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EPA REGION VI

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

IN THE MATTER OF:

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ASCEND PERFORMANCE MATERIALS  
TEXAS, INC.  
  
RESPONDENT

Consent Agreement and Final Order  
USEPA Docket No. RCRA-06-2019-0918

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6, and Ascend Performance Materials Texas, Inc. (“Respondent” or “Ascend”) and concerns Ascend’s Chocolate Bayou facility located at FM 2019, Alvin, Texas 77512 (the “Facility”).

2. Notice of the commencement of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”),

42 U.S.C. § 6928(a)(2) and the required public notice required under Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).<sup>1</sup>

3. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), notice of this action has been published and with reasonable opportunity for any interested person to comment on the proposed issuance of the Clean Water Act portion of this CAFO.

4. For these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and alleged violations of law contained in this CAFO.

5. The Respondent explicitly waives any right to contest the allegations and its right to appeal the final order contained in this CAFO and, for purposes of this proceeding, waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

6. The CAFO resolves only those violations which are alleged herein.

7. This CAFO covers the violations alleged herein and for the specific periods set forth in Section III (Factual Allegations and Alleged Violations) and the period covered by Section IV (Compliance Order) Paragraph 106 of this CAFO.

8. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO and consents to the specific stated Compliance Order.

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1. On December 26, 1984, the State of Texas received final authorization for its Base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations to the EPA Authorized Texas Hazardous Waste Program refer to Title 30 of the Texas Administrative Code (“TEX. ADMIN. CODE”), as amended, effective on February 26, 2016. 80 Fed. Reg. 80672 (December 28, 2015); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References found within this CAFO are to the EPA authorized version of the TEX. ADMIN. CODE and citations may vary slightly from the Texas published version of the TEX. ADMIN. CODE. The corresponding C.F.R. citations are also provided.

9. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in the Compliance Order, Section IV.106(e), of this CAFO, that Respondent has taken the necessary steps to address the compliance aspects of Claim iii and Claim iv that are alleged in this CAFO, by and through the following completed actions at its Facility:

- a) Sump 6: Through the blinding of the piping leading to Sump 6, Ascend has isolated the benzene loading arm at the dock header from Sump 6. Ascend has updated its Piping and Instrumentation Drawings (P&IDs) to show the isolation, and has documented its P&IDs to show that benzene cannot go to Sump 6, unless Sump 6 is upgraded to meet applicable RCRA requirements;
- b) Sump EQU-E: Ascend has removed tubing from the pump discharge bleed leading to Sump EQU-E and has adopted new procedures going forward to ensure that any usage of the Sump EQU-E will comply with applicable RCRA requirements before receiving hazardous waste. Respondent will evaluate its options for complying when pump maintenance is required and implement measures that comply with applicable RCRA requirements; and
- c) Phenol Satellite Accumulation: In July of 2018, Ascend replaced the 200-gallon poly tank with a 55-gallon container to resolve the compliance aspects of Claim iv and has ensured that the Phenol satellite accumulation area ("SAA") is operated in compliance with 30 TEX.ADMIN.CODE § 335.69(d), [40 C.F.R. § 262.34(c)(1)(i) and (ii)]. Further, Ascend revised its P&IDs to show the change described in this subparagraph.



10. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in the Compliance Order, Section IV.106(e), of this CAFO, that Respondent has taken the necessary steps to address the compliance aspects of Claims vi, viii, ix, and x that are alleged in this CAFO, by and through the following completed actions at its Facility:

- a) Wooden Box: During the Inspection, the Wooden Box was removed from service;
- b) Backhoe: During the Inspection, the Backhoe bucket was emptied and the noted material was properly disposed;
- c) PPE Accumulation: Corrected during the Inspection; and
- d) BB/CC Manway Leak: Corrected within a week of the Inspection.

11. By its signature to this CAFO, Respondent is certifying, in accordance with the certification language set forth in Section IV.106(e), of the Compliance Order, that Respondent has reviewed all its processes associated with its Texas Pollutant Discharge Elimination System Permit ("TPDES"), Permit No. WQ0000001000, [TX0003875], to ensure that all of its discharges and respective Outfalls, specifically the Outfalls at issue for purposes of this CAFO, are operating in accordance with Permit No. WQ0000001000, [TX0003875].

