

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

The Arkansas and Missouri Railroad Company
306 East Emma
Springdale, AR 72764

LIS No. 24- 032
Permit No.: ARR00B707
AFIN: 72-00537

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of The Arkansas and Missouri Railroad Company (Respondent) and 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 operates a Line-Haul Railroad (“facility”) located at 306 East Emma, Springdale, Washington County, Arkansas.
2. Respondent discharges Industrial Stormwater at outfalls with the following coordinates: 36° 11’ 6.4206” N, 94° 7’ 44.007” W; 36° 11’ 6.3594” N, 94° 7’ 40.9368” W; and 36° 11’ 11.2518” N, 94° 7’ 42.3834” W.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of a NPDES permit.

6. Ark. Code Ann. § 8-4-217 provides:

(a) It shall be unlawful for any person to:

- (1) Cause pollution, as defined in 8-4-102, of any of the waters of this state;
- (2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;
- (3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

...

(b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

...

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000. DEQ issued the current NPDES Industrial Stormwater General Permit with an effective date of July 1, 2019, and an expiration date of June 30, 2024.

10. DEQ issued Industrial Stormwater General Permit (IGP) coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Industrial Stormwater General Permit, Permit Tracking Number ARR00B707 (“Permit”) with a coverage date of July 1, 2019, and an expiration date of June 30, 2024.

11. On May 11, 2022, DEQ received an anonymous complaint that Respondent was discharging spilled oil from the east side of the rail yard.

12. On May 23, 2022, DEQ conducted an Industrial Stormwater inspection of the facility. The inspection revealed the following permit violations, which are therefore violations of Ark. Code Ann. § 8-4-217(a)(3):

- a. The facility is directly discharging from an on-site retention pond used to collect runoff from areas of spilled/leaked oil and wash water. Discharges of vehicle wash water require separate permit coverage as noted in Part 3.1.1 of the permit. This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E), the APC&EC Rule 2.510, and therefore is a violation of Ark. Code Ann. § 8 4 217(a)(3).
 - b. Evidence of significant oil spills and leaks were observed along the tracks where vehicles are stored at the facility. Spills/leaks are not being collected on the facility's east side. Along the west, drains to the retention pond needed clean-out. These are violations of Part 3.1.1 of the permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).
 - c. General stormwater runoff from the surrounding industrial area that does not drain to the pond must also be monitored. These are violations of Ark. Code Ann. § 8-4-217(b)(1)(D), the APC&EC Rule 2.510, and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
 - d. Areas along the eastern perimeter of the facility had the appearance of contamination from oily water from prior discharges and overflows from the retention pond. These are violations of Part 3.1.4 of the permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).
 - e. An updated copy of the Stormwater Pollution Prevention Plan (SWPPP) was not available during the inspection. This is a violation of Part 4.4 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
13. On December 29, 2022, DEQ notified the Respondent of the inspection results and requested a written response be submitted to DEQ by January 19, 2023.

14. On January 20, 2023, DEQ received Respondent's response to the violations cited in the May 23, 2022, inspection report.

15. On January 31, 2023, DEQ sent Respondent a letter stating the response submitted on January 20, 2023, did not adequately address the violations, and requested the information be submitted by February 14, 2023. The letter sent on January 31, 2023, stated the following:

- a. Unpermitted discharges are noted as occurring from the Respondent's wash water/stormwater pond. Respondent is supposed to pursue permitted coverage for its washing operations as soon as possible.
- b. Submit notification that the additional outfalls have been added to the permit.
- c. Submit photographs and/or other documentation showing the remediation has occurred.
- d. Part 4.1 of the Permit requires SWPPPs to be updated by the effective date of the current permit, February 15, 2019. The date and certification on the facility's SWPPP indicate it has not been updated since the year 2011.

16. As of February 6, 2024, Respondent has not submitted the requested additional information to DEQ.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Immediately cease all unpermitted discharges. On or before the effective date of this Order, Respondent shall submit a certification that all unpermitted discharges have ceased.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit an administratively complete NPDES permit application, including safety data sheets for all products and chemicals used for outdoor cleaning and vehicle wash operations, and pay any

associated permit fees for Respondent's wash water/stormwater pond.

3. On or before the effective date of this Order, Respondent shall submit to DEQ an outfall modification request and an updated SWPPP for the stormwater permit.

4. On or before the effective date of this Order, Respondent shall submit an adequate response for the May 23, 2022 inspection, specifically addressing the issues listed in the letter sent by DEQ on January 31, 2023. The response should include a written report of the actions taken to address the violations along with photographic documentation.

5. Respondent shall submit monthly progress reports to DEQ, by the 15th of the month for the previous month. The first report shall be due on the month following the effective date of this Order. Each monthly progress report shall document ongoing good housekeeping and corrective actions taken to ensure oil spills and leaks are not leaving the site and are being remediated. The reports shall also include copies of the site inspections and photographs documenting best management practices. The monthly progress reports shall be submitted to DEQ for a period of one (1) year [totaling twelve (12) reports] or until the permit has been terminated, whichever occurs first.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Two Hundred Dollars (\$7200.00), or one-half of the full civil penalty of Three Thousand Six Hundred Dollars (\$3600.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Even if the conditions for receiving a reduced penalty of Three Thousand Six Hundred Dollars (\$3600.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Seven Thousand Two Hundred Dollars (\$7200.00) and

shall become due immediately and payable to DEQ. Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through the fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

8. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so 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 specified in this Order. 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.

9. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

11. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. 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 Order is granted by the Commission.

12. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its 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 Order by an individual other than an Officer 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 20th DAY OF February, 2024.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

The Arkansas and Missouri Railroad Company

BY: C. Shepherd
(Signature)

Casey Shepherd
(Typed or printed name)

TITLE: cmd

DATE: 2-20-2024