

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

IN THE MATTER OF:

AFIN: 62-00118

LIS No. 23-091

FEDERAL BUREAU OF PRISONS  
1301 DALE BUMPERS ROAD  
FORREST CITY, AR 72335

**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 United States Department of Justice, Federal Bureau of Prisons (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 Federal Correctional Complex located at 1301 Dale Bumpers Road in Forrest City, St. Francis County, Arkansas.
2. The Air Permit referenced in this CAO is 2198-AR-2 (the Permit). The Permit was issued on April 15, 2016.

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 DEQ;

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 October 18, 2022, DEQ personnel performed a compliance inspection at Respondent’s facility. The reporting period of the inspection was September 1, 2021, through October 31, 2022.

7. General Condition 16 of the Permit states that the permit authorizes only those pollutant emitting activities addressed within the Permit.

8. During the inspection, it was discovered that Respondent replaced a malfunctioning emergency generator (SN-026) and added an additional emergency generator without first obtaining a permit from DEQ. Such acts violate General Condition 16 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. In correspondence dated January 18, 2023, DEQ informed Respondent of the compliance issues identified during the October 18, 2022 inspection. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information

Respondent deemed appropriate regarding the compliance issues.

10. In email correspondence dated March 3, 2023, Respondent stated that changes in leadership had occurred, but they would work to get everything that is needed to DEQ.

11. In email correspondence dated March 13, 2023, Respondent stated that it would be requesting third party assistance with working on a permit modification application.

12. In correspondence dated April 27, 2023, DEQ informed Respondent that formal enforcement was proceeding regarding this matter.

13. On May 9, 2023, and May 16, 2023, Respondent submitted the requested permit information to DEQ's Office of Air Quality. On August 3, 2023, Respondent uploaded the requested permit information into DEQ's ePortal system. On August 7, 2023, DEQ requested additional information from Respondent as a result of the review of the permit submittal. On August 17, 2023, Respondent submitted the additional information as requested by DEQ.

14. On August 18, 2023, DEQ sent Respondent a proposed CAO.

15. In correspondence dated September 11, 2023 in response to the proposed CAO, Respondent requested revisions to CAO language.

### **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. Respondent shall perform either option A or option B.

Option A: Within fifteen (15) calendar days of the effective date of this CAO,

Respondent shall submit all remaining information DEQ needs to process the permit

modification application addressing the unauthorized pollutant emitting activities outlined in paragraph 8 of the FINDINGS OF FACT.

OR

Option B: If Respondent fails to provide the remaining information necessary to process the application received on August 3, 2023 within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a compliance plan and schedule that includes the submittal of an administratively complete permit application addressing the violations outlined in paragraph 8 of the FINDINGS OF FACT.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay an administrative penalty of **THREE THOUSAND THREE HUNDRED SIXTY DOLLARS (\$3,360.00)**. 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 administrative 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 administrative 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. The obligations of Respondent to this CAO shall be subject to the availability of appropriated funds for any such obligation. No appropriated funds are obligated by this CAO.

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.

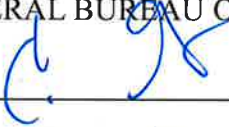
11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 15<sup>th</sup> DAY OF November, 2023.

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

APPROVED AS TO FORM AND CONTENT:

FEDERAL BUREAU OF PRISONS

BY:  (Signature)  
C. Garrett (Typed or printed name)

TITLE: Warden

DATE: 11/6/23