

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

JEFFERSON COUNTY

DAVID J. WOLF  
N6248 Christberg Road  
Johnson Creek, WI 53038,

Plaintiff,

v.

Case No. 13-CV- 322

ARLAND CLEAN FUELS, LLC  
630 Davis Street, Suite 300  
Evanston, IL 60201-4480,

Case Code: 30303

GENERATION CLEAN FUELS, LLC  
630 Davis Street, Suite 300  
Evanston, IL 60201-4480,

ERIC DECATOR  
630 Davis Street, Suite 300  
Evanston, IL 60201-4480,

Defendants.

CLERK OF THE CIRCUIT COURT  
JEFFERSON COUNTY, WISCONSIN  
**FILED**

JUN -4 2013

\_\_\_\_ O'CLOCK \_\_\_\_ M.  
CARLA J. ROBINSON, Clerk

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**COMPLAINT**

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Plaintiff, David J. Wolf, as and for his complaint against Defendants alleges as follows:

1. Plaintiff is an adult citizen of the State of Wisconsin and a resident of Jefferson County residing at N6248 Christberg Road, Johnson Creek, Wisconsin 53038.
2. Defendant Arland Clean Fuels, LLC ("ACF") is a Colorado limited liability corporation with, on information and belief, a principal place of business located at 630 Davis Street, Suite 300, Evanston, Cook County, Illinois 60201.

3. On information and belief Defendant Generation Clean Fuels, LLC (“GCF”) is a Delaware limited liability corporation with a principal place of business located at 630 Davis Street, Suite 300, Evanston, Cook County, Illinois 60201.

4. On information and belief Defendant Eric Decator is an adult citizen and resident of the State of Illinois. On information and belief Mr. Decator is an owner, member, manager, director, and/or officer of ACF and GCF each of which maintains a principal place of business located at 630 Davis Street, Suite 300, Evanston, Cook County, Illinois 60201.

### **JURISDICTION AND VENUE**

5. Pursuant to Wis. Stat. § 801.05(1)(d), personal jurisdiction over ACF and GCF is properly exercised by this Court as each is engaged in substantial and not isolated activities within the State of Wisconsin. Personal jurisdiction over ACF and GCF is also properly exercised by this Court pursuant to Section 801.05(3), as the injury claimed by Plaintiff arose from acts or omissions occurring within the State of Wisconsin.

6. Pursuant to Wis. Stat. § 801.05(1)(d), personal jurisdiction over Mr. Decator is properly exercised by this Court as he is engaged in substantial and not isolated activities within the State of Wisconsin. Personal jurisdiction over Mr. Decator is also properly exercised by this Court pursuant to Section 801.05(8), as this action arises out of his conduct as an officer, director or manager of ACF and GCF or out of the activities of such companies while he held office as a director, officer, or manager.

7. Pursuant to Wis. Stat., §§ 801.50(2)(a) and (c), venue is proper in Jefferson County Circuit Court because Defendants’ obligations to Plaintiff arose from a transaction that occurred in Jefferson County.

## FACTUAL ALLEGATIONS

8. On or about March 12, 2012, Mr. Wolf and ACF executed a written contractual agreement, entitled Royalty Agreement (hereinafter the "Agreement"), a copy of which is attached hereto as Exhibit A. Pursuant to the Agreement, Mr. Wolf agreed to pay ACF the sum of \$250,000.00 (the "Investment Amount"). The Agreement expressly stated that the express purpose of the Investment Amount was to assist ACF in paying for expenses related to the production and placement of oil producing equipment (the "Equipment").

9. Mr. Wolf paid the full sum of the Investment Amount on or around March 12, 2012.

10. Under the Agreement ACF was required to repay Mr. Wolf an amount equivalent to the Investment Amount in four (4) equal installments of \$62,500 (the "Installment Repayments" or individually each an "Installment Repayment"), which Installment Repayments were to be paid on September 15, October 15, November 15, and December 15, 2012 respectively.

11. ACF failed to pay any of the Installment Repayments, and to date, Mr. Wolf has received no repayment of the Investment Amount from ACF.

12. Pursuant to the terms of the Agreement, ACF was required to pay Mr. Wolf additional funds (hereinafter the "Return Payments" and collectively with the Installment Repayments the "Royalty Agreement Payments") on a quarterly basis, beginning thirty (30) days after the Equipment reached full production, for each year that the Equipment was fully operational onsite for a period of up to five (5) years.

