

DISCIPLINARY ACTION CRITERIA

QP 1, QP 2, QP 3, QP 6, QP 7, QP 8, QP 9, QN 1 & QS 1



AMPTM

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DISCIPLINARY ACTION CRITERIA
QP 1, 2, 3, 6, 7, 8, 9, QN-1 & QS1
AMPP QP ACCREDITATION PROGRAM

1. INTRODUCTION

1.1. Background

At a meeting on March 12, 1996, the then SSPC Painting Contractor Certification Program (PCCP) Advisory Committee voted to set up a Task Group to draft new Disciplinary Action Criteria (DAC) for accredited contractors and procedures for administering disciplinary actions. The committee members felt that new and more stringent Disciplinary Action Criteria and administrative procedures were needed to supplement the annual and unannounced technical audits used prior to the DAC as the sole method for determining whether a contractor obtains and retains accreditation status.

The Disciplinary Action Criteria and administrative procedures are intended to strengthen the reputation of the QP programs and thus make QP Accreditation more valuable. Contractors who maintain QP accreditation standards benefit from the increased recognition and opportunities that come with being part of a program with high standards.

The Disciplinary Action Criteria and administrative procedures establish procedures and rules for: issuing warnings to accredited contractors; putting firms on probation; conducting special unannounced audits; suspending, revoking, or denying accreditation of contractors about whom critical faults in safety, environmental compliance, quality/service, or ethical practice have been reported and verified.

1.2. Scope and Use

This procedure defines the process for disciplining contractors for critical faults incurred under the now AMPP QP Accreditation Program. This procedure is used by AMPP when a critical fault is suspected. It is also used by contractors to respond to, and appeal disciplinary actions assessed by AMPP.

The procedure includes the following topics:

- Definitions of critical faults and disciplinary actions
- Steps in the process
- Enforcement
- Special Provisions & Notes

2. TRIGGERS FOR DISCIPLINARY ACTIONS

A contractor found to have violated a critical fault or faults as they are defined in Section 4 will be subject to disciplinary action. Violation of a single critical fault will typically be subject to disciplinary action as defined in Table 2-1. However, the impact of more than one reported critical fault can be cumulative. Consult DAC Table 5-1 for more detailed information on cumulative effects of critical faults.

Table 2-1 Disciplinary Action for Non-Cumulative Critical Fault

| Type of Critical Fault | Disciplinary Action |
|------------------------|---------------------|
| Serious | Warning |
| Very Serious | Probation |
| Severe | Suspension |
| Very Severe | Revocation |

3. DEFINITIONS OF DISCIPLINARY ACTIONS

3.1. DEFINITIONS

3.1.1. Warning

The contractor is notified that critical faults have been reported and have been verified and that additional reports will trigger further disciplinary action. A contractor issued a warning may be subject to one or more audits at any time after the warning has been made, at the contractor's expense. In addition, the Program Manager or Program Director reserves the right to request a corrective action plan, acceptable to AMPP QP Accreditation. Refusal to submit to an audit or cooperate with an auditor during any audit or cooperate with the Program Manager or Program Director or pay expenses shall result in a minimum, six-month suspension from the program. Reinstatement after the suspension is subject to the contractor's written commitment to cooperate. If AMPP chooses to conduct an audit, and the audit is passed, AMPP may remove the warning, provided corrective actions, acceptable to AMPP, have been submitted, when requested. Otherwise, the warning penalty remains in effect for a minimum of one year, unless superseded by another AMPP disciplinary action or extended by the Program Director.

3.1.2. Probation

The contractor is notified that multiple critical faults have been reported and have been verified. A contractor put on probation is subject to one or more

mandatory audits, in addition to the regularly scheduled annual audit, performed at the contractor's expense. If AMPP chooses to audit a second site as part of the mandatory additional audit requirement, the contractor will bear the cost of an additional site audit. In addition, the Program Manager or Program Director reserves the right to request an acceptable corrective action plan from a contractor placed on "probation." Refusal to submit to an audit or refusal to cooperate with an auditor during any audit, or refusal to cooperate with the Program Manager or Program Director or refusal to pay expenses, will result in a minimum, six-month suspension from the program. Reinstatement after the suspension is subject to the contractor's written commitment to cooperate. Probation ends after one calendar year from date of issuance unless otherwise determined through the dispute resolution process (e.g., an arbitration panel decision) or superseded by another AMPP disciplinary action or extended by the Program Director.

3.1.3. Suspension

The contractor is notified that, based on the AMPP Program Director's verification of reported critical faults, its accreditation will be suspended for a period of six months to two years depending on the number of critical faults and their severity. To be reinstated, the contractor will have to submit a maintenance application and successfully complete an office audit and, if applicable, a field audit, at the contractor's expense, as well as pay a reinstatement fee equivalent to an initial application fee for the QP accreditations that were suspended. If the contractor's accreditation term runs out during the suspension period, the contractor must reapply for initial accreditation at the end of the suspension period, pay the required initial application and audit fees as well as a reinstatement fee, and submit to, and pass, an initial audit which may require observation of active work under contract.

3.1.4. Revocation

The contractor is notified that, based on the AMPP Program Director's verification of reported critical faults, AMPP shall revoke its accreditation for a minimum of two years. To be reinstated, the contractor will have to submit an initial application, pass an initial audit at the contractor's expense, which will include observation of active work under contract, and pay a reinstatement fee equivalent to the annual fee in addition to the regular initial application fee. The contractor may submit the initial application 45 days prior to the end of the revocation period. Once reinstated, the contractor will be issued accreditation, conditional upon the firm passing a follow-up audit, at the contractor's expense,

within the first year of reinstatement, but prior to any planned maintenance audit to retain accreditation status.

- 3.2. Disciplinary actions taken by AMPP against an accredited contractor affect all supplemental QP accreditations held by the contractor, unless the initially assessed disciplinary action is changed as a result of the dispute resolution process. For example, if a QP 1 contractor is suspended for violating the DAC, any supplemental accreditations such as QP 2 and QS 1 are also suspended.
- 3.3. Audits for contractors under “warning” or “probation” are not necessarily limited to audits of the items on the accreditation evaluation checklist. A mandatory disciplinary-related audit can also be in the form of a “special” audit to review business practices or other activities not related directly to the accreditation audit checklist such as conditions set as part of a settlement with the Jurisdictional Regulatory Agency, court, arbitration agency or other conditions established as a result of the dispute resolution process.
- 3.4. Disciplinary actions taken, and penalties assessed, may differ for violations noted in special provisions such as “Fatalities,” and “Job Notification Reporting.”

