**ENVIRONMENTAL APPEALS BOARD**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**WASHINGTON, D.C.**

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| In re Oldach Associates, LLC | ) | Docket No. CAA-2025-8461 |

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.[1]

**ENVIRONMENTAL APPEALS BOARD**

Dated: February 25, 2025

Aaron P. Avila
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Mary Kay Lynch.

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| Oldach Associates, LLC | ) | |
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## CONSENT AGREEMENT

### A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought for alleged violations of the American Innovation and Manufacturing Act of 2020 ("AIM Act"), 42 U.S.C. § 7675, which governs the import of bulk hydrofluorocarbons ("HFCs"), under Section 113(d) of the Clean Air Act (the "Act" or "CAA"), 42 U.S.C. § 7413(d), which authorizes the EPA to bring administrative civil enforcement actions.

2. HFCs are potent greenhouse gases that accelerate climate change. The United States has committed, as a signatory of the Kigali Amendment to the Montreal Protocol, to reduce its production and consumption of HFCs by 85% in a stepwise manner by the year 2036.

3. Complainant is Mary E. Greene, Director, Air Enforcement Division, of the United States Environmental Protection Agency.

4. Respondent is Oldach Associates, LLC ("Oldach"), a corporation incorporated in Puerto Rico. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

5. Complainant and Respondent (together, the "Parties"), having agreed that settlement of this action is in the public interest, consent to the issuance of the attached final order

("Final Order" or "Order") ratifying this Consent Agreement ("Consent Agreement" or "Agreement") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement and Final Order.

## B. JURISDICTION

6. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and 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.

7. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).

8. The Environmental Appeals Board is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

## C. GOVERNING LAW

10. This proceeding arises under the AIM Act, 42 U.S.C. § 7675, and Sections 113 and 114 of the CAA, 42 U.S.C. §§ 7413 and 7414, and the regulations promulgated thereunder.

### *HFC Allocation Requirements under the AIM Act and the CAA*

11. The EPA is authorized to enforce the AIM Act and any regulation promulgated thereunder pursuant to the federal enforcement authorities established by Section 113 of

the CAA, 42 U.S.C. § 7413, as though the AIM Act was expressly included in Title VI of the CAA. 42 U.S.C. § 7675(k)(1)(C).

12. The regulations at 40 C.F.R. Part 84, Subpart A, implement the AIM Act requirement to phase down HFC production and consumption.

13. The regulations at 40 C.F.R. Part 84, Subpart A, apply to anyone who imports a regulated substance. 40 C.F.R. § 84.1(b).

14. The regulations at 40 C.F.R. Part 84, Subpart A, contain the following definitions:

(a) An "allowance" is a "limited authorization for the production or consumption of a regulated substance established under subsection (e) of Section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (the AIM Act). An allowance allocated under subsection (e) of Section 103 in Division S of the AIM Act does not constitute a property right." 40 C.F.R. § 84.3.

(b) An "application-specific allowance" is "a limited authorization granted in accordance with subsection (e)(4)(B)(iv) of the AIM Act for the production or import of a regulated substance for use in the specifically identified applications that are listed in that subsection and in accordance with the restrictions contained at § 84.5(c)." 40 C.F.R. § 84.3.

(c) "Bulk" is defined as: "[A] regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a

manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance." 40 C.F.R. § 84.3.

(d) "Consumption allowances" are "a limited authorization to produce and import regulated substances; however, consumption allowances may be used to produce regulated substances only in conjunction with production allowances." 40 C.F.R. § 84.3.

(e) "Exchange value" means the "value assigned to a regulated substance in accordance with AIM Act subsections (c) and (e), as applicable, and as provided in Appendix A to 40 C.F.R. Part 84." 40 C.F.R. § 84.3.[1]

(f) "Exchange value equivalent" ("EVe") is defined as "the exchange value-weighted amount of a regulated substance obtained by multiplying the mass of a regulated substance by the exchange value of that substance." 40 C.F.R. § 84.3.

