UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
AMPAC Fine Chemicals Virginia LLC	:	**U.S. EPA Docket No. RCRA-03-2021-0088**
2820 North Normandy Drive	:	
Petersburg, VA 23805	:	**Proceeding under Section 3008(a) and (g)**
	:	**of the Resource Conservation and Recovery**
Respondent.	:	**Act, as amended, 42 U.S.C. § 6928(a) and (g)**
	:	
AMPAC Fine Chemicals Virginia LLC	:	
2820 North Normandy Drive	:	
Petersburg, VA 23805	:	
	:	
Facility.	:	
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant") and AMPAC Fine Chemicals Virginia LLC ("Respondent" or "AMPAC") (collectively the "Parties"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (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 3008(a) of RCRA, 42 U.S.C. § 6928(a), 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 the authority to enter into consent agreements to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant's civil penalty claims against Respondent under the Resource Conservation and Recovery Act ("RCRA" 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.

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)(4).

5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated January 29, 2020, EPA notified the Virginia Department of Environmental Quality ("VADEQ") of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. 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.

13. On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state hazardous waste management program in lieu of the

federal hazardous waste program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of Virginia's hazardous waste management program through this authorization, have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA reauthorized amendments to the Virginia Hazardous Waste Management Regulations ("VHWMR") on June 20, 2003, on July 30, 2008 and again on November 4, 2013 (with revisions not relevant here), and those revisions became effective as requirements of RCRA Subtitle C on those dates. The provisions of Virginia's current authorized revised VHWMR are codified at 9 VAC-20-60-12 *et seq*.

14. When EPA last authorized the Virginia hazardous waste regulations on November 4, 2013, EPA approved Virginia's incorporation by reference of the then current federal regulations which were in effect as of July 1, 2010, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2010) is the currently enforceable version of that RCRA regulation in Virginia. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein, when referring to the Federal regulations incorporated by the VHWMR, are to the 2010 Federal regulations in effect at the time of the VHWMR were approved.

15. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, certain federally-authorized Virginia hazardous waste regulations, set forth at 9 VAC-20-60-12 *et seq*., in connection with Respondent's facility. Respondent's facility is located at 2820 North Normandy Drive Peterburg, VA 23805 ("Facility"), and is further described below.

16. Factual allegations or legal conclusions in this Consent Agreement that are based on provisions of federally-authorized VHWMR cite those respective provisions as the authority for such allegations or conclusions.

17. Respondent is a corporation incorporated in the Commonwealth of Virginia. Respondent is now, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260.A.

18. Respondent manufactures small-batch specialty chemicals at the Facility, which covers about 200 acres total, with the operating area covering approximately 80 acres within security fencing. Three gated entryways provide restricted access to the Facility.

19. AMPAC reports as a large quantity generator ("LQG") of hazardous waste at the Facility and was assigned RCRA ID No. VAD093561652. Respondent does not have a permit for the treatment, storage or disposal of hazardous waste at the Facility.

20. On August 8, 2018 and October 23-24, 2019, Respondent stored hazardous waste at the Facility, which is a "facility," as that term is defined in 40 C.F.R. § 260.10, as

incorporated by reference in 9 VAC 20-60-260.A.

21. On August 8, 2018 and October 23-24, 2019, Respondent was the "operator" and the "owner" of a "facility," described in Paragraphs 15-18, as the terms "facility", "owner" and "operator" are defined in 40 C.F.R. § 260.10, as incorporated by reference in 9 VAC 20-60-260.A.

22. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is, and has been, a "generator" of, and has engaged in the accumulation in "containers" at the Facility of materials described below that are "solid wastes" and "hazardous wastes," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by 9 VAC 20-60-260.A.

23. On August 8, 2018 and October 23 and 24, 2019, inspectors from the U.S. Environmental Protection Agency, Region III ("EPA") and VADEQ conducted Compliance Evaluation Inspections at the Facility ("Inspections"), to examine the Facility's compliance with Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 et seq., the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Commonwealth of Virginia Hazardous Waste Management Program, 9 VAC-20-60-12 et seq.

24. Respondent, following the Inspections, submitted several emails to EPA between October 28, 2019 and November 25, 2019 to provide information that was not immediately available on the days of the Inspections.

25. On the basis of EPA's findings during the Inspections and additional information provided by Respondent, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and certain federally-authorized VHWMR requirements promulgated thereunder.

