

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of: :
: Docket No. RCRA-03-2018-0149
Ampak, LLC : U.S. EPA-REGION 3-RHC
3850 Smithville Road : FILED-26SEP2018AWB:32
Federalburg, MD 21601, :
: Proceeding Under Section 9006 of the
Respondent. : Resource Conservation and Recovery
: Act, as amended, 42 U.S.C. § 6991e.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Ampak, LLC (or “Respondent”), pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e, 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, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) & (3).

This CA and the associated Final Order (collectively “CAFO”), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the federally-authorized Maryland Underground Storage Tank Management Program (“Maryland UST Management Program”) by the Respondent in connection with four (4) underground storage tank systems (“USTs”) owned and operated by the Respondent at a facility known as the Hurlock Exxon Station and as NASR’s Exxon, located at 104 Pine Street, Hurlock, Maryland 21643 (hereinafter, the “Facility” or the “Hurlock Exxon Facility”).

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state UST management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA. *See 57 Fed. Reg.* 29034 (June 30, 1992). The provisions of the Maryland UST Management Program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The federally-authorized Maryland UST Management Program regulations are set forth in Sections 26.10.02 *et seq.* of the Maryland Department of the Environment (“MDE”) Code of Maryland Regulations and will be cited hereinafter as COMAR §§ 26.10.02 *et seq.*

RCRA Section 9006(a)-(e), 42 U.S.C. § 6991e(a)-(e), authorizes the U. S. Environmental Protection Agency (“EPA” or the “Agency”) to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA’s regulations thereunder, or any regulation of a federally-authorized state UST program. Under RCRA Section 9006(d), 42 U.S.C. § 6991e(d), EPA may assess a civil penalty against any person who, among other things, violates any requirement of an applicable federal or federally-authorized state UST program.

II. GENERAL PROVISIONS

1. For purposes of this proceeding only, the Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, immediately above.
3. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney’s fees.

III. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
 - a. Respondent Ampak, LLC is: (i) a Maryland limited liability company with a business address of 3850 Smithville Road, Federalsburg, Maryland 21601; and (ii) a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5) and COMAR § 26.10.02.04.B(40);
 - b. At all times relevant to the violations alleged in this CA, Respondent Ampak, LLC has been the “owner,” and the “operator” (as these terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and COMAR § 26.10.02.04.B(39) and (37), respectively) of four “underground storage tank[s],” or “UST[s]” and associated “UST system[s],” or “Tank system[s]” (as these terms are each defined in Section 9001 of

RCRA, 42 U.S.C. § 6991, and COMAR § 26.10.02.04.B(64) and (66), respectively), located at the Hurlock Exxon Facility, 104 Pine Street, Hurlock, Maryland 21643, Facility I.D. No. 3008; and

- c. Pursuant to a June 22, 2011 Notification for Underground Storage Tanks (“UST Notice”) that Respondent made to the Maryland Department of the Environment (MDE), the four USTs and associated UST systems (or Tank systems) present, and in use, at the Hurlock Exxon Facility at all times relevant to the violations alleged in this CA, are identified and described as follows:

UST / UST System Details for Hurlock Exxon Facility

UST/ UST System No.	Material Stored	Capacity (gal.)	Installation Date	Tank Construction Material	Piping Type/ Construction Material
1	Regular gasoline	8,000	1/87	Composite	Pressurized / Fiberglass- reinforced plastic
2	Regular gasoline	8,000	1/87	Composite	Pressurized / Fiberglass- reinforced plastic
3	Super gasoline	8,000	1/87	Composite	Pressurized / Fiberglass- reinforced plastic
4	Diesel	4,000	1/87	Composite	Pressurized / Fiberglass- reinforced plastic

