

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

IN THE MATTER OF:

**TIMBER AUTOMATION,
LLC 400 AVIATION PLAZA
HOT SPRINGS, AR
71913 EPA ID No.
ARD983273038
AFIN 26-00375**

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CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7.

The issues herein having been settled by the agreement of Timber Automation, LLC (Respondent) and the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated by all parties that the Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondent is a sawmill equipment manufacturing plant located at 400 Aviation Plaza, Hot Springs, Garland County, Arkansas (the Facility).

¹ Pursuant 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.

2. APC&EC Regulation 23 § 260.10 defines a Universal Waste Handler as, "a generator of universal waste or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination."

3. APC&EC Regulation 23 defines a Small Quantity Handler of Universal Waste (SQH) as, "a universal waste handler who does not accumulate more than 5,000 kilograms total of universal waste (calculated collectively) at any time."

4. Respondent generates characteristic and listed hazardous waste through painting and cleaning operations performed on fabricated steel components. The Facility also generates hazardous waste through the cleaning of paint guns and brushes with lacquer thinner. The Facility generates used oil and universal waste consumer electronic items.

5. Respondent notified DEQ of status as a Conditionally Exempt Small Quantity Generator (CESQG) in 2009. However, based on the amount of hazardous waste generated and shipped off-site, Respondent was operating at least as a Small Quantity Generator (SQG) in 2015 and 2016 and was a Large Quantity Generator (LQG) in 2017 and 2018. Respondent is also a Small Quantity Handler of Universal Waste.

6. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes DEQ to assess an administrative penalty not to exceed twenty-five thousand dollars (\$25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act and any regulation or permit issued pursuant to the Act.

7. Ark. Code Ann. § 8-7-205(1) states, "It shall be unlawful for any person to [v]iolate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter [.]"

8. On December 7, 2018, the Division of Environmental Quality received two (2) anonymous complaints against the Respondent. The first complaint alleged that Respondent was storing sandblasting material in a parking lot on the side of the building. The complaint also alleged that the sandblasting material had been spread over the back of the building. The second complaint alleged the Facility had a mobile crane that had leaked a full reserve of hydraulic fuel oil onto the ground and the soil beneath the replacement crane.

9. On January 17, 2019, DEQ conducted a Compliance Evaluation Inspection (CEI) at the Facility. A sampling event occurred on January 24, 2019. The CEI report was mailed to Respondent on March 26, 2019, and is incorporated herein by reference.

10. Based on the findings of the January 17, 2019 CEI and the January 24, 2019 sampling event, DEQ identified the following violations of APC&EC Regulation 23:

- a. In the Paint Room satellite accumulation area (SAA), DEQ Inspectors observed two (2) 5-gallon SAA containers with lids that were resting on top of the container and were not securely fastened. In the Facility's Mobile Paint Booth SAA, two (2) 5-gallon SAA containers of hazardous waste also were found to be open. Failure to securely close these four (4) containers violates APC&EC Regulation 23 § 265.1 73(a), which states in part, "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." Respondent's failure to keep hazardous waste containers properly closed also violates Ark. Code Ann. § 8-7-205(1).
- b. DEQ inspectors noted that two (2) 5-gallon SAA containers in the Paint Room SAA and two (2) 5-gallon SAA containers in the Mobile Paint Booth SAA were not labeled with the words "Hazardous Waste" or any

other words to identify the contents of the containers. All four (4) of the SAA containers were observed to be approximately 50% full of hazardous waste at the time of the CEI. Failure to properly label the SAA containers violates APC&EC Regulation 23 § 262.34(c)(1)(ii), which indicates that containers must be marked with either the words "Hazardous Waste" or with other words identifying what is in the containers. Failure to properly label hazardous waste containers also violates Ark. Code Ann. § 8-7-205(1).

- c. In the "Paint and Lacquer Thinner <90-Day Container Accumulation Area," where the Facility accumulates all paint related waste prior to shipping it off-site, DEQ inspectors observed nine (9) 55-gallon containers of hazardous waste and one (1) 5-gallon container of hazardous waste. None of these ten (10) containers of hazardous waste were marked with their accumulation start dates. Failure to mark hazardous waste containers with accumulation start dates violates APC&EC Regulation 23 § 262.34(a)(2), which states in part that, "a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that [t]he date upon which each period of accumulation begins is clearly marked and visible for inspection on each container." Failure to properly mark hazardous waste containers with accumulation start dates also violates Ark. Code Ann. § 8-7-205(1).

