

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
Amsted Graphite Materials, LLC	: U.S. EPA Docket No. CWA-03-2022-0020
2698 Philippi Pike	:
Anmoore, West Virginia, 26323	: Proceeding under Section 309(g) of the Clean
	: Water Act
Respondent.	:
	: CONSENT AGREEMENT AND
	: FINAL ORDER
	:

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Amsted Graphite Materials, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309(g) of the Clean Water Act authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the Clean Water Act (“CWA” or the “Act”) (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

II. JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).
5. EPA has consulted with the West Virginia Department of Environmental Protection (“WVDEP”) regarding this action and, subsequent to the Effective Date of this Final Order, EPA will mail a copy of this fully executed Final Order to the appropriate WVDEP official.

III. GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
12. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any National Pollutant Discharge Elimination System (“NPDES”) permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

15. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after November 2, 2015 where the penalty is assessed on or after January 15, 2019, the maximum administrative penalty per day for each day of violation is up to \$21,833, up to a total penalty amount of \$274,150. (Part 19 also specifies the maximum penalties applicable to other time periods).
16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.
17. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.
18. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
19. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
20. An NPDES permit is required for discharges of storm water associated with industrial activity. Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a),(c); 40 C.F.R. § 122.21.
21. Facilities under Standard Industrial Classification 36 (Electronic and Other Electrical Equipment and Components, Except Computer Equipment) are engaged in “industrial activity.” 40 C.F.R. § 122.26(b)(14)(xi).
22. EPA approved West Virginia to administer the NPDES program in the State.
23. Pursuant to the authority of the Act, the NPDES program approval, and the West Virginia Water Pollution Control Law, West Virginia issued West Virginia National Pollutant Discharge Elimination System (“WV NPDES”) Permit No. WV0004707 to Amsted Graphite’s predecessor, Advanced Graphite Materials, LLC, on June 29, 2010, which was set to expire on June 28, 2015 (“2010 Permit”) and was administratively extended until June 30, 2021.
24. The 2010 Permit authorizes the terms for the discharge of stormwater and industrial wastewater at the Facility in accordance with the provisions of the permits. The 2010

Permit requires a permittee to comply with all conditions in the Permit.

25. The 2010 Permit classified the Facility under Standard Industrial Classification Code 3624 (“Carbon and Graphite Products”), Industry Group 362 (Electrical Industrial Apparatus), Standard Industrial Classification 36 (Electronic and Other Electrical Equipment and Components, Except Computer Equipment).
26. On April 28, 2021, WVDEP issued WV/NPDES Permit Number WV0004707 to Amsted Graphite, effective June 1, 2021 with an expiration date of April 27, 2026 (“2021 Permit”).
27. Advanced Graphite Materials, LLC, was the owner and operator of a carbon and graphite manufacturing facility located at 2698 Philippi Pike, Anmoore, West Virginia, 26323 (“Facility”).
28. On June 1, 2020, Advanced Graphite Materials, LLC changed its name to Amsted Graphite Materials LLC (“Amsted Graphite”), when it was acquired by Amsted Rail Company, Inc. For purposes of this Order, Amsted Graphite is the successor of the liabilities of Advanced Graphite Materials, LLC under the Clean Water Act.
29. At all times relevant to this Order, Amsted Graphite, or its predecessors Advanced Graphite Materials, LLC and GrafTech International Holdings Inc., were the owner and operator of a carbon and graphite manufacturing facility located at 2698 Philippi Pike, Anmoore, West Virginia, 26323 (“Facility”).
30. Section 502(5) of the Act, 33 U.S.C. § 1362, provides: “The term ‘person’ means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”
31. Amsted Graphite is a corporation and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
32. The Facility is located on the bank of the Anmoore Run, and all outfalls discharge to Anmoore Run, a “navigable water” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are therefore waters of the United States. The discharges into Anmoore Run are approximately 2 miles from its confluence with Elk Creek, a tributary of the West Fork River, a tributary of the Monongahela River, also a “navigable water.”
33. The discharges of industrial wastewater (cooling water, process water, groundwater), storm water runoff or a combination thereof, were authorized by the 2010 Permit, Individual WV NPDES Permit No. WV0004707.
34. The 2010 Permit permitted the following types of discharges at the following permitted outlets:
 - a. A combination of cooling water, stormwater, process water and “other water” is permitted to be discharged from outlet numbers 003, 009, and 044.

- b. Stormwater is permitted to be discharged from the following outlet numbers: 011, 017, 019, 023, 026, 036, 037, 038, 040, 041, 043, 045 and 047.
 - c. Stormwater, and “other water” is permitted to be discharged from outlet numbers: 027, 030, 032 and 039.
35. In March 2014, WVDEP issued WV/NPDES Water Pollution Control Permit Modification No. 1. This modification removed outlets 032, 039, 044, and 046 from the permit, and added Outlet 048 to the permit.
 36. On August 7, 2014, Respondent submitted a permit modification request to the West Virginia Department of Environmental Protection requesting that a new outlet (050) be added to the 2010 Permit. The outlet will serve as the primary outlet for the recirculated cooling water currently permitted for discharge at Outlet 009.
 37. On August 13-14, 2019, an EPA compliance inspection team inspected the Facility for compliance with its NPDES permit (“Inspection”).
 38. EPA sent an inspection report dated October 17, 2019 to Amsted Graphite on October 17, 2019.
 39. Amsted Graphite responded on December 20, 2019 and May 15, 2020 describing measures it had taken to address the observations made in the October 17, 2019 inspection report.
 40. On April 28, 2021, WVDEP issued WV/NPDES Permit Number WV0004707 to Amsted Graphite, effective June 1, 2021 with an expiration date of April 27, 2026 (“2021 Permit”). This permit allows Amsted Graphite to use Outlet 050 to discharge recirculated cooling water that had been permitted for discharge at Outlet 009, among other changes.
 41. On May 26, 2021, Amsted Graphite filed a notice of appeal of the 2021 Permit with the West Virginia Environmental Quality Board, requesting modifications to certain parts of the permit. Amsted Graphite did not appeal the use of Outlet 050 to discharge recirculated cooling water that had been permitted for discharge at Outlet 009.
 42. Based on observations made in the August 13-14, 2019 inspection, and Amsted Graphite’s subsequent responses, EPA has identified the following violations of the 2010 Permit and Section 301 of the Clean Water Act.

