

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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| <b>In the Matter of:</b>  | ) | <b>Docket No. RCRA-05-2022-0016</b>          |
|                           | ) |  |
| <b>Shurpac, Inc.</b>      | ) | <b>Proceeding to Commence and Conclude</b>   |
| <b>Racine, Wisconsin,</b> | ) | <b>an Action to Assess a Civil Penalty</b>   |
|                           | ) | <b>Under Section 3008(a) of the Resource</b> |
| <b>Respondent.</b>        | ) | <b>Conservation and Recovery Act,</b>        |
|                           | ) | <b>42 U.S.C. § 6928(a)</b>                   |

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Shurpac, Inc., a corporation doing business in the State of Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent 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 CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 - 6992k, and the regulations at Wisconsin Administrative Code Section NR 660 – 670.

**Statutory and Regulatory Background**

12. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, and 6934.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

14. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. *51 Fed. Reg. 3783 (January 31, 1986)*. Subsequently, EPA authorized revisions and updates to Wisconsin's RCRA hazardous waste program on May 23, 1989, effective June 6, 1989 (*54 Fed. Reg. 22278*); on November 22, 1989, effective January 22, 1990 (*54 Fed. Reg. 48243*); on April 24, 1992, effective April 24, 1992 (*57 Fed. Reg. 15029*); on June 2, 1993, effective August 2, 1993 (*58 Fed. Reg. 31344*); on August 5, 1994, effective October 4, 1994 (*59 Fed. Reg. 39971*); on August 5, 1999, effective October 4, 1999 (*64 Fed. Reg. 42630*); on June 26, 2002, effective June 26, 2002 (*67 Fed. Reg. 43027*); on April 15, 2009, effective on the same date (*74 Fed. Reg. 17423*), and on April 17, 2009, effective on the same date (*74 Fed. Reg. 17785*). The EPA-authorized Wisconsin hazardous waste regulations are codified in State regulations at Wisconsin Administrative Code (WAC) Chapter NR 600 – 690 (July 2017 version). *See* 40 C.F.R. § 272.2501(c)(4).

16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation of RCRA, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$109,024 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015 and are assessed after January 12, 2022, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

17. Shurpac is a metal-finishing business with a facility located at 1700 Phillips Avenue, in Racine, Wisconsin (Facility).

18. At all times relevant to this CAFO, Shurpac operated four spray-painting booths in which it applied paint coatings to parts. In each booth, spray applicators were used to apply the paints. These applicators were cleaned by circulating solvent through the hoses and purging the resulting waste into a bucket. The spent solvents generated by the cleaning of the paint applicators and hoses were distilled in an onsite distillation unit in order to reclaim usable solvents. The onsite distillation unit generated waste in the form of “still bottoms.” Respondent identified these “still bottoms” as a hazardous waste (Hazardous Waste Numbers D001, D005, D035, and F005) and stored these “still bottoms” in containers prior to having them transported offsite as hazardous waste.

19. Respondent is a “person” as defined by WAC § NR 660.10(90) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent is an “owner” or “operator” as those terms are defined under WAC §§ NR 660.10(87) and NR 660.10(88), of the facility located at 1700 Phillips Avenue, Racine, Wisconsin.

21. At all times relevant to this CAFO, Respondent’s Facility consisted of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

22. Respondent’s Facility is a “facility” as that term is defined under WAC § NR 660.10(43).

23. On November 2, 2021, U.S EPA conducted a RCRA Compliance Evaluation Inspection at Respondent’s Facility (“the inspection”).

24. At all times relevant to this CAFO, Respondent stored the wastes that it had identified as hazardous waste in containers in a designated hazardous waste storage area. Wastes which

Shurpac identified as non-hazardous wastes were stored in yard sacks in this area.

25. At all times relevant to this CAFO, the still bottoms from the onsite solvent distillation unit were “solid wastes” as defined under WAC § 661.02.

26. At all times relevant to this CAFO, the still bottoms from the onsite solvent distillation unit were “hazardous wastes” as defined under WAC § NR 661.03.

27. At all times relevant to this CAFO, Respondent’s holding of the still bottoms from the onsite solvent distillation unit constituted hazardous waste “storage” as that term is defined under WAC § NR 660.10(112).

28. Respondent is a “generator,” as that term is defined in WAC § NR 660.10 (50).

29. Respondent was generating and managing hazardous waste at its Facility on or before November 19, 1980.

30. At all times relevant to this CAFO, and except as otherwise indicated in this CAFO, Shurpac generated greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,205 pounds) of hazardous waste in any month. Therefore, except as otherwise indicated in this CAFO, Respondent was a “Small Quantity Generator” of hazardous waste, as defined under WAC § NR 662.190(1).