4. DEFINITIONS OF CRITICAL FAULTS

Critical faults are actions associated with contractor activities that violate the requirements of the DAC. Critical faults are classified as:

- Serious
- Very Serious
- Severe
- Very Severe

4.1. SAFETY

4.1.1. Safety - Serious Critical Fault

A Serious fault can result from the following events:

- a. A pattern of substantiated, reliable, unsolicited reports (e.g., published accounts; documentation by the owner or its designated representative) of safety violations. A pattern is defined, in this instance, as three separate instances in an 18-month period.
- b. A single serious “lost time” accident on a painting job site (field or shop), or in relation to an active job site resulting in the hospitalization of the injured worker or workers for more than 48 hours for other than observation.

4.1.2. Safety - Very Serious Critical Fault

A Very Serious fault can result from the following events:

- a. A second single serious accident as described in clause 4.1.1 above within a 5-year period.

4.1.3. Safety - Severe Critical Fault

A Severe Fault can result from the following events:

- a. A pattern of serious, repeat, or willful violations. A “pattern” is defined in this instance as affirmed serious, repeat, or willful violations as a result of three separate, unrelated (see note below) Jurisdictional Regulatory Agency inspections over an 18-consecutive-month period; or any two affirmed repeat or willful violations during an 18-consecutive-month period.

Note 1: With the exception of events described in Note 2 below, when a contractor is cited for serious, repeat, or willful violations on the same project, violations are considered (by AMPP) to be “unrelated” if the initial site visit that reveals such violations was conducted on the same job site at least two months after the contractor received written notification of the results from the previous inspection. Affirmed violations at other job sites are also considered to be “unrelated.” Further, to qualify for a pattern, any affirmed, serious, or repeat violations must be \geq \$10,000 (USD) in fines paid per inspection, when monetary penalties are assessed.

Note 2 - Exceptions to Note 1:

Any **Jurisdictional Regulatory Agency** inspection triggered by one or more of the following, as defined by **Jurisdictional Regulatory Agency standard/requirement**.

- “Imminent danger situation;”
- “Fatalities and catastrophes;”
- “Complaints;”
- “Referrals;”

is considered an “unrelated” inspection, regardless of:

- the job site location,
- any other **Jurisdictional Regulatory Agency** inspection that was previously conducted, at the job site, and

- when the previous **Jurisdictional Regulatory Agency** inspection(s) occurred.
- b. An affirmed willful or repeat Jurisdictional Regulatory Agency violation, resulting from a Jurisdictional Regulatory Agency inspection triggered by a work site incident or fatality.

4.2. ENVIRONMENTAL

4.2.1. Environmental – Serious Critical Fault

A Serious fault can result from the following events:

- a. A pattern of substantiated, reliable, unsolicited reports (e.g., published accounts; documentation by the owner or its designated representative) of environmental compliance specification or governmental regulatory agency violations, excluding unauthorized releases or spills. A pattern is defined, in this instance, as three separate instances in an 18-month period.

4.2.2. Environmental – Very Serious Critical Fault

A Very Serious fault can result from the following events:

- a. Affirmed violations of **Jurisdictional Regulatory Agency** regulations or state or municipal authority regulations or violation of the Owner's specification or contract for unauthorized releases or spills.

4.2.3. Environmental – Severe Critical Fault

A Severe fault can result from the following events:

- a. Affirmed environmental violations that expose employees or the public to significant hazards in conjunction with work done on a specific project. Examples would include but not be limited to the illegal disposal or the illegal storage of hazardous materials or the pollution of areas at or surrounding the work site.

4.3. QUALITY OF WORK/SERVICE

4.3.1. Quality of Work/Service – Serious Critical Fault

A Serious fault can result from the following events:

- a. The final project inspection does not meet project specifications as demonstrated by substantiated and reliable reports (e.g., published accounts; documentation by the Owner or its designated representative) despite attempts by the Owner or its designated representative to have the non-compliance(s) resolved.

4.3.2. **Quality of Work/Service – Very Serious Critical Fault**

A Very Serious fault can result from the following events:

- a. The final project inspection does not meet project specifications on **two** separate instances in an 18-month period as demonstrated by substantiated and reliable reports (e.g., published accounts; documentation by the Owner or its designated representative) despite attempts by the Owner or its designated representative to have the non-compliance(s) resolved.

4.3.3. **Quality of Work/Service – Severe Critical Fault**

A Severe fault can result from the following events:

- a. Deliberate or willfully negligent violations of project specifications as demonstrated by substantiated and reliable reports (e.g., published accounts, which may include termination with cause; documentation by the Owner or its designated representative). Deliberate or willfully negligent violations include, but are not limited to, utilizing a non-QP coating subcontractor to perform any surface preparation and/or coating application work on a project requiring QP accreditation, without the written consent of the ~~facility~~ Owner or its designated representative.

4.4. WAGE AND HOUR REGULATIONS

Table 4-1 – COMPLAINTS TO SUBSTANTIATE SERIOUS/VERY SERIOUS FAULT

| Crew Size | Min. Number of Complainants Required to Substantiate Fault | Crew Size | Min. Number of Complainants Required to Substantiate Fault |
|-----------|--|-----------|--|
| 6 to 15 | 3 | 36 to 40 | 8 |
| 16 to 20 | 4 | 41 to 45 | 9 |
| 21 to 25 | 5 | 46 to 50 | 10 |
| 26 to 30 | 6 | 51 to 60 | 11 |
| 31 to 35 | 7 | 61 to 70 | 12 |
| | | 70 + | 13 |

Table 4-1 Note: Table 4-1 provides guidelines on the number of complainants that may be required to substantiate Serious and Very Serious wage and hour regulation faults as they are defined in this section. The circumstances of each complaint will also be taken under consideration when determining the minimum number of complainants required to confirm fault. Crews with sizes of less than 6 will be assessed on a case-by-case basis.

4.4.1. Wage and Hour Regulations – Serious Critical Fault

A Serious fault is defined by one or more of the following:

- unaddressed and/or uncorrected payroll clerical errors,
- unaddressed and/or uncorrected payroll calculation errors,
- unaddressed and/or uncorrected owed back wages, and/or
- unaddressed and/or uncorrected misclassification of workers.

A Serious fault, as defined above, can result from the following events:

- Two (2) failures in a 24-month period and in accordance with Table 4-1, to pay wage rates, including overtime rates, as required by the Jurisdictional Regulatory Authority's prevailing standard(s)/requirement(s) and/or as required by the Owner/Owner Representative. Such failure shall be substantiated by:
 - verdict or judgment following litigation or administrative process which demonstrates the QP accredited contractor has been notified and has not rectified the initial substantiated complaint within 3 payroll cycles from the notification of complaint, or
 - by settlement or agreement between the contractor, affiliated company(s) and/or subcontractor(s) and any government agency, Jurisdictional Regulatory Authority and/or Owner/Owner Representative in which a contractor is required to pay additional wages to its employees.

4.4.2. Wage and Hour Regulations – Very Serious Critical Fault

A Very Serious fault is defined as one or more of the following:

- unaddressed and/or uncorrected payroll clerical errors,
- unaddressed and/or uncorrected payroll calculation errors,
- unaddressed and/or uncorrected owed back wages, and/or
- unaddressed and/or uncorrected misclassification of workers.

