

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:  
ALUMA-WELD, INC.  
199 EXTRUSION PLACE  
HOT SPRINGS, ARKANSAS 71901**

**EPA ID No. ARD043558568  
AFIN: 26-00413  
LIS 17- 091**

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and 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 Aluma-Weld, Inc., (“Respondent”) and the Arkansas Department of Environmental Quality (ADEQ or “Department”), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

**FINDINGS OF FACT**

1. Respondent operates an aluminum-hulled boat manufacturing facility located at 199 Extrusion Place, Hot Springs, Garland County, Arkansas (“the Site”).
2. Respondent generates characteristic and listed hazardous waste through the cleaning and paint spraying operations conducted throughout the manufacturing process.
3. Respondent is a Large Quantity Generator (LQG) of hazardous waste.
4. 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 ADEQ to assess an administrative civil penalty not to exceed twenty-five thousand dollars

(\$25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act (“the Act”) and any regulation or permit issued pursuant to the Act.

5. 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....”

6. On November 8, 2016, ADEQ conducted a Compliance Evaluation Inspection (CEI) at the Site. ADEQ mailed the CEI Report to Respondent on December 8, 2016.

7. Based on the findings of the November 8, 2016 CEI, ADEQ identified the following APC&EC Regulation 23 violations:

a. **APC&EC Reg. No. 23 § 262.11 - Failure to determine if a solid waste is a hazardous waste through testing or knowledge of process.** Respondent failed to determine if a solid waste is a hazardous waste. Respondent failed to make hazardous waste determinations for solvent contaminated wipes that were previously soaked in acetone and disposed of in the regular trash. Respondent failed to make hazardous waste determinations for non-punctured spent aerosol cans that were disposed of in the regular trash. Respondent failed to make hazardous waste determinations on the contents of multiple containers located just outside the <90-day accumulation area. Failure to determine if a solid waste is a hazardous waste is a violation of APC&EC Reg. No. 23 § 262.11, which states in part, “A person who generates a solid waste, as defined in Section 261.2, must determine if that waste is a hazardous waste[.]” This also violates Ark. Code Ann. § 8-7-205(1).

b. **APC&EC Reg. No. 23 § 265.173(a) - Failure to keep a container holding hazardous waste closed, except when it is necessary to add or remove waste.**

Respondent failed to keep a container holding hazardous waste closed, except when adding or removing waste. During the CEI, ADEQ observed four containers holding hazardous waste that were not kept closed while being stored at the Site. At the time of the CEI, no waste was being added to or removed from any of the four containers. Failure to keep hazardous waste containers closed, except when adding or removing waste, is a violation of APC&EC Reg. No. 23 § 265.173(a) which states, "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." This also violates Ark. Code Ann. § 8-7-205(1).

- c. **APC&EC Reg. No. 23 § 262.34(c)(1)(ii) - Failure to mark an SAA container with the words "Hazardous Waste" or other words to identify the contents of the container.** Respondent failed to mark a Satellite Accumulation Area (SAA) container with the words "Hazardous Waste" or other words to identify the contents of the container. Failure to mark SAA containers with the words "Hazardous Waste" or other words that identify the contents of the containers is a violation of APC&EC Reg. No. 23 § 262.34(c)(1)(ii), which states in part, "A generator may accumulate as much as 55 gallons of hazardous waste . . . at or near any point of generation where wastes initially accumulate . . . provided that he [m]arks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers." This also violates Ark. Code Ann. § 8-7-205(1).
- d. **APC&EC Reg. No. 23§ 262.34(a)(2) - Failure to clearly mark the date upon which each period of accumulation begins on each container.** Respondent failed to have the date the accumulation began clearly marked and visible for

inspection on hazardous waste containers. During the CEI, ADEQ observed fifteen (15) containers of hazardous waste that were not marked with an accumulation start date. Failure to mark accumulation dates on hazardous waste containers where hazardous waste is accumulated on-site is a violation of APC&EC Reg. No. 23 § 262.34(a)(2), which states in part, “[A] generator may accumulate hazardous waste on-site for 90 days or less . . . provided that: The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container[.]” This also violates Ark. Code Ann. § 8-7-205(1).