## II. JURISDICTION

12. This CAFO is issued by EPA, Region 6, pursuant to Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

13. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent

agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA, Region 6, to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

### III. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

14. Ascend Performance Materials Texas, Inc. ("Ascend" or "Respondent") is a corporation authorized to do business in the State of Texas.

15. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility (the "Facility") located at FM 2019, Alvin, Texas 77512.

16. The Facility is situated on approximately 2500 acres and operates a variety of chemical manufacturing processes (Primary NAICS code 325199-All Other Basic Organic Chemical Manufacturing).

17. On or about the week of May 5, 2015, EPA Region 6 and the National Enforcement Investigations Center conducted a RCRA inspection at the Facility, which was followed by a second inspection during the week of March 6, 2017 by EPA Region 6 and EPA Headquarters (the "Inspections").

18. Since 2015 to present, EPA Region 6 and Respondent have engaged in several meetings, phone conferences, and written communications, which resulted in Respondent providing EPA with additional information in response to EPA Region 6's informal requests (the "Responses").

19. From a review of the Inspections and Responses, EPA concluded that Respondent failed to comply with several of the applicable generator standards and permit requirements in violation of the laws and regulations of RCRA promulgated at 3002, 3004, and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924, and 6925.

20. Further, EPA determined that Respondent discharged pollutants into waters of the United States in exceedence of limits prescribed by its TPDES Permit, Permit WQ0000001000, [TX0003875], and in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

21. In its Section 3010(a) of RCRA, 42 U.S.C. § 6930(a) Notification, Respondent notified EPA on March 4, 1996 that it operates as a large quantity generator and as the site owner and operator of the Facility. Further, Respondent is the holder of the RCRA Permit, Permit No. 50189.

22. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); 40 C.F.R. § 260.10; 30 TEX.ADMIN.CODE § 3.2(25); Section 502(5) of the CWA, 33 U.S.C. § 1362(5); and 40 § C.F.R. 122.2.

23. At all relevant times hereto, Respondent's Facility was and continues to be a "facility" as defined under 30 TEX.ADMIN.CODE § 335.1, [40 C.F.R. § 260.10], and 40 C.F.R. §§ 355.20 and 372.3.

24. At all relevant times hereto, Respondent was and continues to be an "owner" and/or "operator" of the Facility as defined under 30 TEX.ADMIN.CODE § 335.1 and 40 C.F.R. § 260.10.

25. At all times relevant hereto, Respondent has discharged, and continues to discharge, "pollutants" through "point sources" into "navigable waters," as each of these terms are defined in Section 502 of the CWA, 33 U.S.C. § 1362.

#### **RCRA ALLEGATIONS**

##### **Claim i. Storage in Tanks Without a Permit or Meeting Other RCRA Accumulation Requirements**

26. The allegations in Paragraphs 1-25 are realleged and incorporated herein by reference.

27. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste", as identified or listed in



30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

28. During the Inspections, EPA identified and photographed four (4) frac tanks in Respondent's Environmental Control Unit 331 storing K011 listed hazardous waste.

29. During the Inspections, EPA identified and photographed six (6) mix tanks in Respondent's Injection Well Pretreatment Facility ("IWPF") treatment area storing hazardous waste and labeled with the following EPA's hazardous waste codes: D002; D007; D010; D038; F003; F039; K011; K013; P063; U009; U019; U122; U154; and U188.<sup>2</sup>

30. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.24], the toxicity characteristic waste identified in Paragraph 29 above are hazardous waste and correspond to the following EPA's hazardous waste codes: D002; D007; D010; and D038.

31. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.31], the F-listed waste F003 and F039 identified in Paragraph 29 above are hazardous waste.

32. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.32], the K-listed waste K011 and K013 identified in Paragraphs 28 and 29 above are hazardous waste.

33. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.33], the P-listed waste P063 identified in Paragraph 29 above is hazardous waste.

34. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.33], the U-listed waste: U009; U019; U122; U154; and U188 identified in Paragraph 29 above are hazardous waste.

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2. The Parties acknowledge that wastes bearing some of these waste codes were not actually present in the processes in question and that these waste codes have been the subject of significant updates to the Facility's TCEQ Notice of Registration.

35. Respondent stored hazardous waste as identified and defined in Paragraphs 28 through 34 in tanks that did not meet requirements for generator accumulation. Also, the tanks were not included in its RCRA permit.