A Very Serious fault, as defined above, can result from the following events:

- a. Three (3) failures, in a three-year period and in accordance with Table 4-1 to pay wage rates, including overtime rates, as required by the Jurisdictional Regulatory Authority's prevailing standard(s)/requirement(s) and/or as required by the Owner/Owner Representative. Such failure shall be substantiated by:
 - i. a verdict or judgment following litigation or administrative process which demonstrates the QP Accredited contractor has been notified and has not rectified the initial substantiated complaint within 3 payroll cycles from the notification of complaint, or
 - ii. by settlement or agreement between the contractor, affiliated company(s) and/or subcontractor(s) and any government agency, Jurisdictional Regulatory Authority and/or Owner/Owner Representative in which a contractor is required to pay additional wages to its employees.

4.4.3. Wage and Hour Regulations – Very Severe Critical Fault

A Very Severe fault is defined as:

- criminal penalties assessed against the contractor related to wage and hour issues, such as fraud, wage theft, and breach of fiduciary duties, or documented refusals by the contractor to pay a wage and hour judgment,
- documented falsification of certified payroll records by the contractor,
- documented abuse by the contractor of visa programs or violations of other immigrant hiring laws,
- kickbacks paid, side payrolls created, and similar schemes,
- debarment of the contractor by any Jurisdictional Regulatory Authority for wage and hour violations, and/or

- wage and hour violations committed by the contractor characterized by any Jurisdictional Regulatory Authority as “willful,” “repeat,” “aggravated”, “serious”, or similar.

A Very Severe fault can result from the following events:

- a. One (1), failure, as defined above, to follow wage and hour regulations, including overtime rates, as required by the **Jurisdictional Regulatory Authority’s** prevailing standard(s)/requirement(s) and/or as required by the Owner/Owner Representative. Such failure shall be substantiated by:
 - i. a verdict or judgment following litigation or administrative process, or
 - ii. by settlement or agreement between the contractor, affiliated company(s) and/or subcontractor(s) and any government agency, Jurisdictional Regulatory Authority and/or Owner/Owner Representative in which a contractor is required to pay additional wages to its employees.

4.5. ILLEGAL OR UNETHICAL BUSINESS PRACTICE

4.5.1. Illegal or Unethical Business Practice – Very Severe Critical Fault Practice

A Very Severe fault can result from the following events:

- a. Criminal conviction of the owner, officers, directors or managing agents of the contracting firm or affiliated corporation, company, or entity for any felony in connection with operation of the firm or in connection with surface preparation and/or coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, plea of guilty or plea of nolo contendere.
- a. Criminal conviction of the contracting firm or corporation or affiliated corporation, company, or entity in connection with surface preparation and coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, a plea of guilty, or a plea of nolo contendere.
- a. Illegal or unethical business practices of the contracting firm or corporation or affiliated corporation, company, or entity, such as, but not limited to, administrative actions, falsification of certified payroll, or systematic violation of labor or tax laws.

- b. A pattern (three separate instances in a 12-month period) of substantiated, reliable, unsolicited reports of ethical practice violations by any representative of the firm's management on a project (e.g., company officer, production supervisor, foreman, superintendent, quality control representative, or safety representative).
- c. Fraud, as documented.
- d. Altering any reports, documents, or test results on a project, as documented by a facility owner or representative or AMPP.
- e. Misrepresentation or non-disclosure of information that is required to obtain, renew, or maintain accreditation, as documented by AMPP.

Note: For purposes of this document, affiliated company is defined as: Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has the power to control the other, or (2) a third-party control or has the power to control both. (Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees), (3) Is a business entity organized following the revocation, suspension, or proposed for same of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was subject to revocation or debarred, suspended, or proposed for such.

4.6. REPEAT OFFENCES

4.6.1. Repeat Offences – Very Severe Critical Fault

A Very Severe fault can result from the following events:

- a. Two severe faults in a one-year period.

5. TABLE OF DISCIPLINARY ACTIONS

This table is a guide for Critical Faults and the associated Disciplinary Actions. In this table, the disciplinary actions are listed from left to right in order of increasing severity. The critical faults are listed from top to bottom in order of increasing severity. Please note that, for economy of space, this table contains an abbreviated description of each critical

fault. The full description in the text will be used by AMPP for assessment of disciplinary action.

It is recognized that more than one critical fault may be reported at one time, thus the entries in this table show both the number of reports and the total number of critical faults that will trigger each disciplinary action.

It is also recognized that critical faults of different severity may be reported one at a time. If a contractor is reported for two or more critical faults, the higher severity fault(s) will take precedence in determining disciplinary action.

Note:

Contractors who have had their QP accreditation(s) suspended are required to notify Owners, general contractors, or other designated Owner representatives that they are under contract to or bidding or tendering to that their AMPP QP accreditation has been suspended. The notification shall be in writing. Failure to notify and document the notification shall be cause for revocation of accreditation for a minimum of 2 years.

Table 5-1: DISCIPLINARY ACTION TABLE (not all inclusive)

| CRITICAL FAULTS (found in Section 4 of the DAC) | WARNING | PROBATION | SUSPEND | REVOKE |
|---|---------------------|---------------------|-------------------|---------------------------|
| SERIOUS | | | | 8 or more Critical Faults |
| <ul style="list-style-type: none"> *A pattern of reports of safety violations – 3x in 18 months *Report of a single "serious" lost-time occupational accident resulting in hospitalization *Environmental Compliance-pattern of violations – 3X in 18 months *Failure to pass Owner's final project inspection – 1 incident *Uncorrected/Unaddressed wage and hour payroll errors, failure to pay back wages and misclassification of workers – 2X – 24 months | 1-3 Critical Faults | 4-8 Critical Faults | | |
| VERY SERIOUS | WARNING | PROBATION | SUSPEND | REVOKE |
| <ul style="list-style-type: none"> *Safety-2nd or 3rd "serious" "lost-time" accident within 5-year period-each accident = 1 Critical Fault *Environmental - gov't agency or owner specification violation for unauthorized leases or spills * Second failure in 18 months to pass Owner's final project inspection *3 Failures in 3 yr. period – Uncorrected/Unaddressed wage and payroll errors | | 1 Critical Fault | 2 Critical Faults | Critical (Not all Faults) |
| SEVERE | WARNING | PROBATION | SUSPEND | REVOKE |
| <ul style="list-style-type: none"> *A pattern of Jurisdictional Regulatory Authority repeat, serious, or willful violations | N/A | N/A | 1 Critical Fault | 2 Critical Faults |