Count I

Failure to Comply with Proper Operation and Maintenance

43. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
44. Appendix A.II.1 of the 2010 Permit requires that “[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and

related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures . . .”.

45. During the Inspection, EPA inspectors observed a sheen indicative of petroleum products on the surface of Anmoore Run downstream of Outlet 003. The sheen could be observed on the surface of Anmoore Run for approximately 250 feet downstream in the northerly direction.
46. During the Inspection, EPA inspectors observed oil on the surface of the liquid within both of the oil and water separators, prior to Outlet 003. The rectangular oil and water separator had a layer of sludge that could not be removed by a conventional vac truck.
47. During the Inspection, EPA inspectors observed several sumps located throughout the press building and indoor processing areas of Buildings 23, 24, 31, and 3. A significant amount of oil was observed within these process areas, the sumps, and the manhole outside of Building 15. The Facility map depicted that the sumps located upgradient of the manhole led to the oil and water separators prior to Outlet 003. The Permittee had not deployed source control methods or BMPs to reduce oils for the process area from collecting in the sumps and inlets upgradient of the oil and water separators and Outlet 003.
48. During the Inspection, EPA inspectors observed that the water re-circulation and cooling tank referred to as the “pie tank” had little available freeboard and was leaking in several locations.
49. The observations of a sheen on Anmoore Run, oil in the oil and water separators, oil in process areas around sumps and manholes and leaking tanks demonstrate Respondent’s failure to comply with proper operation and maintenance. Respondent’s failures to comply with proper operation and maintenance are violations of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count II
Failure to Comply with Good Housekeeping

50. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
51. Section C of the 2010 Permit requires that “[t]he permittee shall practice good housekeeping including maintaining the facility grounds. There shall be no scattered parts, equipment, debris, etc. Any and all drums shall be either stored in a covered area or kept upon pallets and properly sealed.” 2010 Permit Section C.01.
52. During the Inspection, EPA inspectors made the following observations:
 - a. Amsted Graphite was storing exposed products and materials in the east-central

area of the Facility near inlets leading to Outlet 043 without overhead coverage or containment. Dark puddles of stormwater accumulated on the impervious surface of the area.

- b. Exposed products and materials were stored in the eastern area of the Facility, near inlets leading to Outlet 037.
 - c. Unbaked products, exposed rusted metal equipment and an open chemical container was stored on impervious surface in the northeastern area of the Facility, upgradient of storm drain inlets leading to Outlets 003, 011, and 048. Dark puddles of sediment-laden stormwater accumulated on the impervious surface through the northern area of the Facility.
 - d. Debris and fine sediments accumulated on the impervious surface of the northern and northeastern areas of the Facility. There was debris surrounding a dumpster and in the storm drain inlet leading to Outlet 011.
 - e. Sediment-laden water accumulated in a storm drain inlet that was under construction at the time of the inspection. The inlet led to Outlet 023. There was discolored water in Anmoore Run at Outlet 023 at the time of inspection.
 - f. Amsted Graphite stored uncovered totes, material, and debris in the western area of the Facility, upgradient of a storm drain inlet leading to Outlet 030.
 - g. Amsted Graphite stored uncovered and uncontained drums and containers of chemicals and waste stored throughout the Facility. Specifically, there were containers of pitch wastewater stored in an unlabeled container in the central area of the Facility without overhead coverage and secondary containment. Waste drums located in the central area of the Facility only had partial secondary containment and were near a storm drain inlet leading to Outlets 041 or 038. Liquid was present in the secondary containment structure impacting the available capacity of the structure to contain liquid in the event of a leak or spill.
53. The observations made in Paragraph 51, above, reflect Respondent's failure to practice good housekeeping. Respondent's failure to practice good housekeeping on site is a violation of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count 3
NPDES Discharge Exceedances

54. The allegations in the preceding paragraphs are incorporated by reference.
55. Sections A.003 through A.047 of the 2010 Permit include discharge limitations for industrial discharges, stormwater discharges, and a combination thereof from permitted outlets.

56. According to data submitted by Respondent to WVDEP during the period of June 2016 to April 2021, Respondent had the following NPDES Exceedances:

Table 1: NPDES Exceedances October 2016 to June 2021

Monitoring Period End Date	Outfall	Parameter	DMR Value Type Desc	Effluent Limit Value	Exceedance	Percent Exceeding Limit
10/31/2016	003	Chloride	Monthly Avg	250	511	104.4%
10/31/2016	003	Chloride	Daily Max	390	511	31.0%
10/31/2016	009	Temperature	Daily Max	5	7.92	58.4%
11/30/2016	003	Chloride	Monthly Avg	250	367	46.8%
12/31/2016	003	Chloride	Monthly Avg	250	512	104.8%
12/31/2016	003	Chloride	Daily Max	390	516	32.3%
12/31/2016	009	Temperature	Daily Max	5	9.86	97.2%
12/31/2016	038	Iron	Daily Max	1.5	2.02	34.7%
01/31/2017	003	Oil and Grease	Monthly Avg	10	24.2	142.0%
01/31/2017	003	Oil and Grease	Daily Max	15	24.2	61.3%
01/31/2017	009	TSS	Monthly Avg	30	34	13.3%
02/28/2017	009	Temperature	Daily Max	5	6.3	26.0%
03/31/2017	003	TSS	Monthly Avg	30	42	40.0%
03/31/2017	003	Iron	Monthly Avg	1.5	9.06	504.0%
03/31/2017	003	Iron	Daily Max	2	9.06	353.0%
03/31/2017	009	Temperature	Daily Max	5	11	120.0%
03/31/2017	009	TSS	Monthly Avg	30	95	216.7%
03/31/2017	009	TSS	Daily Max	60	95	58.3%
03/31/2017	009	Iron	Monthly Avg	1.2	4.96	313.3%
03/31/2017	009	Iron	Daily Max	2.4	4.96	106.7%
03/31/2017	038	Iron	Daily Max	1.5	3.96	164.0%
04/30/2017	003	Chloride	Monthly Avg	250	318.5	27.4%
04/30/2017	009	Temperature	Daily Max	5	8.5	70.0%
06/30/2017	038	Iron	Daily Max	1.5	3.66	144.0%
07/31/2017	009	Temperature	Monthly Avg	75.2	75.9	0.9%
08/31/2017	003	Oil and Grease	Daily Max	15	27.2	81.3%
08/31/2017	009	Temperature	Daily Max	5	6.5	30.0%
08/31/2017	009	Temperature	Monthly Avg	75.2	77.2	2.7%
09/30/2017	003	Oil and Grease	Monthly Avg	10	14.1	41.0%
09/30/2017	003	Oil and Grease	Daily Max	15	23.2	54.7%
09/30/2017	009	Temperature	Daily Max	5	7	40.0%
09/30/2017	011	Iron	Daily Max	1.5	3.77	151.3%
09/30/2017	038	Iron	Daily Max	1.5	2.39	59.3%

10/31/2017	003	Oil and Grease	Monthly Avg	10	79.8	698.0%
10/31/2017	003	Oil and Grease	Daily Max	15	79.8	432.0%
11/30/2017	009	Temperature	Daily Max	5	5.9	18.0%
12/31/2017	009	Temperature	Daily Max	5	8.3	66.0%
12/31/2017	011	Iron	Daily Max	1.5	5.61	274.0%
12/31/2017	038	Iron	Daily Max	1.5	6.94	362.7%
01/31/2018	009	Temperature	Daily Max	5	13.7	174.0%
01/31/2018	009	Chloride	Monthly Avg	181	228	26.0%
02/28/2018	003	Oil and Grease	Monthly Avg	10	23.9	139.0%
02/28/2018	003	Oil and Grease	Daily Max	15	23.9	59.3%
02/28/2018	009	Temperature	Daily Max	5	30.4	508.0%
02/28/2018	009	Temperature	Monthly Avg	63.1	68.5	8.6%
02/28/2018	009	Iron	Monthly Avg	1.2	1.37	14.2%
03/31/2018	009	Temperature	Daily Max	5	7.88	57.6%
03/31/2018	038	Iron	Daily Max	1.5	1.8	20.0%
04/30/2018	003	Oil and Grease	Monthly Avg	10	25.2	152.0%
04/30/2018	003	Oil and Grease	Daily Max	15	44.4	196.0%
04/30/2018	009	Temperature	Daily Max	5	16.2	224.0%
04/30/2018	009	Temperature	Monthly Avg	63.1	64.2	1.7%
05/31/2018	003	Oil and Grease	Monthly Avg	10	26.5	165.0%
05/31/2018	003	Oil and Grease	Daily Max	15	26.5	76.7%
05/31/2018	009	Temperature	Daily Max	5	12.5	150.0%
06/30/2018	009	Temperature	Daily Max	5	8.1	62.0%
07/31/2018	009	Temperature	Daily Max	5	8.4	68.0%
07/31/2018	009	Temperature	Monthly Avg	75.2	80.4	6.9%
08/31/2018	003	Iron	Monthly Avg	1.5	2.6	73.3%
08/31/2018	003	Iron	Daily Max	2	2.6	30.0%
08/31/2018	009	Temperature	Daily Max	5	11.8	136.0%
08/31/2018	009	Temperature	Monthly Avg	75.2	86.5	15.0%
08/31/2018	009	TSS	Monthly Avg	30	35	16.7%
08/31/2018	009	Iron	Monthly Avg	1.2	1.28	6.7%
09/30/2018	009	Temperature	Daily Max	5	11.1	122.0%
09/30/2018	009	Temperature	Monthly Avg	75.2	80.4	6.9%
10/31/2018	009	Temperature	Daily Max	5	11.7	134.0%
10/31/2018	009	Temperature	Monthly Avg	75.2	81.1	7.9%
11/30/2018	009	Temperature	Daily Max	5	27.9	458.0%
11/30/2018	009	Temperature	Monthly Avg	75.2	78.3	4.1%
12/31/2018	009	Temperature	Daily Max	5	30.8	516.0%
12/31/2018	009	Temperature	Monthly Avg	63.1	70.2	11.3%
12/31/2018	011	Iron	Daily Max	1.5	1.88	25.3%
12/31/2018	038	Iron	Daily Max	1.5	5.46	264.0%