31. The regulation at WAC § NR 660.10 (70m) defines “Large Quantity Generator” as a generator who generates 1,000 kilograms (2,205 pounds) or more of hazardous waste in a calendar month.

32. The regulation at WAC § NR 662.041 requires Large Quantity Generators of hazardous waste to submit an annual report to the Wisconsin Department of Natural Resources. Under WAC § NR 662.041(3), annual reports covering odd-numbered years (such as 2017) must include the items of information set forth in WAC § NR 662.041(3)(a) through (f).

33. On January 13, 2022, U.S. EPA issued a Notice of Potential Violation and Opportunity to Confer (Notice) to Respondent, alleging certain violations of RCRA discovered during the inspection, and advising Respondent of U.S. EPA's plan to file an administrative complaint for civil penalties against Shurpac, Inc. A copy of this Notice was provided to the State of Wisconsin's Department of Natural Resources on January 13, 2022.

34. On February 9, 2022, Respondent submitted to U.S. EPA a written response to the Notice of Potential Violation and Opportunity to Confer.

35. At all times relevant to this CAFO, the State of Wisconsin had not issued a license to Respondent to treat, store, or disposed of hazardous waste at its Facility.

36. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

37. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at WAC § 670 (40 C.F.R. Part 270), the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a license is prohibited.

38. Pursuant to WAC § NR 665.0001(3)(g), the requirements of WAC § NR part 665 do not apply to a generator accumulating waste onsite in compliance with WAC § NR 662.034, except to the extent the requirements are included in WAC § NR 662.034.

**Count 1: Failure to Include All Required Information in Annual Report of Hazardous Waste Activities**

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

40. Under WAC § NR 662.041(1), a generator that ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit an annual report to the Wisconsin Department of Natural Resources by March 1st for the preceding

calendar year. WAC § NR 662.041(3) requires Large Quantity Generators to include in the annual report filed for an odd-numbered year the categories of information set forth in WAC NR 662.041(3)(a) through (f).

41. In February 2017, Shurpac shipped 3,000 pounds of “Oil-containing caustic cleaner” identified with the hazardous waste code D002 off-site to a hazardous waste treatment, storage or disposal facility (TSDF), using a hazardous waste manifest. This amount of hazardous waste exceeded the monthly threshold of 2,205 pounds of hazardous waste and made Shurpac a Large Quantity Generator within the meaning of WAC § NR 660.19(70m). While Shurpac submitted a report as a Small Quantity Generator to the Wisconsin Department of Natural Resources in or about February 2018, Shurpac failed to prepare and submit an annual report to the Wisconsin Department of Natural Resources by March 1, 2018 for the odd-numbered year 2017 that contained all of the information which Large Quantity Generators must include in annual reports for odd-numbered years under WAC NR 662.041(3). Therefore, Respondent failed to include in its annual report for 2017 all of the information required under WAC § NR 662.041(3).

42. Respondent’s failure to include in its annual report for 2017 all of the information required under WAC § NR 662.041(3) constitutes a violation of WAC § NR 662.041(3) and Section 3002 of RCRA, 42 U.S.C. § 6922.

**Count 2: Failure to Perform Weekly Inspections of Hazardous Waste Storage Areas**

43. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

44. WAC §§ NR 662.190(1) and (2), and NR 662.192(1)(b) require Small Quantity Generators who do not have a hazardous waste license and who accumulate hazardous waste in containers to comply with the applicable requirements of WAC subch. I of ch. NR 665

(containers), including but not limited to WAC § NR 665.0174, which provides that the owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

45. The failure to comply with any of the requirements of WAC § NR 662.190(1) and (2), and NR 662.192(1)(b), including the requirement under WAC § NR 665.0174 to inspect areas where containers of hazardous waste are stored at least weekly (incorporated by reference into WAC § NR 662.034), subjects the generator of hazardous waste to all of the applicable requirements of WAC ch. NR 665 and the license requirements of WAC ch. NR 670.

46. From in or about November 2020 to in or about November 2021, Respondent failed to conduct weekly inspections of the Facility's hazardous waste storage area where containers of hazardous waste were being stored. Accordingly, Respondent failed to satisfy all of the requirements for maintaining its exemption from the requirement that it have an operating license or interim status and was subject to the requirements of WAC ch. NR 665.