| | | | | |
|--|---------|-----------|---------|------------------|
| <p>*An affirmed repeat or willful OSHA or other authority outside the US, violation, as a result of a work site/shop incident or occupational fatality</p> <p>*Affirmed violation issued by the Jurisdictional Regulatory Agency for serious environmental violations such as illegal storage or disposal of regulated waste or pollution of the environment at or around a work site or shop operation</p> <p>*Deliberate or willfully negligent violation of specification/contract requirements</p> <p>*Subcontracting to a non QP Accredited organization when the project requires QP accreditation for surface prep and coating application and related processes</p> <p>*Termination of contract – unable to successfully complete project for cause -</p> <p>*Suspension or debarment by Facility Owner or Jurisdictional Regulatory Authority</p> | | | | |
| | | | | |
| VERY SEVERE | WARNING | PROBATION | SUSPEND | REVOKE |
| <p>*Criminal conviction of the contracting firm's owner, officers, directors or managing agent for a felony related to surface preparation and coating operations</p> <p>*Criminal conviction of the painting firm or corp. or affiliated corp., company, or</p> | N/A | N/A | N/A | 1 Critical Fault |

| | | | | |
|---|--|----------------------|------------------------|---|
| entity in connection with surface preparation and coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, a plea of guilty, | | | | |
| Illegal business practices *A pattern of reports of ethical practice violations *Fraud *Altering any reports, documents, or test results on a project *Misrepresentation or nondisclosure of information required for accreditation *Two severe faults in a 1-year period *Criminal penalties assessed for wage and hour regulatory violations; falsification of payroll records; kickbacks and bribes paid; debarment for wage/hour violations; legal settlement requiring contractor to pay back or additional wages to employees | | | | |
| MULTIPLE DISCIPLINARY ACTIONS ISSUED | | 2 Warnings in 1 Year | 2 Probations in 1 Year | 3 Probations in 1 year or 2 Suspensions in 1 year |

* Note: Unless otherwise stated, each occurrence = 1 Critical Fault.

6. PROCESS FOR DISCIPLINE

This section provides the procedures and evidentiary standards for the discipline process, beginning with first receipt of information by AMPP through to resolution, appeals and binding arbitration for disputes arising under the DAC. The procedures are as follows:

a. AMPP receives the initial information or allegation.

AMPP receives information from any identified source that an accredited contractor is violating or has violated the Disciplinary Action Criteria (the "Allegation"). This information will not be accepted from anonymous sources. The Allegation must be supported with sufficient reliable information for AMPP to conclude that there is a reasonable suspicion of a violation, as determined in AMPP's sole discretion, for AMPP to conduct a preliminary inquiry. AMPP will not conduct further inquiry of any Allegation deemed by AMPP to be unreliable or lacking sufficient information to conclude that there is a reasonable suspicion of a violation.

b. AMPP conducts an inquiry of the Allegation.

AMPP will conduct an inquiry to determine, in AMPP's sole discretion, whether the Allegation can be substantiated, or determines that it was unfounded.

c. AMPP either substantiates the Allegation or determines that it was unfounded.

d. AMPP will determine in its sole discretion whether the Allegation is substantiated or unfounded. The Allegation is substantiated if AMPP finds, in its sole discretion, that it is more likely than not that a critical fault occurred and that Contractor violated the DAC. If AMPP determines that the Allegation is unfounded, AMPP will take no further action.

e. If AMPP finds that the Allegation is substantiated, AMPP notifies the contractor of the critical faults and the violation of the DAC.

The contractor is notified in writing that a critical fault has occurred and that AMPP is going to issue disciplinary action under the DAC .

f. Contractor right to initial appeal of impending disciplinary action.

Once the contractor has been notified that a critical fault has occurred and that AMPP is going to issue disciplinary action under the DAC, the contractor may appeal the decision or action of AMPP. Within 10 business days of written notification of an impending disciplinary action, the contractor may submit sworn written statements and documentary evidence to AMPP showing that reported critical faults are incorrect. Failure to appeal within the 10-business-day period will result in automatic issuance of the pending disciplinary action.

g. AMPP will evaluate a correctly submitted appeal within 30 calendar days of its receipt.

h. Contractor requests informal conference

If AMPP denies the initial written appeal, the contractor can continue the appeal process by requesting an informal in-person conference with AMPP at AMPP headquarters offices within 15 business days of notification of the denial of appeal. At the informal conference, the contractor may present matters in mitigation of the violation and/or new documentary evidence and new sworn written statements supporting its appeal. AMPP retains the sole authority to authorize a change of venue for the setting of this informal conference. Contractors are required to abide by AMPP's decision on the date, time, and location of the informal conference, as well as the people who can attend the conference on behalf of contractor. No witness testimony will be presented or heard at the informal conference – contractor may only present arguments and new documentary evidence and sworn written statements. The informal conference shall be limited to no more than two (2) consecutive hours.

i. AMPP determines outcome of final appeal following informal conference.

Following the completion of the informal conference the AMPP Program Director may find in grant the appeal of the contractor, deny the contractor's appeal, or propose a modified disciplinary action. AMPP will render a decision within 30 calendar days after the informal conference.

j. Binding Arbitration

If the foregoing procedures and appeals fail to resolve a dispute regarding AMPP's findings and imposition of disciplinary action under the DAC, the contractor's sole remedy to address the dispute with AMPP is through binding arbitration as provided in the DAC. The binding arbitration process provided in the DAC is the sole remedy available to contractors to address and resolve all disputes QP accreditation, QP audits or the enforcement of the DAC following the contractor's exhaustion of all appeals made available to contractor. Contractor has no right to arbitration unless contractor has timely pursued and exhausted all appeals provided for by AMPP. Binding arbitration means that neither party can appeal the outcome of the arbitration and neither party can sue or take legal action against the other in relation to the outcome of the arbitration or any dispute between them related to QP accreditation, QP audits or the enforcement of the DAC. Contractor

waives all rights to bring any legal action against AMPP related in any way to QP accreditation, QP audits or the enforcement of the DAC.

The contractor may initiate arbitration by sending a written demand for arbitration to AMPP within five (5) business days of AMPP's denial of the contractor's final appeal. If the contractor fails to demand arbitration in writing within five (5) business days of AMPP's denial of the contractor's final appeal, the contractor will have been deemed to waive their right to pursue arbitration, and AMPP's decision in the final appeal is final and cannot be challenged, arbitrated, or litigated, notwithstanding any prior or subsequent objections or claims that contractor may have in relation to AMPP's decision in the final appeal.

Binding arbitration under the DAC shall be conducted by an arbitration panel, consisting of three arbitrators (one arbitrator chosen by the contractor, one by AMPP, and one agreed upon by both parties as Chair of the panel), who will convene to hear evidence from the parties according to "Procedures for Arbitration under the AMPP QP DAC Program" and render a final decision. The parties shall select arbitration panel members as provided herein within 15 business days of contractor providing written notice to AMPP of the demand for arbitration.