(g) "Import" is defined as "to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import." 40 C.F.R. § 84.3.

(h) "Importer" is defined as: "[A]ny person who imports a regulated substance into the United States. 'Importer' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her

[1] The exchange values are the same as the 100-year Global Warming Potentials ("GWPs") listed in the 2007 Intergovernmental Panel on Climate Change ("IPCC") Fourth Assessment Report.

behalf. The term also includes: (1) [t]he consignee; (2) [t]he importer of record; (3) [t]he actual owner; or (4) [t]he transferee, if the right to draw merchandise in a bonded warehouse has been transferred." 40 C.F.R. § 84.3.

(i) "Person" is defined as "any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof." 40 C.F.R. § 84.3.

(j) "Regulated substance" is defined as: "[A] hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3)." 40 C.F.R. § 84.3.

15. From January 1, 2022, to September 17, 2023, 40 C.F.R. § 84.5(b)(1) provided that "[n]o person may import bulk regulated substances, except by expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported."[2]

16. The importer of record is required to submit an advance notification report for each shipment of regulated substances imported no later than 14 days prior to importation. 40 C.F.R. § 84.31(c)(7) (2022).[3]

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[2] The regulations at 40 C.F.R. Part 84, Subpart A were subsequently changed after the alleged violations in this Consent Agreement took place. If a version of the regulations was different in 2022 from the current version of the regulations, it is cited as "2022" in this Consent Agreement.

[3] As previously discussed in footnote 2, 40 C.F.R. § 84.31(c)(7) has since been modified (along with other sections) to require that the importer of record submit an advance notification report "no later than 10 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation," effective September 18, 2023 (see 88 Fed. Reg. 46,836, 46,897 (July 20, 2023)).

17. Within 45 days after the end of each quarter, an importer of record of a regulated substance must submit to the relevant Agency official a report containing the required information listed in 40 C.F.R. § 84.31(c)(1)(i) - (ix). 40 C.F.R. § 84.31(c).

18. A current list of regulated substances, their chemical formulas, and their exchange values can be found in Appendix A to 40 C.F.R. Part 84. *See* 40 C.F.R. § 84.3.

19. The HFCs at issue in this matter are assigned the following exchange values:

| HFC | Chemical Formula | Exchange Value |
|---|---|---|
| HFC-32 | $CH_2F_2$ | 675 |
| HFC-125 | $CHF_2CF_3$ | 3,500 |
| HFC-134a | $CH_2FCF_3$ | 1,430 |
| HFC-143a | $CH_3CF_3$ | 4,470 |

40 C.F.R. Part 84, Appendix A.

20. The exchange value of a blend is calculated by summing the exchange value of each constituent of the blend multiplied by the nominal mass fraction of the constituent within that blend. 40 C.F.R. § 84.64.

21. "Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in paragraph (b)(1)(i) or (v) of this section or another party who meets the definition of an importer met one of the exceptions set forth in paragraphs (b)(1)(ii) through (iv) of this section."[4]

[4] Prior to September 18, 2023, this provision was located at 40 C.F.R. § 84.5(b)(2) and stated "[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1)."

22. "Every kilogram of bulk regulated substances imported … constitutes a separate violation of this subpart." 40 C.F.R. § 84.5(b)(6) (2022).

23. Sections 113(a)(3)(A) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d)(1), authorizes the Administrator of the EPA to assess a civil administrative penalty of not more than $25,000 per day of violation of Title VI of the CAA, or regulations promulgated thereunder. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil administrative penalty has subsequently been raised to $59,114 per day of violation. 40 C.F.R. § 19.4, Table 1.

***The Greenhouse Gas Reporting Requirements under the CAA***

24. Under CAA Section 114(a)(1), 42 U.S.C. § 7414(a)(1), the EPA may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment, or persons whom the EPA believes may have necessary information, to monitor and report emissions and to provide such other information as the EPA requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to motor vehicles).

25. Pursuant to this legal authority, the EPA promulgated the mandatory greenhouse gas reporting requirements in 2010. 40 C.F.R. Part 98.