- e. **APC&EC Reg. No. 23 § 262.34(a)(3) - Failure to label or clearly mark containers being accumulated on-site for 90 days or less with the words “Hazardous Waste.”** Respondent failed to label or clearly mark containers for the accumulation of hazardous waste on-site with the words “Hazardous Waste.” During the CEI, ADEQ observed sixteen (16) containers of hazardous waste that were not labeled or marked clearly with the words “Hazardous Waste.” Failure to clearly label or mark hazardous waste containers with the words “Hazardous Waste” is a violation of APC&EC Reg. No. 23 § 262.34(a)(3), which states in part, “[A] generator may accumulate hazardous waste on-site for 90 days or less . . . provided that: . . . (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, “Hazardous Waste[.]” This also violates Ark. Code Ann. § 8-7-205(1).
- f. **APC&EC Reg. No. 23 § 265.16(c) - Failure to provide an annual review of the initial training for employees.** Respondent failed to provide an annual review of the initial training. Respondent’s new employees undergo orientation

training in which the required initial Resource Conservation and Recovery Act (RCRA) training requirements are covered; however, no annual reviews of the initial training are conducted. This is a violation of APC&EC Reg. No. 23 § 265.16(c), which states in part, "Facility personnel must take part in an annual review of the initial training[.]" This also violates Ark. Code Ann. § 8-7-205(1).

- g. **APC&EC Reg. No. 23 § 265.16(d)(3) - Failure to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under each job title.** Respondent failed to maintain a written description of the type and amount of introductory and continuing training. During the CEI, Respondent provided ADEQ with an email dated "11 Nov 2016" titled "Paint Department Supervisor Job Description." The job description did not contain a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management. This is a violation of APC&EC Reg. No. 23 § 265.16(d)(3), which states that the owner or operator must maintain "[a] written description of the type and amount of both introductory and continuing training that will be given to each person filling a position [related to hazardous waste management]." This also violates Ark. Code Ann. § 8-7-205(1).
- h. **APC&EC Reg. No. 23 § 265.16(d)(4) - Failure of the owner or operator to maintain training documentation for employees filling a position related to hazardous waste management.** Respondent failed to maintain records that document required training. Respondent did not maintain training records for employees filling a position related to hazardous waste management. This is a violation of APC&EC Reg. No. 23 § 265.16(d)(4), which states in part, "The

owner or operator must maintain . . . (records) that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.” This also violates Ark. Code Ann. § 8-7-205(1).

- i. **APC&EC Reg. No. 23 § 265.35 - Failure to 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.** Respondent failed to maintain adequate aisle space. During the CEI, ADEQ observed that the <90-day hazardous waste accumulation area, the area around the distillation unit, and the paint prep area where universal waste batteries were accumulated did not have adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency. This is a violation of APC&EC Reg. No. 23 § 265.35 which states in part, “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[.]” This also violates Ark. Code Ann.

§ 8-7-205(1).

- j. **APC&EC Reg. No. 23 § 265.174 - Failure to inspect areas where containers are stored at least weekly.** Respondent failed to inspect areas where containers are stored at least weekly. During the CEI, Respondent provided ADEQ with copies of the facility’s weekly checklist. The checklists revealed that in 2014, Respondent performed only six (6) weekly inspections between July 3, 2014, and the end of the calendar year. In calendar year 2015, Respondent performed only

six (6) weekly inspections. Respondent did not perform any weekly inspections during the 2016 calendar year. Respondent has not performed any inspections of the < 90-day accumulation area located near the distillation unit. Failure to perform weekly inspections of hazardous waste storage areas is a violation of APC&EC Reg. No. 23 § 265.174, which states in part, "At least weekly, the owner or operator must inspect areas where containers are stored[.]" This also violates Ark. Code Ann. § 8-7-205(1).

8. ADEQ received a response to the CEI Report, dated January 26, 2017, from Respondent regarding the violations identified in the CEI.
  - a. **APC&EC Reg. No. 23 § 262.11 - Failure to determine if a solid waste is a hazardous waste through testing or knowledge of process.** Respondent submitted documentation indicating that waste determinations for all wastes identified during the CEI have been completed.
  - b. **APC&EC Reg. No. 23 § 265.173(a) - Failure to keep a container holding hazardous waste closed, except when it is necessary to add or remove waste.** Respondent submitted documentation indicating that self-closing drain funnels have been attached to each SAA container at the Site in order to ensure the containers remain closed during storage.
  - c. **APC&EC Reg. No. 23 § 262.34(c)(1)(ii) - Failure to mark an SAA container with the words "Hazardous Waste" or other words to identify the contents of the container.** Respondent submitted photographic documentation showing that SAA containers have been marked with the words "Hazardous Waste."
  - d. **APC&EC Reg. No. 23§ 262.34(a)(2) - Failure to clearly mark the date upon which each period of accumulation begins on each container.** Respondent

submitted photographic documentation showing that SAA containers have been marked with their respective accumulation start dates.

