

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

IN THE MATTER OF:

AFIN: 58-00272

LIS No. 20-159

JW ALUMINUM COMPANY
777 TYLER ROAD
RUSSELLVILLE, ARKANSAS 72802

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) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19 and APC&EC Regulation 26.

The issues herein having been settled by agreement of JW Aluminum Company (Respondent) and the Director of 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 owns and operates an aluminum foil rolling mill located at 777 Tyler Road in Russellville, Pope County, Arkansas.
2. There are two Air Permits referenced in this CAO. 1659-AOP-R5 (Permit R5)

¹Pursuant 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 Arkansas Department of Energy and Environment.

was issued on July 30, 2013, and voided on November 27, 2018. 1659-AOP-R6 (Permit R6) was issued on November 27, 2018 and voided on January 27, 2020.

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. On August 5, 2019, DEQ personnel conducted a full compliance inspection of Respondent’s facility.

7. The inspection covered the reporting period of March 2017 through June 2019.

8. During the inspection, it was discovered that Respondent failed to conduct daily opacity observations at SN-20A (Cold Mill) and SN-22A (Finished Foil Mill) from November 27, 2018 through March 31, 2019, for a total of 124 days. Such failures violate Specific Condition 4 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. During the inspection, it was discovered that Respondent failed to install a device

to continuously monitor and record the fan amps from SN-20A and SN-22A from November 27, 2018 through May 29, 2019, for a total of 184 days. Such failures violate Specific Condition 8 and General Provision 7 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. During the inspection, it was discovered that Respondent failed to monitor and record the pressure drop across the control devices for SN-20A and SN-22A on a daily basis from November 27, 2018 through June 30, 2019, for a total of 216 days. Such failures violate Specific Condition 9 and General Provision 7 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. Operation of SN-143 (Casting Emergency Diesel Generator) is limited to 100 hours per consecutive 12 month period. During the inspection, it was discovered that Respondent operated SN-143 more than 100 hours per consecutive 12 month period. Records reviewed indicated that SN-143 exceeded the hours of operation from October 2017 through September 2018 (Table 1). Such act violates Specific Condition 29 of Permit R5 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

Table 1

Date	Source #	Hours of Operation Limit per Consecutive 12 Month Period	Hours Operated per consecutive 12 month period
October 2017	SN-143	100 hours	127.25 Hours
November 2017			122.8 Hours
December 2017			180.7 Hours
January 2018			181.1 Hours
February 2018			181.1 Hours
March 2018			183.7 Hours
April 2018			185 Hours
May 2018			174.2 Hours
June 2018			174.2 Hours
July 2018			172.8 Hours
August 2018			171.7 Hours
September 2018			120.15 Hours

12. In a letter dated August 26, 2019, DEQ informed Respondent of the compliance issues identified in the inspection conducted on August 5, 2019. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

13. In a letter dated September 25, 2019, Respondent submitted a response to the August 26, 2019 letter and provided the following information:

- a. Regarding the compliance issues identified in Paragraph 8 above, Respondent stated that the facility has developed a controlled procedure and process to ensure opacity records are recorded daily.
- b. Regarding the compliance issues identified in Paragraph 9 above, Respondent stated that the facility has added automated tags that continuously read and record the fan amps.
- c. Regarding the compliance issues identified in Paragraph 10 above,

Respondent stated that the facility has developed a control procedure and

process to ensure that pressure drop records are recorded daily.

- d. Regarding the compliance issues identified in Paragraph 11 above, Respondent stated that the facility had an electrical programming issue with the generator and that during the troubleshooting, a technician misprogrammed the controller for the generator.

14. On November 7, 2019, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the August 5, 2019 inspection.

15. On January 27, 2020, DEQ issued Respondent Air Permit 1659-AOP-R7. Specific Conditions 8, 9, and 30 were revised to reference General Provision 7 instead of General Provision 5.

16. On February 11, 2020, Respondent submitted a letter to DEQ addressing the non-compliance issues identified during the August 5, 2019 inspection. Specific Condition 9 of Permits R6 & R7 requires Respondent to monitor and record the pressure drop across the control devices for SN-20A and SN-22A on a daily basis. Respondent stated that the facility cannot comply with Specific Condition 9 of Permits R6 & R7 because there are no pressure drop monitoring points for the cyclonic mist eliminator installed on SN-20A. Instead, the performance at SN-20A is measured by the removal of visible opacity from the exhaust stack. Respondent stated that a permit modification will be submitted to make the following revisions:

- a. A request for revision to Specific Condition 9 to state "The permittee shall monitor and record the pressure drop across the control device for SN-22A on a daily basis. The pressure drop shall be maintained between 0.05 and 1.5 inches of H₂O. If the pressure drop is outside the indicator range, the

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permittee shall take corrective action. The permittee shall submit the records in accordance with General Provision 7. [Reg.19.304 and 40 C.F.R.§ 64]”

- b. A request to revise process descriptions in Section II of the permit to reflect the information provided in the renewal application.
- c. A request to revise source descriptions in Section IV of the permit to reflect the information provided in the renewal application.
- d. A revised CAM plan to correct the header for emissions at unit SN-22A (incorrectly listed as SN-20A), and to provide permit clarifications.

17. On February 25, 2020, Respondent met with DEQ personnel to discuss the issues with SN-20A and Specific Condition 9 of Permits R6 & R7.

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. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a Permit Modification Application to DEQ to address the issues referenced in Paragraph 16 (a)-(d).
- 2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **EIGHTEEN THOUSAND NINE HUNDRED SIXTY DOLLARS (\$18,960.00). TWELVE THOUSAND THREE HUNDRED TWENTY-FOUR DOLLARS (\$12,324.00)** of this amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317.

Unless otherwise notified in writing by DEQ, Respondent shall pay the settlement amount within thirty (30) days after the effective date of this CAO. **SIX THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS (\$6,636.00)** of this amount shall be used to fund a Supplemental Environmental Project (SEP) to be approved by the DEQ Director. Respondent shall submit for approval a SEP within thirty (30) days after the effective date of this CAO. Respondent shall provide documentation of completion of the SEP within six (6) months of the effective date of the CAO. Respondent shall be obliged to pay the difference to DEQ as a civil penalty with a repayment rate for \$1 for each \$1 SEP, up to the maximum original commitment of **SIX THOUSAND SIX HUNDRED THIRTY-SIX DOLLARS (\$6,636.00)** if:

- a. Respondent fails to complete the SEP within the completed time frames;
- b. It is discovered or determined that Respondent was required by a federal, state, or local obligation, rule, law, regulation, or statute to perform the SEP; or
- c. Expenditure by the Respondent in completing the SEP is less than the amount required by the SEP.

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 Regulation 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 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

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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 16 DAY OF July, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

JW ALUMINUM COMPANY

BY: Mike Whitten (Signature)

Mike Whitten (Typed or printed name)

TITLE: Plant Manager

DATE: 3-23-2020