26. The general provisions for the mandatory greenhouse gas reporting requirements are set forth in 40 C.F.R. Part 98, Subpart A. 40 C.F.R. §§ 98.1 – 98.9 and Tables A-1 – A-7 ("Subpart A").

27. Suppliers subject to Subpart A are required to report the greenhouse gases that would be emitted from combustion or use of the products supplied. 40 C.F.R § 98.1(a).

28. The regulations at 40 C.F.R. Part 98, Subpart A, contain the following definitions:

(a) "Bulk," with respect to industrial greenhouse gas suppliers and carbon dioxide ("$CO_2$") suppliers, means "the transfer of a product inside containers, including but not limited to tanks, cylinders, drums, and pressure vessels." 40 C.F.R. § 98.6.

(b) "Carbon dioxide equivalent" ("$CO_2e$") means the number of metric tons of $CO_2$ emissions with the same global warming potential as one metric ton of another greenhouse gas, and is calculated using Equation A-1 of Subpart A. 40 C.F.R. § 98.6.

(c) "Exporter" means "any person, company, or organization of record that transfers for sale or for other benefit, domestic products from the United States to another country or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction." 40 C.F.R. § 98.6.

(d) "Fluorinated greenhouse gas" means sulfur hexafluoride, nitrogen trifluoride, and any fluorocarbon except for controlled substances as defined at 40 C.F.R. Part 82, Subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C. With these exceptions, "fluorinated greenhouse gas" includes but is not limited to any hydrofluorocarbon, any perfluorocarbon, any

fully fluorinated linear, branched or cyclic alkane, ether, tertiary amine or aminoether, any perfluoropolyether, and any hydrofluoropolyether. 40 C.F.R. § 98.6.

(e) "Importer" means "any person, company, or organization of record that for any reason brings a product into the United States from a foreign country, excluding introduction into United States jurisdiction exclusively for United States military purposes. An importer is the person, company, or organization primarily liable for the payment of any duties on the merchandise or an authorized agent acting on their behalf. The term includes, as appropriate: (1) the consignee, (2) the importer of record, (3) the actual owner, and (4) the transferee, if the right to draw merchandise in a bonded warehouse has been transferred." 40 C.F.R. § 98.6.

(f) "Industrial greenhouse gases" means "nitrous oxide or any fluorinated greenhouse gas." 40 C.F.R. § 98.6.

(g) "Supplier" means a producer, importer, or exporter in any supply category included in Table A-5 to Subpart A, as defined by the corresponding subpart of Part 98. 40 C.F.R. § 98.6.

29. Suppliers subject to 40 C.F.R. Part 98 must follow the requirements of Subpart A and all applicable subparts, and if a conflict exists between a provision in Subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence. 40 C.F.R. § 98.1(b).

30. The greenhouse gas reporting requirements and related monitoring, recordkeeping, and reporting requirements of Subpart A apply to any supplier listed in Table A-5 of Subpart

A, and require that the supplier must submit an annual report that covers all applicable products for which calculation methodologies are provided in the applicable subpart and Subpart A. 40 C.F.R. § 98.2(a)(4).

31. 40 C.F.R. Part 98, Subpart OO ("Subpart OO") provides that any supplier of industrial greenhouse gases that meets the requirements of 40 C.F.R. § 98.2(a)(4) must report their greenhouse gas emissions to the EPA. *See* 40 C.F.R. §§ 98.410 – 98.418. Table A-5 of Subpart A lists categories of industrial greenhouse gas suppliers subject to Subpart OO, including: producers of industrial greenhouse gases and importers of industrial greenhouse gases with annual bulk imports of nitrous oxide ("$N_2O$"), fluorinated greenhouse gas, and $CO_2$ that in combination are equivalent to 25,000 metric tons $CO_2e$ or more. Table A-5 of Subpart A also states that suppliers are defined in each applicable subpart.