- e. **APC&EC Reg. No. 23 § 262.34(a)(3) - Failure to label or clearly mark containers being accumulated on-site for 90 days or less with the words "Hazardous Waste."** Respondent submitted photographic documentation showing that containers used for accumulating hazardous waste have been marked with the words "Hazardous Waste."
- f. **APC&EC Reg. No. 23 § 265.16(c) - Failure to provide an annual review of the initial training for employees.** Respondent submitted documentation indicating that the required annual review for RCRA training has been completed.
- g. **APC&EC Reg. No. 23 § 265.16(d)(3) - Failure to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under each job title.** Respondent submitted a written job description that included the required RCRA training for each person who fills a position listed under each job title.
- h. **APC&EC Reg. No. 23 § 265.16(d)(4) - Failure of the owner or operator to maintain training documentation for employees filling a position related to hazardous waste management.** Respondent submitted documentation indicating that the required RCRA training has been completed by personnel at the Site. Respondent will maintain those records of training.
- i. **APC&EC Reg. No. 23 § 265.35 - Failure to 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.** Respondent submitted photographic documentation showing



that hazardous waste containers have been reorganized to ensure adequate aisle space to allow for the unobstructed movement of personnel and emergency equipment.

- j. **APC&EC Reg. No. 23 § 265.174 - Failure to inspect areas where containers are stored at least weekly.** Respondent submitted weekly inspection checklists from December 15, 2016, through January 26, 2017.
9. On February 2, 2017, the Department determined that Respondent had addressed the alleged significant violations cited in the November 8, 2016 CEI.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondent and ADEQ do hereby agree and stipulate as follows:

1. Upon the effective date of this CAO, Respondent shall conduct an Internal Compliance Audit of all hazardous waste management units 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.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a report to ADEQ describing actions taken to achieve and maintain compliance with respect to any instances of noncompliance detected by the CEI Report and the Internal Compliance Audit described in Paragraph 1 above. The report will be subject to ADEQ approval. If ADEQ does not approve the report, in whole or in part, because the actions taken by Respondent were insufficient to achieve compliance with applicable requirements, Respondent shall undertake any additional actions identified by ADEQ in

order to achieve and maintain compliance with the applicable requirements.

3. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall conduct a Pollution Prevention Study (PPS) to investigate ways to reduce the amount of waste from the facility and submit a Report of Findings specific to the PPS to ADEQ for review and approval.
4. Respondent shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans, or specifications required under the terms of this CAO.
5. All submittals required by the CAO, excluding the requirement for the payment submittal in Paragraph 7 below, shall be electronically emailed to [porterg@adeq.state.ar.us](mailto:porterg@adeq.state.ar.us) and submitted by Certified Mail or hand delivered to Gina Porter, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
6. All submittals shall be subject to applicable review fees pursuant to APC&EC Reg. No. 23 § 6(t).
7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of **FOURTEEN THOUSAND DOLLARS (\$14,000.00)** or one-half of the penalty **SEVEN THOUSAND DOLLARS (\$7,000.00)** if this Order is signed and returned to the Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, within twenty (20) calendar days of receipt of this notice. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to ADEQ and mailed to 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, ADEQ

shall be entitled to attorneys' fees and costs of collection, as well as all other lawful fees and penalties.

8. All requirements of the Order and Agreement are subject to approval by ADEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies within the timeframe specified by ADEQ. Failure to adequately respond in writing within the timeframe specified by ADEQ constitutes a failure to meet the requirements established by this CAO.
9. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, ADEQ 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 ADEQ by reason of Respondent's failure to comply with the requirements of this CAO.

10. If any event occurs, including but not limited to natural disasters, which causes or may cause a delay by Respondent in achieving the requirements of this CAO, Respondent shall notify ADEQ in writing as soon as it is apparent that a delay may result. Such request shall be made prior to the deadline. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken to address the delay and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

11. ADEQ 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.
12. Nothing contained in this CAO shall be construed as a waiver of ADEQ'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. 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.
13. 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. ADEQ 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.

14. 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 said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 25<sup>th</sup> DAY OF October 2017.

Becky W. Keogh

**BECKY W. KEOGH  
DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

**APPROVED AS TO FORM AND CONTENT:**

**Aluma-Weld, Inc.**

BY: Signature Rory A. Herndon  
Print Name RORY A. HERNDON  
Title PRES.  
Date 10-11-17