01/31/2019	003	Oil and Grease	Monthly Avg	10	69.4	594.0%
01/31/2019	003	Oil and Grease	Daily Max	15	69.4	362.7%
01/31/2019	009	Temperature	Daily Max	5	22.1	342.0%
01/31/2019	009	Temperature	Monthly Avg	63.1	64	1.4%
02/28/2019	009	Temperature	Daily Max	5	24.3	386.0%
02/28/2019	009	Temperature	Monthly Avg	63.1	64.2	1.7%
03/31/2019	009	Temperature	Daily Max	5	23.2	364.0%
03/31/2019	009	Chloride	Monthly Avg	181	212	17.1%
03/31/2019	011	Iron	Daily Max	1.5	2.22	48.0%
03/31/2019	038	Iron	Daily Max	1.5	10.8	620.0%
04/30/2019	009	Temperature	Daily Max	5	25.76	415.2%
04/30/2019	009	Temperature	Monthly Avg	63.1	76.3	20.9%
04/30/2019	009	Temperature	Daily Max	73	76.3	4.5%
05/31/2019	009	Temperature	Daily Max	5	21.4	328.0%
05/31/2019	009	Temperature	Monthly Avg	75.2	85.5	13.7%
06/30/2019	009	Temperature	Daily Max	5	6.2	24.0%
06/30/2019	011	Iron	Daily Max	1.5	2.18	45.3%
06/30/2019	038	Iron	Daily Max	1.5	1.99	32.7%
07/31/2019	009	Temperature	Daily Max	5	14	180.0%
07/31/2019	009	Temperature	Monthly Avg	75.2	85.1	13.2%
08/31/2019	003	Oil and Grease	Monthly Avg	10	17.9	79.0%
08/31/2019	003	Oil and Grease	Daily Max	15	17.9	19.3%
08/31/2019	009	Temperature	Daily Max	5	11.7	134.0%
08/31/2019	009	Temperature	Monthly Avg	75.2	83.8	11.4%
09/30/2019	009	Temperature	Monthly Avg	75.2	75.4	0.3%
10/31/2019	009	Temperature	Daily Max	5	9	80.0%
11/30/2019	009	Temperature	Daily Max	5	9.3	86.0%
12/31/2019	009	Temperature	Daily Max	5	13	160.0%
12/31/2019	011	Iron	Daily Max	1.5	1.74	16.0%
12/31/2019	038	Iron	Daily Max	1.5	2.94	96.0%
01/31/2020	009	Temperature	Daily Max	5	15.5	210.0%
02/29/2020	009	Temperature	Daily Max	5	11.1	122.0%
03/31/2020	009	Temperature	Daily Max	5	18.5	270.0%
03/31/2020	009	Temperature	Monthly Avg	63.1	64	1.4%
03/31/2020	038	Iron	Daily Max	1.5	3.76	150.7%
04/30/2020	009	Temperature	Daily Max	5	14	180.0%
05/31/2020	009	Temperature	Daily Max	5	23.6	372.0%
06/30/2020	009	Temperature	Daily Max	5	14.1	182.0%
06/30/2020	038	Iron	Daily Max	1.5	1.85	23.3%
07/31/2020	009	Temperature	Daily Max	5	14.3	186.0%
07/31/2020	009	Temperature	Monthly Avg	75.2	82.8	10.11%
07/31/2020	009	Temperature	Daily Max	87	89.4	2.76%

08/31/2020	009	Temperature	Daily Max	5	10.8	116.0%
08/31/2020	009	Temperature	Monthly Avg	75.2	75.6	0.5%
09/30/2020	009	Total Suspended Solids	Monthly Avg	30	33	10.0%
10/31/2020	009	Temperature	Daily Max	5	10.9	118.0%
11/30/2020	009	Temperature	Daily Max	5	11.7	134.0%
12/31/2020	009	Temperature	Daily Max	5	10.8	116.0%
12/31/2020	009	Oil and grease	Monthly Avg	10	34.9	249.0%
12/31/2020	009	Oil and grease	Daily Max	15	34.9	132.7%
12/31/2020	038	Iron	Daily Max	1.5	1.52	1.3%
01/31/2021	003	Oil and grease	Monthly Avg	10	12.5	25.0%
01/31/2021	009	Temperature	Daily Max	5	5.9	18.0%
01/31/2021	009	Oil and grease	Daily Max	15	15.2	1.3%
01/31/2021	009	Chloride	Monthly Avg	181	186	2.8%
02/28/2021	009	Temperature	Daily Max	5	11.9	138.0%
03/31/2021	003	Oil and grease	Daily Max	15	90	500.0%
03/31/2021	009	Temperature	Daily Max	5	14.4	188.0%
03/31/2021	038	Iron	Daily Max	1.5	3	100.0%
04/30/2021	009	Temperature	Daily Max	5	16.6	232.0%
04/30/2021	009	Chloride	Monthly Avg	181	192	6.1%
05/31/2021	009	Chloride	Monthly Avg	181	292	61.3%
06/30/2021	003	TSS	Daily Max	60	132	120.0%
06/30/2021	009	Temperature	Daily Max	5	17.4	248.0%
06/30/2021	009	TSS	Monthly Avg	30	33.6	12.0%
06/30/2021	050	Temperature	Daily Max	5	7.7	54.0%

57. The discharge exceedances in Table 1 reported by Respondent are violations of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count 4

Failure to Implement and Update Stormwater Pollution Prevention Plan Following Stormwater Benchmark Exceedances

58. The allegations in the preceding paragraphs are incorporated by reference.

59. Section C.14 of the 2010 Permit states, “the following storm water requirements apply to Outlet(s) 011, 017, 019, 022, 023, 026, 036, 037, 038, 040, 042, 043, 045 and 047 . . .”, and includes a table at Section C.14.c. with a list of pollutants and benchmark values for each pollutant. The end of Section C.14.c. states, “. . . If the concentration of a pollutant exceeds the corresponding benchmark concentration or a pH value is not within the range of 6.0 to 9.0 S.U., monitoring shall be continued and storm water pollution prevention practices shall be revised and implemented. A letter stating that revised and implemented storm water pollution prevention practices shall be submitted to the Division of Water

and Waste Management at the address listed in Section C.07.”