If the parties cannot agree on the selection of the panel Chair within the 15-business-day period after AMPP denial, the parties shall select a panel Chair from the list of Alternative Dispute Resolution Neutrals maintained and approved by the United States District Court for the Western District of Pennsylvania or the Southern District of Texas Court. The process for selecting the panel Chair in this circumstance shall be: AMPP shall choose three individuals from the neutrals list to submit to the contractor, who shall select one of these individuals as panel Chair. If the contractor fails to choose a panel Chair within 5 calendar days of receiving the list from AMPP, AMPP will make the selection. Both parties share the professional fees and expenses for the Neutral, regardless of the outcome of arbitration.

The arbitration panel must convene and render a written decision by simple majority no later than 30 business days after being selected unless an extension of time is mutually agreed by the parties or granted by arbitration panel. If the arbitration panel finds for the contractor, that is, vacates in its entirety AMPP's findings and imposition of disciplinary action under the DAC, the cost of all travel and per diem expenses etc., associated strictly with convening of the panel shall be borne by AMPP. If the panel makes a decision that does not find in favor of either side, i.e., a compromise decision or change to the initially assessed penalty, the cost

of all travel and per diem expenses associated with convening the arbitration panel will be shared equally by the contractor and AMPP. If the panel finds in favor of AMPP, that is, upholds in its entirety AMPP's findings and imposition of disciplinary action under the DAC, the contractor shall be responsible for payment, directly to AMPP, of all travel and per diem expenses associated with convening of the panel.

Although the arbitration shall be privately administered and will not be registered, processed or administered through any organized alternative dispute resolution organization (such as JAMS or AAA), for all rules and procedures of the arbitration not provided for in this DAC, the parties shall abide by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("AAA Expedited Rules") unless the parties mutually agree in writing to additional exceptions to the AAA Expedited Rules. To the extent that the AAA Expedited Rules provide for the AAA to make any administrative decision regarding the arbitration, AMPP will make all such decisions in arbitrations conducted pursuant to the DAC. To the extent of any conflict between the AAA Expedited Rules and either the rules and procedures of the arbitration provided for in this DAC or otherwise mutually agreed upon in writing by the parties (collectively, the "Private Rules"), the Private Rules shall prevail.

Each party shall pay its own legal fees in connection with the arbitration process, regardless of the outcome of the arbitration.

7. PROCESS FOR ARBITRATION

a. Demand for Arbitration

Contractor has no right to arbitration unless contractor has timely pursued and exhausted all appeals provided for by AMPP. The contractor may initiate binding arbitration by sending a written demand for arbitration to AMPP within five (5) business days of AMPP's denial of the contractor's final appeal of any DAC process or audit process.

b. Initiation of Panel

The parties shall select arbitration panel members as provided herein within 15 business days of contractor providing written notice to AMPP of the demand for arbitration.

c. Composition of Panel

The panel will consist of three arbitrators, two of whom currently or have previously worked in the protective coatings industry for more than 3 years (one person chosen by the contractor, one by AMPP), and the third member of the panel who will serve as the Chair to be mutually agreed upon by the parties, and must be a licensed attorney or retired judge. They will convene to receive evidence and render a final, binding decision. Both parties shall agree to the selection of panel members within 15 business days after denial of the contractor's final appeal. Upon selection, panel members must declare in writing to AMPP, at least 10 days before the hearing, that there are no circumstances likely to affect their impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past, current or foreseeable future relationship with any of the parties or their representatives that could impact their ability to be fair and impartial or cause a party to reasonably question their impartiality. Persons who are past or current employees or investors for either of the parties or their affiliates, family members, personal friends, or under contract directly or indirectly to either of the parties in dispute are ineligible to serve on the panel.

Note 1: Persons nominated to serve on the panel are required to provide a current resume (CV) to AMPP and the appellant and declare in writing that there are no circumstances likely to affect their impartiality, including any bias, financial or personal interest in the result of the arbitration. The nominee shall also disclose any past relationship, excluding counsel, with the parties or their representatives.

Note 2: Honoraria of less than \$10,000 USD, given for making a speech or making a presentation at an AMPP conference or at a conference or meeting on behalf of AMPP or instructing a training course several times a year, are not considered as establishing a contractual relationship.

d. Cooperation

As is the case in all other aspects of the program, if a contractor fails to cooperate with AMPP in the arbitration process, its certificates may be immediately revoked. In addition, if the appellant withdraws from the process at any stage prior to its completion, AMPP shall immediately invoke the initially assessed penalty.

e. Date, Time, and Place of Hearing

The AMPP Program Director, in consultation with the contractor, will decide the date and time for the hearing. AMPP will notify all parties at least 10 business days in advance of the hearing confirming the date and time. Only AMPP, after

consultation with the contractor, can grant a change to the initial date of the hearing. The arbitration panel will convene at the AMPP office in Pittsburgh, PA, or Houston TX, unless a change in venue is approved by AMPP. Unless a delay is agreed to by both parties, the arbitration panel shall convene no later than 30 business days after selection. Once a date is determined, neither party may reschedule unless an emergency arises with one of the panel members or with one of the parties. AMPP will be the final decision authority on all items relating to the date, time, and place of the hearing.

f. Participation

i. Representation

Each party shall designate an official representative authorized to present the party's interest. Either party may also be represented by counsel or another authorized representative. A party intending to be so represented shall notify the other party of the name and address of the representative/counsel at least fifteen (15) business days prior to the date set for the hearing. When one party decides to have counsel and the other party's counsel is unavailable, this will constitute grounds for postponement of the hearing. Postponement may be invoked by either party for a period not to exceed 45 days, if other than the appointed representative appears at the hearing without prior approval by AMPP. The party causing the postponement shall bear all costs related to the postponement when the postponement occurs at the time of the hearing.

ii. Witnesses

Either party may designate up to two witnesses to present evidence. The party shall notify the other party at least fifteen (15) business days prior to the hearing date regarding the name, affiliation, and purpose of the witness.

Requests for permission to present testimony from additional witnesses may be submitted by either party for consideration by the panel Chair, who will decide whether additional witnesses above the two-person limit will be permitted to testify. The party requesting the additional witness or witnesses shall provide advance notification (at least 15 business days prior to the hearing date) of its request to present testimony from more than two witnesses at the hearing and shall state in writing the purpose of the additional witness(es). All requests for additional witnesses will be decided by the panel Chair no less than five calendar days prior to the hearing.

g. Record of Proceedings

AMPP will audio record the arbitration hearing. If the contractor requests a professional stenographic record, the contractor shall pay the cost of that service and the production of that record. If the transcript is agreed by the parties to be the official record of the proceedings, it must be produced no later than 30 calendar days after the hearing.