- d. DEQ personnel observed that the ten (10) hazardous waste storage containers in the "Paint and Lacquer Thinner <90-Day Accumulation Area," described above in Paragraph 10c, were not marked with the words "Hazardous Waste." Failure to clearly mark a <90-Day Accumulation container with the words "Hazardous Waste" violates APC&EC Regulation 23 § 262.34(a)(3), which states in part that, "a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that [w]hile being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste." Failure to adequately mark hazardous waste storage containers also violates Ark. Code Ann.§ 8-7-205(1).
- e. The Facility had not submitted a hazardous waste annual report to DEQ for the 2015, 2016, or 2017 calendar years. DEQ inspectors reviewed waste manifests from 2015 through 2018 that demonstrated the Facility had generated more than 100kg of hazardous waste in any given month in each of those calendar years. Failure to submit an annual report to DEQ in a timely manner violates APC&EC Regulation 23 § 262.41, which states, "Any person who generated more than 100kg of hazardous waste in any given month during the preceding calendar year... must prepare and submit a single copy of an Annual Report to the Director not later than March 1 of each year." Failure to submit an annual report on time also violates Ark. Code Ann. § 8-7-205(1).
- f. DEQ inspectors inquired about the extent hazardous waste training

received by Facility personnel who work in hazardous waste management. Respondent's employee indicated none of the employees working at the Facility have successfully completed classroom or on-the-job training for hazardous waste management. The lack of training by employees who handle hazardous waste management violates APC&EC Regulation 23 § 265.16(a)(1), which states the following:

"Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Section. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section."

Failure to ensure adequate training of all hazardous waste management employees also violates Ark. Code Ann. § 8-7-205(1).

- g. Respondent's employee informed DEQ that records were not kept detailing job titles for each position at the Facility related to hazardous waste management, or the names of employees filling each job on-site. Failure to keep adequate records of hazardous waste management positions violates APC&EC Regulation 23 § 265.16(d)(1), which states that the owner or operator must maintain records at the facility of, "The job title for each position related to hazardous waste management, and the name of the employee filling each job." Failure to ensure adequate records of all hazardous waste management positions also violates Ark. Code Ann. § 8-7-205(1).

- h. Respondent's employee informed DEQ during the CEI that there was no written job description kept for each person at the Facility related to hazardous waste management. Failure of the owner or operator to keep written documentation of all job descriptions dealing with hazardous waste management violates APC&EC Regulation 23 § 265.16(d)(2), which states that the owner or operator must maintain the following documents and records at the facility:

"A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position[.]"

Failure to ensure adequate descriptions of all hazardous waste management positions also violates Ark. Code Ann. § 8-7-205(1).

- i. When DEQ personnel inspected the conditions of the Paint and Lacquer Thinner <90-Day Container Accumulation Area, it was observed that there was not sufficient aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, or decontamination equipment between or around six (6) 55-gallon containers of hazardous waste. Failure to provide adequate space for all necessary personnel and equipment violates APC&EC Regulation 23 § 265.35, which states, "The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and

decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes." Failure to provide adequate space for movement also violates Ark. Code Ann. § 8-7-205(1).

- j. DEQ inspectors reviewed container inspection logs for the Facility. The inspection parameters did not include checking for deterioration of containers by corrosion or other factors. Failure to check hazardous waste storage containers for deterioration violates APC&EC Regulation 23 § 265.174, which states, "At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors." Failure to properly inspect hazardous waste storage containers also violates Ark. Code Ann. § 8-7-205(1).

11. On April 26, 2019, Respondent submitted to DEQ a response to the CEI report. The response did not adequately address all violations. Respondent adequately addressed only the violations cited in Paragraphs 10e, 10h, and 10i of the Findings of Facts above.

12. On July 16, 2020, DEQ mailed a proposed CAO to Respondent to address the violations cited during the January 17, 2019 inspection.

13. On July 21, 2020, Respondent contacted DEQ to request information regarding unaddressed violations cited in Paragraph 10 above. DEQ e-mailed Respondent the additional information.

14. On July 28, 2020, DEQ met with Respondent via teleconference. Respondent informed DEQ that all unaddressed violations would be corrected as soon as possible and submitted a

request to reduce the civil penalty due to reduced business activity related to the ongoing public health crisis.