60. According to the data submitted by the Respondent to WVDEP, it experienced 526 stormwater benchmark exceedances at the Facility from June 2018 to April 2020 as summarized in the table below and detailed in Exhibit A, attached herein.

Table 2: Stormwater Benchmark Exceedances, June 2018 to April 2020

Outlet	Exceedances
011	71
019*	48
023	48
026	48
038*	76
036	76
037	76
043*	1
040	1
041	1
042	1
045*	3
047	3
048	73
Total	526

*representative outlet

61. At the time of the August 2019 EPA Inspection, Amsted Graphite Materials last updated its SWPPP in September 2017.
62. The benchmark exceedances that occurred after the SWPPP was updated in September 2017 trigger the requirement in Section C.14.c. of the Permit to continue monitoring, revise and implement stormwater pollution prevention practices, and send a letter to the WVDEP Division of Water and Waste Management reporting the revised practices that were implemented. Respondent had not updated the Stormwater Pollution Prevention Plan (“SWPPP”) between September 2017 and EPA’s Inspection in August 2019, nor sent letters regarding a change in storm water pollution prevention practices to the WVDEP Division of Water and Waste Management as required by the 2010 Permit. Respondent updated its SWPPP in December 2019, however, benchmark exceedances continued to occur after this update, and Respondent did not communicate how the SWPPP update addressed benchmark exceedances.
63. Respondent’s failure to send letters regarding a change in storm water pollution prevention practices to WVDEP and update the SWPPP following stormwater benchmark exceedances are violations of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count 5
Failure to Implement Stormwater Pollution Prevention Plan

64. The allegations in the preceding paragraphs are incorporated by reference.
65. Section C.13 of the 2010 Permit requires that, “[t]he permittee implement and maintain the approved storm water pollution prevention plan (“SWPPP”) for the site. The SWPPP shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with the industrial activity. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity at the facility and to assure compliance with the terms and conditions of this permit. A copy of this document shall be retained at the site for review upon request.”
66. At the time of the Inspection, Respondent’s SWPPP had last been updated in September 2017.
67. In Appendix G, “Pollutant Source Identification,” the SWPPP states that drainage from outdoor containment structures must be observed before discharging and to remove any oil or hydrocarbon contamination prior to discharge and to document each drainage event. SWPPP at Appendix G.
68. During the Inspection, EPA Inspectors observed a visible sheen on the surface of the stormwater accumulated within the secondary containment structure of the fuel storage area in the central area of the Facility. The Facility representatives did not have documentation of drainage events. This violates the requirement in the SWPPP to remove oil or hydrocarbon contamination prior to discharge and the requirement to document drainage events.
69. In Appendix G, “Pollutant Source Identification,” the SWPPP states for controlling carbon dust on roadways periodic sweeping is to occur and that the Permittee will increase the sweeping frequency and install additional filter media and conduct preventative maintenance activities for the filter media in drop inlets that lead to stormwater outlets.” SWPPP at Appendix G.
70. During the Inspection, EPA Inspectors observed sediment and dust accumulated throughout the Facility, demonstrating Respondent’s failure to perform periodic sweeping as required under the SWPPP. Approximately three of the storm drain inlets had filter fabric BMPs, each of which needed maintenance, violating the SWPPP requirement to conduct preventative maintenance activities for filter media in the drop inlets that lead to stormwater outlets. The Facility Representatives provided the log of sweeper activity which was largely incomplete for 2018 and 2019.

71. Respondent's failures to follow its SWPPP are violations of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count 6
Failure to Maintain Records

72. The allegations in the preceding paragraphs are incorporated by reference.
73. The "personnel training program" section of the SWPPP provided that, "All plant personnel receive initial and annual refresher training which includes BMP [Best Management Practice] stormwater pollution prevention information. This training is conducted as 'on-line' training and individual records are maintained by the HSEP office." SWPPP at Page 11 of 11.
74. At the Inspection, the Facility Representatives did not have training records for 2018.
75. Appendix A.III.6 of the 2010 Permit requires that, "The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time."
76. During the Inspection, EPA Inspectors observed a lack of consistent and thorough recordkeeping at the Facility. Specifically:
- a. **SWPP and SPCC Plans:** The SWPPP and SPCC plans had not been updated to reflect changes in personnel, such as the emergency contact information for the HSEP representative.
 - b. **Weekly Discharge Point Inspection Forms:** The Weekly Discharge Point Inspection Form was used to document weather conditions, flow observed at the various outlets, and housekeeping deficiencies. The entries on this form included a permanent "X" in the column marking that no flow was observed at Outlet 050 because it was not approved, and therefore it was unknown if flow was observed at this location. Several forms were missing dates and time of completion and did not identify if corrective actions were needed. Inspection reports for various dates included identical information about the presence and flow and condition of the Facility.
 - c. **Monthly Spill Clean-up Drum Inspection Forms and Monthly Visible Tankline Inspection Forms:** Many of these forms were incomplete, missing the name of the inspector who completed the form and the date when the form was completed. These forms and the **PCB Storage of Containers Monthly Inspection Report** identified poor housekeeping practices and did not include

requirements for corrective actions.