h. Evidence

To expedite the arbitration hearing, AMPP, in consultation with the contractor, will send the panel Chair all documents either party believes are relevant to the case. This will be done no later than fifteen (15) business days before the hearing. AMPP will provide the contractor with copies of the material presented to the panel Chair. If a piece of material is determined to be missing, it will be immediately sent to the panel Chair by the most expeditious manner. The panel Chair may request offers of proof and may reject items deemed to be unreliable, unnecessary, or of slight value to the determination of the case. Exhibits may be offered by either party, but they must be presented to both parties and the panel Chair at least fifteen (15) business days prior to the hearing for review. Any documents or exhibits submitted after the fifteen business-day deadline shall be inadmissible. The panel Chair determines which documents or exhibits submitted are relevant to the case being heard, and therefore admissible to the arbitrators prior to or at the hearing.

i. Order of Proceedings

The person agreed upon by both parties shall be designated to be the Chair of the panel. That person shall facilitate the proceedings with a view toward expediting the resolution of the dispute. Order of Proceedings

The standard order of the proceedings is: AMPP shall present evidence to support its finding of a violation or violations of the DAC. The contractor shall then present evidence supporting its defense. The arbitration panel may hear witnesses for each party. If there are witnesses, they shall submit to questions or other examination from the panel. The panel has the discretion to vary this procedure but must ensure that each party has been afforded a full and equal opportunity to be heard. In order to expedite the proceedings, the Chair of the panel may control the order of the proceedings and direct the parties to focus the presentation of their case on the issues to be decided by the panel.

j. Communication

There shall be no *ex parte* communications between either of the parties and any member of the panel concerning details of the dispute, unless agreed upon in advance by both parties, in writing.

k. Closing

When satisfied that the presentation of both parties is complete, the Chair of the panel shall declare the hearing closed. The panel shall render a binding decision by simple majority as soon as possible, preferably that day, but no later than 10 business days after the hearing. As set forth in the DAC Section 6, "If the arbitration panel finds for the contractor, that is, the arbitration panel vacates the initially assessed penalty, the cost of per diem and travel expenses associated with convening the arbitration panel shall be borne by AMPP. If the arbitration panel finds for AMPP, the contractor is responsible for payment of all per diem and travel expenses related to convening of the arbitration panel." AMPP and the appellant will share per diem and travel expenses related to convening of the arbitration panel for modified or compromise decisions that change the initially assessed penalty. All other expenses such as staff time, legal counsel, witnesses are borne by the party utilizing the services of these persons.

l. Decisions

All decisions of the panel shall be by majority. The panel's opinion and ultimate decision shall be reflected in writing by the panel Chair and addressed to AMPP. The panel may find in favor of the contractor; in favor of AMPP; or the panel may decide an alternative action that, in its opinion, maintains the integrity of the program and is fair to all parties. If the panel chooses to modify the initially assessed penalty (i.e., decide an alternative action), the panel must clearly state, in its written decision, the time frame the modified penalty shall be in effect and any actions by the contractor that may occur after the decision is made that would revert back to the initially assessed penalty or other alternative. The panel shall not render a disciplinary action that exceeds those published in the DAC.

m. Binding Arbitration as Sole Remedy and Not Subject to Appeal

Contractor knowingly and voluntarily waives all rights to sue AMPP and/or its affiliates or bring a lawsuit against AMPP and/or its affiliates in connection with QP and QS accreditation, audits, audit findings, the interpretation and application of AMPP's policies and procedures, and AMPP's disciplinary processes and outcomes as set forth in the DAC, including but not limited to public statements that AMPP

makes about contractor. Binding arbitration as provided in the Disciplinary Action Criteria ("DAC") shall be the sole and exclusive means of resolving all disputes between the parties related to QP and QS accreditation, audits, audit findings, the interpretation and application of AMPP's policies and procedures, and AMPP's disciplinary processes and outcomes as set forth in the DAC, including but not limited to public statements that AMPP makes about contractor. AMPP and the contractor agree that the decisions reached by any arbitration panel in accordance with the arbitration procedures set forth in the DAC shall be final and binding on all parties and that the parties hereby expressly waive any and all rights to file a lawsuit or proceed in a court of law against one another or any third party with respect to any disputes between them related to QP and QS accreditation, audits and AMPP's disciplinary processes and outcomes and expressly waive any right to appeal any decision of the arbitration panel in a court of law. AMPP and contractor acknowledge that they have had sufficient time to review and consider signing this agreement. It is clearly understood that this is a legal document and that any questions or concerns about it should be referred to appropriate legal counsel. The parties are further voluntarily waiving any right they may have otherwise had to a trial by jury in relation to any dispute between them. The parties specifically intend that all provisions of this procedure and any decision of the panel shall be binding on their heirs, spouses, representatives, attorneys, successors, affiliates, and assigns. The only right the parties have to bring an action in civil court is to enforce the findings and/or outcome of an arbitration conducted in accordance with the provisions of the DAC.

8. ENFORCEMENT

8.1. General

The disciplinary action will become effective within two business days of the formal notification to the contractor of the resolution.

8.2. Notification of Disciplinary Actions

Listed under each type of disciplinary action are the notifications that AMPP will issue, as well as the parties notified.

a. Warning - Issued to an accredited contractor.

- Contractor
- AMPP Administration
- AMPP Auditors
- Announcement on the AMPP website, identifying contractor.

b. Probation - Issued to an accredited contractor.

- Contractor
- AMPP Administration
- AMPP Auditors
- Announcement on the AMPP website, identifying contractor.

c. Suspension - Issued to an accredited contractor.

- Contractor
- AMPP Administration
- AMPP Auditors
- “Active” Facility Owners, i.e., those known by AMPP to be currently engaged in business with the contractor.
- AMPP BOG, Accreditation Program Committee (APC) Chair
- Announcement on the AMPP website, identifying contractor.

d. Revocation - Issued to an accredited contractor.

- Contractor
- AMPP Administration
- AMPP Auditors
- “Active” Facility Owners, i.e., those known by AMPP to be currently engaged in business with the contractor.
- AMPP BOG, Accreditation Program Committee (APC) Chair
- Announcement on the AMPP website, identifying contractor.

8.3. Notification to Owners

AMPP will notify designated Owner representatives and other parties listed on the job notification form that the owner has selected an AMPP accredited contractor for its painting project and requests that the representative respond to the enclosed job performance evaluation form (Appendix A).

8.4. AMPP Review of Performance Evaluation Forms

AMPP program staff will review the job performance evaluation forms to determine if any critical faults are being reported.

Program staff will review unsolicited or published reports to determine if they contain any critical faults.

Note: For AMPP to issue disciplinary action, a critical fault attributed to an accredited contractor must have occurred during the contracting firm’s accreditation term or within a

minimum of 24 months before the contractor's initial application for accreditation. For initial applicants, critical faults occurring up to 24 months prior to submittal of their application for accreditation will be considered by AMPP in determining application status or accreditation status. AMPP also reserves the right to issue disciplinary action for faults that have occurred but are discovered at a later date. AMPP staff will verify the validity of each reported critical fault.