32. All the terms used in Subpart OO have the same meaning given in the CAA and Subpart A, except the terms "isolated intermediate" and "low-concentration constituent." 40 C.F.R. § 98.418.

33. Subpart OO at 40 C.F.R. § 98.410 defines source categories for suppliers of industrial greenhouse gases.

34. The industrial gas supplier source category consists of any facility that produces fluorinated greenhouse gases or $N_2O$; any bulk importer of fluorinated greenhouse gases or $N_2O$; and any bulk exporter of fluorinated greenhouse gases or $N_2O$. 40 C.F.R. § 98.410(a).

35. Any supplier of industrial greenhouse gases that meets the requirements of 40 C.F.R. § 98.2(a)(4) must report greenhouse gas emissions. 40 C.F.R. § 98.411.

36. 40 C.F.R. § 98.2(f) provides the methodology to calculate industrial greenhouse gas quantities for comparison to the 25,000 metric ton $CO_2e$ per year threshold under 40 C.F.R. § 98.2(a)(4) for importers and exporters of industrial greenhouse gases, including the requirement to use Equation A-1 of 40 C.F.R. § 98.2. The imported quantities and the exported quantities must be compared separately to the 25,000 metric ton $CO_2e$ per year threshold. 40 C.F.R. § 98.2(f).

37. Equation A-1 of 40 C.F.R. § 98.2 provides that the calculation of metric tons of $CO_2e$ must use the GWP for each greenhouse gas from Table A-1 of 40 C.F.R. Part 98, Subpart A, along with the mass emissions for each greenhouse gas. The total metric tons of $CO_2e$ equals the sum of the mass emissions of each greenhouse gas (in metric tons) multiplied by the GWP for that greenhouse gas.

38. The HFCs at issue in this matter are assigned the following global warming potentials:

| HFC | Chemical Formula | Global Warming Potential (100yr) |
|---|---|---|
| HFC-32 | $CH_2F_2$ | 675 |
| HFC-125 | $C_2HF_5$ | 3,500 |
| HFC-134a | $CH_2FCF_3$ | 1,430 |
| HFC-143a | $C_2H_3F_3$ | 4,470 |

40 C.F.R. Part 98, Subpart A, Table A-1.

39. With certain exceptions not applicable here, once a supplier is subject to the requirements of 40 C.F.R. Part 98, the supplier must for each year thereafter comply with all requirements of 40 C.F.R. Part 98, including the requirement to submit annual greenhouse gas reports, even if the supplier does not meet the applicability requirements in 40 C.F.R. § 98.2(a) in a future year. 40 C.F.R. § 98.2(i).

40. Suppliers subject to 40 C.F.R. Part 98 must submit annual reports to the EPA no later than March 31 of each calendar year for greenhouse gas emissions in the previous calendar year. 40 C.F.R. § 98.3(b).

41. 40 C.F.R. § 98.3(c) specifies the content of each annual report, and includes any other data specified in the "Data reporting requirements" section of each applicable subpart of 40 C.F.R. Part 98. Subpart OO's "Data reporting requirements" are at 40 C.F.R. § 98.416.

42. Subpart OO at 40 C.F.R. § 98.416(c) provides a list of information that bulk importers must include in each annual report, in addition to the information required by 40 C.F.R. §§ 98.3(c)(1) – (3) and (5) – (13) that must be included in each annual report.

43. 40 C.F.R. § 98.412 requires, in relevant part, reporting of greenhouse gas emissions that would result from the release of the $N_2O$ and each fluorinated greenhouse gas that is produced, imported, exported, transformed, or destroyed during the calendar year.

44. 40 C.F.R. § 98.3(e) requires use of the calculation methodologies specified in the relevant subparts in preparing the annual report. "For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required." 40 C.F.R. § 98.3(e).

45. 40 C.F.R. § 98.413 prescribes the methodology to calculate the industrial greenhouse gas emissions set forth in 40 C.F.R. § 98.412.