13. On information and belief, the Equipment became fully operational and reached full production in 2012.

14. To date, Mr. Wolf has received no quarterly Return Payments from ACF.
15. The Agreement requires that in the event ACF fails to timely make any Royalty Agreement Payments to Mr. Wolf, ACF must pay 10% per annum interest on such failed payment from the date the Royalty Agreement Payment should have been made.
16. To date, ACF has made no interest payments to Mr. Wolf for amounts owed due to its failure to make timely Royalty Agreement Payments.
17. On January 10, 2013, Mr. Decator represented to Plaintiff that ACF had little or no assets of its own, and that he has comingled his personal funds to finance the operations of Defendants, including without limitation, using his personal funds to pay the payroll of ACF.
18. On information and belief, ACF and GCF are shell entities with no assets. As a consequence of Mr. Decator's failure to observe the necessary corporate formalities by, among other things, comingling his personal assets with those of the companies, he is not veiled from personal liability for the debts and obligations of ACF and GCF.
19. In addition, on information and belief, the assets of ACF that were transferred to GCF included ACF's debts and obligations to Plaintiff.

**FIRST CLAIM FOR RELIEF**  
***(Breach of Contract)***

20. Plaintiff incorporates the preceding allegations by reference and asserts that they shall have the same effect as if fully set forth herein.
21. Plaintiff and Defendants entered into a binding and lawfully enforceable contractual agreement.
22. Plaintiff has fully complied with and completed his obligations under the Agreement.

23. Notwithstanding that Defendants have received and fully realized the totality of the benefit of the bargain to be provided to it by Plaintiff under the Agreement, Defendants have breached its obligations to Plaintiff thereunder.

24. Plaintiff has been damaged by Defendants' breach in an amount to be determined at trial, but in an amount at least equal to \$250,000 plus any Return Payments unpaid by Defendants, plus 10% per annum interest on any unpaid Royalty Agreement Payments calculated from the date Defendants were required to make such payment.

## **SECOND CLAIM FOR RELIEF**

### ***(Declaratory Judgment)***

25. Plaintiff incorporates the preceding allegations by reference and asserts that they shall have the same effect as if fully set forth herein.

26. Pursuant to the Agreement, Plaintiff is entitled to receive Return Payments from Defendants on a quarterly basis, beginning thirty (30) days after the Equipment reached full production, for each year that the Equipment was fully operational onsite for a period of up to five (5) years.

27. To the extent that the Equipment may not presently have reached full production and be fully operational, Defendants are obligated to make Return Payments to Plaintiff in the future.

28. Defendants have received the full and complete benefit of the bargain contemplated by the parties and provided by Plaintiff under the Agreement.

29. Defendants' past breaches of the Agreement as set forth herein do not invalidate the Agreement or in any other manner relieve Defendants of its obligation to make Return Payments to Plaintiff in the future.

30. On information and belief, Defendants deny their obligation to make Return Payments to Plaintiff.

31. There is an actual, justiciable controversy between the parties regarding Defendants' obligation to make future Return Payments to Plaintiff.

32. Plaintiff is entitled to a declaratory judgment under Wis. Stat. § 806.04 that he is entitled to future Return Payments pursuant to the terms of the Agreement.

### **THIRD CLAIM FOR RELIEF**

#### ***(Unjust Enrichment)***

33. Plaintiff provided a benefit to Defendants by, among other things, paying it an amount equal to \$250,000.

34. Defendants knowingly received and retained the benefit provided to it by Plaintiff.

35. Defendants have failed or refused to compensate Plaintiff for the benefit provided to it by Plaintiff.

36. It would be inequitable to permit Defendants to retain the benefit provided to it by Plaintiff without compensating Plaintiff for such benefit.

### **FOURTH CAUSE OF ACTION**

#### ***(Violation of the Uniform Fraudulent Transfer Act)***

37. Plaintiff incorporates the preceding allegations by reference and asserts that they shall have the same effect as if fully set forth herein.

38. On March 19, 2013, in pleadings filed with the Jefferson County Circuit Court, ACF represented that ACF is now operating as GCF.

39. On information and belief, Mr. Decator has transferred the assets of ACF to GCF, himself, or some other entity in which he is an insider, or caused the same to be done.

40. On information and belief, ACF did not receive reasonably equivalent value in exchange for the assets transferred.

41. On information and belief, ACF was insolvent at the time of the transfer, or became insolvent as a consequence thereof.