9. SPECIAL NOTES

9.1. Job Notifications (field projects)

- a. Discovery that a contractor has not submitted a required job notification within the 12-month period after the job is awarded results in a letter of warning and a minor audit deficiency if discovered during the course of an audit.
- b. Second omission after issuance of a warning or audit deficiency results in probation and issuance of a major or critical item deficiency.
- c. Third omission after issuance of probation results in an automatic 6-month suspension.
- d. Failure to submit a required job notification after a suspension results in revocation for two years at which time contractor must reapply for accreditation.

Note: Discovery by AMPP of more than one omission at one time counts as one infraction, for the purposes of this rule.

Access Job Notification Forms online from the left bar on:

<https://www.ampp.org/qp-program/qp-quick-links/access-job-forms>

AMPP reserves the right to contact Owners or their designated representatives regarding information reported on a job notification form.

9.2. Fees

All fees and expenses due AMPP as a result of a disciplinary action must be paid by the contracting firm in accordance with terms established on the invoice. Failure to comply with payment terms is cause for suspension in accordance with QP Program Rules re: "Suspension for Nonpayment of Fees."

9.3. Transfer of Disciplinary Actions

In the event the accredited contractor's business is, in whole or in part, sold, leased, transferred, or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, any disciplinary actions (warning, probation, suspension or revocation) issued will be transferred to the new business. The intent is to prevent a contracting company from changing its name, reorganizing, or otherwise changing to avoid consequences of disciplinary actions assessed or in process.

9.4. Critical Faults

For initial accreditation applicants, actions by the applicant firm that would result in reported and verified critical faults shall be considered by AMPP in determining denial of application for accreditation, or conditions upon which a contractor can become accredited if all other requirements are met. The AMPP Accreditation Program Committee (APC) shall make the final determination if an applicant appeals AMPP's denial of its application for accreditation based on a critical fault attributed to an applicant.

9.5. Citations

Accredited contractors and applicants are required to submit to AMPP copies of all citations issued to their firm by regulatory agencies for non-compliance with regulations during any stage of a project relating to coating operations. Coating operations include but are not limited to mobilization and demobilization and clearance operations, rigging, tearing down or moving containment structures or scaffolding and fall protection or fall arrest systems, defect repair, pre-cleaning, surface preparation operations and coating application. In addition, follow up documentation (e.g., settlement agreements; review commission, review panel or legal or arbitration decisions) must be provided to document closure. Failure to do so can result in assessment of disciplinary action for misrepresentation or non-disclosure of information required for accreditation per DAC Section 4.5.1.e.

9.6. Criminal Conviction

Criminal conviction of the owner, officers, directors or managing agents of an accredited contractor for a felony in connection with operation of the firm or in connection with surface preparation and coating operations being performed under the name of another, as a corporation, a company, partnership or any other business entity, including a joint venture where the owner, officer, director, etc., exercises directly or indirectly any significant degree of ownership, management or control, renders the accredited firm subject to disciplinary action under the DAC.

9.7. Management Personnel Responsibility for DAC

Any representative of the management, including but not limited to an officer, director, superintendent, quality control supervisor, safety director, general manager, or stockholder, or any person who exercises directly or indirectly, including through family members, any degree of ownership, management or control of a contracting or affiliated firm disciplined by AMPP under the DAC, who forms or purchases a new company or who exercises any management or control of a new, existing, or purchased company, or who exercises any degree of ownership of a new, existing, or purchased company, renders the new, existing, or purchased company ineligible for accreditation while any suspension or revocation of the disciplined company the person was associated with, is in effect. The intent is to ensure that management, representatives, or individuals associated with the disciplined firm cannot form or purchase a new company or exercise any control over an existing company (such as through family members) to avoid disciplinary action.

9.8. Affiliates

For the purpose of this document, Affiliates are Business concerns, organizations, or individuals that are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third-party control or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

9.9. Coating Application Specialist (CAS) QP 1 Implementation

If, in the course of an audit, an auditor finds that a QP 1 contractor has not implemented the CAS Implementation plan in effect on an eligible job (as described in the Eligible Jobs section on <https://www.ampp.org/qp-program>, the auditor will write a major finding.

AMPP will allow the contractor 60 calendar days from the date of notification of the audit results to show evidence that it has achieved compliance with the CAS implementation plan in effect.

Failure to achieve CAS compliance after the 60-day period will result in suspension. AMPP will lift the suspension when the AMPP QP Program Manager or QP Director verifies that the contractor has in fact complied with any and all corrective actions and

meets the requirements of all aspects of the program detailed here:
(<https://www.ampp.org/qp-program> - Select CAS for QP 1 Contractors.)

As part of the compliance verification process, the AMPP QP Program Manager or Program Director reserves the right to request and review additional documentation, as well as the right to require a follow-up audit at the Contractor's or applicant's expense to confirm compliance.

10. WATCH LIST CLAUSE

10.1. Purpose of the "Watch List" Clause

The "Watch List" allows the AMPP QP Program Manager or Director to flag actions of AMPP accredited or introductory qualified contractors that could result in eventual disciplinary penalties if such actions result in any Allegation later affirmed as a violation of the DAC. The Watch List is intended to be a precursory step before the disciplinary action process, which may enable the contractor to promptly address potential violations and correct course prior to AMPP's initiation of the disciplinary action process. The Watch List is also intended to notify the executive management of the contracting firm of a reported allegation or incident so the contractor can take preventive action to get to the root cause of the event and avoid reoccurrence.

AMPP will provide written notice to each contractor placed on the Watch List. If the contractor's executive management fails to respond to the "Watch List" notification within thirty (30) calendar days of the date of the notification, the contractor's accreditation shall be suspended for a minimum of 6 months. Failure to comply with ongoing requests for information in a timely manner as a result of an investigation or Watch List action shall also result in a suspension of a minimum of 6 months. Reinstatement of accreditation after such a suspension is contingent upon the contractor cooperating with AMPP and complying with the actions requested by AMPP in relation to the concerns that caused AMPP to place the contractor on the Watch List.

The names of the firms/companies placed on the Watch List is treated as confidential and is for AMPP staff internal use only. Being placed on the Watch List does not automatically result in any disciplinary action. The decision of whether disciplinary action is taken against a contractor on the Watch List is within the sole discretion of AMPP based on the criteria set forth in the DAC.