46. Each annual report must be submitted electronically through the "Electronic Greenhouse Gas Reporting Tool" ("e-GGRT"). 40 C.F.R. § 98.5. Each report must be submitted by a designated representative. *See* 40 C.F.R. § 98.4.

47. Any violation of 40 C.F.R. Part 98 is a violation of the CAA, including Section 114, 42 U.S.C. § 7414. A violation includes but is not limited to failure to report greenhouse gas emissions, failure to collect data needed to calculate greenhouse gas emissions, failure to continuously monitor and test, failure to retain records needed to verify the amount of greenhouse gas emissions, and failure to calculate greenhouse gas emissions following the methodologies specified in this part. Each day of violation constitutes a separate violation. 40 C.F.R. § 98.8.

48. Sections 113(a)(3)(A) and 113(d)(1) of the CAA, 42 U.S.C. § 7413(a)(3)(A) 7413(d)(1), authorizes the Administrator of the EPA to assess a civil administrative penalty of not more than $25,000 per day of violation of Section 114 of the CAA, or regulations promulgated thereunder. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil administrative penalty has subsequently been raised to $$59,114 per day of violation. 40 C.F.R. § 19.4, Table 1.

## D. FACTUAL ALLEGATIONS

49. Respondent is a distributor and importer of residential and commercial air conditioning, refrigeration, industrial cooling, ventilation, water treatment, and air and water filtration equipment, materials, and replacement parts.

50. Respondent is a "person," as that term is defined in 40 C.F.R. § 84.3.

51. Respondent is an "importer," as that term is defined in 40 C.F.R. § 84.3.

52. R-404A is comprised of 52% HFC-143a, 44% HFC-125, and 4% HFC-134a.

53. R-410A is comprised of 50% HFC-125 and 50% HFC-32.

54. For R-404A, the Exchange Value of the blend is 3,921.6, which is calculated as follows: (0.52 x 4,470 (the Exchange Value of HFC-143a)) plus (0.44 x 3,500 (the Exchange Value of HFC-125)) plus (0.04 x 1,430 (the Exchange Value of HFC-134a)). *See* 40 C.F.R. Part 84, Appendix A.

55. For R-410A, the Exchange Value of the blend is 2,087.5, which is calculated as follows: (0.50 x 675 (the Exchange Value of HFC-32)) plus (0.50 x 3,500 (the Exchange Value of HFC-125)). *See* 40 C.F.R. Part 84, Appendix A.

56. HFC-32, HFC-125, HFC-134a, and HFC-143a are fluorinated greenhouse gases. 40 C.F.R. § 98.6.

57. HFC-32, HFC-125, HFC-134a, and HFC-143a are each "industrial greenhouse gases" within the meaning of 40 C.F.R. § 98.6.

Reporting on Importation of Greenhouse Gases in 2021

58. On or about December 1, 2021, according to Customs Entry Number 508-0399889-2, and on or about December 17, 2021, according to Customs Entry Number 508-0400276-9, Respondent imported a total of approximately 19,323 kg of R-410A in containers used for transportation or storage into the port of San Juan, Puerto Rico ("December 2021 HFCs").

59. The December 2021 HFCs are bulk industrial greenhouse gases within the meaning of 40 C.F.R. § 98.6.

60. Pursuant to the formula provided at 40 C.F.R. § 98.2(f), 19,323 kg of R-410A are equivalent to approximately 40,336.8 metric tons of $CO_2e$.

61. By importing approximately 19,323 kg of R-410A, Respondent imported bulk fluorinated greenhouse gases equivalent to approximately 40,336.8 metric tons of $CO_2e$ in 2021.

62. An importer of over 25,000 metric tons of $CO_2e$ of bulk fluorinated greenhouse gases in 2021 was required under 40 C.F.R. § 98.3(b) to submit to the EPA a greenhouse gas report for its 2021 imports of bulk fluorinated greenhouse gases by March 31, 2022.

63. Respondent submitted to the EPA a greenhouse gas report for its 2021 imports of bulk fluorinated greenhouse gases on May 31, 2023.

