

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

IN THE MATTER OF:

AFIN: 60-00302

LIS No. 21-057

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS
ACTING FOR AND ON BEHALF OF THE UNIVERSITY OF
ARKANSAS FOR MEDICAL SCIENCES
4301 WEST MARKHAM STREET
LITTLE ROCK, ARKANSAS 72205

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.*, Pollution Control and Ecology Commission (PC&EC) Regulation 7, PC&EC Regulation 8, PC&EC Regulation 18, PC&EC Regulation 19, and PC&EC Regulation 26.

The issues herein having been settled by agreement of the Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas for Medical Sciences (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 general medical and surgical hospital located at

¹Pursuant 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.

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4301 West Markham Street in Little Rock, Pulaski County, Arkansas.

2. There are two Air Permits referenced in this CAO. 2125-AOP-R5 (Permit R5) was issued on November 21, 2017 and voided on October 25, 2019. 2125-AOP-R6 (Permit R6) was issued on October 25, 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 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. On August 31, 2020, DEQ personnel conducted a full compliance inspection of Respondent’s facility. The inspection covered the reporting period of May 2018 through July 2020.

7. The Sources listed below in Table 1 are subject to 40 C.F.R. Part 60, Subpart III - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (Subpart III).

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Table 1

Source Number	Source Description
SN-34	WCEP Diesel Generator #1
SN-35	WCEP Diesel Generator #2
SN-36	WCEP Diesel Generator #3
SN-37	WCEP Diesel Generator #4
SN-38	WCEP Diesel Generator #5
SN-39	WCEP Diesel Generator #6
SN-54	CI #3 Generator
SN-55	PDC Generator

8. Specific Conditions 25 (Permit R5), 23 (Permit R6) and 33 (Permit R5), 31 (Permit R6) require Respondent to maintain a visual emission limit of 20% or less as measured by EPA Method 9 – Visual Opacity at SN-12 through SN-25, SN-28 through SN-33, SN-34 through SN-39, and SN-54 through SN-55. During the inspection, it was discovered that Respondent exceeded the permitted visual emission limit at the MCEP Diesel Generator #3 (SN-14), the COPH Diesel Generator (SN-20), the CI#3 Generator (SN-54) (Table 2) and failed to conduct the visual emission readings in accordance with EPA Method 9.

Table 2

Source Number	Visual Emissions Limit	Visual Emissions Test Result	Test Date
SN-14	20%	21.5%	May 25, 2018
SN-20	20%	23.5%	May 29, 2018
SN-14	20%	31%	May 31, 2019
SN-20	20%	21%	May 31, 2019
SN-20	20%	31.5%	May 31, 2020
SN-54	20%	31.5%	June 5, 2020

EPA Method 9 requires twenty-four (24) observations be taken during the visual emission testing. Records reviewed during the inspection indicated that Respondent only conducted twenty (20) observations during the visual emissions testing. Such acts violate Specific Conditions 25 (Permit R5), 23 (Permit R6), 33 (Permit R5), and 31 (Permit R6) of the Permits and therefore

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violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 47 (Permit R5) and Specific Condition 45 (Permit R6) require Respondent to measure opacity levels as set forth in Part 86, Subpart I - Emission Regulations for New Diesel Heavy-Duty Engines; Smoke Exhaust Test Procedure. Subpart I requires the generator to be put through preloading, preconditioning, idling, acceleration, and lugging modes. During the inspection, it was discovered that Respondent did not follow the test procedures in Subpart I. Records indicated that Respondent was recording the opacity at the startup of the generator and not putting the generator through the required operating modes. Such failure violates Specific Conditions 47 (Permit R5) and 45 (Permit R6) of the Permits and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such failure also violates Subpart III.

10. General Provision 21 of the Permits R5 and R6 require Respondent to submit an Annual Compliance Certification (ACC) report of the compliance status of each condition of the permit and to note if continued compliance was maintained during the reporting period. During the inspection, it was discovered that Respondent failed to report the visual emission exceedances listed in Table 2 of this CAO in the ACC reports submitted on August 24, 2018, August 26, 2019, and August 26, 2020. Such failures violate General Provision 21 of the Permits and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In a letter dated September 21, 2020, DEQ informed Respondent of the compliance issues identified in the inspection conducted on August 31, 2020. This letter was intended to give Respondent an opportunity to review the issues identified and submit any

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additional information Respondent deems appropriate.

12. On November 9, 2020, Respondent submitted a response to the September 21, 2020 letter and provided the following information:

A. Regarding the compliance issues listed in Paragraph 8 and 9 above,

Respondent stated their technicians were being retrained on EPA Method 9.

Respondent also stated that “[e]ach of these engines require a load (building load or load bank) to achieve a passing opacity test. Most of our annual opacity testing dates fall on a NFPA 110 weekly test where there is no load available.

Changing our annual opacity test date to correspond with our annual NFPA 110 load bank test or transfer[sic] switch tests would eliminate this issue.

UAMS requests permission to adjust our annual opacity test dates to correspond with our annual NFPA load bank tests and/or transfer switch tests.”

B. Regarding the compliance issues listed in paragraph 10 above, Respondent

stated that “[e]ach of these instances were recorded during our weekly NFPA 110 testing. No weekly test runs for more than 15 minutes on any generator.

According to Pollution Control and Ecology Commission [R]ule 19 (19.601),

these would not qualify as a reportable "Upset Condition". Given permission,

changing our annual opacity readings to correspond with our NFPA 110

annual load bank testing or transfer switch testing will either eliminate

readings like this or create true reportable conditions.”

13. On December 4, 2020, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the August 31, 2020 compliance inspection.

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 thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to DEQ documentation that the facility's technicians have been retrained on EPA Method 9.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit written notification to DEQ of when the facility's NFPA 110 annual load bank testing is scheduled to be conducted.
3. Within thirty (30) calendar days of Respondent conducting the NFPA 110 annual load block testing at the facility Respondent will submit the visual emissions results to DEQ.
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 EIGHT HUNDRED FORTY DOLLARS (\$4,840.00)**. 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

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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

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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 PC&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

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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 18th DAY OF June, 2021.

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

APPROVED AS TO FORM AND CONTENT:

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS ACTING FOR AND ON BEHALF OF THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES

BY: Amanda George (Signature)

Amanda George, CPA, MHSA (Typed or printed name)

TITLE: Vice Chancellor for Finance and Chief Financial Officer

DATE: 6/10/2021

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6/7/21

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