



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 29 2017

**CERTIFIED MAIL RETURN RECEIPT**

Adam G. Sowatzka  
Partner  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309

Re: Ascend Performance Materials LLC, EPA ID # ALD006320774  
Consent Agreement and Final Order, Docket No. RCRA-04-2017-4016(b)

Dear Mr. Sowatzka,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-reference matter. Please note that payment of the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for assistance in resolving this matter. If you have questions, please feel free to contact me at 404-562-8590 or by email at [lamberth.larry@epa.gov](mailto:lamberth.larry@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
)  
)  
Ascend Performance Materials LLC )  
1050 Chemstrand Avenue )  
Decatur, Alabama 35601 )  
EPA ID No.: ALD006320774 )  
)  
Respondent )  
\_\_\_\_\_ )

DOCKET NO.: RCRA-04-2017-4016(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

2017 SEP 29 PM 4: 38  
HEARING CLERK  
USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Alabama Hazardous Waste Management and Minimization Act of 1978 (AHWMMA), Ala. Code § 22-30-1 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Rules 335-14-1 to 335-14-17 of the Alabama Department of Environmental Management (ADEM) Administrative Code (ADEM Admin. Code) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] and ADEM Admin. Code rr. 335-14-1 to 335-14-17 [40 C.F.R. Parts 260 through 270, 273 and 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## **II. THE PARTIES**

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Ascend Performance Materials LLC, a limited liability corporation organized under the laws of Alabama. Respondent is the owner and operator of a manufacturing facility of chemical intermediates used to make nylon 6,6 and various specialty chemicals, located at 1050 Chemstrand Avenue in Decatur, Alabama (the Facility).

## **III. PRELIMINARY STATEMENTS**

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b).
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Alabama has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 22-30-14 of the AHWMMA, Ala. Code § 22-30-14 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at ADEM Admin. Code r. 335-14-3 [40 C.F.R. Part 262].
12. Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this

requirement are found at ADEM Admin. Code r. 335-14-5 (permitted) and ADEM Admin. Code r. 335-14-6 (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in ADEM Admin. Code r. 335-14-2-.01(3)(a)2. [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by ADEM Admin. Code r. 335-14-2-.01(4)(b) [40 C.F.R. § 261.4(b)].
15. Pursuant to ADEM Admin. Code rr. 335-14-2-.01(3)(a)2.(i) and -.03(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in ADEM Admin. Code r. 335-14-2-.03(2)-(5) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to ADEM Admin. Code rr. 335-14-2-.01(3)(a)2.(ii) and -.04(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in ADEM Admin. Code r. 335-14-2-.04 [40 C.F.R. Part 261, Subpart D].
17. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)115.(i) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in ADEM Admin. Code r. 335-14-2 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)104.(i) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
19. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)198. [40 C.F.R. § 260.10], a “person” includes a corporation (including a government corporation).
20. Pursuant to ADEM Admin. Code rr. 335-14-1-.02(1)(a)192 and 194. [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
21. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)151. [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG).
22. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a) [40 C.F.R. § 262.34(a)], a LQG may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.-6. [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).

23. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates 335-14-6-.09(5) [40 C.F.R. § 265.174], and is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors.
24. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3. [40 C.F.R. § 262.34(a)(3)], and is a condition of the LQG Permit Exemption, a generator is required to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: “Hazardous Waste” and the EPA hazardous waste number.
25. Pursuant to the exemption from Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], given in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)] as referenced in ADEM Admin. Code r. 335-14-6-.02(7) [40 C.F.R. § 265.16(a)(1), (b) (c) and (d)], facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.
26. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1. [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with ADEM Admin. Code r. 335-14-3-.03(5)(a) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i)-(ii) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).
27. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
28. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
29. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)254. [40 C.F.R. § 273.9], a “small quantity handler of universal waste” (SQHUW) is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
30. Pursuant to ADEM Admin. Code r. 335-14-11-.03(6)(a) and (c) [40 C.F.R. § 273.15(a) and (c)], a SQHUW may accumulate universal waste no longer than one year and must to be able to

demonstrate the length of time that the universal waste has accumulated from the date that it became a waste or was received.

31. Pursuant to ADEM Admin. Code r. 335-14-17 [40 C.F.R. § 279.1], a “used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
32. Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1. [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil.”

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

33. Respondent is a “person” as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)200. [40 C.F.R. § 260.10].
34. Respondent is the “owner/operator” of a “facility” located in 1050 Chemstrand Avenue in Decatur, Alabama, as those terms are defined in ADEM Admin. Code rr. 335-14-1-.02(1)(a)194, 196 and 106. [40 C.F.R. § 260.10].
35. Respondent is a “generator” of “hazardous waste” as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)117.(i) [40 C.F.R. § 260.10] and ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3].
36. Respondent is a manufacturer of chemical intermediates used to make nylon 6,6 and various specialty chemicals.
37. Respondent, as a result of its practices and operations at the Facility, is a LQG, as that term is defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)153. [40 C.F.R. § 262.34(a)], at all times relevant to this CA/FO.
38. On October 18-19, 2016, the EPA and the Alabama Department of Environmental Management (ADEM) conducted a compliance evaluation inspection (CEI) at the Respondent’s Facility. The findings of the CEI were documented in a report mailed to Respondent, dated March 1, 2017.
39. During the CEI, the EPA and ADEM Inspectors (Inspectors) observed the hazardous waste storage area inspection records were missing inspections, the last two weeks of December 2014 and the first and third weeks of July 2016.
40. The EPA therefore alleges that Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) [40 C.F.R. § 262.34(a)(1)(i)], by not complying with the inspection requirements of ADEM Admin. Code r. 335-14-6-.09(5) [40 C.F.R. § 265.174].
41. During the CEI, the Inspectors observed the following containers of hazardous waste that were not labeled with the EPA hazardous waste number:

