

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

IN THE MATTER OF:

AFIN: 46-00985

LIS No. 24-010

PERFORMANCE PROPPANTS, LLC  
2561 MILLER COUNTY 4  
DODDRIDGE, AR 71834

**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 Performance Proppants, LLC (Respondent) and the Director 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 sand plant located at 2561 Miller County 4 in Doddridge, Miller County, Arkansas.
2. The Air Permit referenced in this CAO is 2400-AR-4 (the Permit). The Permit was issued on January 31, 2022.

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 November 18 through 20, 2022, stack testing of Dryer B (SN-09B) was performed at less than 90% of the permitted process rate, thus limiting future production to 10% over the tested rate. Consequently, based on the testing throughput is limited to 137.84 tons/hour at SN-09B.

7. On January 11, 2023, DEQ personnel performed a routine compliance inspection of the facility.

8. Specific Condition 7 of the Permit states that SN-09B is subject to 40 CFR Part 60, Subpart UUU, Standards of Performance for Calciners and Dryers in Mineral Industries, and shall comply with all requirements applicable in this subpart.

9. Specific Condition 8 of the Permit states that Respondent shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by 40 C.F.R. § 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first.

10. 40 C.F.R. § 60.732 states that each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first.

11. During the inspection, Respondent provided two (2) weekly reports for operations and efficiency (2022, week 52 and 2023, week 2) that included average dryer rates. A review of the reports revealed throughputs at SN-09B of 152.9 tons/hour and 160.4 tons/hour, thus exceeding the established limit of 137.84 tons/hour. Such acts violate Specific Condition 7 and Specific Condition 8 of the Permit and 40 C.F.R. § 60.732 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304 and Subpart UUU.

12. In correspondence dated February 1, 2023, DEQ informed Respondent of the compliance issues identified during the January 4, 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.

13. In correspondence dated February 23, 2023, Respondent provided the following:
- a. Respondent stated that it had submitted a permit modification application to request for a Specific Condition which limits the dryer throughputs at the level established during the stack tests from 2020.
  - b. Respondent stated that it would retest dryers A and B in the near future and plans to operate the dryers at the target throughput which is at least 90% of the maximum capacity of 200 TPH during the test.
  - c. Respondent stated that it intends to obtain a General Provision 20 authorization

for the pre-test activities and during the test.

- d. Respondent provided TPH records for Dryers A, B, and C (SN-09A, SN-09B, and SN-09C) covering August 1, 2022, through February 20, 2023.

14. During review of the TPH records provided on February 23, 2023, DEQ personnel determined the records to be incomplete; therefore, compliance could not be determined.

15. In correspondence dated February 24, 2023, Respondent requested a General Provision #20 Temporary Production Increase for an engineering study and a stack test of Dryers A and B. Respondent requested the engineering tests to be conducted during the week of March 13, 2023. Respondent stated that it planned to perform a stack test within thirty (30) days after the results of the engineering tests are finalized.

16. In correspondence dated March 9, 2023, DEQ informed Respondent that formal enforcement action was proceeding regarding this matter.

17. On May 31, 2023, Respondent submitted a test protocol for testing at SN-09B scheduled for June 26 and 28, 2023.

18. On July 10, 2023, Respondent submitted a test report for testing conducted on June 26 and 28, 2023.

19. On July 21, 2023, DEQ evaluated the test report submitted on July 10, 2023. It was determined that Respondent was in compliance at SN-09B at the time of testing.

### **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:

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

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)**. 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

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 said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 8<sup>th</sup> DAY OF January 2024 ~~2023~~ <sup>ef</sup>



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

APPROVED AS TO FORM AND CONTENT:

PERFORMANCE PROPPANTS, LLC

BY:  (Signature)

Brent Quillen (Typed or printed name)

TITLE: Vice President of Operations / DIRECTOR

DATE: Jan 2, 2024