



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of:

Universal Propulsion Co., Inc. located at  
25401 North Central Avenue, Phoenix,  
Maricopa County, Arizona

CONSENT ORDER

Docket No. A-135-04

To: Universal Propulsion Co., Inc. ("UPCO"), in its capacity as owner and operator of the facility located at 25401 North Central Avenue, Phoenix, Maricopa County, Arizona.

RECITALS

UPCO acknowledges that no promise of any kind or nature whatsoever, was made to induce it to enter into this Consent Order, and UPCO has done so voluntarily.

UPCO acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law except as may be provided in a civil settlement under section V.D. of this Order.

By entering into this Consent Order, UPCO does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to UPCO under applicable law. Further, UPCO does not admit, and both the Arizona Department of Environmental Quality ("ADEQ") and UPCO retain the right to controvert in any subsequent proceeding except a proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

The undersigned representative of UPCO certifies that she is fully authorized to execute this Consent Order on behalf of UPCO and to legally bind UPCO to this Consent Order.

Initial





1 facilities authorized to treat, store, or dispose of the materials covered by the permit, and those  
2 materials covered by the permit which are allowed to be transported under state and federal  
3 Department of Transportation requirements.

4 B. Within thirty (30) calendar days of the effective date, UPCO shall submit to ADEQ  
5 for review and approval, air dispersion modeling for the open burn activities proposed under the  
6 renewal application for Open Burn Permit #2878.

7 C. UPCO may exceed the 90-day RCRA limit for temporary accumulation of open  
8 burning wastes for 30 days under 40 CFR § 262.34(b) (incorporated by reference at A.A.C. R18-  
9 8-262). Notwithstanding paragraphs D and E of this section, ADEQ may also approve specific  
10 instances of open burning if needed for safety reasons.

11 D. Unless UPCO obtains an administrative or judicial determination that open burning  
12 is allowed under Open Burn Permit #2878, immediately upon the effective date of this order and  
13 continuing until ADEQ approves both UPCO's analysis of alternate means of disposal, and the air  
14 dispersion modeling demonstrating that the open burning of propellant formulations will not  
15 result in the emission of hazardous or toxic substances either directly or as a product of  
16 combustion in amounts that will endanger health or safety, UPCO shall not open burn any  
17 dangerous materials at its facility.

18 E. Unless UPCO obtains an administrative or judicial determination that open burning  
19 is allowed under Open Burn Permit #2878, any open burning of dangerous materials subsequent  
20 to ADEQ's approvals of the alternate disposal analysis and air dispersion modeling shall be  
21 limited by any conditions in the approvals until UPCO obtains an Open Burn Permit authorizing  
22 the open burning of dangerous materials.

23 F. Any open burning performed under this Consent Order will be limited to only  
24 those materials for which UPCO can demonstrate to ADEQ's satisfaction: 1) that no safe alternate  
25 means of disposal exists; and 2) that will not result in the emission of hazardous or toxic

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1 substances either directly or as a product of combustion in amounts that will endanger health or  
2 safety.

3 G. Within fifteen (15) calendar days of the effective date, UPCO shall video tape,  
4 film, digitally record, or otherwise create a video record of each open burn and test being  
5 performed outdoors which may generate air emissions. The video record shall begin prior to the  
6 generation of air emissions and continue until after the generation of all air emissions have ceased.  
7 UPCO agrees to keep these video records for at least six months after the activity being recorded,  
8 and will make these records available to ADEQ upon request in either a format that can be viewed  
9 by ADEQ or along with the means to view them. Any disclosure shall comply with applicable  
10 state and federal laws and regulations.

#### 11 **IV. STATUS REPORTS**

12 A. UPCO agrees to submit a written status report to ADEQ every thirty (30) calendar  
13 days beginning thirty (30) days from the effective date of this Consent Order, until termination of  
14 this Consent Order. Each written status report shall describe what measures have been taken  
15 under Section III, of this Consent Order, and shall certify when compliance with the requirements  
16 of Section III of this Order has been achieved. Each report shall be accompanied by evidence of  
17 compliance including, as appropriate, submittal of documents, photographs or copies of any other  
18 supporting information that UPCO deems necessary.

