Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Universal Dynamics, Inc. FOR Universal Dynamics Air Registration No. 74151

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the Virginia Department of Environmental Quality and Universal Dynamics, Inc. regarding Universal Dynamics, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

2. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

3. "Facility" means the Universal Dynamics facility, located at 11700 Shannon Drive, Fredericksburg, Spotsylvania County, Virginia.

4. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

5. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

7. "Permit" means the Minor New Source Review Permit to construct and operate a spray coating and metal fabrication plant, which was issued under the Virginia Air Pollution Control Law and the Regulations to Universal Dynamics on July 25, 2018.

8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

9. "Universal Dynamics" means Universal Dynamics, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Universal Dynamics is a "person" within the meaning of Va. Code § 10.1-1300.

10. "Va. Code" means the Code of Virginia (1950), as amended.

11. "VAC" means the Virginia Administrative Code.

12. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Universal Dynamics owns and operates the Facility in Fredericksburg, Virginia, and is subject to the Permit, which authorizes it to construct and operate a spray coating and metal fabrication plant at the specified location.

2. In reviewing the annual update report submitted by Universal Dynamics for calendar year 2021, DEQ staff observed that Universal Dynamics reported that 4,000 pounds of welding wire was consumed during calendar year 2021.

3. At the request of DEQ, Universal Dynamics submitted updated welding wire throughput data to DEQ via email on May 12, 2022, and DEQ staff observed that Universal Dynamics reported throughput data for consumption of welding wire for welding operations as follows:

    a. 3,963 pounds consumed between April 1, 2020 and March 31, 2021;

    b. 3,987 pounds consumed between May 1, 2020 and April 30, 2021;

c. 3,924 pounds consumed between June 1, 2020 and May 31, 2021;

d. 4,133 pounds consumed between July 1, 2020 and June 30, 2021;

e. 4,321 pounds consumed between August 1, 2020 and July 31, 2021;

f. 4,315 pounds consumed between September 1, 2020 and August 31, 2021;

g. 4,264 pounds consumed between October 1, 2020 and September 30, 2021;

h. 4,189 pounds consumed between November 1, 2020 and October 31, 2021;

i. 4,179 pounds consumed between December 1, 2020 and November 30, 2021;

j. 4,008 pounds consumed between January 1, 2021 and December 31, 2021;

k. 4,407 pounds consumed between April 1, 2021 and March 31, 2022; and

l. 4,834 pounds consumed between May 1, 2021 and April 30, 2022.

4. Condition 11 of the Permit states: "Throughput – The consumption of welding wire in the welding operations shall not exceed 3900 pounds per year total for all welding units, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total amounts purchased for the most recently completed calendar month to the individual monthly totals for the preceding 11 months. (9 VAC 5-80-1180)"

5. 9 VAC 5-170-160(A) provides that the Department may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.

6. Va. Code § 10. 1-1322(A) states that pursuant to the regulations adopted by the Department, permits may be enforced under the provisions of this chapter and failure to comply with any condition of a permit shall be considered a violation of this chapter.

7. On March 24, 2022, DEQ-NRO issued a Notice of Violation (NOV No. ANRO002118) to Universal Dynamics for a throughput exceedance of welding wire consumption reported in the annual update report submitted for the Facility for calendar year 2021.

8. On May 19, 2022, DEQ staff and representatives of Universal Dynamics had a conference call to discuss the NOV, Universal Dynamics' plans for corrective actions, and enforcement proceedings.

9. Based on the annual update report submitted by Universal Dynamics for calendar year 2021, the data submission by Universal Dynamics at the request of DEQ on May 12, 2022, the NOV issued to Universal Dynamics on March 24, 2022, the NOV conference

call held on May 19, 2022, and related correspondence between DEQ and representatives of Universal Dynamics, the Department concludes that Universal Dynamics has violated Condition 11 of the Permit as described above.

10. In order for Universal Dynamics to return to compliance, Universal Dynamics has agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Department orders Universal Dynamics, and Universal Dynamics agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **$6,526.66** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Universal Dynamics shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Universal Dynamics shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Universal Dynamics for good cause shown by Universal Dynamics, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ANRO002118 dated March 24, 2022. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any

additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Universal Dynamics admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Universal Dynamics consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Universal Dynamics declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.

6. Failure by Universal Dynamics to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Universal Dynamics shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Universal Dynamics shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Universal Dynamics shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Universal Dynamics. Nevertheless, Universal Dynamics agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Universal Dynamics has completed all of the requirements of the Order;

    b. Universal Dynamics petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Universal Dynamics.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Universal Dynamics from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Universal Dynamics and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Universal Dynamics certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Universal Dynamics to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Universal Dynamics.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Universal Dynamics voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2022.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

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Universal Dynamics, Inc. voluntarily agrees to the issuance of this Order.

Date: 9-28-2022 By: [signature], Director of Operations
(Person) (Title)
Universal Dynamics, Inc.

APPENDIX A

SCHEDULE OF COMPLIANCE

Universal Dynamics, Inc. shall:

1. Within 15 days of receiving approval of a permit modification, submit to DEQ one of the following items:

   a. a written update to DEQ enforcement to demonstrate that throughput for the consumption of welding wire for welding operations at the Facility is in compliance with Universal Dynamics' Permit; or

   b. a plan and schedule of corrective actions (Plan) to return and maintain compliance with the permitted throughput for the consumption of welding wire for welding operations at the Facility.

   Universal Dynamics shall respond to any comments or questions from DEQ within 10 calendar days of the date of the correspondence. If a Plan is submitted, once the Plan is accepted by DEQ, it shall become an enforceable part of this Order.

2. Regardless of the status of any pending permit modifications, within one year of the execution of this Order, Universal Dynamics shall demonstrate that throughput for the consumption of welding wire for welding operations at the Facility is in compliance with Universal Dynamics' Permit

3. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Universal Dynamics, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Unless otherwise specified in this Order, Universal Dynamics shall submit all requirements of Appendix A of this Order to:

   Virginia Department of Environmental Quality
   Northern Regional Office
   Attention: Enforcement
   13901 Crown Court
   Woodbridge, VA 22193