corporation

BY: 
(Signature)

DAN MANUEL
(Typed or printed name)

TITLE: Site Manager

DATE: SEP 30 2021