19 B. ADEQ will review the status reports and relay any disputes in writing to UPCO.  
20 UPCO shall incorporate all required modifications, changes or other alterations, as requested by  
21 ADEQ, within a reasonable time specified by ADEQ.

#### 22 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

23 A. Under A.R.S. § 49-463, violation of this Consent Order subjects UPCO to civil  
24 penalties of up to \$10,000 per day per violation. ADEQ and UPCO agree to establish penalty  
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1 amounts for any violations of this Consent Order to avoid disputes and potential litigation over the  
2 appropriate amount of a penalty.

3 B. ADEQ and UPCO therefore agree that if UPCO fails to comply with any  
4 requirement of this Consent Order, UPCO shall pay a stipulated penalty pursuant to the schedule  
5 below:

6	<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
7	1 <sup>st</sup> to 30 <sup>th</sup> day	\$1,000 per day per violation
8	31 <sup>st</sup> to 60 <sup>th</sup> day	\$1,500 per day per violation
9	After 60 days	\$3,000 per day per violation

10 C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on  
11 the day that performance is due or that a violation of this Consent Order occurs and shall continue  
12 to accrue until correction of the act of noncompliance is completed. Neither issuance by ADEQ  
13 nor receipt by UPCO of a Notice of Violation of the terms and conditions of this Consent Order  
14 are conditions precedent to the accrual of stipulated penalties.

15 D. ADEQ shall notify UPCO in writing of any claim for stipulated penalties under  
16 this section. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g.,  
17 Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and UPCO  
18 are unable to reach agreement for payment of stipulated penalties under a civil settlement within a  
19 reasonable time after UPCO receives written notice of a claim for stipulated penalties, or if UPCO  
20 fails to make payment of stipulated penalties due under a civil settlement, ADEQ may file a civil  
21 action seeking up to the maximum civil penalty allowed under Federal or State law for violation  
22 of this Consent Order.

23 E. The stipulated penalties required by this Consent Order shall be in addition to other  
24 remedies or sanctions available to ADEQ by reason of any failure by UPCO to comply with the  
25 requirements of Federal or State laws. The payment of stipulated penalties shall not relieve  
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1 UPCO from compliance with the terms and conditions of this Consent Order or Federal or State  
2 laws, nor limit the authority of the State to require compliance with the Consent Order or State  
3 law, except as may be provided by the terms of any civil settlement filed under paragraph D of  
4 this section.

5 **VI. COMPLIANCE WITH OTHER LAWS**

6 A. This Consent Order does not encompass issues regarding releases, contamination,  
7 sources, operations, facilities or processes not expressly covered by the terms of this Consent  
8 Order, and is without prejudice to the rights of the State of Arizona or UPCO, arising under any  
9 federal or Arizona statutes and rules with regard to such issues.

10 B. Nothing in this Consent Order shall constitute a permit of any kind, or a  
11 modification of any permit of any kind, or an agreement to issue a permit of any kind under  
12 federal, state or local law, or relieve UPCO in any manner of its obligation to apply for, obtain,  
13 and comply with all applicable permits. Nothing in this Consent Order shall in any way alter,  
14 modify or revoke federal, state, or local law, or relieve UPCO in any manner of its obligation to  
15 comply with such laws. Compliance with the terms of this Consent Order shall not be a defense  
16 to any action to enforce any such permits or laws.

17 **VII. FORCE MAJEURE**

18 A. UPCO shall perform all the requirements of this Consent Order according to the  
19 time limits set forth herein, unless performance is prevented or delayed by events which constitute  
20 a *force majeure*. *Force majeure*, for the purposes of this Consent Order, is defined as any event,  
21 arising from causes beyond the control of UPCO or its authorized representatives which delays or  
22 prevents the performance of any obligation under this Consent Order and which could not have  
23 been overcome or prevented by UPCO. The financial inability of UPCO to comply with the terms  
24 of this Consent Order, shall not constitute a *force majeure*.

