

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

IN THE MATTER OF:

AFIN: 46-00003

LIS No. 24-015

UTC RAILCAR REPAIR SERVICES, LLC
-TEXARKANA SHOP
175 W. JACKSON BLVD., SUITE 2100
CHICAGO, ILLINOIS 60604

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, APC&EC Rule 19, and APC&EC Rule 26.

The issues herein having been settled by agreement of UTC Railcar Repair Services, LLC - Texarkana Shop (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 railcar repair facility located at 2801 Northcutt Street in Texarkana, Miller County, Arkansas.
2. The Air Permit referenced in this CAO is 0902-AR-12 (the Permit). The Permit was

issued on July 2, 2019.

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 February 9, 2023, DEQ personnel performed a routine compliance inspection of Respondent's facility. The reporting period for this inspection was January 1, 2018 through December 31, 2022.

7. Specific Condition 16 of the Permit states Respondent shall emit no more than 5% of total painting/coating emissions at SN-10A, Touch-up Painting Operations.

8. During the inspection, records indicated emissions from SN-10A were above 5% of total painting/coating emissions in 2019 (14% of total) and in 2022 (8% of total). Such acts violate Specific Condition 16 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 17 of the Permit states Respondent shall not exceed the lb/gal single HAP as total weight of paints used for the given minimum threshold limit value (TLV) in the

following table.

Maximum lb/gal single HAP	Minimum TLV (mg/m ³)
6.72	362.85
6.05	326.57
5.38	290.28
4.70	254.00
4.03	217.71
3.36	181.43
2.69	145.14
2.02	108.65
1.34	72.57
0.67	36.29
0.34	18.14
0.07	3.63

10. During the inspection, records provided included an analysis of all approved products for use at SN-10a. A review of the records revealed an error in the TLV calculations. Values were calculated as micrograms instead of milligrams as required by Specific Condition 17 of the Permit. DEQ personnel notified Respondent of the calculation error; however, a response was not received by the inspection report deadline. A conversion of the values to milligrams, preliminarily indicated that in Carboline Plasite 3073 Red B500, formaldehyde content failed to meet the permitted minimum TLV.

11. In correspondence dated March 10, 2023, DEQ informed Respondent of the compliance issues identified during the February 9, 2023 inspection.

12. On March 13, 2023, Respondent responded to inspection findings and provided corrected paints applied records. A review of the records indicated that Carboline Plasite 3073 Red B500 contains 0.08lbs/gal of formaldehyde with a minimum TLV of 0.40 mg/m³. Calculations of the TLV for formaldehyde in Carboline Plasite 3073 Red B500 revealed a TLV of 4.15 mg/m³ for

formaldehyde. Respondent exceeded the lb/gal single HAP as total weight of paints used for Carboline Plasite 3073 Red B500 from November 27, 2018 through July 14, 2021. Additionally, during the records review of the TLV calculations, additional HAPs (Glycol Ethers) were identified in the final paints applied by weight; however, the associated TLVs were not calculated. Such an act violates Specific Condition 17 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

13. On April 26, 2023, DEQ informed Respondent that formal enforcement action was proceeding regarding this matter.

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. Respondent shall perform Option A or Option B to demonstrate compliance with the Permit.

Option A: Respondent shall immediately comply with Specific Conditions 16 and 17 of the Permit for the 5% of total painting/coating emissions and HAP emissions limits for given TLVs.

OR

Option B: Within thirty (30) days of the effective date of this CAO, Respondent shall submit a permit modification to increase the total painting/coating emissions percentage for SN-10A, and to address all HAP emissions from paint usage.

2. In compromise and full settlement of the violations specified in the FINDINGS OF

FACT, Respondent agrees to pay a civil penalty of **NINE THOUSAND FIVE HUNDRED TWENTY DOLLARS (\$9,520.00)**, or one-half of the penalty, **FOUR THOUSAND SEVEN HUNDRED SIXTY DOLLARS (\$4,760.00)** if this CAO is signed and returned to Air Enforcement Section, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **January 18, 2024**. 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 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 that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 22^d DAY OF JANUARY, ~~2023~~ ²⁰²⁴ Jo



CALEB J. OSBORNE
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

UTC RAILCAR REPAIR SERVICES, LLC
- TEXARKANA SHOP

BY:  (Signature)

Michael Welby (Typed or printed name)

TITLE: Director, Environmental

DATE: 1/11/24