

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RelaDyne HOC  
1320 Molniard Park Avenue  
El Dorado, AR 71730

LIS No. 17- *///*  
Permit No. Unpermitted  
AFIN 70-01379

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

The issues herein having been settled by the agreement of RelaDyne HOC (“Respondent”) and the Arkansas Department of Environmental Quality (ADEQ or “Department”), 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 petroleum products distribution terminal (“facility”) at 1320 Molniard Park Avenue, El Dorado, Union County, Arkansas.
2. Respondent’s facility is classified as Standard Industrial Classifications (SIC) code 5171 (Petroleum Bulk Stations and Terminals) and North American Industry Classification System (NAICS) code 424710 (Petroleum Bulk Stations and Terminals).<sup>1</sup>

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<sup>1</sup> NAICS was developed under the auspices of the Office of Management and Budget to replace the SIC system as the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

3. 40 C.F.R. § 122.26(c) requires that dischargers of storm water associated with industrial activity obtain an NPDES permit. 40 C.F.R. §§ 122.26(b)(14) defines the term “Storm water discharge associated with industrial activity” to include sites used for shipping and receiving and identifies categories of facilities that are considered to be engaging in “industrial activity” for purposes of that definition.

4. 40 C.F.R. §§ 122.26(b)(14)(viii) specifically identifies “[t]ransportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171” as types of facilities engaged in industrial activity.

5. Respondent discharges stormwater associated with industrial activity to an unnamed drainage ditch, thence to an unnamed tributary of Bogay Creek, thence to Bogay Creek.

6. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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

8. Ark. Code Ann. § 8-4-217 provides:

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

...

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

...

(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 department:

...

(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[.]

9. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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 regulation or permit issued pursuant to the Act.

10. 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.”

11. On January 26, 2017, Respondent submitted an incomplete Notice of Intent (NOI) and Stormwater Pollution Protection Plan (SWPPP) for an Industrial Stormwater General Permit (IGP).

12. ADEQ requested the missing information on January 27, 2017, February 2, 2017, March 2, 2017, March 22, 2017, and again on April 18, 2017.

13. Respondent failed to provide the requested information and the NOI was deemed inactive on June 29, 2017. The Department returned the NOI to Respondent via certified mail on June 29, 2017.

14. On June 29, 2017, the Department conducted an Industrial Stormwater Inspection of the facility. The facility was found to be operating without coverage under the NPDES IGP ARR000000 as required by 40 C.F.R. 122.26(c)(1). This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On July 19, 2017, the Department contacted Respondent, via letter, delineating the findings made during the inspection and indicated the required response deadlines.

16. To date, Respondent has not submitted a response to the June 29, 2017 inspection.

**ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease all unpermitted activities.
2. On or before the effective date of this Order, Respondent shall submit to the Department a complete application for an IGP ARR000000, to include an NOI, SWPPP, and \$200.00 permit fee and be mailed to the attention of:

ADEQ  
Office of Water Quality  
Permits Branch  
5301 Northshore Drive  
North Little Rock, AR 72118

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Dollars (\$2000.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

ADEQ, 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, ADEQ shall be entitled to attorneys' fees and costs of collection.

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

- a. First day through 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 which may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

5. 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 ADEQ, 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.

6. ADEQ 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

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

8. 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. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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.

9. Nothing in this Order shall be construed as a waiver by ADEQ 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 which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

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

SO ORDERED THIS 4th DAY OF December, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

RelaDyne HOC – El Dorado

BY: Steven Frasier  
(Signature)

STEVEN FRASIER  
(Typed or printed name)

TITLE: Manager

DATE: 11/24/17