

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Hendry Oil Company, Inc.
601 Mine Street
Nashville, AR 71852

LIS No. 20- 150
Permit Tracking No. ARR001019 (EXPIRED)
AFIN 26-00766

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 the regulations and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Hendry Oil Company, LLC (Respondent) and the Division of Environmental Quality¹ (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 bulk petroleum plant (“Facility”) located at 230 Jack Berry Lane, Royal, Garland County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. 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).

4. 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 an NPDES permit.

5. 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 [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

6. 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.

7. 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.”

8. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 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 or an individual permit.

9. DEQ issued the NPDES Industrial Stormwater General Permit with an effective date of July 1, 2014, and an expiration date of June 30, 2019. DEQ issued a renewal of the 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 coverage to Wacaster Oil Company, Inc. for discharge of stormwater at the Facility into waters of the state pursuant to the NPDES Industrial Stormwater General Permit, Permit Tracking Number ARR001019 (“Permit”) with a coverage date of July 1, 2014, and an expiration date of June 30, 2019.

11. On November 28, 2016, Respondent purchased the Facility.

12. Part 2 Condition 6 of the Permit requires a Permit Transfer form to be submitted to the Director of DEQ thirty (30) days prior to the date of transfer of ownership. To date, Respondent has not submitted a Permit Transfer form to DEQ.

13. Part 2 Condition 2.2 of the Permit requires Respondent to submit a complete Recertification Notice of Intent (RNOI) no later than June 30, 2019, in order to maintain permit coverage for the regulated activity.

14. The complete RNOI was not received by July 1, 2019. Failure to submit the RNOI by July 1, 2019, is a violation Part 2 Condition 2.2 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On September 24, 2019, DEQ contacted Respondent, and Respondent confirmed the Facility is still operating. Respondent has operated the Facility beyond the June 30, 2019 expiration date of the NPDES Industrial Stormwater General Permit. This action is a violation of 40 C.F.R. § 122.26, as adopted by APC&EC Regulation No. 6, and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

16. On October 15, 2019, Respondent submitted a Notice of Intent and Stormwater Pollution Prevention Plan.

- 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.

4. 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.

5. DEQ may grant an extension of any provision of this Order, 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

6. 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.

7. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 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 Regulation No. 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.

8. 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.

9. 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 4th DAY OF MAY, 2020.

Becky W Keogh

BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Hendry Oil Company, Inc.

BY: *Dickie Hendry*
(Signature)

Dickie Hendry
(Typed or printed name)

TITLE: owner

DATE: 4-30-20