

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

IN THE MATTER OF:

AFIN: 14-00448

LIS No. 23-067

DELEK LOGISTICS OPERATING, LLC
305 NORTH WASHINGTON AVENUE
EL DORADO, AR 71730

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 Delek Logistics Operating, LLC (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 Crude Oil Terminal located at 800 Columbia Road 25 in Magnolia, Columbia County, Arkansas.
2. The Air Permit referenced in this CAO is 2036-AR-2 (the Permit). The Permit was issued on May 24, 2018.

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. In a letter dated June 15, 2022, Respondent requested consideration under DEQ’s Environmental Self-Disclosure Incentive Policy (Policy) for Respondent’s disclosure of the non-compliance issues associated with Respondent’s facility.

7. Subpart A § 60.7(a)(1) states that any owner or operator subject to the provisions of this part shall furnish the Administrator written notification or electronic notification of the date of construction (or reconstruction as defined under § 60.15) of an affected facility is commenced postmarked no later than thirty (30) days after such date.

8. Subpart A § 60.7(a)(3) states that any owner or operator subject to the provisions of this part shall furnish the Administrator written notification of the actual date of initial startup of an affected facility postmarked within fifteen (15) days after such date.

9. Plantwide Condition 6 of the Permit states that Respondent shall not exceed a throughput of 25.6 million barrels (1,075 million gallons) of product at the facility per rolling 12-

month period.

10. In the self-disclosure letter, Respondent provided that requested changes to the throughput limit outlined in Plantwide Condition 6 were not incorporated into the Permit and Respondent failed to notify the Administrator of re-construction and re-start of a source required by Subpart A.

11. A review of the self-disclosure letter indicated that Respondent exceeded the rolling 12-month period limit for two (2) months (April and May 2022). Such an act violates Plantwide 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.

12. General Condition 3 of the Permit states that Respondent shall notify DEQ in writing within thirty (30) days after each of the following events: commencement of construction, completion of construction, first operation of equipment and/or facility, and first attainment of the equipment and/or facility target production rate.

13. A review of the self-disclosure indicated that Respondent commenced construction of Tank 437 on December 7, 2021, and restarted operation of Tank 437 on April 12, 2022. Respondent failed to give notice at Tank 437 of construction commencement, construction completion, first operation, and first attainment. Such failure violates General Condition 3 of the Permit and Subpart A and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

14. On September 26, 2022, Respondent submitted a permit modification application to DEQ to increase the permitted rolling 12-month period limit and add Tank 437 as a source.

15. In correspondence dated September 29, 2022, DEQ informed Respondent that it completed its review of Respondent's self-disclosure dated June 15, 2022 and found that not all eight

(8) conditions of the Policy were met, thus Respondent does not qualify for penalty mitigation.

16. Although Respondent is not eligible for a reduction under the Policy, DEQ encourages and offers partial penalty mitigation for those who voluntarily disclose, expedite a return to compliance, and cooperate fully through the enforcement process.

17. On October 7, 2022, the permit modification application was deemed administratively complete.

18. On January 23, 2023, Air Permit 2036-AR-4 was issued.

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 referenced in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **TWO THOUSAND EIGHT HUNDRED EIGHTY DOLLARS (\$2,880.00)**, or one-half of the penalty, **ONE THOUSAND FOUR HUNDRED FORTY DOLLARS (\$1,440.00)** 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 **September 18, 2023**. Payment is due within thirty (30) calendar days after 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 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.

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 a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than a Managing Member 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 15th DAY OF SEPTEMBER, 2023.



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

APPROVED AS TO FORM AND CONTENT:

DELEK LOGISTICS OPERATING, LLC

BY:  (Signature)

Robert Wright (Typed or printed name)

TITLE: Senior Vice President

DATE: Sept 13, 2023