8. At all times herein relevant, each of the four USTs and UST systems owned and operated by the Respondent at the Hurlock Exxon Facility, as identified in the Paragraph 7.c. Chart, immediately above:
- routinely contained petroleum (*i.e.*, gasoline or diesel), a “regulated substance” as defined by COMAR § 26.10.02.04.B(48) and RCRA Section 9001(7)(B), 42 U.S.C. § 6991(7)(B);
 - comprised a “petroleum UST system” as defined in COMAR § 26.10.02.04.B(43); and
 - was, together with its associated piping, ancillary equipment and containment system, an “existing tank system,” as defined in COMAR § 26.10.02.04.B(19), subject to the “Requirements for Petroleum UST Systems” set forth at COMAR § 26.10.05.02.
9. On May 12, 2017, a duly authorized representative of EPA (the “EPA Inspector”) conducted a compliance evaluation inspection (“CEI” or “Facility CEI”) of the Hurlock Exxon Facility.

10. During the performance of the Facility CEI, the EPA Inspector confirmed the presence of the four USTs and UST systems used to store regulated substances, in the form of petroleum-based products, at the Facility, as identified and described in the Paragraph 7.c. Chart, above, and learned, from the Facility's Fuel Manager, that these USTs and UST systems were then being used for that purpose.
11. On May 12, 2017, during the performance of the Facility CEI, the EPA Inspector observed and determined that the piping associated with, and conveying regulated substances from, each of the four Facility USTs identified and described in the Paragraph 7.c. Chart, above (as part of each Facility UST System), was pressurized piping equipped with a mechanical Line Leak Detector ("mLLD").
12. In response to the EPA Inspector's May 12, 2017 request that Facility personnel provide a copy of the most recent annual Line Leak Detector ("LLD") functionality test of the operation of each Facility UST's mLLD, and the most recent annual results of line release detection testing, or monthly monitoring, for the pressurized piping associated with each of the four UST Systems at the Facility, the Facility's Fuel Manager provided the EPA inspector with documentation indicating that each of the four Facility mLLDs passed an annual functionality test conducted on June 6, 2013 and that all of the pressurized lines at the Facility passed an annual Line Tightness ("LT") test on that same date, and further advised the EPA Inspector that no more recent documentation was present at the Facility or otherwise available.
13. On July 5, 2017, the EPA Inspector sent a request to MDE seeking copies of any post-June 6, 2013 LLD and LT testing documentation and information, if any, in MDE's possession, with respect to the mLLDs and the pressurized piping associated with each of the Hurlock Exxon Facility's four UST Systems.
14. On July 7, 2017, in response to the EPA Inspector's July 5, 2017 request (as set forth in the preceding Paragraph), an MDE representative provided the EPA Inspector with copies of test results indicating that each of the four Hurlock Exxon Facility mLLDs, and all Hurlock Exxon Facility UST system pressurized piping, passed required annual LLD functionality testing and LT Testing on January 15, 2016.
15. On July 7, 2017, the same MDE representative advised the EPA Inspector that MDE had no other LLD testing or LT testing records for the Hurlock Exxon Facility in its possession for the time period between June 2013 and January 2016, and that the "contractors that typically test at that [F]acility" also had "no [such] records from between 6/13 and 1/16; only records from 2012."
16. On July 21, 2017, the EPA Inspector received a follow-up e-mail correspondence from MDE, with attached records, indicating and documenting that MDE: (a) performed a follow-up inspection at the Facility on June 29, 2017; (b) discovered a leak at the

Facility's UST System No. 2 during that inspection; (c) learned from the contractor hired by Ampak, LLC that the leak was repaired on June 30, 2017; and (d) obtained records from the contractor hired by AMPAK which documented that: (i) the mLLDs associated with Facility UST System Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above) passed annual LLD functionality tests on June 30, 2017; (ii) the mLLD associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above) passed an annual LLD functionality test on July 5, 2017; (iii) the pressurized piping associated with Facility UST System Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above) each passed a LT test on June 30, 2017; and (iv) the pressurized piping associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above) passed a LT test on July 5, 2017.

