

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

UPPER EDGE TECHNOLOGIES, INC.  
201 VAN BUREN AVENUE  
EPA ID: ARR000030361  
WEST MEMPHIS, ARKANSAS 72301

AFIN 18-00957  
LIS 20- 181

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 the 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 Upper Edge Technologies, Inc. (Respondent) and the Division of Environmental Quality<sup>1</sup> (DEQ), it is hereby agreed and stipulated by all parties that the Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondent is an electronics salvaging and reselling facility located at 201 Van Buren Avenue, West Memphis, Crittenden County, Arkansas (the Facility).
2. Respondent collects, dismantles, and evaluates consumer electronics for the purpose of facilitating the recycling, reclamation, and reuse of individual components.
3. Respondent is a Large Quantity Handler of Universal Waste (LQHUV) as defined by APC&EC Reg.23 § 273.9. LQHUVs accumulate 5,000 kilograms or more of universal waste at any time.

<sup>1</sup>Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

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 DEQ to assess an administrative 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 August 6, 2018, DEQ received an anonymous complaint alleging Respondent had stockpiled three to four thousand pounds (3,000–4,000 lbs.) of lithium ion batteries, computer monitors, and miscellaneous consumer electronic parts. In addition, it was alleged that the containers storing these parts were not closed, labeled, or sorted. The complainant stated that the parts had been left outdoors for at least nine months and were beginning to leak out of the containers.
7. On October 26, 2018, DEQ conducted a Compliance Evaluation Inspection (CEI) at the Facility. The CEI report was mailed to Respondent on December 19, 2018 and is incorporated herein by reference.
8. On November 5, 2018, a conference call was conducted between DEQ personnel and Respondent during which Respondent provided additional information about operations at the Facility. DEQ personnel recorded the substance of this telephone call in writing (the Telecon Note), which Note is incorporated herein by reference.
9. On November 6, 2018, DEQ issued an EPA Identification Number to Respondent.
10. Based on the findings of the October 26, 2018 CEI and the November 5, 2018 conference call, DEQ identified the following violations of APC&EC Regulation 23:

- a. During the CEI, DEQ observed twenty-six (26) large corrugated box containers of universal waste. Three (3) of these containers held universal waste batteries and were stored outside underneath a covered awning. Twenty-three (23) containers held universal waste consumer electronic items and parts. The amount of universal waste observed on-site met or exceeded the 5,000 kilogram storage limit to classify the Facility as a LQHUU. However, Respondent had not notified DEQ of its universal waste management activities and did not have an EPA Identification Number. Failure of Respondent to notify DEQ in writing of universal waste management, and Respondent's failure to receive an EPA Identification Number before meeting or exceeding the 5,000 kilogram storage limit is a violation of APC&EC Regulation 23 § 273.32(a)(1). APC&EC Reg.23 § 273.32(a)(1) states, "Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the [Division] and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit." Failure to notify DEQ and receive an EPA Identification Number before meeting or exceeding the 5,000 kilogram storage limit also violates Ark. Code Ann. § 8-7-205(1).
- b. During the CEI, Respondent stated that the Facility did not have a recycling and/or disposal plan in place. The consumer electronic parts in the twenty-six (26) containers were no longer in working condition and could not be reclaimed. Additionally, DEQ learned that Respondent had not made a waste determination on the waste in these containers. Failure to make a waste

determination is a violation of APC&EC Regulation 23 § 273.33(e)(4), which states in part, “A large quantity handler of universal waste who disassembles consumer electronic items for the purpose of facilitating the recycling or reclamation of individual components of those items must determine whether those components and/or other solid waste resulting from the activities listed above exhibit a characteristic of hazardous waste.” Failure to make a waste determination also violates Ark. Code Ann. § 8-7-205(1).

- c. During the CEI, an employee of Respondent informed DEQ that universal waste had not been shipped off-site for disposal in over two (2) years. Additionally, DEQ personnel learned during the conference call with Respondent that the Facility has been accumulating waste computer parts for approximately two (2) to three (3) years, and currently is not recycling or disposing of waste parts. Respondent’s extended accumulation of waste parts is a violation of APC&EC Regulation 23 § 273.35(a), which states in part, “A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler[.]” Failure to properly and timely dispose of waste also violates Ark. Code Ann. § 8-7-205(1).
- d. DEQ personnel observed that the twenty-six (26) containers of universal waste were not dated and requested documentation demonstrating the length of time the wastes had been accumulating on-site. Respondent denied DEQ’s request for documentation. Failure to demonstrate waste accumulation time is a violation of APC&EC Regulation 23 § 273.35(c), which states in part, “A large

quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes waste or is received.” Failure to demonstrate waste accumulation time also violates Ark. Code Ann. § 8-7-205(1).