42. Plaintiff, as a present creditor of ACF, is entitled to avoid the transfer and/or recover amounts owed to it from the transferee.

#### **FIFTH CAUSE OF ACTION**

##### ***(Breach of Fiduciary Duty)***

43. Plaintiff incorporates the preceding allegations by reference and asserts that they shall have the same effect as if fully set forth herein.

44. As an officer of ACF, Mr. Decator had a fiduciary obligation to preserve the assets of ACF for the benefit of its creditors.

45. On information and belief, in breach of his duty Mr. Decator caused the assets of ACF to be transferred to himself, GCF, or another entity in which he is an insider, in violation of his duties to ACF's creditors.

46. Plaintiff has been damaged by Mr. Decator's breach in an amount to be determined at trial.

#### **SIXTH CAUSE OF ACTION**

##### ***(Unlawful Distribution of Assets in Violation of Wis. Stat. § 183.0607, Del. Code Tit. 6, § 18-607 or 805 ILCS180/25-35)***

47. Plaintiff incorporates the preceding allegations by reference and asserts that they shall have the same effect as if fully set forth herein.

48. On information and belief, Mr. Decator is a member and/or managing member of ACF and GCF.

49. On information and belief, Mr. Decator caused the assets of ACF to be distributed to himself or to another entity, such as GCF, in which he maintains an interest.

50. On information and belief, Mr. Decator knew or should have known that after giving effect to such distribution and/or transfer, all liabilities of ACF exceeded the fair value of the assets of ACF.

51. Mr. Decator is liable for such amounts as were distributed from ACF and/or transferred for his benefit.

WHEREFORE, Plaintiff prays for judgment from the Court as follows:

- A. With respect to his first cause of action, judgment determining that Defendants are jointly and severally liable to Plaintiff in an amount to be determined at trial, but in an amount at least equal to \$250,000 plus any Return Payments unpaid by Defendants, plus 10% per annum interest on any unpaid Royalty Agreement Payments calculated from the date Defendants were required to make such payment.
- B. With respect to his second cause of action, a declaratory judgment that Plaintiff is entitled to receive quarterly future Return Payments from Defendants pursuant to the terms of the Agreement.
- C. With respect to his third cause of action, which is pled in the alternative to his first cause of action, judgment the Defendants are jointly and severally liable to Plaintiff in an amount to be determined at trial, but in an amount equal to \$250,000 plus 10% interest per annum calculated from the date ACF was required to make payment to Plaintiff.



- D. With respect to its fourth and fifth causes of action, a judgment determining that Defendants are jointly and severally liable to Plaintiff for his actual and punitive damages in an amount to be determined at trial.
- E. Costs and charges pursuant to Section 842.16 of the Wisconsin Statutes.
- F. Such further relief as the Court may deem just and equitable.

Dated this 3<sup>rd</sup> day of June, 2013.



Travis James West (1052340)  
Solheim Billing & Grimmer, S.C.  
One S. Pinckney Street, Suite 301  
P.O. Box 1644  
Madison, WI 53703  
Telephone: (608) 282-1200  
Facsimile: (608) 282-1218  
Email: [twest@sbgllaw.com](mailto:twest@sbgllaw.com)

Attorneys for Plaintiff David J. Wolf

## ROYALTY AGREEMENT

**THIS ROYALTY AGREEMENT** ("Agreement") is made and entered into this 12th day of March, 2012, by and between David J. Wolf, (the "Royalty Recipient,") and Arland Clean Fuels, LLC, a Colorado corporation ("Company").

### W I T N E S S

**WHEREAS**, Company has requested that Royalty Recipient fund initial expenses related to the purchase of certain waste processing equipment which produces raw oil and is further referenced as the oil producing equipment; and

**WHEREAS**, Royalty Recipient has agreed to extend certain financial terms to Company upon the terms and conditions hereinafter set forth.

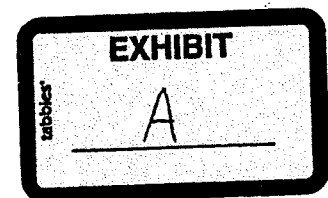
**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

### **ARTICLE I** **THE INVESTMENT**

**Section 1.01 The Investment.** The Royalty Recipient agrees, on the terms and subject to the conditions hereinafter set forth, to assist Company in offsetting the expenses related to its purchase and placement of the Oil Producing Equipment by providing to Company Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the "Investment Amount") as set forth below.