17. On November 13, 2017, EPA issued Respondent a *Request to Show Cause* letter ("SCL"). In the SCL, the Agency notified Respondent that, based upon records and information provided to EPA by the Respondent and by MDE during and subsequent to the CEI, EPA believed that Respondent had failed to comply with federally-authorized Maryland UST Management Program regulatory requirements by:
 - (a) failing to perform required annual LLD functionality tests pursuant to, and as required by, COMAR § 26.10.05.02(C)(2)(a) and COMAR § 26.10.05.05(B), on:
 - (i) each of the mLLDs associated with Facility UST System Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above), during the time periods of June 6, 2014 until January 15, 2016 and January 15, 2017 until June 30, 2017, respectively; and
 - (ii) the mLLD associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above), during the time periods of June 6, 2014 until January 15, 2016 and January 15, 2017 until July 5, 2017, respectively.
 - (b) failing to have a secondary method of line release detection, such as an annual line tightness test or monthly monitoring, pursuant to the requirements of COMAR § 26.10.05.02(C)(2)(b) and conducted in accordance with the applicable requirements of COMAR § 26.10.05.05(C) or (D), for:
 - (i) each of the Facility UST System Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above) pressurized pipes, during the time periods of June 6, 2014 until January 15, 2016 and January 15, 2017 until June 30, 2017, respectively; and

- (ii) the Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above) pressurized pipes, during the time periods of June 6, 2014 until January 15, 2016 and January 15, 2017 until July 5, 2017, respectively
18. In its SCL, EPA requested that Respondent provide EPA with any additional and relevant information and documentation regarding its compliance with federally-authorized Maryland UST Management Program Requirements at the Hurlock Exxon Facility that was in the Respondent's possession or control.
19. Subsequent to its receipt of the SCL, Respondent did not provide EPA with any additional information or documentation to indicate that Respondent had performed any additional LLD testing, in accordance with the manufacturer's requirements or otherwise, of the four Facility UST System mLLDs or that the Respondent had performed any additional LT tightness testing (in accordance with COMAR § 26.10.05.05(C)) or monthly monitoring (in accordance with COMAR § 26.10.05.05(D)) using any other method, or combination of methods (as set forth in COMAR § 26.10.05.04F through I) to detect a release from any portion of the underground pressurized piping at the Facility that routinely contains regulated substances.
20. In accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), EPA notified the State of Maryland of EPA's intent to commence this administrative action against the Respondent, in response to the violations alleged and set forth in Section V ("Violations Alleged"), immediately below, through an August 21, 2017 written correspondence addressed and mailed to Tom Walter, Program Manager, Maryland Department of the Environment, Oil Control Program, Montgomery Park Business Center, Suite 620, 1800 Washington Boulevard, Baltimore, MD 21230-1701.

V. VIOLATIONS ALLEGED

COUNTS I - VIII

(Failure to Perform Required Annual Line Leak Detector Testing)

21. The allegations contained in Paragraphs 1 through 20 of this CA are incorporated by reference herein as though fully set forth at length.
22. The UST system "Release Detection" provisions, which are "General Requirements for ALL UST Systems" in Maryland, are set forth at COMAR § 26.10.05.01 and provide as follows:
- A. *Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:*

- (1) *Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;*
- (2) *is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and*
- (3) *Meets the performance requirements in Regulation [COMAR § 26.10.05].04 or .05 with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed before that date, shall be capable of detecting the leak rate or quantity specified for that regulation in [COMAR § 26.10.05].04C, D and E or regulation [COMAR § 26.10.05].05 B and C with a probability of detection of 0.95 and a probability of false alarm of 0.05.*

23. With respect to petroleum UST systems with underground piping that conveys regulated substances under pressure, COMAR § 26.10.05.02(C), entitled "Piping," provides as follows:

C. Piping.

- (1) *Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the requirements of this section.*
- (2) *Pressurized Piping.*
Underground piping that conveys regulated substances under pressure shall:
 - (a) *Be equipped with an automatic line leak detector conducted in accordance with Regulation .05B; and*
 - (b) *Have an annual line tightness test conducted in accordance with Regulation [COMAR § 26.10.05].05 C or have monthly monitoring conducted in accordance with Regulation [COMAR § 26.10.05].05 D.*

24. With respect to the methods of release detection for piping, COMAR § 26.10.05.05, entitled ".05 Methods of Release Detection for Piping," further provides that:

- A. *Each method of release detection for piping used to meet the requirements of Regulation [COMAR § 26.10.05].02 of this Chapter shall be conducted in accordance with this Regulation.*
 - B. *Automatic Line Leak Detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.*
 - C. *Line Tightness Testing. A periodic test of piping shall be conducted only if it can detect a 0.10 gallons per hour at 1.5 times the operating pressure.*
 - D. *Applicable Tank Methods. Any of the methods of Regulation [COMAR § 26.10.05].04 F – I of this Chapter shall be used if they are designed to detect a release from any portion of the Underground piping that routinely contains regulated substances.*
25. Pursuant to COMAR § 26.10.05.02.C(2)(a), underground piping which is part of a petroleum UST system and routinely conveys regulated substances under pressure must be equipped with an automatic line leak detector, in accordance with COMAR § 26.10.05.05.B.
26. Pursuant to COMAR § 26.10.05.05.B, the operation of the automatic line leak detector must be tested annually in accordance with the manufacturer's requirements.
27. At all times relevant to the violations set forth in this Count, the underground piping associated with Facility UST Nos. 1, 2, 3 and 4 (as identified in the Paragraph 7.c. Chart, above), routinely contained regulated substances and conveyed regulated substances under pressure.
28. From at least January 1, 2013 through July 5, 2017, Respondent performed annual LLD functionality tests on the mLLDs associated with the underground piping of Facility UST Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above), *only* on June 6, 2013, January 15, 2016 and June 30, 2017.
29. From at least January 1, 2013 through July 5, 2017, Respondent performed annual LLD functionality tests on the mLLD associated with the underground piping of Facility UST No. 4 (as identified in the Paragraph 7.c. Chart, above), *only* on June 6, 2013, January 15, 2016 and July 5, 2017.

30. From June 6, 2014 until January 15, 2016, and from January 15, 2017 until June 30, 2017, Respondent failed to perform required annual LLD functionality tests on the mLLDs associated with the underground piping of Facility UST Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above), in violation of COMAR §§ 26.10.05.01 and 26.10.05.02.C.
31. From June 6, 2014 until January 15, 2016, and from January 15, 2017 until July 5, 2017, Respondent failed to perform required annual LLD functionality tests on the mLLD associated with the underground piping of Facility UST No. 4 (as identified in the Paragraph 7.c. Chart, above), in violation of COMAR §§ 26.10.05.01 and 26.10.05.02.C.
32. Respondent's failure to perform required annual LLD functionality testing on the four mLLDs associated with the underground piping of Facility UST Nos. 1, 2, 3 and 4 (as identified in the Paragraph 7.c. Chart, above), during each of the two annual time periods specified in Paragraphs 30 (with respect to the Facility UST Nos. 1, 2 and 3 mLLDs) and 31 (with respect to the Facility UST No. 4 mLLD), above, constitutes eight separate counts of violating the requirements of COMAR §§ 26.10.05.01 and 26.10.05.02.C.