77. Respondent’s failure to comply with the recordkeeping requirements of the 2010 Permit and the SWPPP are violations of the 2010 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

V. CIVIL PENALTY

78. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Two Hundred Sixteen Thousand dollars (\$216,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
79. The civil penalty is based upon EPA’s consideration of a number of factors, including the nature, circumstances, extent and gravity of the violations, Respondent’s ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to the statutory penalty criteria and factors set forth at Section 309(g) of the Act, 33 U.S.C. § 1319(g), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
80. Pursuant to provisions of this Consent Agreement and based on Respondent’s certified statement that it is impacted by poor industry market, rising costs and limited free cash, and therefore unable to pay the civil penalty within 30 days of the effective date of the accompanying Final Order, Respondent will remit a total civil penalty (principal) of \$216,000 dollars and interest in the amount or \$436 dollars, in accordance with the installment payment schedule set forth in the following chart:

a. Installment Payment Schedule:

Payment No.	Principal Amount	Interest	Date Payment Due (From Effective Date of Agreement)	Payment Amount Due
1	\$36,072.67	\$ -	<i>Within 30 Days</i>	\$36,072.67
2	\$35,922.67	\$150.00	<i>Within 60 Days</i>	\$36,072.67
3	\$35,960.67	\$112.00	<i>Within 90 Days</i>	\$36,072.67
4	\$35,988.67	\$84.00	<i>Within 120 Days</i>	\$36,072.67
5	\$36,012.67	\$60.00	<i>Within 150 Days</i>	\$36,072.67
6	\$36,042.65	\$30.00	<i>Within 180 Days</i>	\$36,072.65
Total	\$216,000.00	\$436.00		\$216,436.00

- b. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
 - c. Respondent may, at any time after the effective date of the accompanying Final Order, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
81. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CWA-03-2022-0020**;
 - b. All checks shall be made payable to the "United States Treasury."
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Aviva H. Reinfeld
Assistant Regional Counsel
U.S. EPA, Region III
Reinfeld.aviva@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

82. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
83. Payment of the civil penalty in accordance with the above terms and provisions, is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
84. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
85. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
86. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
87. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

VI. GENERAL SETTLEMENT CONDITIONS

88. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
89. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VII. CERTIFICATION OF COMPLIANCE

90. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on Consent between Respondent and EPA, Docket No. CWA-03-2022-0020, which addresses the violations alleged herein.

VIII. OTHER APPLICABLE LAWS

91. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

IX. RESERVATION OF RIGHTS

92. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to

the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

X. EXECUTION /PARTIES BOUND

93. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XI. EFFECTIVE DATE

94. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.


XII. ENTIRE AGREEMENT

95. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

Amsted Graphite Materials, LLC

Date: 12-28-2021

By: 

Jared Knight
General Manager
Amsted Graphite Materials, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Aviva H. Reinfeld
Assistant Regional Counsel
U.S. EPA – Region III

Appendix A

Stormwater Benchmark Exceedances: June 2018 to April 2020

Outlet 011										
Sample Date			6/27/2018	11/9/2018	2/6/2019	6/24/2019	3rd QTR	10/22/2019	2/4/2020	4/23/2020
<i>Parameter</i>	<i>Limits</i>	<i>Units</i>								
Flow		MGD	0.04194	0.0685699	0.003802	0.003802	No Events	0.00158	0.000383	0.001037
pH		SU	6.8	6.7	7.8	8.3	produced	6.7	7.3	7.7
Aluminum (mg/L)	0.75	mg/L	0.133	0.853	1.31	1.05	samples	1.44	0.487	0.761
Arsenic	0.17	mg/L	<0.001	<0.001	0.0019	<0.001		<0.0020	<0.0010	<0.0010
Copper	0.0636	mg/L	0.0157	0.0257	0.0377	0.029		0.0527	0.0069	0.0168
Lead	0.0816	mg/L	0.0016	0.0065	0.008	0.0089		0.0112	0.0026	0.0027
Nickel	0.47	mg/L	0.0049	0.0117	0.0201	0.0234		0.274	0.041	0.0074
Vanadium	0.08	mg/L	0.0111	0.0108	0.0366	0.0137		0.011	0.0041	0.0054
Selenium	0.005	mg/L	<0.0003	<0.0003	<0.0003	0.0003		<0.0003	0.0003	0.00047
Chloride	230	mg/L	3.66	0.57	51.3	1.16		3	2.5	2.2
Total Suspended Solids	100	mg/L	5	80	8	150		46	16	9.5
Oil & Grease	15	mg/L	<4.9	<4.9	<4.9	<4.9		<4.9	<5.0	<4.9
Acenaphthene	MDL (1.80)	µg/L	8.65	<1.76	8.99	<0.163		0.14	<0.095	0.076
Anthracene	MDL (.66)	µg/L	<0.100	<1.03	<0.103	0.0989		0.011	<0.095	0.092
Benz(a)anthracene	MDL (.01)	µg/L	0.955	5.05	1.27	3.74		1.5	1.4	1.3
Benzo(a)pyrene	MDL (.02)	µg/L	1.48	9.47	1.91	7.48		2.3	1.8	1.9
Benzo(b)fluoranthene	MDL (.018)	µg/L	2.17	11.2	3.14	10.2		4.1	4	3.5
Benzo(k)fluoranthene	MDL (.017)	µg/L	0.884	4.19	1.22	3.74		1.1	1.5	1.1
Chrysene	MDL (.15)	µg/L	1.76	6.24	1.86	5.04		1.9	1.7	1.6
Dibenz(a,h)anthracene	MDL (.03)	µg/L	<0.0300	<0.310	<0.0308	<0.0287		0.67	0.32	0.5
Fluoranthene	MDL (.21)	µg/L	1.91	5.75	2.29	3.52		1.9	2	1.7
Fluorene	MDL (.21)	µg/L	0.276	0.72	0.6	0.85		<0.096	<0.095	0.052
Indeno(1,2,3-cd)pyrene	MDL (.043)	µg/L	1.67	8.79	<0.0411	7.57		2.3	1.8	1.7
Pyrene	MDL (.27)	µg/L	1.54	7.17	1.85	6.74		1.7	1.8	1.5