**Section 1.02 Timing of the Investment.** The Investment Amount shall be deposited with the Company upon the execution of this Royalty Agreement.

**Section 1.03 Sources and Uses of Funds.** Company hereby represents and agrees that the proceeds of the Royalty Investment in the Oil Producing Equipment are to be used for the sole purpose of the expenses related to acquiring and placing the equipment necessary for operation of the business as more fully set forth below and in the attached payment and production schedule.



**ARTICLE II**  
**TERMS OF THE ROYALTY INVESTMENT**

**Section 2.01 Royalty Investment.** The Royalty Recipient will deposit Two Hundred and Fifty Thousand Dollars (\$250,000.00) to the Company pursuant to the schedule set forth in Article I. Company's banking coordinates are as follows:

JPMORGAN CHASE BANK - Routing Number: 071000013  
Account Name: Arland Clean Fuels, LLC  
Account Number: 000000-962718177

**Section 2.02 Construction and Placement of the Oil Producing Equipment.** The intended purpose of the Royalty Investment is for the Royalty Recipient to assist the Company in paying for expenses related to the production and placement of the Oil Producing Equipment, which is the subject of a purchase agreement between Company and P2O (the "P2O Agreement" attached hereto as Exhibit B). In exchange for the proceeds with which to pay these related expenses, from Royalty Recipient, Company agrees to provide to Royalty Recipient a royalty in the amount of Two Hundred and Fifty Thousand Dollars per year for each full year that the equipment is fully operational on-site for a period of up to five (5) years. A serial number associated with the oil producing equipment, in which the royalty investment applies, will be assigned at the time of investment and a production schedule will be drafted.

**Section 2.03 Return on Investment.** The return on investment to the Royalty Recipient is expected to be several times the investment over a five year period. The principal amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), (the "Principal Payment") will be paid back to the Royalty Recipient on the following schedule:

September 15, 2012	Principal Payment of \$62,500.00
October 15, 2012	Principal Payment of \$62,500.00
November 15, 2012	Principal Payment of \$62,500.00
December 15, 2012	Principal Payment of \$62,500.00

In addition to the above Principal Payments, an investment return will be paid to Royalty Recipient on a quarterly basis, beginning 30 days after reaching full production, (the "Investment Return"). The total royalty payments by year will be as follows:

	<u>Principal</u>	<u>Return</u>	<u>Total Royalty Payments</u>
Year 1	\$ 250,000.00	\$ 250,000.00	\$ 500,000.00
Year 2		\$ 500,000.00	\$ 500,000.00
Year 3		\$ 500,000.00	\$ 500,000.00
Year 4		\$ 250,000.00	\$ 250,000.00
Year 5		\$ 250,000.00	\$ 250,000.00
	<hr/> \$250,000.00	<hr/> \$1,750,000.00	<hr/> \$2,000,000.00

The Company agrees to provide Royalty Recipient with the first right of refusal on all future mini-investments of \$250,000.00. The Royalty Recipient will be provided this option in writing by Company with an automatic 30-day consideration period. The Company may elect to pay any or all of the total royalty payments early under terms to be mutually agreed by the Parties. The Royalty Recipient may choose to invest any or all of its total royalty payments with the Company under terms to be mutually agreed by the Parties. In the event that any of the total royalty payment are not made on schedule, Company will accrue the unpaid payment with the application of an interest accrual rate of 10% per annum from the date the scheduled payment should have been made.

### **ARTICLE III**

#### **WARRANTIES AND REPRESENTATIONS OF COMPANY AND ROYALTY RECIPIENT**

**Section 3.01 Company Representations and Warranties.** Company hereby represents and warrants as follows:

- (a) Company will use its best efforts to produce oil for sale consistent with attached oil assay
- (b) Company will use its best efforts to convert approximately 22 Tons of poly/plastic into 4400 gallons of raw oil.
- (c) Company will use its best efforts to obtain a contract for the delivery and sale of the raw oil for a period of five years from an industry recognized and financially capable Royalty Recipient.
- (d) Company will use its best efforts to obtain any all performance guarantees, warranties and insurance coverage to insure the proposed operations perform to the anticipated or desired levels of production of raw oil.
- (e) Company will use its best efforts to obtain commitments for the required feed stock to achieve the necessary outputs of raw oil contemplated by the parties.
- (f) Company will maintain proper financial and accounting records of all operations and make any all necessary reporting requirements to Royalty Recipient.

