

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

IN THE MATTER OF:

**AGROdeviate, LLC
1810 S. Ohio Street
Pine Bluff, AR 71601**

**LIS No. 22- 100
EPA ID: ARD062146246
AFIN 35-00214**

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 Arkansas Pollution Control and Ecology Commission (APC&EC) Rules 7, 8, and 23.

The issues herein having been settled by the agreement of AGROdeviate, LLC d/b/a W & A Manufacturing Company, Inc. (Respondent) and the Arkansas Department of Energy and Environment, 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 operates a manufacturing facility (Facility) located at 1810 South Ohio Street, Pine Bluff, Jefferson County, Arkansas. W & A Manufacturing Company, Inc. was purchased by AGROdeviate, LLC in June of 2018. AGROdeviate is a company with its principal business address located at 124 West 25th Street, Suite C5, Kearney, Nebraska 68845. Rodney Haarberg is the registered agent for AGROdeviate in the state of Nebraska and has the same contact address. AGROdeviate is not registered to do business in the state of Arkansas. W & A

Manufacturing's status with the Arkansas Secretary of State's website as a registered corporation also is revoked at this time.

2. The Facility produces tractor implements for row crop agriculture. The Facility imports steel bar stock, which is band sawed, drilled, and welded in the manufacturing of components. These components are then spray painted in the Facility's paint booth before final product assembly.

3. 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 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 (Act) and any rule or permit issued pursuant to the Act.

4. 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, permit, or order adopted or issued under this subchapter[.]"

5. Respondent submitted its Annual Report on April 26, 2021 and reported 250 pounds of hazardous waste generated for the 2020 calendar year. In this Annual Report, Respondent notified as a Small Quantity Generator (SQG). SQGs may only accumulate up to 13,200 lbs. of hazardous waste on-site before becoming a Large Quantity Generator (LQG).

6. On September 7, 2021, DEQ conducted a Compliance Evaluation Inspection (CEI) based on a complaint that alleged that the facility was storing approximately seventy-five (75) 55-gallon containers of possible hazardous waste.

7. On September 22, 2021, a follow-up CEI revealed approximately 16,887 lbs. of hazardous waste on-site. Based upon this amount of hazardous waste on-site at the time of the CEI, Respondent is a LQG of hazardous waste.

8. The following violations of APC&EC Rule 23 were identified during the September 7 and 22, 2021, CEI investigations:

a. DEQ observed a 55-gallon container of hazardous waste paint related material, which was generated from flushing paint booth spray lines with xylene in a Satellite Accumulation Area (SAA).

i. The 55-gallon SAA container was not marked or labeled with the words "Hazardous Waste". Failure to mark or label SAA containers with the words "Hazardous Waste" violates APC&EC Rule 23 § 262.15(a)(5)(i).

ii. Additionally, the aforementioned 55-gallon SAA container was not marked or labeled with the hazards of the contents. Failure to mark or label SAA containers with an indication of the hazards of the contents violates APC&EC Rule 23 § 262.15(a)(5)(ii).

b. Two (2) 55-gallon containers, which were observed in Central Accumulation Area (CAA) #1, contained hazardous waste paint booth filters and hazardous waste paint booth surface covers. Additionally, CAA #2 held eighty-six (86) 55-gallon containers and one (1) 30-gallon container. This included ten (10) 55-gallon containers and one (1) 30-gallon container of hazardous waste paint related material, and seventy-six (76) 55-gallon containers of hazardous waste paint booth filters and hazardous waste paint booth surface covers.

i. None of the eighty-nine (89) CAA containers were marked or labeled with the words "Hazardous Waste". Failure to mark or label CAA

