

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

IN THE MATTER OF:

AFIN: 88-00608

LIS No. 23-047

JET ASPHALT & ROCK CO., INC.
373 OUACHITA ROAD #233
BEARDEN, ARKANSAS 71720

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 Jet Asphalt & Rock Co., 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 an asphalt plant located at 373 Ouachita Road #233 in Bearden, Ouachita County, Arkansas.
2. The Air Permit referenced in this CAO is the General Air Permit Minor Source Hot Mix Asphalt Facilities 1912-AGP-000 (the Permit). Respondent is assigned Tracking No. 1912-

AGP-019, which indicates authority to operate under the Permit. The Permit was issued on May 9, 2001.

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. On January 10, 2023, DEQ personnel conducted a full compliance inspection of Respondent’s facility.

7. The inspection covered the reporting period of November 1, 2020 through November 30, 2022.

8. Specific Condition 18 of the Permit states that Respondent shall test the asphalt plant exhaust stack for particulate matter (PM) and opacity every five years. For units that have previously been tested, the testing shall be repeated within five years of the most recent documented test. Testing performed prior to acquisition of the general permit or performed while the unit was in operation in another state shall be deemed acceptable provided such testing meets all of the requirements of Specific Condition 18 and Respondent provides documentation of such testing. For

each existing production unit that has not previously been tested, testing shall be performed within ninety (90) days of permit issuance. Testing of new units shall be conducted within sixty (60) days of achieving the maximum production rate, but in no event greater than 180 days from the initial start-up of the source. The test must be conducted while the facility is operating at ninety percent (90%) of the permitted throughput or higher. If ninety percent (90%) of the permitted throughput cannot be achieved, Respondent shall be limited to ten percent (10%) above the actual tested throughput. Respondent shall conduct the required tests in accordance with General Condition 7 of the Permit and 40 C.F.R. Part 60, Subpart I, Standards of Performance for Hot Mix Asphalt Facilities. The EPA Reference Methods shall be used as listed in Appendix A of 40 C.F.R. Part 60, the PM testing shall include the following conditions: the sampling time shall be at least sixty (60) minutes and the sample volume shall be at least 0.90 dscm (31.8 dscf) as set forth in 40 C.F.R. § 60.93(b)(1).

9. The Hot Mix Asphalt Baghouse Plant Stack (SN-01) was last tested on August 1, 2017; therefore, the next emissions test at SN-01 should have occurred on or before August 1, 2022.

10. During the inspection, DEQ personnel discovered that Respondent failed to conduct the required emissions testing at SN-01 within the five (5) year period. Such a failure violates Specific Condition 18 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In a letter dated January 23, 2023, DEQ informed Respondent of the compliance issues identified during the inspection conducted on January 10, 2023. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deemed appropriate.

12. On February 21, 2023, Respondent submitted a response to the January 23, 2023

letter. The response stated that the facility is working to make sure that all Permit requirements are met. Furthermore, Respondent provided that an air emission testing company has been contracted to conduct testing as soon as there is enough asphalt production available to accommodate the requirements of the emission test method.

13. On March 3, 2023, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the January 10, 2023 inspection.

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 fifteen (15) calendar days of the effective date of this CAO, Respondent shall, if they have not done so prior to the execution date of this document, submit an emissions testing protocol form to DEQ for emissions testing at SN-01.

2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall, if they have not done so prior to the execution date of this document, conduct emissions testing at SN-01 in accordance with Specific Condition 18 of the Permit.

3. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall, if they have not done so prior to the execution date of this document, submit the emissions test results to DEQ. This documentation can be mailed to:

DEQ, Compliance Branch
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317.

4. In compromise and full settlement of the violations specified in the FINDINGS OF

FACT, Respondent agrees to pay a civil penalty of **EIGHT THOUSAND SIX HUNDRED FORTY DOLLARS (\$8,640.00)**, or one-half of the penalty, **FOUR THOUSAND THREE HUNDRED TWENTY DOLLARS (\$4,320.00)** 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 **June 23, 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 16th DAY OF June, 2023.

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

APPROVED AS TO FORM AND CONTENT:

JET ASPHALT & ROCK CO., INC.

BY: Lisa Woolsey (Signature)

Lisa Woolsey (Typed or printed name)

TITLE: Manager

DATE: June 12, 2023