

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

IN THE MATTER OF:

AFIN: 66-00219

LIS No. 24-068

COVIA ISP, INC.  
-FORT SMITH PLANT  
5300 GERBER ROAD  
FORT SMITH, ARKANSAS 72904

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

The issues herein having been settled by agreement of Covia ISP, Inc. – Fort Smith Plant (Respondent) and the Director of the Division of Environmental Quality (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 facility which manufactures silica based products located at 5300 Gerber Road in Fort Smith, Sebastian County, Arkansas.
2. The Air Permit referenced in this CAO is 0492-AOP-R12 (the Permit). The Permit

was issued on August 4, 2021.

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 DEQ;

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 30, 2023, DEQ personnel conducted a full compliance inspection of Respondent’s facility. The inspection covered the reporting period of August 2022 through July 2023.

7. Specific Condition 5 of the Permit states that Respondent shall not process more than 67,452,000 cubic feet of natural gas at the Plant #1, Kiln #1, 7.7 MMBtu/hr (SN-04), 175,200,000 cubic feet of natural gas at the Kiln DC, Plant No. 1, 20 MMBtu/hr (SN-C01), and 525,600,000 cubic feet of natural gas at the Plant #2, Kiln and Cooler, 60.0 MMBtu/hr (SN-29) per consecutive 12-month period.

8. During the inspection, it was discovered that Respondent exceeded the consecutive 12-month period limit for processed natural gas at SN-C01. Records reviewed indicated that Respondent exceeded the consecutive 12-month period limit from September 2022 through July

2023 (11 months). Such an act violates Specific Condition 5 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. In a letter dated September 5, 2023, DEQ informed Respondent of the compliance issues identified during the inspection conducted on August 30, 2023. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deemed appropriate.

10. In a submittal dated September 22, 2023, Respondent requested consideration under DEQ's Environmental Self-Disclosure Incentive Policy (Policy) for the disclosure of the non-compliance issues associated with its existing permit. The self-disclosure submittal disclosed that the wrong maximum rated heat input capacity was used to permit burner SN-C01. The SN-C01 burner should have been permitted at 28 MMBtu/hr, but was only permitted for 20 MMBtu/hr.

11. On September 26, 2023, Respondent's consultant submitted an email to DEQ clarifying that the Self-Disclosure submitted on September 22, 2023 was intended to report a violation related to the incorrectly permitted burner capacity of SN-C01 and not the violation of Specific Condition 5 of the Permit.

12. On October 9, 2023, Respondent submitted a permit modification application to DEQ to increase the burner capacity at SN-C01 from 20 MMBtu/hr to 30 MMBtu/hr.

13. On October 11, 2023, Respondent submitted a response to the September 5, 2023 letter. The response stated that:

- a) Data from utility bills, starting in September 2022, showed a potential exceedance of the rolling 12-month natural gas usage limit at the SN-C01 burner.
- b) Several investigations were initiated and it was found that SN-C01 did not have a

name plate indicating size.

- c) Information for SN-C01 could not be found due to the manufacturer no longer being in business and the age of the source.
- d) Respondent initiated a project to source, install, wire, and calibrate a gas flow meter on the gas train at SN-C01.
- e) Earlier this year, the meter was sourced, installed, wired to the automation system, and calibrated.
- f) Based upon data from the new meter, the SN-C01 burner appeared to be more aligned with at least a 28-MMBtu/hr burner.
- g) Respondent contracted ECCI to submit a permit modification for SN-C01 to adjust the capacity from 20 MMBtu/hr to 30-MMBtu/hr, which also adjusted the rolling 12-month annual limit from 175,200,000 cubic feet to 245,300,000 cubic feet.
- h) The request for a permit modification to a 30-MMBtu/hr burner capacity was based on Respondent's inability to obtain any historic technical information on this burner size due to the manufacturer being out of business.

14. On October 16, 2023, the Air Enforcement Program received an enforcement referral from the Air Permits Branch that stated that the burner at SN-C01 should have been permitted at 30 MMBTU/hr rather than 20 MMBTU/hr and that this could potentially cause an exceedance of the hourly emissions rate. Specific Condition 5 limits natural gas usage and this usage could be tied to the 20 MMBtu rating.

15. After reviewing the self-disclosure submittal, DEQ determined that Respondent had

not met all eight (8) conditions of the Policy.

### 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. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **SIX THOUSAND SEVEN HUNDRED THIRTY-TWO DOLLARS (6,732.00)**. Payment is due within thirty (30) calendar days after 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.

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 Rule 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.

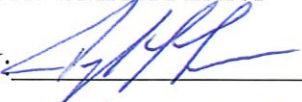
11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 15<sup>th</sup> DAY OF April, 2024.

  
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CALEB J. OSBORNE  
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT  
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

COVIA ISP, INC.  
-FORT SMITH PLANT

BY:  (Signature)

Douglas S Losee (Typed or printed name)

TITLE: V.P. Environmental

DATE: 4/11/2024