

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
**BLACK OAK POWER PRODUCERS, LLC** ) **No. APCP-2023-028**  
 )  
 )  
**Proceeding Under the** )  
**Missouri Air Conservation Law** )

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**ADMINISTRATIVE ORDER ON CONSENT**

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**NOTICE TO THE RESPONDENT**

The issuance of this Administrative Order on Consent No. APCP-2023-028 (Order) by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because BLACK OAK POWER PRODUCERS, LLC (Respondent) is in violation of Missouri Air Conservation Law, Chapter 643, of the Revised Statutes of Missouri (RSMo), and its implementing regulations. This Order is issued under Sections 643.060(4), 643.080, and 643.085, RSMo. Failure to comply with this Order is, by itself, a violation of the Missouri Air Conservation Law under Section 643.151.3, RSMo.

**FINDINGS OF FACT**

1. BLACK OAK POWER PRODUCERS, LLC is an active foreign limited liability company registered with the Missouri Secretary of State.
2. The Respondent owns and operates a power generation facility located at 5054 Highway HH, Hartville, Wright County, Missouri.

3. The Respondent operates under Part 70 Permit to Operate No. OP2018-030 which requires the Respondent to submit a complete permit renewal application at least six months prior to the expiration date. Additionally, Missouri Air Conservation Law's implementing regulation at 10 CSR 10-6.065 "Operating Permits" states that "the permittee shall file a complete application for renewal of this operation permit at least six (6) months before the date of permit expiration."

4. The Respondent's Part 70 permit expired on April 26, 2023. The Respondent was required to submit a complete permit renewal by October 26, 2022, but did not submit a complete permit renewal application until November 14, 2022.

5. On May 17, 2023, the Department issued Referral Notice of Violation (RNOV) No. AP23014 to the Respondent to document the identified violation.

6. The amount of the administrative penalty is assessed according to the criteria of 10 CSR 10-6.230, "Administrative Penalties." From a gravity-based analysis, it has been determined the violation of 10 CSR 10-6.065 is a moderate potential for harm and a moderate extent of deviation from the requirement. The violation of 10 CSR 10-6.065 by the Respondent on October 27, 2022, was a moderate potential for harm because failing to submit the Part 70 operating permit renewal application at least six (6) months prior to the permit expiration does not ensure enough time for the Department to adequately evaluate the application, and was a moderate extent of deviation because the Respondent's permit expired April 26, 2023. Using the gravity-based matrix and finding the extent of deviation as moderate and the potential for harm as moderate, and considering adjustment factors including fairness and equity, the assessed penalty is \$3,750.

### **STATEMENT OF VIOLATIONS**

The Department finds that the following violations of the Missouri Air Conservation Law, Chapter 643, RSMo, and its implementing regulations have occurred, thereby subjecting the Respondent to penalties as described in Sections 643.151 and 643.085, RSMo:

7. On October 27, 2022, the Respondent failed to submit a renewal application of its Part 70 Permit to Operate No. OP2018-030 at least six months prior to the expiration date of April 26, 2023, in violation of 10 CSR 10-6.065, "Operating Permits."

### **AGREEMENT**

8. The Department and the Respondent desire to amicably resolve all claims that the Department might bring against the Respondent for the violation of the Missouri Air Conservation Law and regulations described above and within RNOV No. AP23014. The Department and the Respondent agree that this Order resolves only the specific violations described herein, that this Order shall not be construed as a waiver or a modification of any requirements of the Missouri Air Conservation Law and regulations or any other source of law, and that this Order does not resolve any claims based on any failure by the Respondent to meet the requirements of this Order, or claims for past, present, or future violations of any statutes or regulations other than those specifically referenced herein.

9. The provisions of this Order apply to and bind the parties executing this Order, their agents, subsidiaries, successors, assigns, affiliates, and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the

parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, do not affect the responsibilities of the Respondent under this Order. If the Respondent sells or otherwise transfers its business or the real estate that is the situs of the violation referenced in this Order, then the Respondent shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Respondent under this Order in writing. In such event, the Respondent shall provide 30 days prior written notice of such assumption to the Department.

10. The Respondent agrees to comply with the Missouri Air Conservation Law and regulations and, in particular, to refrain from further violations of 10 CSR 10-6.065, for all future operations.