- e. An employee of Respondent stated during the CEI that he had not received any universal waste training, nor was he aware of any universal waste training provided to employees of Respondent. Failure to provide employees with universal waste training is a violation of APC&EC Regulation 23 § 273.36, which states in part, “A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.” Failure to provide necessary training also violates Ark. Code Ann. § 8-7-205(1).
- f. During the CEI, DEQ requested records for universal waste shipments received at the Facility. Respondent could not provide DEQ with documentation of universal waste shipments received at the Facility. Failure to maintain required documentation is a violation of APC&EC Regulation 23 § 273.39(b), which states in part, “A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities...” Failure to provide records of waste received also violates Ark. Code Ann. § 8-7-205(1).
- g. The twenty-three (23) containers observed at the Facility holding universal waste consumer electronic items included plastic casings, keyboards, circuit

boards, monitors, heat sinks and fans, liquid crystal display (LCD) cables, speaker sets, monitor mounts, and broken LCD screens. During the CEI, DEQ personnel observed that all twenty-three (23) of these containers were outside, open, disintegrating, and not in good condition. Failure to maintain the soundness of the containers is a violation of APC&EC Regulation 23 § 273.33(e)(1), which states in part, “A large quantity handler of universal waste must contain any waste consumer electronic item in containers or packages that are structurally sound, adequate to prevent breakage...and containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.” Failure to keep storage containers in acceptable condition also violates Ark. Code Ann. § 8-7-205(1).

- h. DEQ observed that none of the twenty-three (23) containers of universal waste consumer electronic items were labeled or marked clearly with words identifying the contents of the containers. Failure to properly label this waste is a violation of APC&EC Regulation 23 § 273.34(f), which states in part, “Universal waste consumer electronic items...or a container in which the consumer electronic items are contained, must be labeled or marked clearly with the phrases: “Universal Waste,” followed by a description of the item or the items in the container – e.g., “Consumer Electronic Items,” or “Electronic Wastes,” or “Used Electronic Items,” etc. Failure to properly label waste also violates Ark. Code Ann. § 8-7-205(1).

11. On January 28, 2019, Respondent submitted to DEQ a response to the CEI. The response submitted to DEQ did not adequately address the violations.

12. On December 23, 2019, a proposed CAO was mailed to Respondent.
13. A meeting was held between Respondent and DEQ on January 23, 2020. Respondent submitted documentation to address the violations cited during the October 26, 2018 inspection. This documentation is incorporated herein by reference.
14. On February 3, 2020, Respondent submitted to DEQ additional information regarding the violations cited in the October 26, 2018 CEI. The documentation is incorporated herein by reference.
  - a. Respondent stated that the Universal Waste was weighed internally to only be 2160 kilograms (kg), and as such it should be considered a Small Quantity Handler of Universal Waste (SQHUW).
15. On February 7, 2020, Respondent submitted to DEQ a Notification of RCRA Subtitle C form to request reclassification into a SQHUW. The form was accepted by DEQ.
16. On July 13, 2020, DEQ e-mailed an update to Respondent stating that the negotiated order would be mailed shortly in the future.
17. On the same date, Respondent replied by email thanking DEQ for the update.

#### **ORDER AND AGREEMENT**

1. Within fifteen (15) calendar days of the effective date of this CAO, Respondent shall submit to DEQ, for review and approval, either written procedures for determining if separated components of consumer electronic items exhibit a characteristic of hazardous waste as identified in APC&EC Regulation No. 23 § 261, Subsection C, in accordance with APC&EC Regulation No. 23 § 273.33(e)(4), or written notification that disassembled consumer electronic items will be managed as universal waste.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall ship all electronic waste with an accumulation date greater than one (1) year to another universal waste handler or destination facility. Respondent shall submit to DEQ copies of all shipping papers within ten (10) calendar days of shipping waste off-site.

3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation showing what process is in place to demonstrate the length of time universal waste accumulates on-site. This documentation can include, but is not limited to, logs and spreadsheets.
4. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a training program to DEQ for review and approval. This training program should be designed to ensure all employees who are responsible for handling universal waste are familiar with universal waste handling regulations and emergency procedures. This training should be provided to all employees who are responsible for handling universal waste within fifteen (15) calendar days of approval of the training program by DEQ. Documentation that training has been received, including, but not limited to, training logs, sign in sheets, or certificates of completion shall be provided to DEQ within twenty (20) calendar days of approval of the training program.
5. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit a Standard Operating Procedure (SOP) for recordkeeping procedures of universal waste shipments sent to other facilities.
6. Respondent shall submit to DEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this CAO.
7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent shall pay a negotiated civil penalty of **NINETEEN THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$19,125.00)** or one-half of the full civil penalty of **NINE THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$9,560.00)** if this Order is signed and returned to the Office of Land Resources, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment shall be made payable to the DEQ,



Attention: 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 of collection.

8. All submittals required by the CAO, excluding the requirement for the payment submittal in paragraph 7 above, shall be emailed to [olrenforcement@adeq.state.ar.us](mailto:olrenforcement@adeq.state.ar.us) and submitted by Certified Mail or hand delivered, to Rebecca Rathe, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
9. All submittals shall be subject to applicable review fees pursuant to APC&EC Reg. No. 23 § 6(t).
10. All requirements by the CAO and Agreement are subject to approval by DEQ. In the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to adequately respond to a Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this CAO.
11. If Respondent fails to submit to DEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, DEQ 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 DEQ by reason of Respondent's failure to comply with the requirements of this CAO.

12. Respondent shall notify DEQ 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 the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay. Such notification or request for extension shall be made in writing and prior to the deadline.

13. DEQ 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.
14. Nothing contained in this CAO shall be construed as a waiver of DEQ's enforcement authority over violations not specifically addressed herein; nor does this CAO 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.
15. 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. DEQ 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.
16. 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 13<sup>th</sup> DAY OF October, 2020.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Upper Edge Technologies, Inc. -

BY: Chris Wilson  
(Signature)

Chris Wilson  
(Typed or printed name)

TITLE: President

DATE: Oct. 13, 2020