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1 Larry Lopez, Manager EH&S  
2 Universal Propulsion Company  
25401 North Central Avenue  
Phoenix, Arizona 85027

3 Telephone: 623-515-3340

4 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

5 **X. RESERVATION OF RIGHTS**

6 A. This Consent Order is based solely upon currently available information. If  
7 additional information is discovered, which indicates that the actions taken under this Consent  
8 Order are or will be inadequate to protect human health, safety, or the environment, or to conform  
9 with applicable federal or state laws, ADEQ shall have the right to seek further action in  
10 accordance with applicable law.

11 B. ADEQ shall have the right: to pursue civil penalties for violations of any and all  
12 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before entry of this  
13 Consent Order; to disapprove of work performed by UPCO that fails to comply with this Consent  
14 Order; to take enforcement action for any and all violations of this Consent Order; and to take  
15 enforcement action for any and all violations of A.R.S. Title 49, or the rules promulgated  
16 thereunder, occurring after the entry of this Consent Order.

17 C. UPCO expressly reserves all defenses and the right to contest the validity of any  
18 Finding of Fact or Conclusion of Law in any action or proceeding other than an action or  
19 proceeding to enforce this Consent Order, and the right to appeal ADEQ's open burning permit  
20 determination.

21 **XI. SEVERABILITY**

22 The provisions of this Consent Order are severable. If any provision of this Consent Order  
23 is declared by a court of law to be invalid or unenforceable, all other provisions of this Consent  
24 Order shall remain in full force and effect.

25 **XII. MODIFICATIONS**

1 Any modifications of this Consent Order shall be in writing and must be approved by both  
2 UPCO and ADEQ.

3 **XIII. EFFECTIVE DATE**

4 The effective date of this Consent Order shall be the date this Consent Order is signed by  
5 ADEQ and UPCO. If such signatures occur on different dates, the later date shall be the effective  
6 date of this Consent Order.

7 **XIV. PARTIES BOUND**

8 No change in ownership, corporate status, or partnership status relating to the subject of  
9 this Consent Order will in any way alter the responsibilities of UPCO under this Consent Order.  
10 UPCO will be responsible, and will remain responsible, for carrying out all activities required  
11 under this Consent Order.

12 **XV. TERMINATION**

13 The provisions of this Consent Order shall be deemed satisfied and this Consent Order  
14 shall be terminated upon receipt of written notification from ADEQ that UPCO has demonstrated,  
15 to the satisfaction of ADEQ, that all of the terms of this Consent Order have been completed.  
16 Any denial of a request for termination from UPCO will be in writing and describe which terms of  
17 the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the  
18 right to terminate this Consent Order unilaterally at any time for any reason. Any termination will  
19 include a written explanation of the reason(s) for termination.

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1 ISSUED this 12 day of October, 2004

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3 Shannon M. Davis, Director  
4 Waste Programs Division  
5 Arizona Department of Environmental Quality

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7 Nancy C. Wrona, Director  
8 Air Quality Division  
9 Arizona Department of Environmental Quality

10 **CONSENT TO ORDER**

11 The undersigned, on behalf of UPCO, hereby acknowledges that she has read the foregoing  
12 Consent Order in its entirety, agrees with the statements made therein, consents to its entry and  
13 issuance by the Arizona Department of Environmental Quality, agrees that UPCO will abide by  
14 the same and waive any right to appeal therefrom.  
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16 DATED this 12<sup>th</sup> day of October, 2004  
17   
18 Christine Probett, President  
19 Universal Propulsion Company, Inc.

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1 ORIGINAL of the foregoing Consent Order was filed this 13 day of October, 2004 with:

2 Judith Fought, Hearing Administrator  
3 Office of Special Counsel  
4 Arizona Department of Environmental Quality  
5 1110 West Washington Street  
6 Phoenix, Arizona 85007-2935

7 COPY of the foregoing Consent Order was sent certified mail, return receipt requested, this 13  
8 day of October, 2004 to:

9 Christine Probett, President  
10 Universal Propulsion Company, Inc.  
11 25401 North Central Avenue  
12 Phoenix, Arizona 85027

13 COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 13  
14 day of October, 2004 to the following:

- 15 Tamara Huddleston, Chief Counsel
- 16 Environmental Enforcement Section, Office of the Attorney General
- 17 Karen O'Regan, City of Phoenix
- 18 Maricopa County Environmental Services

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