Respondent's Import of Bulk HFCs in April 2022

64. On or about April 26, 2022, Respondent imported approximately 7,848 kg of R-404A contained in approximately 720 cylinders used for transportation or storage, and approximately 17,854 kg of R-410A contained in approximately 1,580 cylinders used for transportation or storage, from China into the port of San Juan, Puerto Rico under Customs entry number 508-04028327 ("April 2022 HFCs").

65. The April 2022 HFCs were imported and subsequently held in Respondent's bonded warehouse in a Foreign Trade Zone, and were not sold or distributed within Puerto Rico or elsewhere in the United States. On or about July 14, 2022, Respondent re-exported the April 2022 HFCs to Panama.

66. 17,854 kg of R-410A is equivalent to an MTEVe of 37,270.2 metric tons.

67. 7,848 kg of R-404A is equivalent to an MTEVe of 30,776.7 metric tons.

68. Using the formula provided at 40 C.F.R. § 84.3, the EPA calculated the total metric tons of exchange value equivalents ("MTEVe") of the April 2022 HFCs to be approximately 68,046.9.

69. The import of 68,046.9 MTEVe of HFCs requires the importer to possess and expend 68,046.9 consumption or application-specific allowances at the time of import.

70. The April 2022 HFCs are bulk regulated substances, as defined above at 40 C.F.R. § 84.3.

71. Respondent did not possess or expend any allowances when importing the April 2022 HFCs.

72. Respondent did not submit a report to the EPA with information relating to the April 2022 HFCs, which the company imported during the second quarter of 2022, within 45 days after the end of the second quarter of 2022.

Respondent's Import of Bulk HFCs in August 2022

73. On or about August 6, 2022, Respondent imported approximately 13,221 kg of R-410A, contained in approximately 1,170 cylinders used for transportation or storage, and approximately 12,317 kg of R-404A, contained in approximately 1,130 cylinders used for transportation or storage, from China into the port of San Juan, Puerto Rico under Customs shipment numbers 16036417621 and 16036417623 ("August 2022 HFCs").

74. The August 2022 HFCs were imported and subsequently held in Respondent's bonded warehouse in a Foreign Trade Zone, and were not sold or distributed within Puerto Rico or elsewhere in the United States. On or about December 29, 2023, Respondent re-exported the August 2022 HFCs to Panama.

75. 12,317 kg of R-404A is equivalent to an MTEVe of 48,302.3 metric tons.

76. 13,221 kg of R-410A is equivalent to an MTEVe of 27,598.8 metric tons.

77. Using the formula provided at 40 C.F.R. § 84.3, the EPA calculated the total metric tons of exchange value equivalents ("MTEVe") of the August 2022 HFCs to be approximately 75,901.2.

78. The import of 75,901.2 MTEVe of HFCs requires the importer to possess and expend 75,901.2 consumption or application-specific allowances at the time of import.

79. The August 2022 HFCs are bulk regulated substances, as defined above at 40 C.F.R. § 84.3.

80. Respondent did not possess or expend any allowances when importing the August 2022 HFCs.

81. Respondent did not submit a report to the EPA with information relating to the August 2022 HFCs, which the company imported during the third quarter of 2022, within 45 days after the end of the third quarter of 2022.

Reporting on Importation of Greenhouse Gases in 2022

82. The April 2022 HFCs and August 2022 HFCs are bulk industrial greenhouse gases within the meaning of 40 C.F.R. § 98.6.

83. Pursuant to the formula provided at 40 C.F.R. § 98.2(f), 31,075 kg of R-410A is equivalent to 64,844.6 metric tons of $CO_2e$.

84. Pursuant to the formula provided at 40 C.F.R. § 98.2(f), 20,165 kg of R-404A is equivalent to 79,087.1 metric tons of $CO_2e$.

85. By importing approximately 31,075 kg of R-410A and 20,165 kg of R-404A, Respondent imported bulk fluorinated greenhouse gases equivalent to approximately 143,971.7 metric tons of $CO_2e$ in 2022.