47. Respondent's failure to inspect, at least weekly, areas where hazardous waste containers were stored violated WAC § NR 665.0174 and Section 3004 of RCRA, 42 U.S.C. § 6924.

### **Count 3: Violation of Universal Waste Regulations**

48. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

49. At all times relevant to this CAFO, Shurpac generated wastes in the form of discarded lamps and light bulbs.

50. Under WAC § NR 660.10 (133), discarded lamps are a form of hazardous waste considered "universal wastes," which are regulated under WAC ch. NR 673.



51. WAC § NR 660.10(134) provides that a generator of universal waste is a “universal waste handler.”

52. WAC § NR 673.09(9) provides that the term “small quantity handler of universal waste” means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms (11,025 pounds) or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

53. At all times relevant to this CAFO, Respondent was a small quantity handler of universal waste within the meaning of WAC § NR 673.09(9).

54. WAC § NR 673.13(4) requires that a small quantity handler of universal waste lamps must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage and compatible with the content of the lamps. The containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage.

55. At the time of the inspection, Shurpac stored discarded lamps and light bulbs inside a large wooden crate located in a universal waste storage area. At the time of the inspection, this crate was not closed.

56. WAC § NR 673.14(5) requires that a small quantity handler of universal waste lamps must label or clearly mark each lamp or a container or package in which such lamps are contained with any one of the following phrases: “Universal Waste-Lamps,” “Waste Lamps” or “Used Lamps.”

57. At the time of the inspection, the crate holding the discarded lamps and light bulbs at the Shurpac facility bore a label with the words “Fluorescent Light Bulb Recycling Only.” The crate was open and was not labeled with the phrase “Universal Waste-Lamps,” “Waste Lamps” or “Used Lamps.”

58. WAC § NR 673.15(1) and (2) provide that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated unless the generator proves that the activity is solely for the purpose of accumulation of quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

59. At the time of the inspection, Shurpac did not provide evidence that the company was storing the lamps solely for the purpose of facilitating recovery, treatment, or disposal.

60. WAC § NR 673.16 requires that a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste of proper handling and emergency procedures appropriate to the types of universal waste handled at the facility.

61. At the time of the inspection, Respondent had not informed its employees were not of proper handling and emergency procedures appropriate for managing universal wastes such as discarded lamps

62. Respondent's failure to comply with the requirements for small quantity handlers of universal waste as described in paragraphs 49 to 61, above, constitute violations of WAC §§ NR 673.13(4), 673.14(5), 673.15(1) and (2), and 673.16, and of Section 3004 of RCRA, 42 U.S.C. § 6924.

### **Civil Penalty**

63. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is **fourteen-thousand four-hundred twenty-six dollars (\$14,426)**. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy,

dated June 23, 2003.

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,426 civil penalty for the RCRA violations alleged in this CAFO. Respondent shall pay this penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For checks sent by express mail:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must state the case title, "In the Matter of Shurpac, Inc." and include the docket number of this CAFO.

65. A transmittal letter stating Respondent's name, the case title case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Brenda Whitney  
Land Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
[whitney.brenda@epa.gov](mailto:whitney.brenda@epa.gov) and  
[R5LE CAB@epa.gov](mailto:R5LE CAB@epa.gov)

James Cha  
Office of Regional Counsel  
U.S. EPA, Region 5  
[cha.james@epa.gov](mailto:cha.james@epa.gov)

66. This civil penalty is not deductible for federal tax purposes.

67. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

#### **General Provisions**

68. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

69. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [cha.james@epa.gov](mailto:cha.james@epa.gov) (for Complainant), and [JVanLieshout@reinhartlaw.com](mailto:JVanLieshout@reinhartlaw.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

70. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

71. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law

72. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

73. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

74. The terms of this CAFO bind Respondent, its successors, and assigns.

75. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

76. Each party agrees to bear its own costs and attorney's fees in this action.

77. This CAFO constitutes the entire agreement between the parties.

**Shurpac, Inc., Respondent**

9/13/22

Date

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Joseph H.  
Mandli

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Mr. Joseph H. Mandli  
Vice President  
Shurpac, Inc.

**United States Environmental Protection Agency, Complainant**

9/20/22

Date

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MICHAEL  
HARRIS

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division

**In the Matter of:**  
**Shurpac, Inc.**  
**Docket No. RCRA-05-2022-0016**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

**ANN COYLE** Digitally signed by ANN  
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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5