BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

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

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
UPCO admits to the jurisdiction of the Director of ADEQ.

UPCO consents to the terms and entry of this Consent Order and agrees not to contest the validity or terms of this Consent Order in any subsequent proceeding to enforce this Consent Order. UPCO expressly reserves the right to contest the validity of any Findings of Fact or Conclusions of Law in any proceeding other than a proceeding to enforce this Consent Order.

**THEREFORE, IT IS HEREBY ORDERED** as follows:

**I. JURISDICTION**

The Director of ADEQ has jurisdiction over the subject matter of this action and is authorized to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") § 49-461 and 41-1092.07(F)(5).

**II. FINDINGS**

THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

**A. Findings of Fact**

1. ADEQ issued UPCO Open Burn Permit #2878 on September 10, 2003, for the burning of certain waste propellant formulations.

2. Section III.C. of Open Burn Permit #2878 requires UPCO to submit to ADEQ a summary of UPCO’s pursuit of alternate disposal options annually with future open burn permit applications.

3. On September 7, 2004, ADEQ received a renewal application from UPCO dated August 31, 2004, for Open Burn Permit #2878. The renewal application did not contain a summary of UPCO’s pursuit of alternate disposal options. The renewal application also did not contain a demonstration that burning the materials would not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
4. Under A.A.C. R18-2-602(E), ADEQ shall issue an Open Burn Permit for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.

B. Conclusions of Law

1. The propellant formulations UPCO is authorized to burn under Open Burn Permit #2878 are “dangerous materials” as defined in A.A.C. R18-2-602(A)(5).

2. By failing to submit a summary of UPCO’s pursuit of alternate disposal options in its Open Burn Permit renewal application, UPCO violated section III.C. of Open Burn Permit #2878.

3. Under A.A.C. R18-2-602(E), ADEQ is not authorized to issue an Open Burn Permit without a demonstration that no safe alternate means of disposal exists and that the open burning of propellant formulations will not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.

4. Open Burn Permit #2878 was issued pursuant to Article 2 of Chapter 3 of Title 49 of the Arizona Revised Statutes.

5. Under A.R.S. § 49-461, ADEQ may issue an order of abatement requiring compliance as expeditiously as practicable for violations of a permit issued pursuant to Article 2 of Chapter 3 of Title 49 of the Arizona Revised Statutes.

III. COMPLIANCE SCHEDULE

THE DIRECTOR HEREBY ORDERS and UPCO agrees to comply with the provisions of this Consent Order as follows:

A. Within twenty (20) calendar days of the effective date, UPCO shall submit to ADEQ for review and approval a detailed analysis of alternate means of disposing the materials covered under Open Burn Permit #2878. At a minimum, this analysis shall include a list of [Initial]
facilities authorized to treat, store, or dispose of the materials covered by the permit, and those
materials covered by the permit which are allowed to be transported under state and federal
Department of Transportation requirements.

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

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

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

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

F. Any open burning performed under this Consent Order will be limited to only those materials for which UPCO can demonstrate to ADEQ’s satisfaction: 1) that no safe alternate means of disposal exists; and 2) that will not result in the emission of hazardous or toxic
substances either directly or as a product of combustion in amounts that will endanger health or
safety.

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

IV. STATUS REPORTS

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

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

V. VIOLATIONS OF ORDER/STIPULATED PENALTIES

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

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

<table>
<thead>
<tr>
<th>Period of Failure to Comply</th>
<th>Penalty Per Day of Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st to 30th day</td>
<td>$1,000 per day per violation</td>
</tr>
<tr>
<td>31st to 60th day</td>
<td>$1,500 per day per violation</td>
</tr>
<tr>
<td>After 60 days</td>
<td>$3,000 per day per violation</td>
</tr>
</tbody>
</table>

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

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

E. The stipulated penalties required by this Consent Order shall be in addition to other remedies or sanctions available to ADEQ by reason of any failure by UPCO to comply with the requirements of Federal or State laws. The payment of stipulated penalties shall not relieve
VI. COMPLIANCE WITH OTHER LAWS

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

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

VII. FORCE MAJEURE

A. UPCO shall perform all the requirements of this Consent Order according to the time limits set forth herein, unless performance is prevented or delayed by events which constitute a force majeure. Force majeure, for the purposes of this Consent Order, is defined as any event, arising from causes beyond the control of UPCO or its authorized representatives which delays or prevents the performance of any obligation under this Consent Order and which could not have been overcome or prevented by UPCO. The financial inability of UPCO to comply with the terms of this Consent Order, shall not constitute a force majeure.
B. In the event of a *force majeure*, the time for performance of the activity affected by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the delay caused by the *force majeure*. The time for performance of any activity dependent on the delayed activity shall be similarly extended. In the event of a *force majeure*, UPCO shall notify ADEQ in writing within five (5) calendar days after UPCO or its agents become aware of the occurrence. The written notice provided to ADEQ shall describe in detail the event, the anticipated delay, the measures taken and to be taken by UPCO to prevent or minimize delay, and a proposed timetable under which those measures will be implemented. UPCO shall take all reasonable measures to prevent or minimize any delay caused by the *force majeure*. Failure of UPCO to comply with any requirements of this paragraph for a particular event, shall preclude UPCO from asserting any claim of *force majeure* for that event.

**VIII. SITE ACCESS**

ADEQ may at any time, upon presentation of credentials to authorized personnel on duty, enter upon the premises at the Facility for the purpose of observing and monitoring compliance with the provisions of this Consent Order. This right of entry shall be in addition to, and not in limitation of or substitution for, ADEQ's rights under applicable law.

**IX. CORRESPONDENCE**

All documents, materials, plans, notices, or other items submitted as a result of this Consent Order shall be transmitted to the addresses specified below:

To ADEQ:

Arizona Department of Environmental Quality  
Office of Administrative Counsel  
Attention: Denise McConaghy, Senior Enforcement Officer  
1110 West Washington Street  
Phoenix, Arizona 85007-2935  
Telephone: 602-771-4110  
E-mail: dlm@azdeq.gov

To UPCO:

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

Telephone: 623-515-3340

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

X. RESERVATION OF RIGHTS

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

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

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

XI. SEVERABILITY

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

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

XIII. EFFECTIVE DATE

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

XIV. PARTIES BOUND

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

XV. TERMINATION

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

The undersigned, on behalf of UPCO, hereby acknowledges that she has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that UPCO will abide by the same and waive any right to appeal therefrom.

DATED this 12th day of October, 2004
ORIGINAL of the foregoing Consent Order was filed this 13 day of October, 2004 with:

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

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

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

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

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