

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

IN THE MATTER OF:

AFIN: 54-00003

LIS No. 21-134

SOLFUELS USA INC.
1463 HIGHWAY 20
HELENA-WEST HELENA, AR 72342

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 Solfuels USA, Inc. (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 biodiesel production facility located at 1463 Highway 20 in Helena-West Helena, Phillips County, Arkansas.
2. There are three Air Permits referenced in this CAO. 0444-AR-5 (Permit R5) was

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.

issued on May 11, 2017, and voided on September 14, 2018. 0444-AR-6 (Permit R6) was issued on September 14, 2018, and voided on September 27, 2019. 0444-AR-7 (Permit R7) was issued on September 27, 2019.

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. From March 2, 2021, through March 8, 2021, DEQ personnel conducted a compliance inspection of Respondent’s facility covering the reporting period of September 1, 2017, through January 31, 2021.

7. Specific Condition 15 of Permit R5 and Specific Condition 14 of Permit R6 and Permit R7 require Respondent to continuously record the data of the scrubbing liquid temperature monitoring device and the specific gravity monitoring device.

8. The inspection revealed that Respondent failed to continuously record the

scrubbing liquid temperature and the specific gravity data during the reporting period. Such failure violates Specific Condition 15 of Permit R5 and Specific Condition 14 of Permit R6 and Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 27 of Permit R5 and Specific Condition 26 of Permit R6 and Permit R7 require Respondent to establish a fugitive emissions minimization program for the facility based on the provisions of 40 C.F.R. Part 60, Subpart VV monitoring for leaks, repairing the leaks found, and providing the department with semi-annual reports of the program.

10. The inspection revealed that Respondent failed to establish a written fugitive emissions minimization program for the facility. Such failure violates Specific Condition 27 of Permit R5 and Specific Condition 26 of Permit R6 and Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. 40 C.F.R. Part 60, Subpart VV, § 60.487(a) further requires that the semi-annual reports be submitted to DEQ beginning six (6) months after the initial startup date. In correspondence dated October 2, 2017, Respondent informed DEQ that the initial startup date was September 18, 2017. Therefore, Respondent was required to submit its semi-annual reports on March 18, 2018, September 18, 2018, March 18, 2019, September 18, 2019, March 18, 2020, and September 18, 2020.

12. The inspection revealed that Respondent failed to submit any of the required semi-annual reports that were due during the reporting period. Such failure violates Specific Condition 27 of Permit R5 and Specific Condition 26 of Permit R6 and Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such

failure also violates 40 C.F.R. Part 60, Subpart VV, § 60.487(a).

13. In correspondence dated April 1, 2021, DEQ informed Respondent of the compliance issues identified during the March 2021 compliance inspection. The letter was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

14. In correspondence dated June 9, 2021, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

15. On August 27, 2021, DEQ mailed a proposed CAO written to address violations identified during the compliance inspection conducted March 2, 2021, through March 8, 2021.

16. In correspondence dated September 23, 2021, HSG Environmental Consultants, LLC (HSG), on behalf of Respondent, responded to the August 27, 2021 proposed CAO. HSG stated that biodiesel production at the facility is currently shut down and is not expected to resume for up to two (2) years.

17. HSG also stated that facility operators visually observed process equipment and related piping on a frequent basis to detect leaks and other problems. Repairs were timely made if problems were detected. However, fugitive emissions detection procedures were not formalized in a written program, and observation records, leak testing, and repair efforts were not maintained during this reporting period, so the semi-annual reports required by 40 C.F.R. Part 60, Subpart VV cannot be retroactively created.

18. In correspondence dated October 12, 2021, Respondent stated that the facility had no production from November 28, 2019, through January 28, 2020 and no production since October 9, 2020.

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 sixty (60) calendar days of the effective date of this CAO, Respondent shall submit an air permit modification application to correct regulatory citations, revise compliance demonstration requirements, including control equipment monitoring procedures, and to address planned physical changes to facility processes, with the latter intended to allow the facility to achieve the permitted biodiesel production rate. The air permit modification application shall include any proposed operating scenarios and or new chemical processes other than biodiesel production, which are planned for the facility and subject to air permitting requirements.

2. Should biodiesel production resume before the revised air permit is issued, Respondent shall submit a written letter of assurance within ten (10) calendar days of the restart of biodiesel production that liquid scrubber compliance monitoring is being conducted consistent with the scrubber monitoring and record keeping requirements proposed in the air permit application. The letter of assurance shall be accompanied with the first five (5) days of data from the liquid scrubber monitoring records. The data shall reflect the start date that liquid scrubber monitoring and record keeping began.

3. Prior to the restart of biodiesel production, Respondent shall establish a fugitive emissions monitoring and record keeping program for the facility based on the provisions of 40 C.F.R. Part 60, Subpart VV or VVa, whichever is confirmed applicable as a result of the air permit revision process.

4. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

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

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 13TH DAY OF DECEMBER, 2021.

Julie Linck
JULIE LINCK, CHIEF ADMINISTRATOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

SOLFUELS USA INC.

BY: [Signature] (Signature)

STEVE LEWIS (Typed or printed name)

TITLE: PLANT MANAGER

DATE: 12-7-21