Outlet 019		Also Representative for Outlets 023 and 026				
Sample Date			11/9/2018	2/6/2019	11/7/2019	4/23/2020
Parameter	Limits	Units				
Flow		MGD	0.08150832	0.06171264	0.0216	0.0052848
pH		SU	6.3	7.52	6.04	7.4
Aluminum	0.75	mg/L	0.354	0.754	0.0572	0.984
Iron	1	mg/L	0.993	2.36	0.204	0.221
Arsenic	0.17	mg/L	<0.001	0.0022	<0.002	<0.0010
Copper	0.0636	mg/L	0.0274	0.0938	0.0159	0.0431
Lead	0.0816	mg/L	0.0115	0.0284	0.0034	0.0032
Nickel	0.47	mg/L	0.0071	0.023	<0.006	0.0085
Vanadium	0.08	mg/L	0.0098	0.0308	0.0127	0.0109
Selenium	0.005	mg/L	<0.0003	<0.0003	<0.0003	0.00048
Chloride	230	mg/L	2.92	636	4.2	2.6
Total Suspended Solids	100	mg/L	90	470	26	13
Oil & Grease	15	mg/L	<4.9	<4.9	<5.0	<4.9
Acenaphthene	MDL (1.80)	µg/L	<0.871	<0.856	1.4	1
Anthracene	MDL (.66)	µg/L	0.775	0.678	0.58	1.1
Benz(a)anthracene	MDL (.01)	µg/L	8.28	4.91	13.9	10.9
Benzo(a)pyrene	MDL (.02)	µg/L	13.2	6.57	17.2	11.9
Benzo(b)fluoranthene	MDL (.018)	µg/L	16.5	11.1	14.0	20.9
Benzo(k)fluoranthene	MDL (.017)	µg/L	6.46	3.6	8.4	6.7
Chrysene	MDL (.15)	µg/L	9.05	7.05	13.2	9.8
Dibenz(a,h)anthracene	MDL (.03)	µg/L	<0.154	1.69	2.4	2.1
Fluoranthene	MDL (.21)	µg/L	11.3	9.04	18.4	15.6
Fluorene	MDL (.21)	µg/L	6.09	3.91	0.34	0.57
Indeno(1,2,3-cd)pyrene	MDL (.043)	µg/L	11.6	5.65	12.4	8.9
Pyrene	MDL (.27)	µg/L	11	8.9	16.3	13.3

Outlet 038		Also Representative for Outlets 036 and 037										
Sample Date			6/27/2018	11/9/2018	12/20/2018	2/6/2019	6/24/2019	3rd QTR	10/22/2019	2/4/2020	3/25/2020	4/23/2020
Parameter	Limits	Units										
Flow		MGD	0.035122	0.100463		0.100463	0.072	No Events	0.00922	0.001483		0.000907
pH		SU	7.5	6.7		7.9	8.3	produced	7.1	7.3		8.1
Aluminum (mg/L)	0.75	mg/L	0.603	3.29	0.366 (ave 1.83)	6.17	1.13	samples	2.49	3.08		2.04
Arsenic	0.17	mg/L	<0.001	0.0022		0.0065	<0.0010		<0.0020	0.0018		0.0016
Copper	0.0636	mg/L	0.0063	0.0336		0.0699	0.0095		0.0191	0.0162		0.0156
Lead	0.0816	mg/L	0.0048	0.0256		0.0454	0.0084		0.012	0.0135		0.0124
Nickel	0.47	mg/L	0.112	0.351		0.808	0.246		0.23	0.439		0.151
Vanadium	0.08	mg/L	0.0056	0.0096		0.0156	0.003		0.0075	0.0078		0.0064
Selenium	0.005	mg/L	<0.0003	0.0006		0.0009	0.0005		0.00073	0.00078		0.00085
Chloride	230	mg/L	6.58	4.19		165	11.8		38.2	28.2		11.7
Total Suspended Solids	100	mg/L	9	170	80 (ave 125)	440	54		76	110	44	17
Oil & Grease	15	mg/L	<4.9	<4.9		<4.9	<4.9		<5.1	<5.0		<5.0
Acenaphthene	MDL (.80)	µg/L	3.24	12.2		<0.178	<0.163		0.13	<0.096		0.092
Anthracene	MDL (.66)	µg/L	<0.100	0.113		0.399	<0.0957		0.099	<0.096		0.18
Benz(a)anthracene	MDL (.01)	µg/L	0.362	1.2		5.64	0.554		0.78	0.62		1.3
Benzo(a)pyrene	MDL (.02)	µg/L	0.531	1.62		7.89	0.872		0.79	0.53		1.6
Benzo(b)fluoranthene	MDL (.018)	µg/L	0.952	3.01		12.9	1.51		1.8	1.5		3
Benzo(k)fluoranthene	MDL (.017)	µg/L	0.351	1.16		4.49	0.463		0.47	0.53		1
Chrysene	MDL (.15)	µg/L	0.858	2.36		8.43	1.45		1.1	0.91		2.1
Dibenz(a,h)anthracene	MDL (.03)	µg/L	<0.0300	<0.0305		<0.0314	<0.0287		0.23	<0.096		0.35
Fluoranthene	MDL (.21)	µg/L	0.647	3.01		13.8	1.07		1.5	1.7		2.8
Fluorene	MDL (.21)	µg/L	0.262	0.872		3.89	0.413		<0.097	<0.096		0.069
Indeno(1,2,3-cd)pyrene	MDL (.043)	µg/L	0.651	1.75		7.61	0.919		0.83	0.58		1.3
Pyrene	MDL (.27)	µg/L	0.696	2.75		7.34	1.21		1	1.1		1.9