COUNTS IX -XVI

(Failure to Perform Required Annual Line Tightness Testing)

33. The allegations contained in Paragraphs 1 through 32 of this CA are incorporated by reference herein as though fully set forth at length.
34. Pursuant to COMAR § 26.10.05.02.C.(2)(b), underground piping which is part of a petroleum UST system and routinely conveys regulated substances under pressure must have an annual LT test conducted in accordance with COMAR § 26.10.05.05.C, or have monthly monitoring conducted in accordance with COMAR § 26.10.05.05.D which, in turn, allows the use of the monthly monitoring methods set forth in COMAR § 26.10.05.04.F through I, so long as the method used is designed to detect a release from any portion of the underground piping that routinely contains regulated substances.
35. From June 6, 2014 until January 15, 2016, and from January 15, 2017 until June 30, 2017, Respondent failed to conduct annual LT testing on any of the underground pressurized piping associated with Facility UST System Nos. 1, 2 and 3 (as identified in the Paragraph 7.c. Chart, above), pursuant to COMAR § 26.10.05.05.C.
36. From June 6, 2014 until January 15, 2016, and from January 15, 2017 until July 5, 2017, Respondent failed to conduct annual LT testing on the underground pressurized piping associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above), pursuant to COMAR § 26.10.05.05.C.

37. From at least January 1, 2013 through June 30, 2017, the Respondent did not conduct monthly monitoring of any of the underground pressurized piping associated with Facility UST System Nos. 1, 2 or 3 (as identified in the Paragraph 7.c. Chart, above), in accordance with COMAR § 26.10.05.05.D.
38. From at least January 1, 2013 through July 5, 2017, the Respondent did not conduct monthly monitoring of the underground pressurized piping associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above), in accordance with COMAR § 26.10.05.05.D.
39. Respondent violated the applicable requirements of COMAR § 26.10.05.02.C.(2)(b) from June 6, 2014 until January 15, 2016, and from January 15, 2017 until June 30, 2017, by failing to conduct required annual LT testing, or monthly monitoring, of the underground pressurized piping associated with Facility UST System Nos. 1, 2 or 3 (as identified in the Paragraph 7.c. Chart, above), in accordance with COMAR § 26.10.05.05.C. or .D. requirements, during each of these time periods.
40. Respondent violated the applicable requirements of COMAR § 26.10.05.02.C.(2)(b) from June 6, 2014 until January 15, 2016, and from January 15, 2017 until July 5, 2017, by failing to conduct required annual LT testing, or monthly monitoring, of the underground pressurized piping associated with Facility UST System No. 4 (as identified in the Paragraph 7.c. Chart, above), in accordance with COMAR § 26.10.05.05.C. or .D. requirements, during each of these time periods.
41. Respondent's failure to conduct required annual LT testing, or monthly monitoring, of the underground pressurized piping associated with each of Facility UST System Nos. 1, 2, 3 and 4 (as identified in the Paragraph 7.c. Chart, above), in accordance with COMAR § 26.10.05.05.C. or .D. requirements, during each of the two annual time periods specified in Paragraphs 39 (with respect to Facility UST System No. 1, 2 and 3 pressurized piping) and 40 (with respect to the Facility UST System No. 4 pressurized piping), above, constitutes eight separate counts of violating the requirements of COMAR § 26.10.05.02.C.(2)(b).

VI. CIVIL PENALTIES

42. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)**, which Respondent agrees to pay in accordance with the payment terms set forth in Paragraph 46, below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
43. The Parties represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and in accordance with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the January 11, 2018 Memoranda by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty, pursuant to EPA's June 29, 2015 "Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Proceeding." This analysis was based upon the following information submitted to Complainant by Respondent, including but not necessarily limited to:
- a. a completed "Financial Statement for Businesses" form, with information provided by the Respondent;
 - b. U.S. Income Tax Return of Partnership Income (Form 1065) for each of the three (3) years ending December 31, 2014 through December 31, 2016, respectively; and
 - c. additional information, provided by Respondent on March 29, 2018, regarding Bank Statement balances, Real Property ownership (including property addresses, mortgages and valuations) and Rental Income.

