

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 18-00120

LIS No. 19-009

VALERO PARTNERS WEST MEMPHIS, LLC
1282 SOUTH EIGHTH STREET
WEST MEMPHIS, AR 72301

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, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of Valero Partners West Memphis, LLC (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), 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 petroleum storage and distribution terminal located at 1282 South 8th Street in West Memphis, Crittenden County, Arkansas.
2. The self-disclosure notification noted in this CAO covered Air Operating Permit 0668-AOP-R10 (the Permit). The Permit was issued on April 19, 2018, and was still in effect at

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the time of investigation.

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, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

4. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 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.

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. Specific Condition 93 of the Permit limits gasoline throughput at SN-22 to 231,000,000 gallons per rolling twelve (12) month period.

7. On September 14, 2018, during a monthly records update of throughput and emissions, Respondent discovered that it had exceeded the Permit's gasoline throughput limit at SN-22 for the rolling twelve month period ending August 31, 2018. The recorded throughput for this period was 244,612,865 gallons of gasoline, an exceedance of 612,856 gallons. Such act violates Specific Condition 93 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

8. In correspondence dated October 3, 2018, Respondent requested consideration under ADEQ's Environmental Self-Disclosure Incentive Policy for Respondent's disclosure of

the non-compliance issues associated with Specific Condition 93 of the Permit.

9. In this correspondence Respondent stated that because this is a rolling limit that it had calculated that at zero (0) throughput the twelve (12) month rolling gasoline throughput will remain above the permitted level until December of 2018. Remediation measures were stated to be: (a) Respondent has shut down loading of gasoline barges at the facility; (b) Before restarting operations, Respondent will submit a variance request to ADEQ and await approval of the request from ADEQ to return to the previously permitted throughput limit of 252,000,000 gallons of gasoline per rolling twelve (12) month period found in Specific Condition 31 of Air Operating Permit 0668-AOP-R8; and (c) Respondent will evaluate a permit modification to make this variance limit permanent. Should a permit modification be allowed by regulation, Respondent will submit an application to ADEQ following the variance request.

10. Specific Condition 89 of the Permit limits VOC to 432.2 tpy at the Barge Loading Area (SN-22).

11. Specific Condition 90 of the Permit limits [HAPs] to 16.75 tpy at SN-22.

12. As part of the review conducted on September 14, 2018, Respondent discovered that the Benzene content in the HAPs speciation that was provided to ADEQ with the last Title V permit renewal application, submitted January 18, 2017, was more than double the actual Benzene content of the gasoline loaded. The HAPs speciation submitted was based on information gathered before the Mobile Source Air Toxics rules required refiners to meet an annual gasoline Benzene content standard of 0.62 volume percent. When using the updated speciation, the actual emissions for VOC and Total HAPs did not exceed the permitted limits. See Table.

| Actual Twelve (12) Month Emissions for SN-22, September 1, 2017 through August 31, 2018 | | |
|--|---------------------------|----------------------------|
| Pollutant | Emissions Limit (tons) | Actual Emissions (tons) |
| VOC | 432.20 | 417.47 |
| Total HAPs | 16.75 | 14.47 |

13. On October 3, 2018, Respondent submitted a request for a temporary variance. With the temporary variance, Respondent requested ADEQ's approval to load as much as 252,000,000 gallons of gasoline on a twelve (12) month rolling total basis at SN-22 until a new permit can be issued with the rolling total resetting as of the date of the variance approval. Respondent also requested that the definition of petroleum intermediates be limited to naphtha and not include alkylate and reformat as these are types of gasolines. The application included an updated HAPs speciation to address the issues with Specific Conditions 89 and 90 of the Permit as previously addressed in paragraphs 10-12 of the FINDINGS OF FACT of this CAO.

14. On October 22, 2018, Respondent submitted an air permit modification application. Respondent requested an increase in the uncontrolled gasoline annual throughput for SN-22 from 231,000,000 gallons per year to 252,000,000 gallons per year and to remove the petroleum intermediates annual throughput from Specific Condition 93 of the Permit.

15. In correspondence dated October 29, 2018, Respondent was informed that pursuant to Ark. Code Ann. § 8-4-230, ADEQ's Director had considered the statutory factors that allow for the granting of a temporary variance. ADEQ's Director found that Respondent's request provided adequate information addressing the statutory factors and as such grants the variance for a period of no longer than ninety days from the date granted.

16. In correspondence dated December 13, 2018, ADEQ informed Respondent that it had completed its review of Respondent's self-disclosure and found that it met all of the

conditions of the ADEQ Self-Disclosure Policy. Therefore, ADEQ may mitigate up to 100 percent of the gravity-based component of any civil administrative penalty in a CAO regarding the self-disclosed violations.

ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond 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.
3. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to ADEQ 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 ADEQ'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 which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this

CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

4. 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 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 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.

5. ADEQ 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 ADEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

6. 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. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

7. 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.

8. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained in the permit.

9. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

10. 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.

A handwritten signature in blue ink, appearing to read "C. H. [unclear]", is located at the bottom right of the page.

SO ORDERED THIS 29 DAY OF January, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

VALERO PARTNERS WEST MEMPHIS, LLC

BY: Fred E Hampton (Signature)

Fred E. Hampton (Typed or printed name)

TITLE: VP

DATE: 1/18/19