Outlet 043		Also Representative for Outlets 040, 041, and 042				
Sample Date			11/9/2018	2/6/2019	11/7/2019	4/23/2020
Parameter	Limits	Units				
Flow		MGD	0.0022824	0.00057024	0.005328	No Flow
pH		SU	7	6.3	6.6	
Iron	1	mg/L	0.1	0.463	0.104	
Chloride	230	mg/L	0.67	1050	1.6	
Total Suspended Solids	100	mg/L	3	15	2.5	

Outlet 045		Also Representative for Outlet 047				
Sample Date			11/9/2018	2/6/2019	11/7/2019	4/23/2020
Parameter	Limits	Units				
Flow		MGD	0.0249696	0.00285264	0.01728	0.0014256
pH		SU	6.6	7.12	6.4	8.1
Iron	1	mg/L	0.786	1.61	0.154	0.218
Chloride	230	mg/L	2.97	267	3.4	8.3
Total Suspended Solids	100	mg/L	37	116	4.5	5.5

Outlet 048											
Sample Date			6/27/2018	11/9/2018	12/20/2018	2/6/2019	6/24/2019	3rd QTR	10/22/2019	2/4/2020	4/23/2020
Parameter	Limits	Units									
Flow		MGD	0.001426	0.0464501		0.00095	0.002851	No Events	0.00291	0.000878	0.0001526
pH		SU	7.1	7		7.6	8.2	which produced samples	7.3	7.8	8
Aluminum (mg/L)	0.75	mg/L	0.266	6.02	1.02 (ave 3.52)	2.81	1.88		0.59	0.292	0.62
Iron (mg/L)	1	mg/L	0.764	12.9	1.74 (ave 7.32)	4.16	4.36		1.27	0.31	0.799
Arsenic	0.17	mg/L	<0.001	0.0014		0.0022	<0.0010		<0.0020	<0.0010	<0.0010
Copper	0.0636	mg/L	0.0049	0.0463		0.0194	0.023		0.0073	0.0033	0.0081
Lead	0.816	mg/L	0.0023	0.0411		0.0123	0.0131		0.0027	0.001	0.0014
Nickel	0.47	mg/L	0.0063	0.0575		0.0227	0.0253		0.0094	0.0035	0.0071
Vanadium	0.08	mg/L	0.0158	0.0445		0.0221	0.0635		0.0125	0.0058	0.0054
Selenium	0.005	mg/L	<0.0003	<0.0003		<0.0003	0.0005		<0.0003	<0.00030	0.00032
Chloride	230	mg/L	1.79	0.69		66.7	0.65		2.5	0.7	0.59
Total Suspended Solids	100	mg/L	3	172	56 (ave 112)	70	48		78	8	42
Oil & Grease	15	mg/L	<4.9	<4.9		<4.9	<4.9		<5.0	<5.0	<5.0
Acenaphthene	MDL (1.80)	µg/L	6.61	52.2		15.4	<0.165		0.16	0.19	0.076
Anthracene	MDL (.66)	µg/L	0.146	0.665		0.271	<0.0968		<0.096	<0.098	0.11
Benz(a)anthracene	MDL (.01)	µg/L	1.91	6.16		3.33	3.67		2.2	0.95	1.8
Benzo(a)pyrene	MDL (.02)	µg/L	3.17	13.1		6.64	7.81		3.5	1.3	2.9
Benzo(b)fluoranthene	MDL (.018)	µg/L	4.19	14		9.23	10.1		0.69	2.4	4.6
Benzo(k)fluoranthene	MDL (.017)	µg/L	1.86	6		3.66	3.98		1.7	0.87	1.4
Chrysene	MDL (.15)	µg/L	3.27	7.82		5.62	6.34		2.3	1.1	2
Dibenz(a,h)anthracene	MDL (.03)	µg/L	<0.0300	17.5		1.84	<0.0290		0.84	0.23	0.76
Fluoranthene	MDL (.21)	µg/L	2.91	7.58		4.11	3.13		2.3	1.1	1.8
Fluorene	MDL (.21)	µg/L	0.188	2.08		0.755	0.823		<0.096	<0.098	<0.033
Indeno(1,2,3-cd)pyrene	MDL (.043)	µg/L	3.25	12.4		<0.0405	7.84		2.9	1.2	2.3
Pyrene	MDL (.27)	µg/L	2.92	11.4		6.21	2.66		2.4	1.2	1.8
Temperature		°F	71.2	46.58					62.2	54.5	55.4
Dissolved Oxygen		mg/L	9.2	11.9							
Total PAH (µg/L)						57.066	46.353		18.99	10.54	19.546

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
Amsted Graphite Materials, LLC	: U.S. EPA Docket No. CWA-03-2022-0020
2698 Philippi Pike	:
Anmoore, West Virginia, 26323	: Proceeding under Section 309(g) of the Clean
	: Water Act
Respondent.	:
	:
	:
	:

FINAL ORDER

Complainant, the Director of the of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Amsted Graphite Materials, LLC, have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to [Sections 22.13(b) and 22.18(b)(2) and (3) (*for Super Consent Agreement/Final Orders*) or Sections 22.18(b)(2) and (3) (*for Consent Agreement/Final Orders*)]. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of the statutory factors set forth in Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

NOW, THEREFORE, PURSUANT TO Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWO HUNDRED SIXTEEN THOUSAND DOLLARS (\$216,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), including payment of any applicable interest, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the CWA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. § 1319(g)(5), and served on the Respondent.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of: :
:
Amsted Graphite Materials, LLC :
2698 Philippi Pike : **U.S. EPA Docket No. CWA-03-2022-0020**
Anmoore, West Virginia, 26323 :
: **Proceeding under**
Respondent. : **Section 309(g) of the Clean Water Act**
:
:

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Erica Hawley
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Aviva Reinfeld, Esq.
Assistant Regional Counsel
U.S. EPA, Region III
reinfeld.aviva@epa.gov

[Digital Signature and Date]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III