44. Complainant has relied upon the financial information provided by Respondent and identified in the preceding Paragraph. Based upon an analysis of the same, it is Complainant's conclusion that the Respondent has established that it is unable to pay a civil penalty in excess of the amount set forth in Paragraph 42, above, in settlement of the above-captioned action.
45. By his signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay the full civil penalty proposed by EPA in this proceeding, and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals 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. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay the full civil penalty proposed by EPA in this proceeding, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.
46. The civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)**, set forth in Paragraph 42, above, may be paid in twenty-four (24) monthly installments, with applicable interest at the rate of one per cent (1%) per annum on the outstanding principal balance, in accordance with the payment schedule, instructions and illustrative chart set forth immediately below:
- a. **1st Payment:** The first payment, in the amount of FOUR HUNDRED TWENTY-ONE DOLLARS AND EIGHT CENTS (\$ 421.08), consisting of a principal payment of \$ 421.08 and an interest payment of \$ 0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent but, in no event later than October 15, 2018.
 - b. **Payments 2 – 23:** Each of the following twenty-two payments (*i.e.*, each of payments 2 through 23), consisting of a principal and an interest amount delineated in the Chart, below, shall also be in the total amount of FOUR HUNDRED TWENTY-ONE DOLLARS AND EIGHT CENTS (\$ 421.08) and shall be paid on or before the 15th day of each successive month, from November 15, 2018 through August 15, 2020.
 - c. **Payment 24:** A final payment (*i.e.*, payment 24), consisting of a principal and an interest amount delineated in the Chart, below, shall be in the total amount of FOUR HUNDRED TWELVE DOLLARS AND FIFTY-SIX CENTS (\$ 412.56), and shall be paid on or before September 15, 2020.

- d. Pursuant to the provisions of this CA, Respondent will remit a total civil penalty (principal) of TEN THOUSAND DOLLARS (\$10,000.00) and interest in the amount of NINETY-SEVEN DOLLARS AND FORTY CENTS (\$ 97.40), in accordance with the installment payment schedule described above and illustrated in the Chart, immediately below.

Payment No.	Principal Amount	Interest	Due Date - Payment Amount Due
1	\$ 421.08	\$0.00	10/15/2018 - \$ 421.08
2	\$ 412.83	\$8.25	11/15/2018 - \$ 421.08
3	\$ 413.44	\$7.64	12/15/2018 - \$ 421.08
4	\$ 413.54	\$7.54	01/15/2019 - \$ 421.08
5	\$ 413.90	\$7.18	02/15/2019 - \$ 421.08
6	\$ 414.92	\$6.16	03/15/2019 - \$ 421.08
7	\$ 414.61	\$6.47	04/15/2019 - \$ 421.08
8	\$ 415.17	\$5.91	05/15/2019 - \$ 421.08
9	\$ 415.33	\$5.75	06/15/2019 - \$ 421.08
10	\$ 415.86	\$5.22	07/15/2019 - \$ 421.08
11	\$ 416.04	\$5.04	08/15/2019 - \$ 421.08
12	\$ 416.40	\$4.68	09/15/2019 - \$ 421.08
13	\$ 416.90	\$4.18	10/15/2019 - \$ 421.08
14	\$ 417.12	\$3.96	11/15/2019 - \$ 421.08
15	\$ 417.59	\$3.49	12/15/2019 - \$ 421.08
16	\$ 417.84	\$3.24	01/15/2020 - \$ 421.08
17	\$ 418.20	\$2.88	02/15/2020 - \$ 421.08
18	\$ 418.72	\$2.36	03/15/2020 - \$ 421.08
19	\$ 418.92	\$2.16	04/15/2020 - \$ 421.08
20	\$ 419.34	\$1.74	05/15/2020 - \$ 421.08
21	\$ 419.64	\$1.44	06/15/2020 - \$ 421.08
22	\$ 420.04	\$1.04	07/15/2020 - \$ 421.08
23	\$ 420.36	\$0.72	08/15/2020 - \$ 421.08
24	\$ 412.21	\$0.35	09/15/2020 - \$ 412.56
Total:	\$10,000.00	\$97.40	\$ 10,097.40

47. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in Paragraph 46, 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 in Paragraphs 52 through 55, below, in the event of any such failure or default.

48. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
49. Respondent shall remit payment for the civil penalty set forth in Paragraph 42, above, and/or any applicable interest, administrative fees and late payment penalties due in accordance with Paragraphs 52, 53, 54 and 55, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, **RCRA-03-2018-0149**;
 - b. All checks shall be made payable to "**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

Primary Contact: Craig Steffen, 513-487-2091
Secondary Contact: Contact: Jessica Henderson, 513-487-2718
 - d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028
 - e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

50. Respondent may also pay the amount described in Paragraph 42, above, electronically or on-line as follows:

a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
or Remittance Express (REX): 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

51. A copy of each of Respondent's checks and/or electronic transfer payments shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

52. 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 or to comply with the conditions in this CA and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
53. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).
54. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash 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.
55. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which 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).

56. Respondent agrees not to deduct, for federal tax purposes, all or any portion of the civil monetary penalty specified in this CA and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

57. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under RCRA Section 9006(a), 42 U.S.C. § 6991e, for the specific violations alleged in Section V (“Violations Alleged”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

58. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated or authorized thereunder.

IX. CERTIFICATION OF COMPLIANCE

59. By his signature below, Respondent’s representative certifies to EPA, upon personal investigation and to the best of his knowledge and belief, that Respondent is presently in compliance with all relevant and applicable provisions of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and with all relevant regulations in Maryland UST Management Program for which violations are alleged in this CA at the Hurlock Exxon Facility.

X. RESERVATION OF RIGHTS

60. This CA and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. EPA reserves the right to commence action against any person, including the 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. In addition, 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). Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

XI. PARTIES BOUND

61. This CA and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's respective successors, agents and assigns.

XII. EFFECTIVE DATE

62. The effective date of this CA and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

63. This CA and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims 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 CAFO.

XIV. EXECUTION

64. The person signing this CA on behalf of the Respondent acknowledges and certifies, by his signature, that he is fully authorized to enter into this CA and to legally bind the Respondent to the terms and conditions of this CA and the accompanying Final Order.

For the Respondent Ampak, LLC:

Date: 8-28-18


By: Mr. Muhammad Arif Ullah
Mr. Muhammad Arif Ullah, President
Ampak, LLC

In the Matter of:
Ampak, LLC

Consent Agreement
Docket No. RCRA-03-2018-0149

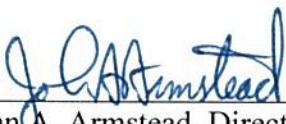
For the Complainant:

Date: 9/20/2018

By: 
A.J. D'Angelo, Esquire
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing Findings of Fact, Conclusions of Law and other pertinent matters, the Waste and Chemicals Management Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9.24.18

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	
	:	Docket No. RCRA-03-2018-0149
Ampak, LLC	:	
3850 Smithville Road	:	U.S. EPA-REGION 3-RHC
Federsburg, MD 21601,	:	FILED-26SEP2018AM6:32
	:	Proceeding Under Section 9006 of the
Respondent.	:	Resource Conservation and Recovery
	:	Act, as amended, 42 U.S.C. § 6991e.

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Ampak, 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). 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.

WHEREFORE, pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, with respect to violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and of the federally authorized *Maryland UST Management Program*, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon a consideration of, *inter alia*: the statutory penalty factors set forth in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), EPA's *Penalty Guidance for Violations of UST Regulations*, dated November 4, 1990; the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19; the

associated January 11, 2018 Memoranda by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018)* and *Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*; and, EPA's June 29, 2015 "*Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Proceeding*," **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Ten Thousand Dollars (\$10,000.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or his designee, the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 25, 2018



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