36. From the Investigation and a review of Ascend's Responses, EPA determined that for the periods that Ascend operated the tanks identified in Paragraphs 28 and 29 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim ii. Operating Ancillary Equipment without Secondary Containment**

37. The relevant allegations in Paragraphs 1-36 are realleged and incorporated herein by reference.

38. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a)(1)(B), which incorporates by reference 30 TEX.ADMIN.CODE § 335.112(a)(9), [40 C.F.R. § 262.34 (a)(1)(ii), which incorporates by reference 40 C.F.R. § 265.193(f)], RCRA requires that a large quantity generator ("LQG") must equip ancillary equipment in hazardous waste service with secondary containment to meet the requirements of paragraphs (b) and (c) of the referenced section.

39. During the Inspections, EPA identified and photographed six (6) valves without secondary containments located between Respondent's Department 336 area and IWPF treatment area.

40. The regulations at 30 TEX.ADMIN.CODE § 335.69(a)(1)(B), which incorporates by reference 30 TEX.ADMIN.CODE § 335.112(a)(9), [40 C.F.R. § 262.34 (a)(1)(ii), which incorporates by reference 40 C.F.R. § 265.193(f)], provides some exceptions from the above requirements which were not applicable to the six (6) valves identified during the Inspections and referenced in Paragraph 39 above.



41. From the Investigation and a review of Ascend's Responses, EPA determined that for the periods that Ascend operated the six (6) valves identified in Paragraphs 39 and 40 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.69(a)(1)(B), which incorporates by reference 30 TEX.ADMIN.CODE § 335.112(a)(9), [40 C.F.R. § 262.34 (a)(1)(ii), which incorporates by reference 40 C.F.R. § 265.193(f)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim iii. Management of Hazardous Waste in Sumps without Meeting the Applicable RCRA Requirements**

42. The relevant allegations in Paragraphs 1-41 are realleged and incorporated herein by reference.

43. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste", as identified or listed in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

44. During the Inspections, EPA identified and photographed Sump 6 and Sump EQU-E where Respondent operated and managed hazardous waste exhibiting the toxicity characteristic for benzene, with the corresponding EPA's hazardous waste code D018.

45. Further, 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], makes it clear that owners and operators of certain hazardous waste management units must have permits during the active life of the unit. At the time of the Inspections, the sumps were not included in Ascend's permits neither were they meeting the generator accumulation requirements authorized under RCRA.

46. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.24], the waste bearing the D018 code identified in Paragraph 44 above is a hazardous waste.

47. Respondent managed hazardous waste as identified and defined in Paragraphs 44 and 46 above in sumps that did not meet the tank standards set out in 40 C.F.R. Part 265, Subpart J, nor were the sumps included in Respondent's RCRA permit.

48. From the Investigation and a review of Ascend's Responses, EPA determined that for the periods that Ascend operated Sump 6 and Sump EQU-E, which are identified in Paragraphs 44 through 47 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim iv. Storage in a Tank Without a Permit or Meeting Other RCRA Accumulation Requirements - Poly Tank**

49. The relevant allegations in Paragraphs 1-48 are realleged and incorporated herein by reference.

50. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste", as identified or listed in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

51. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a)(1)(A) and (B), [40 C.F.R. § 262.34(a)(1)(i) and (ii)], a generator may accumulate hazardous waste on site for 90 days without a permit or interim status as long as the waste is placed first in a container or a tank and the generator complies with the applicable regulations, respectively in 40 C.F.R. Part 265, Subpart I, AA, BB, and CC as adopted and referenced under 30 TEX.ADMIN.CODE § 335.112 or 40 C.F.R. Part 265, or Subpart J, AA, BB, and CC, as adopted and referenced under 30 TEX.ADMIN.CODE § 335.112.

52. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d), [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in a container at or near the point of generation where wastes initially accumulated which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph 30 TEX.ADMIN.CODE § 335.69( a), provided the generator complies with 40 C.F.R. §§ 265.171, 265.172, and 265.173(a), as adopted by reference under 30 TEX.ADMIN.CODE § 335.112(a), and 30 TEX.ADMIN.CODE § 335.69(d)(1) and (2), [40 C.F.R. § 262.34(c)(1)(i) and (ii)].

53. During the Inspections, EPA identified and photographed a 200-gallon poly tank used by Respondent to collect drips from its phenol unloading activities at or near a point of waste generation.

54. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 261.33], the waste identified in Paragraph 53 U-listed waste above is a hazardous waste with the corresponding EPA's hazardous waste code U188.

55. The 200-gallon poly tank was not covered by Respondent's RCRA Permit, nor was it a 55-gallon container or a tank determined by EPA to comply with 30 TEX.ADMIN.CODE § 335.69(a)(1)(A) or (B), [40 C.F.R. § 262.34(a)(1)(i) or (ii)].

56. From the Investigation and a review of Ascend's Responses, EPA determined that for the periods that Ascend operated the 200-gallon poly tank identified in Paragraphs 53 through 55 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).



**Claim v. Waste Analysis Practices failed to Fully Comply with RCRA Permit**

57. The relevant allegations in Paragraphs 1-56 are realleged and incorporated herein by reference.

58. Pursuant to Table IV.C of Respondent's RCRA Permit, Permit No. 50189, the Permit required Respondent to perform chemical and physical analysis of a representative sample from each of the itemized waste streams associated with Respondent's treatment, storage, and disposal of hazardous waste.

59. At the time of the Inspections, Ascend could not demonstrate that all the chemical and physical analyses specified in Table IV.C of Respondent's RCRA Permit, Permit No. 50189, were being performed.

60. EPA conducted a subsequent review of Ascend's Waste Analysis Plan ("WAP") and concluded that in general its WAP was not consistent with the requirements of Table IV.C of its RCRA Permit, Permit No. 50189.

61. From the Investigation and a review of Ascend's RCRA Permit and WAP, EPA determined that for the relevant period of this CAFO, Ascend failed to comply with its RCRA Permit, Permit No. 50189 and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim vi. Treatment of Hazardous Waste Without a Permit -Three-sided Wooden Box**

62. The relevant allegations in Paragraphs 1-61 are realleged and incorporated herein by reference.

63. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste", as identified or listed

in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261].

64. During the Inspection, EPA observed and photographed Respondent's treating of hazardous waste in a three-sided wooden box.

65. The three-sided wooden box identified in Paragraph 64 stored hazardous waste that was generated in Respondent's IWPF. The hazardous waste being treated in the box had at various points between generation and treatment either been labeled with or characterized as bearing numerous waste codes, which correspond to the following EPA's hazardous waste codes: D001; D002; D003; D004; D005; D007; D009; D010; D018; D038; F002; F003; F005; F039; K011; K013; U002; U003; U009; U019; U022; U053; U080; U122; U123; U134; U135; U154; U161; U188; U220; P003; P030; P063; P101; and P106.

66. The three-sided wooden box was not covered by Respondent's RCRA Permit, Permit 50189 and did not meet the definition of a tank or container.

67. From the Investigation, EPA determined that for all relevant period that Ascend managed and treated hazardous waste in the three-sided wooden box identified in Paragraphs 64 through 66 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim vii. Treatment of Hazardous Waste Without a Permit or Meeting Other RCRA Accumulation Requirements – The Roll-off Container**

68. The relevant allegations in Paragraphs 1-67 are realleged and incorporated herein by reference.

69. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste", as identified or listed

in 30 TEX.ADMIN.CODE §335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

70. From a review of the Responses, EPA determined that Respondent transferred the treatment of hazardous waste from the three-side wooden box, identified in Claim vi above, into an open Roll-off Container and treated its waste.

71. Respondent stored and treated hazardous waste in its Roll-off Container which had at various points between generation and treatment either been labeled with or characterized as bearing numerous waste codes, which correspond to the following EPA's hazardous waste codes: D001; D002; D003; D004; D005; D007; D009; D010; D018; D038; F002; F003; F005; F039; K011; K013; U002; U003; U009; U019; U022; U053; U080; U122; U123; U134; U135; U154; U161; U188; U220; P003; P030; P063; P101; and P106.

72. The Roll-off Container is not covered by Respondent's RCRA Permit, Permit 50189 and was not meeting the accumulation requirements that are otherwise authorized under RCRA.