Count I
(Failure to Conduct Waste Determination)

26. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

27. Pursuant to 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11 with exceptions not relevant herein, requires that "[a] person who generates a solid waste, as defined in 40 CFR§ 262.2, must determine if that waste is a hazardous waste," using a method set forth at 40 CFR§ 262.11.

28. At the time of the Inspection on October 23-24, 2019, Respondent was storing the following solid wastes at the Facility, but had not made a determination as to whether these were hazardous wastes by using a method a set forth at 40 CFR§ 262.11: (a) 5 (five) 25-gallon metal drums in south side of Waste Shed on a pallet, with only their original product labels, later determined to be D001 hazardous waste Bromomethyl

cyclopropane; and (b) 2 (two) 55-gallon drums in south side of Waste Shed on a pallet, with only their original product labels "3-(dimethylamino)-1-(3-methoxyphenyl)-2-(s)-methyl-1propanone;" (later determined to be D001 hazardous waste).

29. On October 23, 2019, Respondent violated the requirements of 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.11, by failing to make a hazardous waste determination on the solid waste contents of the containers, described above, using a method set forth at 40 CFR § 262.11.

Count II
(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

30. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

31. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b) (pertaining to the Hazardous Waste Permit Program), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

32. Respondent has never had a permit or interim status, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), for the storage of hazardous waste at the Facility.

Generator Storage of Hazardous Waste (the "Generator Permit Exemption")

33. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R.§ 262.34(a) (2010) (recently recodified in 40 C.F.R. § 262.17, with exceptions not relevant here, provides:

> [A] generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (1) The waste is placed: (i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265;

34. Respondent's records indicated that Respondent failed to inspect the less than 90-day hazardous waste storage area on a weekly basis insofar as two (2) inspections were missed between 11/7/2017 and 11/30/2017 and one (1) inspection was missed between 6/8/2018 and 6/22/2018.

35. As part of the generator permit exemption, 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(i) and 265.174 (pertaining to "Standards for Large Quantity Generator of Hazardous Waste"), states:

> At least weekly, the owner or operator must inspect areas where containers are stored.

36. Respondent did not have a permit or interim status and was in violation of 9 VAC 20-60-262, which incorporates by reference §§ 262.34(a)(1)(i) and 265.174, for failing to inspect the hazardous waste area at the Facility where containers are stored as described in Paragraph 34.

Generator Permit Exemption: Failure to Meet Other Requirements of Generator Accumulation Exemption

37. Respondent failed to comply with the generator accumulation exemption to the permit requirement, found in 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34 (recently recodified at 40 C.F.R. § 262.17) (pertaining to Accumulation), because it failed to comply with all of the conditions of this exemption.

38. The following acts or omissions, which were discovered at the time of the Inspection on October 23-24, 2019, prevented Respondent from meeting the regulatory permit exemption requirements:

a. Respondent failed to transfer hazardous waste from a container in bad condition as required by 9 VAC 20-60-262 (which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(i) and 265.171) and 20-60-270, as further described in Count III, below;

b. Respondent failed to conduct integrity assessment of a hazardous waste tank, as required by 9 VAC 20-60-262 and 20-60-270, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(i) and 265.192(a), as further described in Count V, below;

c. Respondent failed to maintain adequate secondary containment for a hazardous waste tank, as required by 9 VAC 20-60-262 and 20-60-270, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.193, as further described in Count VI, below;

d. Respondent failed to conduct and document daily hazardous waste tank inspections, as required by 9 VAC 20-60-262 and 20-60-270, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.195, as further described in Count VII, below;

e. Respondent failed to mark each piece of equipment subject to Subpart BB, as required by 9 VAC 20-60-262 and 20-60-270, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.1060(c), as further described in Count VIII, below; and

f. Respondent failed to determine whether equipment contains or contacts a hazardous waste with 10% or more organic concentration and mark each piece of equipment subject containing or contacting a hazardous waste with 10% or more organic concentration, as required by 9 VAC 20-60-262 and 20-60-270, which incorporates by reference 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.1063(d), as

further described in Count IX, below.

39. The requirements of 40 C.F.R. Parts 264 and 265, and the permit requirements of 40 C.F.R. Part 270, apply to the Facility because it failed to meet several conditions of the permit exemption.

40. Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270.A, which incorporates by reference 40 C.F.R. Part 270, by storing hazardous waste at the Facility without a permit.

Count III
(Failure to Transfer Hazardous Waste From Container Not In Good Condition)

41. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

42. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.171 (pertaining to "Use and Management of Containers"), "[i]f a container holding hazardous waste is not in good condition…the owner or operator must transfer the hazardous waste from this container to a container that is in good condition…"

43. At the time of the Inspection on October 23-24, 2019, Respondent was storing "Spent alumina/silica", a hazardous waste (F002/F003) in a 30-gallon container in north side of Waste Shed on a pallet. This container had a bulging top and was not in good condition.

44. On October 23-24, 2019, AMPAC violated the requirements of 9 VAC 20-60-264, which incorporates by reference, 40 C.F.R. § 264.171, by failing to transfer the hazardous waste described in Paragraph 43, above, from a container not in good condition into a container that is in good condition.

Count IV
(Failure to Conduct Weekly Inspections of Hazardous Waste Storage Area)

45. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

46. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.174, the owner or operator must inspect areas where containers are stored at least weekly.

47. At the time of the Inspection on August 8, 2018, inspection records provided by the Respondent indicated that during the time period of 11/7/2017 to 11/30/2017, Respondent failed to conduct two weekly inspections of the hazardous waste storage area, and between 6/8/2017 and 6/22/2018, Respondent failed to conduct one weekly inspection of the hazardous waste storage area.

48. Respondent violated the requirements of 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.174, by failing to conduct weekly inspections of the hazardous waste storage area during the dates indicated in Paragraph 47, above.

Count V
(Failure to Conduct Integrity Assessment of Hazardous Waste Tank)

49. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

50. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.192(a), for each new tank system, the owner or operator must obtain and keep on file at the facility a written assessment by a qualified Professional Engineer that attests to the tank systems integrity.

51. At the time of the Inspection on October 23-24, 2019, Respondent had not had a complete assessment done and did not have a complete requisite tank system assessment on file at the facility for Hazardous Waste Tank System TK-2601, which is a new tank system as defined in the regulations.

52. On October 23-24, 2019, Respondent violated the requirements of 9 VAC 20-60-264 which incorporates by reference 40 CFR § 264.192(a), by failing to have a written assessment by a qualified Professional Engineer and keep on file that assessment at the facility of Hazardous Waste Tank System TK-2601, which is a new tank system.

Count VI
(Failure to Maintain Adequate Secondary Containment for Hazardous Waste Tank)

53. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

54. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.193(a), for each new tank system, the owner or operator for each new and existing tank system in order to prevent a release of hazardous waste or hazardous constituents to the environment, must provide secondary containment that meets the requirements of this section, which in pertinent part, must be free of cracks.

55. At the time of the Inspection on October 23-24, 2019, the EPA inspector observed that several thin cracks existed on the top and outside of the secondary containment concrete walls surrounding hazardous waste tanks TK-2601 & TK-2605, both of which are new or existing hazardous waste tanks, at the Facility.

56. On October 23-24, 2019, Respondent violated the requirements of 9 VAC 20-60-264 which incorporates by reference 40 CFR § 264.193(a), by failing to provide secondary containment for tanks TK-2601 and TK-2605, at the Facility, that was free of cracks.

Following the inspection, Respondent did have the secondary containment evaluated by a professional engineer who recommended repairs. Respondent completed the repairs.

Count VII
(Failure to Conduct and Document Daily Hazardous Waste Tank Inspections)

57. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

58. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.195, the owner or operator must inspect at least once each operating day the hazardous waste tanks at the facility and document the inspections in the operating record of the facility.

59. At the time of the Inspections on August 8, 2018 and October 23-24, 2019, the records provided by the Respondent indicated a failure to conduct/document inspections for the hazardous waste tanks TK-2601 & TK-2605 at the Facility for the following dates: 3/28/19, 3/17/19, 3/3/19, 3/2/19, 2/3/19, 2/2/19, 7/22/18, 7/21/18, 7/20/18, 6/4/18, 6/3/18, 5/28/18, 5/27/18, 5/26/18, 5/13/18, 5/2/18, 5/1/18, 3/11/18, 3/10/18, 12/3/17, 12/2/17.

