

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

American Distillation, Inc.  
1690 N.E. Royster Road  
Leland, North Carolina 28451  
EPA ID No.: NCR000001651

Respondent.

Docket No. RCRA-04-2021-2111(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.
5. Respondent is American Distillation, Inc., a corporation doing business in the State of North Carolina. This proceeding pertains to Respondent's facility located at 1690 N.E. Royster Road, Leland, North Carolina (Facility).

### III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at North Carolina Solid Waste Management Law (NCSWML), N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -310.22 [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g] and the North Carolina Hazardous Waste Management Rules (NCHWMR), 15A NCAC 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270].
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Section 130A-294(c) of the NCSWML, N.C.G.S. § 130A-294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15 NCAC 13A .0107 [40 C.F.R. Part 262].
12. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
13. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A NCAC 13A .0106(a) [40 C.F.R. § 261.4(b)].
14. Pursuant to 15A NCAC 13A .0106(a) and 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.

15. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
16. Pursuant to 15A NCAC 13A .0106(a) and 15A NCAC 13A .0106(d) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed in 15A NCAC 13A .0106 [40 C.F.R. Part 261, Subpart D].
17. Listed hazardous wastes include the F-Listed wastes from nonspecific sources identified in 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31].
18. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31(a)], the following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents; and still bottoms from the recovery of these spent solvents and spent solvent mixtures are listed hazardous wastes identified with the EPA Hazardous Waste Number F003.
19. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in 15A NCAC 13A .0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
20. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
21. Pursuant to N.C.G.S. 130A-290(a)(22) [40 C.F.R. § 260.10], a “person” includes a corporation.
22. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
23. Pursuant to N.C.G.S. 130A-290(a)(41) [40 C.F.R. § 260.10], “storage” means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
24. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “tank” is defined as a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.
25. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], “ancillary equipment” is defined as any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

26. Pursuant to 15A NCAC 13A .0107 (2016) [40 C.F.R. § 262.34(a) (2016)<sup>1</sup>], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a Large Quantity Generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Sections 130A-294(c) and (g) of the NCSWML, N.C.G.S. § 130A-294(c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A NCAC 13A.0107 (2016) [40 C.F.R. § 262.34(a)(1)-(4) (2016)], hereinafter referred to as the “LQG Permit Exemption”.
27. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in 15A NCAC 13A .0107(a) 40 C.F.R. § 262.11].
28. Pursuant to 15A NCAC 13A .0103(c) [40 C.F.R. § 260.42(a)], a facility managing hazardous secondary materials under 15A NCAC 13A .0103(c) or 15A NCAC 13A .0106(a) [40 C.F.R. §§ 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27)] must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator using EPA Form 8700-12.

#### **IV. FINDINGS OF FACTS**

29. Respondent’s facility is located at 1690 N.E. Royster Road, Leland, North Carolina 28451 (“Facility”).
30. Respondent owns and operates a chemical production facility which provides services to its customers by providing distillation, dehydration, reaction, carbon treating and blending services. Products produced from chemical mixtures provided to Respondent include ethyl acetate, tert butyl alcohol, isopropyl alcohol, ethyl alcohol, miscellaneous alkanes, amines, esters and ketones. The Facility’s equipment includes 24-inch and 40-inch distillation columns, liquid phase dehydration equipment, vapor phase driers and various carbon beds.
31. Respondent is registered with the North Carolina Department of Environmental Quality (NCDEQ) as an LQG of hazardous waste.
32. On November 4, 2020, the EPA and the NCDEQ conducted a Compliance Evaluation Inspection (CEI) at Respondent’s Facility. The EPA’s findings of the CEI were documented in a report mailed to Respondent, dated December 18, 2020.
33. At the time of the CEI, the EPA determined that the Respondent was using isopropyl alcohol (IPA) beginning January of 2015 and acetone beginning May of 2017, through November of 2019 to clean tanks at its Facility. Upon using the solvents to clean the Respondent’s tanks, the Respondent generated spent IPA and acetone solvents which were transferred and accumulated in

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<sup>1</sup> North Carolina’s Generator Improvement Rule (GIR) regulations were effective in North Carolina as of March 1, 2019 but were not federally enforceable at the time of the EPA and State inspections at American Distillation, Inc. As such, and for ease of reference and consistency with the State’s Inspection Report, this CAFO will cite to the North Carolina hazardous waste regulations that were federally enforceable at the time of the inspections, and the corresponding federal regulations, prior to the amendments by the GIR. The requirements prior to the GIR are noted with their most recent effective date.

one of two run tanks (R-03 and R-28) and ancillary equipment prior to being fed to one of the Facility's distillation columns for reclamation.

