

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

IN THE MATTER OF:

AFIN: 23-01027

LIS No. 19-122

FLYWHEEL ENERGY OPERATING, LLC
d/b/a DeSOTO GATHERING COMPANY
-CADDIS CPF-2
1678 HWY 65 NORTH
DAMASCUS, ARKANSAS 72039

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.

The issues herein having been settled by agreement of Flywheel Energy Operating, LLC d/b/a DeSoto Gathering Company – Caddis CPF-2 (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 a natural gas compressor station located at 1678 Hwy 65 North in Damascus, Faulkner County, Arkansas.

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 Arkansas Department of Energy and Environment.

2. The self-disclosure notification noted in this CAO covered Air Permit 1868-AGP-198 (the Permit). The Permit was issued on October 19, 2017, and was still in effect at the time of the self-disclosure.

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) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 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 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. Following a discovery on October 25, 2018, of failing to conduct engine maintenance within the timeframe required by 40 C.F.R Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (Subpart ZZZZ), Respondent implemented an oversight process in which weekly monitoring of maintenance activities were to be conducted and alerts provided to operators when an engine was approaching its maintenance timeframe deadline.

7. In a letter dated June 10, 2019, Respondent requested consideration under DEQ's Environmental Self-Disclosure Incentive Policy (Policy) for Respondent's disclosure of the non-

compliance issues associated with Respondent's Caddis CPF-2 facility.

8. A review of the self-disclosure letter indicated that Respondent failed to conduct the maintenance on Engine # 4EK04090 within the required time period as required by 40 C.F.R. Part 63, NESHAP for Reciprocating Internal Combustion Engines Subpart ZZZZ on three occasions (Table #1). Such failures violate Specific Condition 17 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such failures also violate Subpart ZZZZ.

Table #1

Engine #: 4EK04090	Beginning Date	Ending Date	Hours Accrued	Hours Over 2,160
	10/5/2017	1/9/2018	2,274	114
	1/9/2018	4/13/2018	2,208	48
	6/21/2018	9/20/2018	2,169	9
Manufacture Date: 6/16/2004				

9. In the self-disclosure consideration letter, Respondent provided that the maintenance interval exceedances for Engine # 4EK04090 occurred concurrently with the exceedances discovered on October 25, 2018, but was not discovered until after the oversight process of weekly monitoring of maintenance activities was implemented. The letter also provided that all maintenance on Engine # 4EK04090 occurred within the prescribed hours of operation interval since the implementation of the oversight process.

10. In correspondence dated November 14, 2019, DEQ informed Respondent that it completed its review of Respondent's self-disclosure and found that all eight (8) conditions of the Policy were met, thus mitigating the penalty up to 100%.

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:

Flywheel Energy Operating, LLC
d/b/a DeSoto Gathering Company – Caddis CPF-2

1. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall conduct an audit of maintenance activities at all compressor units from March 1, 2017, through December 31, 2018.

2. Within ninety (90) calendar days of the effective date of this CAO, Respondent shall submit the summary of the maintenance audit findings to DEQ. The audit findings shall be submitted to:

DEQ, Office of Air Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

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). However, this CAO shall become effective upon execution by Respondent and the Director of DEQ.

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

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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 does it relieve 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 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 19th DAY OF December, 2019.

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

APPROVED AS TO FORM AND CONTENT:

FLYWHEEL ENERGY OPERATING, LLC
d/b/a DESOTO GATHERING COMPANY – CADDIS CPF -2

BY: [Signature] (Signature)

Zack Laird (Typed or printed name)

TITLE: Director - ESG & Supply Chain

DATE: 12/4/19