

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Albemarle Corporation-South Plant
P.O. Box 729
Magnolia, AR 71754

LIS No. 22- 022
Permit No. AR0038857
AFIN 14-00028

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Albemarle Corporation-South Plant (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 on Highway 79 South, Magnolia, Columbia County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Horsehead Creek, thence to Horsehead Creek, thence to Dorcheat Bayou, thence to the Red River 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 AR0038857 (“Permit”) to Respondent on March 23, 2018. The Permit became effective on May 1, 2018, and expires on April 30, 2023.

10. Part I, Section B of the Permit requires Respondent to certify that the facility is in compliance with the Final Effluent Limitations for Total Recoverable Lead, *P. promelas*

Lethality and Sub-Lethality, and *C. dubia* Lethality within three (3) years of the effective date of the Permit.

11. On April 29, 2021, DEQ received Respondent's Final Compliance Schedule Report. In that report, Respondent certified compliance with the final effluent limitations for Total Recoverable Lead, *P. promelas* Lethality and Sub-Lethality, and *C. dubia* Lethality. The report indicated a Toxicity Reduction Evaluation (TRE) Action Plan would be submitted to DEQ by May 1, 2021, to address the increasing sub-lethality in *C. dubia*.

12. On April 29, 2021, Respondent submitted the TRE Action Plan with a final compliance date of May 4, 2023.

13. On November 16, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent for the reporting period of August 1, 2018, through September 30, 2021. The review revealed the following:

- a. Respondent reported violations of Whole Effluent Toxicity (WET) *C. dubia* Sub-Lethality six (6) times. The violations were reported on the TX4-Q DMRs for monitoring period end dates June 30, 2020; September 30, 2020; December 31, 2020; March 31, 2021; June 30, 2021; and September 30, 2021.
- b. Respondent reported violations of WET *P. promelas* Sub-Lethality one (1) time during this period. The violation was reported on the TX4-Q DMRs for monitoring period ending on June 30, 2021.
- c. Respondent reported two (2) violations for Fecal Coliform Bacteria of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from August 1, 2018, through September 30, 2021.

14. Respondent did not achieve final compliance with *P. promelas* Sub-Lethality within three

(3) years after the effective date of the Permit. Respondent's failure to achieve final compliance with *P. promelas* Sub-Lethality is a violation of Part I, Section B of the Permit, and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date of May 4, 2023, contained in the TRE Action Plan, dated April 29, 2021. The milestone schedule and final compliance date of May 4, 2023, shall be fully enforceable as terms of this Order.
2. Respondent shall continue to submit quarterly progress reports detailing the progress that has been made towards compliance with the final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by May 4, 2023.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Six Thousand Four Hundred Dollars (\$6400.00), or one-half of the full civil penalty of Three Thousand Two Hundred Dollars (\$3200.00) 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 of 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 8th DAY OF MARCH, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Albemarle Corporation-South Plant

BY: DM Manuel

(Signature)

DM MANUEL

(Typed or printed name)

TITLE: site manager

DATE: 28 Feb 2022