86. An importer of over 25,000 metric tons of $CO_2e$ of bulk fluorinated greenhouse gases in

2022 was required under 40 C.F.R. § 98.3(b) to submit to the EPA a greenhouse gas report for its 2022 imports of bulk fluorinated greenhouse gases by March 31, 2023.

87. Respondent submitted to the EPA a greenhouse gas report for its 2022 imports of bulk fluorinated greenhouse gases on June 6, 2023.

## E. ALLEGED VIOLATIONS OF LAW

Importation of bulk HFCs on or about April 26, 2022

88. The EPA alleges that Respondent imported the April 2022 HFCs without first expending the required 68,059 allowances or obtaining a non-objection notice, in violation of 40 C.F.R. § 84.5(b)(1) (2022).

89. The April 2022 HFCs imported by Respondent are approximately 25,702 kg.

90. The EPA alleges that, for each of the 25,702 kg of the April 2022 HFCs, Respondent violated the prohibition on importing bulk regulated substances into the United States without expending allowances as required by 40 C.F.R. § 84.5(b) (2022).

Submission of advance notification reports

91. The EPA alleges that Respondent violated 40 C.F.R. § 84.31(c)(7) (2022) by failing to submit an advance notification report for the April 2022 HFCs no later than 14 days prior to importation.

92. The EPA alleges that Respondent violated 40 C.F.R. § 84.31(c)(7) (2022) by failing to submit an advance notification report for the August 2022 HFCs no later than 14 days prior to importation.

Importation of bulk HFCs on or about August 6, 2022

93. The EPA alleges that Respondent imported the August 2022 HFCs without first expending the required 75,912.8 allowances or obtaining a non-objection notice, in violation of 40 C.F.R. § 84.5(b)(1) (2022).

94. The August 2022 HFCs imported by Respondent are approximately 25,538 kg.

95. The EPA alleges that, for each of the 25,538 kg of the August 2022 HFCs, Respondent violated the prohibition on importing bulk regulated substances into the United States without expending allowances as required by 40 C.F.R. § 84.5(b) (2022).

Submission of quarterly reports

96. The EPA alleges that Respondent violated 40 C.F.R. § 84.31(c)(1) by failing to submit a report to the EPA that describes the April 2022 HFCs imported during the second quarter of 2022 within 45 days after the end of the second quarter of 2022.

97. The EPA alleges that Respondent violated 40 C.F.R. § 84.31(c)(1) by failing to submit a report to the EPA that describes the August 2022 HFCs imported during the third quarter of 2022 within 45 days after the end of the third quarter of 2022.

Submission of annual greenhouse gas reports

98. As a bulk importer of fluorinated greenhouse gases, Respondent is an industrial greenhouse gas supplier subject to the greenhouse gas reporting requirements at 40 C.F.R. Part 98, Subpart OO. 40 C.F.R. §§ 98.6 and 98.410(a).

99. The EPA alleges that, in 2021 and 2022, Respondent imported bulk fluorinated greenhouse gases that exceeded the mandatory greenhouse gas reporting threshold of 25,000 metric tons of $CO_2e$ under 40 C.F.R. § 98.2(a)(4).

100. The EPA alleges that Respondent did not timely report to the EPA its greenhouse gas import quantities for calendar years 2021 and 2022, in violation of 40 C.F.R. Part 98, Subparts A and OO.

## F. TERMS OF CONSENT AGREEMENT

101. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;

(b) admits to the jurisdictional allegations in this Consent Agreement;

(c) neither admits nor denies the factual allegations alleged in Section D of this Consent Agreement;

(d) neither admits nor denies the violations alleged in Section E of this Consent Agreement;

(e) consents to the assessment of a civil penalty as stated below;

(f) waives any right to contest the alleged violations of law; and

(g) waives its rights to appeal the Final Order accompanying this Consent Agreement.