34. The spent IPA and acetone solvents each have flashpoints of less than 140 degrees Fahrenheit and are D001 characteristic and D001/F002 characteristic/listed hazardous wastes, respectively.
35. At the time of the CEI, the Respondent had not made hazardous waste determinations on the spent IPA or acetone solvents generated and managed in tanks and ancillary equipment at its Facility.
36. At the time of the CEI, the Respondent had not filed a notification with the NCDEQ to become a handler of hazardous secondary materials in accordance with 15A NCAC 13A .0103(c) [40 C.F.R. § 260.42(a)]. As a result of not filing the notification, the Respondent did not fulfill tank inspection and monitoring requirements on its tank and ancillary equipment that were used to manage spent IPA and acetone, D001 and D001/F002 hazardous wastes.

## **V. ALLEGED VIOLATIONS**

37. Respondent is a "person" as defined in N.C.G.S. 130A-290(a)(22) [40 C.F.R. § 260.10].
38. Respondent is the "owner/operator" of a "facility" located at 1690 N.E. Royster Road, Leland, North Carolina, as those terms are defined in 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10].
39. Respondent is a "generator" of "hazardous waste" as those terms are defined in 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10] and 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3].
40. The Respondent failed to determine that the spent solvents, IPA and acetone used for cleaning tanks at the Facility were D001 characteristic and D001 characteristic/F002 listed hazardous waste, respectively. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid waste generated at its Facility.
41. The Respondent failed to notify as a handler of hazardous secondary materials. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0103(c) [40 C.F.R. § 260.42(a)] by failing to notify NCDEQ to be a handler of hazardous secondary materials.

## **VI. STIPULATIONS**

42. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
43. 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 CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;

- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

44. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- d. 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 CAFO, and to seek an additional penalty for noncompliance with the CAFO, and agrees that federal law shall govern in any such civil action;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of this CAFO.

45. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.

46. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding.

## VII. TERMS OF PAYMENT

47. Based on the Respondent's substantiated ability to pay claim, and in accordance with the Act, the EPA has determined that **THIRTY-NINE THOUSAND FIVE HUNDRED DOLLARS** (\$39,500.00) is an appropriate civil penalty to settle this action, which Respondent consents to pay as follows:

- a. The civil penalty will be paid in **three** installments in order to complete payment of the entire civil penalty including interest. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be \$39,500 + \$390.05. The first payment is due within thirty (30) days of the Effective Date of this CAFO, which is upon its filing with the Regional Hearing Clerk. Respondent's subsequent

payments shall thereafter be due in one year and then in eighteen (18) months from said Effective Date.

b. Respondent shall make payments in accordance with the following schedule:

<b>Payment Number</b>	<b>Payment shall be made <i>no later than</i></b>	<b>Principal Amount</b>	<b>Interest Amount</b>	<b>Total Payment Amount</b>
1	Thirty (30) calendar days following the Effective Date of this CAFO.	U.S. \$7,967.08	U.S. \$32.92	U.S. \$8,000
2	One (1) year following the Effective Date of this CAFO.	U.S. \$15,509.74	U.S. \$290.26	U.S. \$15,800
3	Eighteen (18) months following the Effective Date of this CAFO.	U.S. \$16,023.18	U.S. \$66.87	U.S. \$16,090.05

c. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in Paragraph 51 in the event of any such failure or default.

d. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may take action as set forth below in Paragraphs 51 and 52.

e. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of \$39,500 within thirty (30) calendar days of the Effective Date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

48. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

a. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

- c. If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

- d. If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

49. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4\_Regional\_Hearing\_Clerk@epa.gov  
and



Daryl R. Himes  
Chemical Safety and Land Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
himes.daryl@epa.gov

50. “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 the Facility name and “Docket No. RCRA-04-2021-2111(b).”
51. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
  - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
  - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(b)(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
52. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14;

- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 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; and/or
- d. refer the debt to the Department of Justice as provided in 40 C.F.R. § 13.33. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

53. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

### **VIII. EFFECT OF CAFO**

- 54. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 55. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c),
- 56. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
- 57. Nothing in this CAFO 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, except as expressly provided herein.
- 58. 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 as provided under the Act.
- 59. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
- 60. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.


61. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
62. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
63. By signing this Consent Agreement, the 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 CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
64. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
65. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
66. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, 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.
67. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
68. This CAFO shall not be construed to create rights in, or grant any cause of action to, any third party not party to this CAFO.
69. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

#### **IX. EFFECTIVE DATE**

70. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**[Remainder of Page Intentionally Left Blank]**

The foregoing Consent Agreement In the Matter of **American Distillation, Inc., Docket No. RCRA-04-2021-2111(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.  
FOR RESPONDENT:

  
Signature

11-16-21  
Date

Printed Name: AJ Simmons Jr

Title: owner

Address: 1690 Royster Rd NC, Leland, NC 28451

The foregoing Consent Agreement In the Matter of **American Distillation, Inc., Docket No. RCRA-04-2021-2111(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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Kimberly L. Bingham  
Chief  
Chemical Safety and Land Enforcement Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

American Distillation, Inc.  
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EPA ID No.: NCR000001651

Respondent.

Docket No. RCRA-04-2021-2111(b)

Proceeding Under Section 3008(a) of the  
Resource Conservation and Recovery Act,  
42 U.S.C. § 6928(a)

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of **American Distillation, Inc., Docket No. RCRA-04-2021-2111(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

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