73. From the Investigation, EPA determined that for all relevant periods that Ascend managed and treated hazardous waste in the open Roll-off Container identified in Paragraphs 70 through 72 above, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim viii. Storage Without a Permit or Meeting Other RCRA Accumulation Requirements – Backhoe**

74. The relevant allegations in Paragraphs 1-73 are realleged and incorporated herein by reference.



75. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the “treatment,” “storage,” and “disposal” of any “hazardous waste”, as identified or listed in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

76. Pursuant to 30 TEX.ADMIN.CODE § 335.69(a)(1)(A), [40 C.F.R. § 262.34(a)(1)(A)], a generator may accumulate hazardous waste on site for 90 days without a permit or interim status if the waste is placed first in a container and the generator complies with the applicable requirements of 40 C.F.R. Part 265, Subpart I, AA, BB, and CC as adopted and referenced in 30 TEX.ADMIN.CODE § 335.112.

77. During the Inspections, EPA identified and photographed a front bucket of a parked backhoe holding hazardous waste with the waste code K011, which was generated in Respondent’s Acrylonitrile area and subsequently sent to the Catalyst Recovery area in Department 331 for treatment.

78. Pursuant to 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. § 261.32], the K-listed waste, K011, identified in Paragraph 77 above is a hazardous waste.

79. The front bucket of a backhoe is not covered by Respondent’s RCRA Permit, and it was not being managed in accordance with the RCRA requirements for a hazardous waste storage container.

80. From the Investigation and a review of the Responses, EPA determined that for the period that Ascend accumulated hazardous waste in the front bucket of a backhoe identified in Paragraphs 77 through 79, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R.

§§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim ix. Storage Without a Permit or Meeting Other RCRA Accumulation Requirements – PPE Accumulation in Plastic Container**

81. The relevant allegations in Paragraphs 1- 80 are realleged and incorporated herein by reference.

82. Pursuant to 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. § 270.1(c)], RCRA requires a permit for the “treatment,” “storage,” and “disposal” of any “hazardous waste”, as identified or listed in 30 TEX.ADMIN.CODE § 335.1(69), [40 C.F.R. Part 261], unless the generator meets the accumulation requirements that are otherwise authorized under RCRA.

83. Pursuant to 30 TEX.ADMIN.CODE § 335.69(d), [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in a container at or near the point of generation where wastes initially accumulated which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph 30 TEX.ADMIN.CODE § 335.69( a), provided the generator complies with 40 C.F.R. §§ 265.171, 265.172, and 265.173(a), as adopted by reference under 30 TEX.ADMIN.CODE § 335.112(a), and 30 TEX.ADMIN.CODE § 335.69(d)(1) and (2), [40 C.F.R. § 262.34(c)(1)(i) and (ii)].

84. During the Inspections, EPA identified and photographed a black plastic container located in the SAA of Respondent’s IWPF. Through the Response, Ascend informed EPA that waste in the form of used personal protective equipment had come in contact with listed hazardous wastes and was stored in that plastic container.

85. Based on the listed hazardous waste Respondent identified to EPA as having the best chance of being present in the area, and from EPA's understanding of the related processes, EPA determined that the hazardous waste stored by Respondent in the plastic container corresponds to the following EPA's hazardous waste codes: K011; K013; F003; F039; P063; U009; U019; U122; U154; and U188.

86. The PPE Accumulation identified in Paragraphs 84 and 85 above is not covered by Respondent's RCRA Permit and was not otherwise authorized RCRA accumulation.

87. From the Investigation and a review of Ascend's Responses, EPA determined that for the period that Ascend stored hazardous waste in the plastic container identified in Paragraphs 84 through 86, Ascend failed to comply with 30 TEX.ADMIN.CODE § 335.2(a), [40 C.F.R. §§ 270.1(c) and 270.10], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

**Claim x. Failure to Inspect and Monitor Air Pollution Control Units**

88. The allegations in Paragraphs 1-87 are realleged and incorporated herein by reference.

89. Pursuant to 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. § 262.34(a)(ii)] generators who place wastes in tanks must comply with the applicable requirements of 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. Part 265, Subpart CC].

90. Pursuant to 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. § 265.1085(c)(4)(ii)], the owner or operator of the air pollutant emission control equipment shall perform an initial inspection of the fixed roof and its closure devices on or before the date the tank becomes subject to 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. § 265.1085(c)(4)].



91. Pursuant to 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. § 265.1085(c)(4)(i)], the fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to visible cracks, holes, or gaps.

92. During the Inspections, EPA identified two tanks: a green frac tank (T-110); and a white frac tank (T-109), both were in Respondent's Mix Tank Area of the Facility.