102. For the purpose of this proceeding, Respondent:

(a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;

(b) acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions related to the Respondent;

(c) waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this Consent Agreement and Final Order,

and its right to appeal this Consent Agreement and Final Order;

(d) waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying this Consent Agreement;

(e) consents to personal jurisdiction in any action to enforce this Consent Agreement or Order, or both in the United States District Court for the District of Columbia;

(f) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for noncompliance with the Consent Agreement or Final Order, and agrees that federal law shall govern in any such civil action;

(g) acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;

(h) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Consent Agreement (see 31 U.S.C. § 7701);

(i) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

(j) acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

103. Civil Penalty. The civil penalty agreed upon by the Parties for settlement purposes is $427,000 (the "Assessed Penalty").

104. Penalty Payment. Respondent agrees to pay the Assessed Penalty to the United States in the manner specified below:

(a) pay the Assessed Penalty within 30 calendar days of the Effective Date of this Agreement.

(b) pay the Assessed Penalty using any method, or combination of methods, provided on the following website https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov.

(c) identify each and every payment with Docket No. CAA-2025-008461; and

(d) within 24 hours of payment of the EPA Penalty, email proof of payment to Eleanor Kane at kane.eleanor@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with Docket No. CAA-2025-008461.

105. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following four paragraphs of this Consent Agreement, Respondent must timely pay the penalty.

106. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7524(c)(6), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

(a) Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

(b) Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

(c) Late Payment Penalty. A 10% quarterly non-payment penalty.

107. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement and attached Final Order, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following:

(a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;

(b) Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

(c) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

(d) Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7524(c)(6). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

108. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

109. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement and attached Final Order shall not be deductible for purposes of federal taxes.

110. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and

has the legal capacity to bind the party he or she represents to this Agreement.

111. By signing this Agreement, Respondent agrees to acceptance of the Complainant's: (a) digital or an original signature on this Agreement; and (b) service of the fully executed Agreement on the Respondent by mail or electronically by e-mail. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

112. Except as qualified by Paragraph 107(b), each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

113. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section E of this Consent Agreement.

114. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

115. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in

excess of $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

(a) Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf. If Respondent does not file an IRS Form W-9, please inform the EPA's Cincinnati Finance Center at wise.milton@epa.gov for further instruction within 30 days after the Final Order ratifying this Agreement is filed;

(b) Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

(c) Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

(d) In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the effective date as defined in Paragraph 121; and

ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

116. This Consent Agreement constitutes the entire agreement and understanding of the Parties andsupersedes any prior agreements or understandings among the Parties with respect to the subject matter hereof.

117. This Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement.

118. Nothing in this Agreement shall relieve Respondent of the duty to comply with all

applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

119. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

120. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

## H. EFFECTIVE DATE

121. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order ratifying the Agreement. The effective date of the Agreement shall be the date of issuance of the Final Order. The EPA will transmit a copy of the Final Order and ratified Consent Agreement to the Respondent.

The foregoing Consent Agreement In the Matter of Oldach Associates, LLC, Docket No. CAA-2025-008461, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature  Date 1/17/2025

Printed Name: Arnaldo San Miguel

Title: Vice President

Address: PO Box 364603 San Juan, P.R. 00936

Federal Tax Identification Number: _____

The foregoing Consent Agreement In the Matter of Oldach Associates, LLC, Docket No. CAA-2025-008461, is Hereby Stipulated, Agreed, and Approved.

COMPLAINANT:

MARY GREENE

Digitally signed by MARY GREENE
Date: 2025.02.24 08:46:45 -05'00'

Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Oldach Associates, LLC, Docket No. CAA-2025-8461, were sent to the following persons in the manner indicated:

**By E-mail:**

Hallie Lipsey, Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
E-mail: lipsey.hallie@epa.gov

Eugene Scott, Counsel for Respondent
Oldach Associates, LLC
Carr. 869, Esq. Calle D, Bo. Palmas
Cataño, Puerto Rico 00962
E-mail: escott@ferraiuoli.com

Dated: Feb 25, 2025

Tommie Madison

Tommie Madison
Clerk of the Board