

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

IN THE MATTER OF:

AFIN: 47-01030

LIS No. 23-022

CARB-RITE COMPANY, INC.
316 SOUTH INDUSTRIAL DRIVE
BLYTHEVILLE, AR 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) Rule 7, APC&EC Rule 8, APC&EC Rule 18, and APC&EC Rule 19.

The issues herein having been settled by agreement of Carb-Rite Company, Inc. (Respondent) and the Chief Administrator of the Division of Environmental Quality (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 and packaging company for the steel and foundry industry located at 316 South Industrial Drive in Blytheville, Mississippi County, Arkansas.
2. The Air Permit referenced in this CAO is 2375-A (the Permit). The Permit was issued on May 11, 2017.

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. Specific Condition 6 of the Permit requires Respondent to notify DEQ in writing at least thirty (30) days before Respondent accepts any coal, thereby subjecting the facility to the requirements of 40 C.F.R. Part 60, Subpart Y.

7. Specific Condition 8 of the Permit states that on and after the date on which the performance test is conducted or required to be completed under 40 C.F.R. § 60.8, whichever date comes first, Respondent must not cause to be discharged into the atmosphere: a) any gases from the affected facility which exhibit ten percent (10%) opacity or greater; and b) gases from any mechanical vent on an affected facility which contain particulate matter in excess of 0.023 g/dscm (0.010 gr/dscf).

8. Specific Condition 9 of the Permit requires Respondent to conduct performance tests at the following sources: Rail Car Unloading (SN-01), Screening Line (SN-02), Crushing Line (SN-

03), Bulk Loadout Line (SN-04), Packaging (SN-05), and Bulk Truck Unloading and Loadout (SN-06). The performance tests are to be conducted according to the requirements of 40 C.F.R. § 60.8 to demonstrate compliance with applicable emissions standards in 40 C.F.R. Part 60, Subpart Y which are: a) the opacity limit of ten percent (10%) from any of the previously mentioned sources; and b) the limit of discharge of gases which contain particulate matter in excess of 0.023 g/dscm (0.010 gr/dscf) from any mechanical vent on the affected facility.

9. On September 1, 2022, DEQ personnel conducted an inspection of Respondent's facility for the reporting period of May 11, 2017, through July 31, 2022.

10. The inspection revealed that sources SN-02 and SN-03 were never constructed.

11. DEQ personnel found that Respondent first accepted and processed coal on May 11, 2017, establishing this as the initial startup date. Therefore, initial performance tests at SN-01, SN-04, SN-05, and SN-06 should have been conducted on or before November 7, 2017.

12. DEQ personnel found that Respondent failed to notify DEQ in writing at least thirty (30) days before Respondent accepted coal to process. Such a failure violates Specific Condition 6 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

13. The inspection revealed Respondent failed to conduct initial performance tests at SN-01, SN-04, SN-05, and SN-06, thus, Respondent failed to demonstrate compliance with the applicable emission standards in Specific Condition 8. Such failures violate Specific Condition 9 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Failure to comply with Specific Condition 9 prevents a determination of compliance with

Specific Condition 8 of the Permit. Such failures also violate 40 C.F.R. Part 60, Subpart Y.

14. In correspondence dated September 8, 2022, DEQ informed Respondent of the compliance issues identified during the September 1, 2022, compliance inspection. The letter was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

15. On October 6, 2022, Respondent confirmed to DEQ in writing that the processing of coal started upon approval of the Permit on May 11, 2017. Respondent also stated that a protocol had been submitted to complete the required opacity performance test on October 6, 2022. However, a records review failed to locate the referenced protocol.

16. In correspondence dated November 15, 2022, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

17. On November 18, 2022, DEQ received Respondent's protocol that indicated testing at SN-01 through SN-06 would be conducted on December 14, 2022, for particulate matter and opacity.

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. If Respondent has not demonstrated compliance with the initial performance tests at SN-01, SN-04, SN-05, and SN-06 as required by Specific Conditions 8 and 9 of the Permit on or before the execution date of this CAO, Respondent shall conduct said performance tests within sixty (60) calendar days of the effective date of this CAO.

2. Within sixty (60) calendar days of completing the initial performance tests referenced

in Paragraph 1 of the ORDER AND AGREEMENT of this CAO, Respondent shall submit a written report of results of the performance tests to DEQ.

3. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **FIVE THOUSAND FOUR HUNDRED DOLLARS (\$5,400.00)**, or one-half of the penalty, **TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00)** 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 **March 6, 2023**. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 CAO is granted by the Commission.

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. 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.

12. 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 3rd DAY OF March, 2023.



CALEB J. OSBORNE
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

CARB-RITE COMPANY, INC.

BY: Cynthia A. Bogner (Signature)

Cynthia A. Bogner (Typed or printed name)

TITLE: CEO

DATE: 2/24/23.