93. Tanks T-110, and T-109, accumulate and treat hazardous waste from Respondent's IWPF and store hazardous waste that had been listed as including the following EPA hazardous waste codes: D001; D002; D003; D004; D005; D007; D009; D010; D018; D038; F002; F003; F005; F039; K011; K013; U002; U003; U009; U019; U022; U053; U080; U122; U123; U134; U135; U154; U161; U188; U220; P003; P030; P063; P101; and P106.

94. During the Inspection, EPA conducted Method 21 readings using Flame Ionization Detectors on both tanks and identified the following readings: for T-110 VOC, readings of 2178 ppm (Respondent's testing on said day indicated VOC readings of 1328 ppm); and for T-109, VOC readings of 678 ppm (Respondent's testing on said day indicated VOC readings of 1178 ppm).

95. From a review of the Response, EPA determined that Respondent did not conduct an initial inspection of the fixed roofs and its closure devices on or before the date the tanks identified in Paragraphs 92 and 93 were placed into service.

96. From the Investigation and a review of the Responses, including its records, EPA determined that from the date of 25 February 2017 when waste was first introduced into Tanks T-110, and T-109, through the date of 14 March 2017 when the leaks were verified to be fixed in Tanks T-110, and T-109, Respondent placed the Tanks into service without an initial inspection.

97. From the Investigation and a review of Ascend's Responses, EPA determined that Ascend placed waste in the tanks that are subject to 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. Part 265, Subpart CC], and failed to comply with 30 TEX.ADMIN.CODE § 335.112(a)(21), [40 C.F.R. § 265.1085(c)(4)(ii)], and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

### **CWA ALLEGATIONS**

#### **Claim xi. Failure to Comply with Its Effluent Limitations**

98. The allegations alleged in Paragraphs 1-25 are incorporated herein by reference.

99. The Texas Pollutant Discharge Elimination System ("TPDES") Permit, Permit No. WQ0000001000, [TX0003875], (the "TPDES Permit") authorized Ascend to discharge from several Outfalls, including the Outfalls at issue for purposes of this CAFO, Internal Outfall 101 and Outfalls 001 and 006. Internal Outfall 101 and Outfall 001 ultimately discharge to Chocolate Bayou Tidal via Outfall 001 in Segment No.1107 of the San Jacinto-Brazos Coastal Basin; Outfall 006 discharges to New Bayou, thence to Chocolate Bay in Segment No.2432 of the Bays and Estuaries.

100. The TPDES Permit provides that Ascend discharges shall be made in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the TPDES Permit, as well as the TCEQ rules, the laws of the State of Texas, other TCEQ orders, and with all applicable federal laws and regulations.

101. During the period of January 2013 through August 2018, Ascend discharged wastewater from its permitted Internal Outfall 101 and Outfalls 001 and 006.

102. For Outfall 006, Ascend has a discharge limitation of 15 mg/L (daily max.) for oil and grease; for Outfall 001, Ascend has a discharge limitation of a maximum of 9.0 s.u. for pH.

103. For Internal Outfall 101, Ascend has several discharge limitations that are relevant for this CAFO, including the discharge limitations listed below:

- a) 89 CFU/100 ml (Daily Max) for enterococci;
- b) 4 mg/L (MO Max) for chlorine; and
- c) 574 lbs/d (Daily Max) BOD, 5day, 20 deg. C.

104. For all times relevant to this CAFO, Ascend's Discharge Monitoring Reports demonstrate that Ascend exceeded the discharge limitations, which are referenced in Paragraphs 102 and 103, on several occasions for Internal Outfall 101 and at least one occasion for Outfalls 001 and 006.