60. Respondent's acts and/or omissions detailed in Paragraph 59, above, violated the requirements of 9 VAC 20-60-264 which incorporates by reference 40 CFR § 264.195 for failing to conduct/document inspections for the hazardous waste tanks TK-2601 & TK-2605 at the Facility.

Count VIII
(Failure to Mark Each Piece of Equipment Subject to Subpart BB)

61. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

62. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.1050(c), the owner or operator must mark equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight in such a manner that that it can be distinguished readily from other pieces of equipment.

63. At the time of the Inspection on October 23-24, 2019, EPA inspectors observed several pieces of equipment (including valves, flanges and caps) that contains or contacts hazardous waste with organic concentrations of at least 10% by weight, associated with hazardous waste tanks TK-2601 and TK-2605, and many receiver units throughout processing areas at the Facility that were not marked to readily distinguish them from equipment not subject to Subpart BB.

64. On October 23-24, 2019, Respondents acts and/or omissions observed in Paragraph 63, above, violated the requirements of 9 VAC 20-60-264 which incorporates by reference 40 CFR § 264.1050(d) for failing to mark equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight in such a manner that

that it can be distinguished readily from other pieces of equipment at the Facility.

Count IX
(Failure to Determine Whether Equipment Contains or Contacts a Hazardous Waste With 10% or More Organic Concentration)

65. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

66. Pursuant to 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.1063(d), requires, in accordance with 40 CFR § 265.13(b), that an owner or operator of a facility determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight (Subpart BB applicability) using one of the following test methods: Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 incorporated by reference in 40 CFR § 260.11; Method 9060A, incorporated by reference in 40 CFR § 260.11; or an application of the knowledge or nature of the hazardous waste stream or the process by which it was produced supported by documentation.

67. At the time of the Inspection on October 23-24, 2019, Respondent had not determined Subpart BB applicability for equipment related to several interior hazardous waste receiver units in violation of 9 VAC 20-60-264, 40 CFR § 264.1063(d) (Subpart BB).

68. On October 23-24, 2019, Respondents acts and/or omissions observed in Paragraph 67, above, violated the requirements 9 VAC 20-60-264, 40 CFR § 264.1063(d) (Subpart BB) for failing to determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight (Subpart BB applicability) using one of the following test methods: Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 incorporated by reference in 40 CFR § 260.11; Method 9060A, incorporated by reference in 40 CFR § 260.11; or an application of the knowledge or nature of the hazardous waste stream or the process by which it was produced supported by documentation.

Count X
(Failure to Maintain Land Disposal Restriction (LDR) Forms)

69. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

70. Pursuant to 9 VAC 20-60-268, which incorporates by reference, 40 CFR § 268.7, a generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in 40 CFR §§ 268.40, 268.45, or 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11, in either of two ways: testing the waste or using knowledge of the waste. If the waste does not meet the treatment standards, or if the generator chooses not to make the determination of

whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in 40 CFR § 268.7(a)(4).

71. At the time of the Inspection on October 23-24, 2019, manifest #019280164JJK for an 8/7/2019 shipment of 15 drums and one small container of hazardous waste D001/F003/F005 "Flammable Solids" did not have an accompanying LDR form, and no other LDR form for that Transportation, Storage, and Disposal Facility (Metallix Refining Inc.) or waste stream was found in the files reviewed at the Facility or provided by Respondent.

72. Respondents acts and/or omissions detailed in Paragraph 71, above, violated the requirements 9 VAC20-60-268, which incorporates by reference, 40 CFR § 268.7 for failing to maintain at the facility, a copy of LDR form for manifest #019280164JJK.

Count XI
(Failure to Properly Label Universal Waste Containers)

73. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

74. Pursuant to 9 VAC 20-60-273, which incorporates by reference, 40 CFR § 273.14(a) and (d), a small quantity handler of universal waste who accumulates universal waste must label or mark each container of universal waste batteries or clearly label or mark individual universal waste batteries with one of the following phrases: "Universal Waste—Battery(ies)"; "Waste Battery(ies)"; or "Used Battery(ies)" and must mark or label universal waste mercury containing equipment, i.e., each device, or each container with the following "Universal Waste—Mercury Containing Equipment" or "Waste Mercury Containing Equipment" or Used Mercury-Containing Equipment."