#### **PENALTY**

11. To resolve the violation listed in Statement of Violations above, the Respondent agrees to a penalty in the amount of \$3,750, which shall be paid by **certified check** made payable to the "Wright County Treasurer, as trustee for the Wright County School Fund." The penalty is reduced to \$3,000 (80 percent of the assessed penalty) based on payment received within 30 days of the date the Order is sent to the Respondent and the expectation of the Respondent's full participation in the conference, conciliation, and persuasion process. The penalty shall be paid by **certified check**. The Respondent shall mail such payment along with the signed Order to:

Accounting Program  
Missouri Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

### **CORRECTIVE ACTIONS BY RESPONDENT**

To resolve the remaining violations, the Respondent agrees to and will complete to the Department's satisfaction, the following schedule of compliance:

12. The Respondent must work with the Department's Air Pollution Control Program's Permitting Section for the timely issuance of a new operating permit.

13. The Respondent must continue to operate under the authority of Part 70 Operating Permit No. OP2018-030, subject to all permit conditions and requirements, until a new operating permit is issued. Failure to comply with all conditions outlined in Operating Permit No. OP2018-030 constitutes a violation of this order and violation of the Missouri Air Conservation Law and regulations.

### **OTHER PROVISIONS**

14. This Order resolves the claims of the Department for the specific violations and concerns stated herein through the effective date of this Order.

15. The Department reserves all legal and equitable remedies available to enforce the provisions of this Order, except as stated in the previous paragraph. This Order shall not be construed to limit the rights of the Department to obtain penalties or injunctive relief under the Clean Air Act, the Missouri Air Conservation Law or the implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the previous paragraph. The Department further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare of the environment arising at, or posed by the Respondent, whether related to the violations addressed in this Order or otherwise.

16. By signing this Order, all signatories assert that they have read and understand the terms of this Order, that they had the opportunity to consult with counsel, and that they have the authority to sign this Order on behalf of their respective parties.

17. This Order shall be construed and enforced according to the laws of the State of Missouri, and the terms stated herein shall constitute the entire and exclusive agreement of the parties hereto with respect to the matters addressed herein. This Order may not be modified orally.

18. If any provision of this Order is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

19. Penalty payments under this Order, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this Order may qualify as restitution, remediation, or costs required to come into compliance with the law. **BLACK OAK POWER PRODUCERS, LLC** is solely responsible for providing to the Department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. Further, the Department shall not be responsible for any incomplete or inaccurate information nor the results of any tax audit. No portion of any penalties paid pursuant to this Order may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

20. Nothing in this Order excuses the Respondent for any future non-compliance with the laws of the State of Missouri, and the Department expressly reserves the right to address future noncompliance in any manner authorized by law.

21. This Order will become final, effective, and fully enforceable upon the date the Department signs it. The Department shall send a fully executed copy of this Order to the Respondent for their records.

**CORRESPONDENCE AND DOCUMENTATION**

Correspondence or documentation with regard to this Order shall be directed to the following persons, subject to change upon written notification from either party:

**For the Department:**

Heather Lehman  
Compliance and Enforcement Section  
Air Pollution Control Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

**For the Respondent:**

Chris Eastgate  
Chief Executive Officer  
Black Oak Power Producers, LLC  
1000 Windward Concourse, Suite 150  
Alpharetta, GA 30005

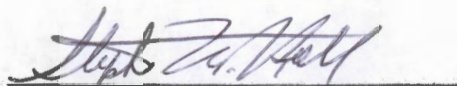
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**RIGHT OF APPEAL**

By signing this Order, the Respondent waives any right to appeal, seek judicial review, or otherwise challenge this Order pursuant to Sections 643.130, 643.085, or 621.250, RSMo, Chapters 536, 643, or 640, RSMo, 10 CSR 10-1.030, or any other source of law.

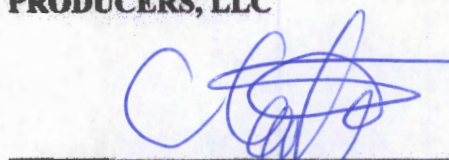
AGREED TO AND ORDERED:

**MISSOURI DEPARTMENT OF  
NATURAL RESOURCES**

  
\_\_\_\_\_  
Stephen M. Hall, Director  
Air Pollution Control Program

Date: 4-8-2024

**BLACK OAK POWER  
PRODUCERS, LLC**

  
\_\_\_\_\_  
Chris Eastgate, Chief Executive  
Officer

Date: March 28, 2024