- containers with the words "Hazardous Waste" violates APC&EC Rule 23 § 262.17(a)(5)(i)(A).
- ii. None of the eighty-nine (89) CAA containers were marked or labeled with an indication of the hazards of the contents. Failure to mark or label CAA containers with an indication of the hazards of the contents violates APC&EC Rule 23 § 262.17(a)(5)(i)(B).
 - iii. None of the eighty-nine (89) CAA containers were marked or labeled with the accumulation start date. Failure to mark or label CAA containers with the accumulation start date violates APC&EC Rule 23 § 262.17(a)(5)(i)(C).
- c. DEQ observed the facility's tight-head containers while inspecting CAA #2, which held hazardous waste paint related material (D001), directly adjacent to the facility's property line. Failure to locate CAA containers holding ignitable waste at least 15 meters (50 feet) from the facility's property line violates APC&EC Rule 23 § 262.17(a)(1)(vi).
- d. DEQ observed fourteen (14) 55-gallon containers in CAA #3, which contained unidentified powdery debris. Failure to make an accurate waste determination for solid wastes violates APC&EC Rule 23 § 262.11.
- e. During the CEI, a facility spokesperson stated weekly inspections of the three (3) CAAs were not being conducted at the facility. Failure to inspect facility CAAs for leaking containers and deterioration of containers caused by corrosion or other factors violates APC&EC Rule 23 § 262.17(a)(1)(v).

f. During the CEI, a facility spokesperson stated that the hazardous waste containers observed in the facility's outside CAAs (CAA #2 & #3) had been generated and were on-site at the time AGROdeviate purchased the site in June of 2018; an exceedance of approximately 1,090 days past the ninety (90) day accumulation limit for LQGs. Accumulating hazardous waste for greater than ninety (90) days violates APC&EC Rule 23 § 262.17(a).

9. DEQ notified Respondent of the findings of the CEI, in a letter dated October 20, 2021.

10. On January 20, 2022, DEQ held a meeting with Respondent. During this meeting, Respondent was notified that the response, dated December 3, 2021, failed to adequately address all the identified violations. Respondent agreed to properly dispose of all hazardous waste observed during the CEI as soon as possible.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) days of the effective date of this CAO, Respondent shall submit documentation demonstrating that all SAA containers, and all containers located in the CAAs, as documented at the time of the CEI, have been marked or labeled with the following words: "Hazardous Waste"; an indication of the hazards of the contents; and the date upon which each period of accumulation begins. If any of these containers have been shipped off-site for disposal, Respondent shall submit a manifest documenting this shipment.

2. Within thirty (30) days of the effective date of this CAO, Respondent shall submit documentation demonstrating that all CAA containers holding ignitable waste are located at least 15 meters (50 feet) from the facility's property line.

3. Within thirty (30) days of the effective date of this CAO, Respondent shall submit documentation demonstrating that the content within the fourteen (14) solid waste containers, which were observed in CAA #3 at the time of the CEI, have been properly identified.

4. Within thirty (30) days of the effective date of this CAO, Respondent shall submit documentation demonstrating that all wastes accumulated for greater than ninety (90) days have been shipped off-site for proper treatment, storage, or disposal.

5. All documents required by this CAO to be submitted to DEQ, excluding the penalty payment required by Paragraph 6 below, shall be emailed to Enforcement, Office of Land Resources, at olrenforcement@adeq.state.ar.us, or submitted by Certified Mail or hand delivered to Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

6. In compromise and full settlement for instances of noncompliance specified in the Findings of Fact, Respondent agrees to pay the sum of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00). 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 DEQ and mailed to the attention of:

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

In the event that Respondent fails to pay the civil penalties within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection as well as all other lawful fees and penalties.

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

8. If Respondent fails to meet any requirement of this CAO within the deadline established by the CAO, DEQ may assess stipulated penalties for the delay in the following amounts:

- a. First day through the fourteenth day: \$250.00 per day
- b. Fifteenth day through the thirtieth day: \$1,250.00 per day
- c. Each day beyond the thirtieth day: \$2,500.00 per day

These stipulated penalties for delay in performance 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 this CAO.

9. Respondent shall notify DEQ in writing 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 delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

10. 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

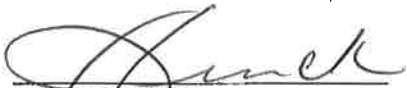
11. Nothing contained in this CAO shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to relieve Respondent of its responsibilities for obtaining any necessary permits or licenses, nor does it relieve Respondent of any other obligations imposed by any local, state, or federal laws. This CAO does not exonerate any past, present, or future conduct not expressly addressed herein.

12. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty-day public comment period.

13. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC Rule No. 8, this matter is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the APC&EC.


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 29TH DAY OF SEPTEMBER, 2022.



JULIE LINCK
CHIEF ADMINISTRATOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:
AGROdeviate, LLC

BY: 
Signature _____
Print Name RODNEY HAABERG
Title President
Date 9/14/2022