105. Respondent, on at least thirteen (13) occasions, violated its TPDES Permit No. WQ0000001000, [TX0003875], and Section 301 of the CWA, 33 U.S.C. § 1311, by exceeding the effluent limitations contained in the TPDES Permit and is therefore subject to civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

#### IV. COMPLIANCE ORDER

106. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and submit all documents, including a copy of all permit modification and amendment requests made to the TCEQ to effectuate the compliance with this order, photos, and other appropriate evidence, relevant to the implementation and completion of this compliance order, to the EPA within seven (7) days of the time specified below for completion of each action:

- a) With respect to the Respondent's hazardous waste management processes in the Facility's 331 and IWPF areas and the cement stabilization process, identified in claim i. of this CAFO, Ascend will take and complete permitting, design, and construction steps as necessary to meet the requirements of 30 TEX.ADMN.CODE § 335.2(a), [40 C.F.R. Part 264], (the "Solids Projects"). The Solids Projects is delineated as follows to include respective completion dates:
  - i. A Class II permit modification, to the Facility's existing RCRA Permit, Permit No. 50189, will be submitted to the TCEQ no later than June 30, 2019, and



said modification will expressly cover these solids handling activities and areas, as well as the Facility's cement stabilization processes;

- ii. Preliminary design work and drawings for the Solids Projects will be completed by June 30, 2019;
  - iii. Detailed engineering work for the Solids Projects will be completed by December 31, 2019;
  - iv. Fabrication of equipment, instrumentation, and piping for the Solids Projects will be completed by June 30, 2020;
  - v. Field construction for the Solids Projects will be completed by December 31, 2020; and
  - vi. Start-up of operation of the Solids Projects will commence by March 30, 2021.
- b) As part of Respondent's RCRA permit modification, Ascend will also amend its RCRA Permit, Permit No. 50189 and take the necessary actions to ensure that Ascend operates the Facility in compliance with RCRA and its modified permit. Further, Ascend will ensure that its WAP is fully compliant with RCRA and its RCRA Permit, Permit No. 50189. This permit modification will be submitted to the TCEQ together with the application for the Solids Projects by June 30, 2019.
- c) On or before June 30, 2019, Respondent will take the steps necessary to address the six (6) valves identified in Claim ii and comply with RCRA and the regulations promulgated thereunder by June 30, 2019.
- d) If Respondent cannot meet the timeline listed above and will need to delay performance for less than ninety (90) calendar days, Respondent shall notify EPA and request an extension of time, including a timetable for compliance. EPA will grant an extension of up to ninety (90) calendar days. If Respondent determines that it needs longer than the additional ninety (90) calendar days to come into compliance, Respondent will need to initiate a conference call with EPA to discuss the rationale for the delay, before EPA will grant additional extensions.
- e) In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer or officer's designee of Ascend and shall include the following certification:

I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or

persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6  
Enforcement and Compliance Assurance Division  
RCRA Enforcement Section (ECDSR)  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
Attn: Mr. Gabriel Salinas

In the alternative, documents required by this CAFO may be sent to Gabriel Salinas via email at [salinas.gabriel@epa.gov](mailto:salinas.gabriel@epa.gov).

## V. TERMS OF SETTLEMENT

### i. **Penalty Provisions**

107. Pursuant to the authority granted in Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and upon consideration of the entire record herein, including the above referenced Factual Allegations and Allegations of Violations, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, which includes Respondent's information provided to EPA subsequent to the Inspection, it is ordered that Respondent be assessed a civil penalty of Nine Hundred and Seventy-Six Thousand Seven Hundred and Seven Dollars (\$976,707.00).<sup>3</sup>

108. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO by one of the following methods:

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<sup>3</sup> The total civil penalty of \$976,707.00 is divided between RCRA and CWA as follows: RCRA equaling \$909,365.00 and CWA equaling \$67,342.00.

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

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

- b. By wire transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone: 314-418-1028

"In the matter of Ascend Performance Materials, Docket No. RCRA-06-2019-0918 shall be clearly marked on the check or other remittance, to ensure proper credit.

109. The Respondent shall send a simultaneous notice of such payment to the following:

Ms. Lorena S. Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102

Mark Potts, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500



Dallas, TX 75270-2102  
Attn: Mr. Gabriel Salinas

Your adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

110. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and 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). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30)-day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b).

111. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**ii. Stipulated Penalties**

112. In addition to any other remedies or sanctions available to EPA, if the Respondent

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fails or refuses to comply with any provision of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$1,000.00
16th through 30th day	\$5,000.00
31st day and beyond	\$10,000.00

113. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

114. The payment of stipulated penalties shall be made in accordance with the options set forth in Subsection i. (Penalty Provisions) of Section V of this CAFO.

115. The Respondent shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn  
Regional Hearing Clerk (ORCD)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102

Mark Potts, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
Attn: Mr. Gabriel Salinas

Chief, RCRA Legal Branch (ORCER)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102

116. Adherence to these procedures in addition to Respondent's compliance with the provisions of Section V, concerning interest, penalties, and administrative costs, will ensure proper

credit when payments are received.