75. On August 8, 2018 and October 23-24, 2019, Respondent was a "small quantity handler of universal waste," as the terms is defined in 40 C.F.R. § 273.9, as incorporated by reference in 9 VAC 20-60-273.

76. At the time of the Inspection on October 23-24, 2019, EPA inspectors observed one (1) 30-gallon drum labeled as "Universal Waste 'Electronics'" in the north side of Waste Shed on a pallet and at the time of the Inspection on August 8, 2018, EPA inspectors observed over twenty (20) Universal Waste batteries in the Hazardous Waste Storage Area with no labels.

77. On August 8, 2018, Respondent's acts and/or omissions detailed in Paragraph 76, above, violated the requirements 9 VAC 20-60-273, which incorporates by reference, 40 CFR §

273.14(a) for failing to label the Universal Waste batteries referenced in Paragraph 79; and on October 23-24, 2019, Respondent's acts and/or omissions violated 9 VAC 20-60-273, which incorporates by reference, 40 CFR § 273.14(d) for failing to properly label the drum described in Paragraph 76.

Count XII
(Failure to Mark or Track Date of Universal Waste)

78. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.

79. Pursuant to 9 VAC 20-60-273, which incorporates by reference, 40 CFR § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received by labeling or marking the container of universal waste with the earliest date that any of the universal waste was received or became a waste and was placed in that container or label each individual item of universal waste with the date it was received or became a waste. An inventory system may be maintained that tracks and identifies the waste or the waste may be placed in a specific accumulation area that identifies when the earliest waste was received in that area.

80. At the time of the October 23-24, 2019 Inspection, EPA inspectors observed 1 (one) 30-gallon drum labeled as Universal Waste "Electronics" in the north side of Waste Shed on a pallet, with no date marking or other method to track accumulation start date and over 20 Universal Waste batteries in the Hazardous Waste Storage Area with no date markings or other method to track accumulation start dates.

81. On August 8, 2018 and October 23-24, 2019, Respondent's failure to date mark or use another method to track accumulation start date for the containers described in Paragraph 80, above, is a violation of 9 VAC 20-60-273, which incorporates by reference, 40 CFR § 273.15(c).

CIVIL PENALTY

82. 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 **FIFTY-NINE THOUSAND TWO HUNDRED DOLLARS ($59,200)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

83. The civil penalty settlement amount set forth in Paragraph 82, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at

Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has also considered 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.

84. 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.*, EPA Docket No. RCRA-03-2021-0088;

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 emailed simultaneously to:

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
Nast.Jeffrey@epa.gov

85. 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.

86. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed 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 EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

87. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. 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 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).

88. 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.

89. 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).

90. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

91. 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.

92. 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.

CERTIFICATION OF COMPLIANCE

93. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

94. 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 RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

95. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] 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 RCRA, 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.

EXECUTION /PARTIES BOUND

96. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, 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.

EFFECTIVE DATE

97. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

98. 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: **AMPAC FINE CHEMICALS VIRGINIA, LLC**

Date: 07/06/2021

By: _____
Elso DiFranco, Executive Director & General Manager
AMPAC Fine Chemicals, LLC

For the Complainant: **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III**

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and 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: 8/16/21

By: Melvin, Karen Digitally signed by Melvin, Karen Date: 2021.08.16 13:36:17 -04'00'

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

Attorney for Complainant:

Date: 7/22/2021

By:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. EPA – Region III

In the Matter of:	:	
	:	
AMPAC Fine Chemicals Virginia LLC	:	**U.S. EPA Docket No. RCRA-03-2021-0088**
2820 North Normandy Drive	:	
Petersburg, VA 23805	:	**Proceeding under Section 3008(a) and (g)**
	:	**of the Resource Conservation and Recovery**
Respondent.	:	**Act, as amended, 42 U.S.C. § 6928(a) and (g)**
	:	
AMPAC Fine Chemicals Virginia LLC	:	
2820 North Normandy Drive	:	
Petersburg, VA 23805	:	
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Respondent, AMPAC Fine Chemicals Virginia, 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. § 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.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June 2003 ("RCRA Penalty Policy"), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment of **FIFTY-NINE THOUSAND TWO HUNDRED DOLLARS ($59,200.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), 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 RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 8/24/21

By: JOSEPH LISA Digitally signed by JOSEPH LISA Date: 2021.08.24 08:51:54 -04'00'

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