

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

IN THE MATTER OF:

AFIN: 35-00226

LIS No. 24-120

SUN GRO HORTICULTURE PROCESSING INC.
4418 EMMETT SANDERS ROAD
PINE BLUFF, ARKANSAS 71601

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, and APC&EC Rule 19.

The issues herein having been settled by agreement of Sun Gro Horticulture Processing Inc. (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 vermiculite, perlite, and horticultural mixtures facility located at 4418 Emmett Sanders Road in Pine Bluff, Jefferson County, Arkansas.
2. There are two Air Permits referenced in this CAO. 1109-AR-5 (Permit R5) was issued on June 27, 2018, and voided on January 22, 2020. 1109-AR-6 (Permit R6) was issued on January 22, 2020.

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 July 6, 2023, DEQ personnel conducted a full compliance inspection of Respondent’s facility. The inspection covered the reporting period of April 18, 2018 through May 31, 2023.

7. Specific Condition 11 of Permit R5 states that Respondent shall test the Perlite Furnace (SN-24) for Particulate Matter (PM) using EPA Method 5. Specific Condition 11 of Permit R6 states that Respondent shall test SN-24 or Furnace #4-Perlite (SN-18) for PM. The test should take place no later than 180 days after initial start-up and in accordance with General Provision 7. Testing shall be conducted with the source operating at least at 90% of its permitted capacity. Emission testing results shall be extrapolated to correlate with 100% of the permitted capacity to demonstrate compliance. Failure to test within this range shall limit Respondent to operating within 10% above the tested rate. Respondent shall measure the operation rate during the test and if testing is conducted below 90% of the permitted capacity, records shall be maintained at all times to demonstrate that the source does not exceed operation at 10% above the tested rate.

8. During the inspection, it was discovered that Respondent failed to submit records evidencing it conducted the initial PM testing at SN-18 or SN-24 within 180 days of startup. Such a failure violates Specific Condition 11 of Permits R5 and R6 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 August 10, 2023, DEQ informed Respondent of the compliance issue identified during the inspection conducted on July 6, 2023. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deemed appropriate.

10. On August 28, 2023, Respondent submitted an email response to the August 10, 2023 letter. The response addressed other issues discovered during the inspection, but did not address the initial testing of SN-18 and SN-24.

11. In correspondence dated September 27, 2023, DEQ informed Respondent that formal enforcement action was proceeding regarding this matter.

12. On January 22, 2024, DEQ sent Respondent a proposed CAO for the violations outlined in paragraph 8 of the FINDINGS OF FACTS section of this CAO.

13. On February 2, 2024, Respondent submitted an Air Compliance – Stack Testing Protocol form to DEQ for PM and Opacity testing to be conducted at SN-18 or SN-24 on February 5, 2024.

14. On February 5, 2024, Respondent conducted PM and Opacity testing at SN-24.

15. On March 19, 2024, DEQ sent Respondent a re-proposed CAO.

16. On April 11, 2024, Respondent submitted a response to the proposed CAO. Respondent stated that Sun Gro of Pine Bluff has been experiencing difficulties in maintaining optimal performance and meeting regulatory obligations due to previous leadership. In the month of

December, the plant manager suddenly resigned and after reviewing the facility's permit, it was discovered that the air quality/emissions regulatory paperwork had not been submitted. Respondent stated that the following measures are being taken to address the compliance issues:

- A. A thorough review of the internal processes, improved communication channels, and implemented new protocols to ensure timely and accurate submissions to the DEQ offices have been initiated.
- B. All regulatory schedules and documentation are now being submitted to the corporate office to enhance the efficiency and effectiveness of the submission procedures.

Respondent also requested that the civil penalty be reduced by 65%.

17. On May 5, 2024, Respondent submitted emissions test results for the emissions testing conducted on February 5, 2024, at SN-24. The results of the emissions test indicated that at the time of testing, SN-24 was in compliance with the permitted emission limits.

18. In correspondence dated May 24, 2024, DEQ notified Respondent that after a review of the stack test results, it was determined that SN-24 was in compliance with the permitted emission rate limits at the time of testing.

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 **ONE THOUSAND DOLLARS (\$1,000.00)**.

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 24 DAY OF July, 2024.

Bailey Taylor
BAILEY TAYLOR
DIVISION OF ENVIRONMENTAL QUALITY, INTERIM DIRECTOR
INTERIM CHIEF ADMINISTRATOR, ENVIRONMENT
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

SUN GRO HORTICULTURE PROCESSING INC.

BY: Del Jackson (Signature)

DEL JACKSON (Typed or printed name)

TITLE: PLANT MANAGER

DATE: _____