### **ARTICLE IV**

#### **EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

**Section 4.01 Event of Default Defined.** As used herein, the term Event of Default shall include each or all of the following events:

- (a) Any default under the Agreement which continues beyond any applicable grace or cure period, if any.
- (b) Any default under the Financing Documents which continues beyond the expiration of any applicable cure period, if any.
- (c) Any financial information, statement, certificate, representation or warranty given to the Royalty Recipient by Company (or any of their representatives) in connection with entering into this Agreement or the other Financing Documents and/or a, or required to be furnished under the terms hereof or the Financing Documents, shall prove untrue in any material respect (as determined by the Royalty Recipient in the exercise of its reasonable judgment) as of the time when given.
- (d) There is a material adverse change in the financial condition of Company or a violation of an environmental law having a material adverse effect on Company or the Mortgaged Property occurs or is discovered.

**Section 4.02 Rights and Remedies.** Upon the occurrence of an Event of Default the Royalty Recipient may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it):

- (a) The Royalty Recipient may, without notice, terminate the Investment, and not make or approve any further disbursements from any Escrow or Reserve.
- (b) The Royalty Recipient may, by written notice to Company, declare immediately due and payable all sums payable hereunder, and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived; provided, however, that upon the filing of a petition commencing a case naming Company as debtor under the United States Bankruptcy Code, sums payable hereunder shall be automatically due and payable without any notice to or demand on Company or any other party.
- (c) The Royalty Recipient shall have the right, in addition to any other rights provided by law or in equity, to enforce its rights and remedies under any or all of the Financing Documents.

## **ARTICLE V**

### **MISCELLANEOUS**

**Section 5.01 Amendments, Determinations, Consents, Etc.** This Agreement and the Financing Documents may not be amended or modified, nor may any of their terms be modified or waived, except by written instruments signed by the Royalty Recipient and Company. In any instance where the consent or approval of the Royalty Recipient may be given or is required, or where any determination, judgment or decision is to be rendered by the Royalty Recipient under this Agreement or under any Financing Document, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Royalty Recipient at its sole and exclusive option and in its sole and absolute discretion. Whenever Company is obligated to indemnify or defend the Royalty Recipient under the terms of this Agreement or under the terms of any other Financing Document, such indemnity obligations shall run to the favor of the Royalty Recipient and its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns.

**Section 5.02 Waivers.** No waiver by the Royalty Recipient of any right or remedy hereunder shall operate as a waiver of any other right or remedy, or of the same right or remedy on a future occasion. No delay on the part of the Royalty Recipient in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or future exercise thereof or the exercise of any other right or remedy.

**Section 5.03 Remedies Cumulative.** The rights and remedies herein specified of the Invest Fund are cumulative and not exclusive of any rights or remedies which the Royalty Recipient would otherwise have at law or in equity or by statute.

**Section 5.04 Governing Law and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The Financing Documents contain the entire agreement of the parties on the matters covered herein and therein.

**Section 5.05 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

**Section 5.06 Term.** This Agreement, and the terms and conditions hereof, shall survive the execution and delivery of the other Financing Documents and shall remain in full force and effect until the sums due hereunder are paid in full. The representations, warranties, covenants and agreements of Company shall survive the execution and delivery of the other Purchasing Documents.

**Section 5.07 Successors and Assigns.** This Agreement, and the terms and provisions hereof, shall be binding upon Company its successors and permitted assigns, and shall inure to the benefit of the Royalty Recipient, its successors and assigns; provided, however, that Company may not transfer or assign this Agreement, including, without limitation, its right to borrow hereunder, without the prior written consent of the Royalty Recipient.

**Section 5.08 Headings.** The descriptive headings for the several Sections of this Agreement are inserted for convenience only and shall not define or limit any of the terms or provisions hereof.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

For Company:

ARLAND CLEAN FUELS, LLC

By: Michael S. Hales

Its: PRESIDENT & CEO

Sworn to and subscribed  
before me this 19<sup>th</sup> day of March, 2012.

Carrie L. Hoffman  
Notary Public

County of Jefferson  
State of Wisconsin

My Commission Expires:  
10-28-2012

For Royalty Recipient:

David J. Wolf

[Signature]