- a. Area 402 less than 90-day hazardous waste storage area - 2 roll-offs containing NSQ Nalmet Wet Solids, 27 55-gallon drums of Edge Strips AG6844, a 55-gallon drum of aerosol cans and a 55-gallon drum of diesel fuel with water; and
  - b. No. 2 Warehouse - a Gaylord box of damaged lead batteries.
42. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-3-.03(5)(a)3., which required a generator to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: "Hazardous Waste" and the EPA hazardous waste number.
  43. During the CEI, the Inspectors reviewed the training records for Facility personnel that handle hazardous waste and found that employees did not receive annual hazardous waste management training, and the written job descriptions did not include the duties of facility personnel assigned to each position, such as hazardous waste handling, generation or management.
  44. The EPA therefore alleges that Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(a)4. [40 C.F.R. § 262.34(a)(4)], by not complying with the personnel training requirements of ADEM Admin. Code r. 335-14-6-.02(7) [40 C.F.R. § 265.16(a)(1), (b) (c) and (d)].
  45. During the CEI, the Inspectors observed 12 containers of hazardous waste in the Chemistry Lab that were not kept closed. These containers of hazardous waste include a 55-gallon drum in the Extraction Feed Recovery Area and 11 used sharps containers.
  46. The EPA therefore alleges that Respondent violated Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of ADEM Admin. Code r. 335-14-6-.09(4)(a) [40 C.F.R. § 265.173(a)].
  47. During the CEI, the Inspectors observed the following containers of hazardous waste that were not labeled with the words "Hazardous Waste":
    - a. Extraction Feed Recovery Filters Satellite Accumulation Area – a 55-gallon drum;
    - b. Chemistry Lab - the extraction waste funnel vacuum system inside the fume hood; and
    - c. Chemistry Lab - 11 used sharps containers ranging in size from 3.3 quarts to 6.9 quarts.
  48. The EPA therefore alleges that Respondent Section 22-30-12(b) of the AHWMMMA, Ala. Code § 22-30-12(b) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) [40 C.F.R. § 262.34(c)(1)(ii)].
  49. During the CEI, the Inspectors observed that the No. 2 Warehouse had a pallet with spent lead acid batteries that was not dated.

50. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-11-.03(6)(a) and (c) [40 C.F.R. § 273.15(a) and (c)], by failing to demonstrate the length of time that the facility's universal waste had been accumulated from the date that the universal waste became a waste or was received.
51. During the CEI, the Inspectors observed in the Central Maintenance Shop that the parts washer skimmer was not labeled as "Used Oil."
52. The EPA therefore alleges that Respondent violated ADEM Admin. Code r. 335-14-17-.03(4)(c)1. [40 C.F.R. § 279.22(c)(1)], by storing used oil in containers that were not labeled or marked clearly with the words "Used Oil."

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

53. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
54. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
55. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
56. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
57. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
58. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
59. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
60. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
61. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.

62. Each party will pay its own costs and attorneys' fees.

## VI. PAYMENT OF CIVIL PENALTY

63. Respondent consents to the payment of a civil penalty in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
64. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706

Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

65. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Paula A. Whiting  
Environmental Engineer  
Hazardous Waste Compliance and Enforcement Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

66. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty

of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

67. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

#### **VII. PARTIES BOUND**

68. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
69. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
70. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

#### **VIII. RESERVATION OF RIGHTS**

71. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
72. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
73. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

#### **IX. OTHER APPLICABLE LAWS**

74. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **X. SERVICE OF DOCUMENTS**

75. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Stephen P. Smith  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9554

76. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Adam G. Sowatzka  
Partner  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309

#### **XI. SEVERABILITY**

77. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

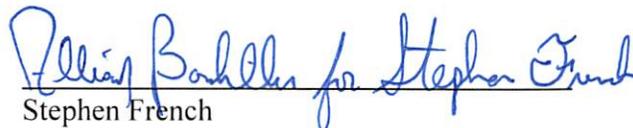
**XII. EFFECTIVE DATE**

78. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

*In the matter of Ascend Performance Materials LLC, Docket No. RCRA-04-2017-4016(b):*

**AGREED AND CONSENTED TO:**

**Ascend Performance Materials LLC**

By:  Dated: 9/28/17  
Stephen French  
Plant Manager

**United States Environmental Protection Agency**

By:  Dated: 09/29/17  
Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

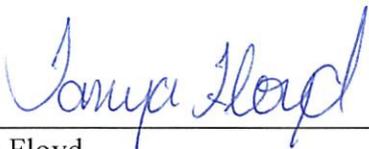
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2017-4016(b)  
)  
Ascend Performance Materials LLC )  
1050 Chemstrand Avenue )  
Decatur, Alabama 35601 ) Proceeding Under Section 3008(a) of the  
EPA ID No.: ALD006320774 ) Resource Conservation and Recovery Act,  
) 42 U.S.C. § 6928(a)  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 29<sup>th</sup> day of September, 2017.

BY:   
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Ascend Performance Materials LLC, Docket Number: RCRA-04-2017-4016(b), and have served the parties listed below in the manner indicated:

Stephen P. Smith  
Associate Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

(Via EPA's electronic mail)

Adam G. Sowatzka  
Partner  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, Georgia 30309

(Via Certified Mail - Return Receipt Requested)

Date: 9-29-17



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511