117. In addition to the stipulated penalties set forth above, EPA specifically reserves the right to seek other remedies or sanctions available to the EPA by reason of the Respondent's failure to comply with the requirements of this CAFO, including sanctions that EPA may seek under RCRA and the CWA.

118. If the Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

### **iii. Dispute Resolution**

119. If the Respondent objects to any decision or directive of EPA regarding Section IV. (Compliance Order) or Section VI.ii. (Stipulated Penalties), the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Mark Potts, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
Attn: Mr. Gabriel Salinas

Chief, RCRA Legal Branch (ORCER)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102



120. The RCRA Enforcement Branch Chief (“Branch Chief”) or his/her designee and the Respondent shall then have an additional fifteen (15) calendar days from EPA’s receipt of the Respondent’s written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Chief and the Respondent, the agreement shall be reduced to writing and signed by the Branch Chief and the Respondent and incorporated by reference into this CAFO.

121. If no agreement is reached between the Branch Chief and the Respondent within that time, the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division (“Division Director”) or his/her designee. The Division Director and the Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second fifteen (15)-day period, the Division Director shall provide a written statement of EPA’s decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

122. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to the Subsection on Modification, below.

#### **iv. Notification**

123. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals

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specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA: Mark Potts, Chief  
Waste Enforcement Branch (ECDS)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 75270-2102  
Attn: Mr. Gabriel Salinas

Respondent: Mr. Brian Connelly  
Vice President of Operations  
Ascend Performance Materials Texas, Inc.  
FM 2019  
Alvin, TX 77512

With Copy to: Mr. Andrew Ralston  
Senior Vice President & General Counsel  
Ascend Performance Materials  
1010 Travis, Suite 900  
Houston, TX 77002

Mr. Timothy A. Wilkins  
Managing Partner, Austin  
Bracewell, LLP  
111 Congress Avenue,  
Suite 2300  
Austin, TX 78701

#### **v. Modification**

124. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

#### **vi. Retention of Enforcement Rights**

125. EPA does not waive any rights or remedies available to EPA for any other violations by the

Respondent of Federal or State laws, regulations, or permitting conditions.

126. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**vii. Indemnification**

127. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

**viii. Record Preservation**

128. The Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which, in any way relate to this CAFO regardless of any document retention policy to the contrary.

**ix. Cost**

129. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent



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specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

**x. Termination and Satisfaction**

130. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 106 of this CAFO. Unless the EPA objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated based on Respondent's certification.

131. This CAFO resolves the claims set forth in Section III, Factual Allegations and Alleged Violations, and Respondent is released from liability for Federal civil penalties for the violations alleged in this CAFO that relate to the Facility through the effective date of this CAFO as provided in 40 C.F.R. § 22.18(c) upon the termination of this CAFO.

**xi. Effective Date of Settlement**

132. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT**

**AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 6-20-2019




Brian Connelly, Vice President of Operations  
Ascend Performance Materials Texas, Inc.

Docket No. RCRA-06-2019-0918

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER (con't):**

**FOR THE COMPLAINANT:**

Date: 6/21/19

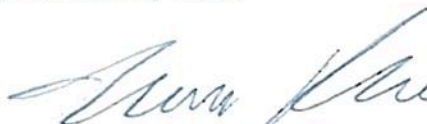
  
Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division



FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/25/19



\_\_\_\_\_  
Regional Judicial Officer  
Thomas Rucki

**CERTIFICATE OF SERVICE**

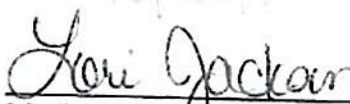
I hereby certify that on the 25<sup>th</sup> day of June 2019, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

Certified Mail, return receipt requested, 7010 2780 0002 4356 3613  
Addressed to the following:

Mr. Brian Connelly  
Vice President of Operations  
Ascend Performance Materials Texas, Inc.  
FM 2019  
Alvin, TX 77512

With a copy, via email timothy.wilkins@bracewell.com:  
To: Mr. Timothy A. Wilkins

And a copy via email to sarals@ascendmaterials.com:  
To: Mr. Andrew Ralston

  
Ms. Lori Jackson  
Paralegal