ORDER AND AGREEMENT

1. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit photographic documentation demonstrating all hazardous waste satellite accumulation containers are closed as required.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to DEQ photographic documentation demonstrating that all containers of hazardous waste are properly labeled.
3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit photographic documentation demonstrating all containers of hazardous waste located in the "Paint and Lacquer Thinner <90 Day Container Accumulation Area" are marked with the accumulation start date.
4. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall conduct an Internal Compliance Audit of all hazardous waste management practices and related activities. The Internal Compliance Audit shall be of sufficient scope to identify any instances of noncompliance with applicable hazardous waste management requirements, whether identified by the aforementioned CEI Report or not.
5. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit to DEQ a report describing actions taken to achieve and maintain compliance with respect to any instances of noncompliance revealed by the Internal Compliance Audit. This report will be subject to approval by DEQ. If DEQ does not approve the report, in whole or in part, Respondent shall undertake any additional actions identified by DEQ to achieve and maintain compliance with all applicable requirements.
6. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall provide DEQ with a list of job titles for each position related to hazardous waste

management, as well as, the name of each employee filling each position.

7. Within ninety (90) calendar days of the effective date of this CAO, Respondent shall provide to DEQ information demonstrating that required hazardous waste training has been provided to facility personnel in accordance with APC&EC Regulation No. 23 § 265.16.

8. Within ninety (90) calendar days of the effective date of this CAO, Respondent shall provide DEQ with documentation demonstrating Facility is conducting weekly inspections of the areas where containers are stored. This documentation must cover a time frame of at least eight (8) consecutive weeks.

9. Respondent shall submit to DEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this CAO.

10. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent shall pay a civil penalty of TWENTY EIGHT THOUSAND DOLLARS (\$28,000.00) of which TWENTY THREE THOUSAND (\$23,000.00) shall be conditionally SUSPENDED by DEQ. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

11. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this CAO. If Respondent fully complies with this CAO, the SUSPENDED civil penalty of TWENTY THREE THOUSAND (\$23,000.00) shall be DISMISSED by DEQ. If Respondent violates any term of this CAO, or fails to pay the reduced sum of FIVE THOUSAND DOLLARS (\$5,000.00), the full balance of TWENTY EIGHT THOUSAND DOLLARS (\$28,000.00) shall become immediately due and payable to DEQ. In

the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

12. All submittals required by the CAO, excluding the requirement for the payment submittal in Paragraph 10 above, shall be electronically mailed to olrenforcement@adeq.state.ar.us, submitted by Certified Mail, or hand delivered to Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

13. All submittals shall be subject to applicable review fees pursuant to APC&EC Reg. No. 23 § 6(t).

14. All requirements by the CAO and Agreement are subject to approval by DEQ. In the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to adequately respond to a Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this CAO.

15. If Respondent fails to submit to DEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, DEQ may assess stipulated penalties for delay in the following amounts:

- a. First day through the fourteenth day: \$250 per day
- b. Fifteenth day through the thirtieth day: \$1,250 per day
- c. Each day beyond the thirtieth day: \$2,500 per day

These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to DEQ by

reason of Respondent's failure to comply with the requirements of this CAO.

16. Respondent shall notify DEQ within five (5) calendar days of knowledge of any delay or potential delay in complying with any provision of this CAO, specifying in detail the anticipated length of the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay. Such notification or request for extension shall be made in writing and prior to the deadline.

17. DEQ may grant a written extension of any provision of this CAO, provided that Respondent requested such an extension in writing and provided that the delay or anticipated delay has been 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 fault of Respondent and the length of delay attributable to such circumstances shall rest with Respondent.

18. Nothing contained in this CAO shall be construed as a waiver of DEQ's enforcement authority over violations not specifically addressed herein; nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein.

19. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this CAO be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

20. This CAO is subject to public review and comments in accordance with Ark.

Code Ann. § 8-4-103(d) and is therefore 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-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this CAO is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the Commission.

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

SO ORDERED THIS 17TH DAY OF DECEMBER, 2020.



BECKY W. KEOGH
DIRECTOR
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND

CONTENT: TIMBER AUTOMATION, LLC

BY: Signature Andy Trautham
Print or Type Name ANDY Trautham
Title VP - OPERATIONS
Date 11/30/20