10.2. Criteria for Placement on the Watch List

AMPP will only consider documented or otherwise substantiated reports as a trigger for a Watch List investigation. The following is a list of known or reported incidents that can, in AMPP's sole discretion, trigger an AMPP inquiry to determine whether a contractor reaches the threshold for a "Watch List" notification:

- a. Violation of worker safety and health or environmental regulations as alleged in a newspaper article or through other media outlets. Written complaint (not verbal) from a Facility Owner or authorized representative, who has specified QP Accreditation in its project specifications, documenting substandard work performance or contract violations.
- b. Serious injury of an employee or other worker under the accredited entity's direction as a result of an alleged violation of worker safety and health regulations issued by the Jurisdictional Regulatory agency. Note: Fatalities are covered separately under DAC Section 11.
- c. An established pattern of "alleged" Repeat, Serious, or Willful OSHA (or equivalent Jurisdictional Regulatory agency) worker safety and health violations as described in the DAC Section 4.1.
- d. Arrest of a person in Management; including but not limited to the President, Vice President, CEO, COO, Safety Director, or Quality Control Supervisor, for alleged civil or criminal charges in connection with a work-related incident or action.
- e. Allegations of fraud involving an individual in Management or an owner of the entity.
- f. Allegations of violations of wage, hourly or other regulations regarding payment of lawful wages, benefits, payroll taxes, etc.
- g. Allegations of tax evasion or avoidance.

- h. Reports of insolvency (e.g., failure to meet payroll or pay payroll taxes; failure to pay material and equipment suppliers).
- i. Illegal business practices.

10.3. Steps in the Process

- a. AMPP becomes aware on its own of an incident or receives a report of the incident from an identifiable source that qualifies for an inquiry in accordance with the criteria set forth in section 10.2 of the DAC.
- b. AMPP confirms that the report is accurate and that the incident is connected to a currently accredited contractor or currently accredited Shop or affiliated entity.
- c. AMPP notifies the President/CEO of the Accredited Contracting Company or Shop of the report via written correspondence. The letter will include specifics in regard to the source and content of the report. The letter will also ask the company executive to confirm the credibility of the report and add any factual details or extenuating circumstances not contained in the report. The letter will also ask the executive how the company is addressing concerns described in the report, assuming the report has been confirmed.
- d. The President/CEO has ten (10) business days from the date of the notification by AMPP to respond in writing to the AMPP Program Manager or Program Director. If the contractor acknowledges that the action cited in the report is accurate, the contractor must state in writing to AMPP what corrective actions it is taking to remedy the problem. The corrective action plan must be accepted by AMPP as a factual and appropriate response to the action/problem.
- e. If the written response from the contractor confirms the report and describes appropriate corrective actions to be taken, AMPP will notify the contractor in writing that the response has been received and accepted and that the company will be on the "Watch List," for one (1) year.

- f. Placement on the Watch List can exceed one year in cases where allegations of wrongdoing are pending legal action or other form of recognized due process such as arbitration or alternate dispute resolution.
- g. AMPP will place a contractor on the Watch List if and only if credible information is received and confirmed that the contractor may not be meeting AMPP QP Accreditation standards. No disciplinary action is taken unless allegations are affirmed.
- h. After placing contractors on the Watch List, AMPP reserves the right in its sole discretion to:
 - i. Further investigate to determine if other similar incidents have been reported and if a pattern exists.
 - ii. Conduct a special unannounced audit at the contractor's expense, in addition to any regularly scheduled audit, if the confirmed report is related to an operational matter.
 - iii. Initiate the disciplinary process set forth in section 6 of the DAC.

10.4. Removal from the Watch List

Companies will be removed from the Watch List after one (1) year if:

- a. No further reports are received concerning the allegation, noting that placement on the Watch List can exceed one year in cases where allegations of wrongdoing are pending legal action or other form of recognized due process such as arbitration or alternate dispute resolution.
- b. The contractor is issued formal disciplinary action as a result of affirmation of a DAC critical fault.
- c. The contractor is cleared of alleged violations (e.g., violations are downgraded; formal charges are dropped; the contractor or key management/owners are found not guilty of charges or violations upon completion of any formal due process or other disciplinary, arbitration or alternate dispute resolution, etc.).

11.FATALITIES

11.1. Initial Notification Requirements

- a. Accredited contractors are required to notify the AMPP QP Program Manager or Program Director in writing, within five (5) calendar days of occurrence of each and every instance of a reportable incident in connection with one of its painting projects.
- b. A reportable incident includes any fatal accident occurring in connection with the QP contractor's operations that involves an employee or worker under the contractor's supervision; or the death of a bystander, such as a member of the public; a person involved in another trade; or someone at or near the jobsite representing any other type of organization.
- c. Within five (5) calendar days, the contractor must call to verify that the appropriate AMPP official (i.e., the AMPP QP Program Manager or the QP Program Director) has received the notification. The contractor must then document the date and time of the call and the AMPP staff person to whom he or she spoke. Leaving a voice mail message is not considered proper notification.
- d. The written notification must include:
 - i.date of notification and method used to send to AMPP,
 - ii.date and location of the incident,
 - iii.name of deceased person(s),
 - iv.circumstances of the incident, and
 - v.contact information of the facility owner of the work site.

11.2. Procedures After Filing Initial Notification

a. Notification of Investigation

Accredited contractors are also required to give AMPP written notification of the date(s) that OSHA or another government or Jurisdictional Regulatory agency visited the job site or the company's offices, or both, to investigate the incident. This notice must also be in writing and sent to the AMPP Program Manager or Program Director within 5 business days after the visit. The contractor is responsible for confirming that AMPP has received this secondary notification using the same procedures as described in Section 11.1.

b. Issuance of Citations

Within 15 business days of issuance, or in a time frame allowed by the Program Manager, contractors must provide the AMPP QP Program Manager or Program Director with copies of any and all citations issued to it by a governmental authority in relation to the incident. The contractor is responsible for confirming that AMPP has received this secondary notification using the same procedures as described in Section 11.1.

Quarterly, the contractor must inform AMPP of the status of any contested citations until those citations become final or are reduced or vacated.

c. Criminal Charges

If criminal charges are filed, contractors have 15 calendar days to submit copies of those charges filed against the company or any of its managers or directors or copies of any other legal actions taken against the contractor as a result of the incident. The contractor is responsible for confirming that AMPP has received this secondary notification using the same procedures as described in Section 11.1

d. Preliminary Corrective Action Plan.

Within 30 calendar days of reporting the incident to AMPP, the contractor must develop a preliminary corrective action plan if requested by AMPP, describing actions it has taken or is going to take as a result of the incident.

e. Final Corrective Action Plan

Within 90 days of affirmation of any official governmental agency citations or completion of any legal proceedings related to any death(s) resulting from the incident, the contractor must follow up with a final Corrective Action Plan (CAP) in response to the first non-exempt incident and submit it to AMPP for its review. The CAP shall fully describe the incident, including the events that led to the incident, and the contractor's plan to prevent or mitigate any or all incidents of a similar nature from occurring in the future.

If the contractor contends that the cause of the fatality was NOT due to gross negligence or its deliberate disregard, the contractor is obligated to explain its reasons for such and provide supporting evidence to that fact. The contractor must also explain in its CAP any contributing factors that were related to the fatality.

f. Independent CSP Review

In addition to developing the preliminary and final CAPs, the contractor must agree to obtain an independent, written review of its final CAP by a certified safety professional (CSP) who is experienced in coating operations. The contractor must subsequently revise its Health and Safety (EHS) policies, procedures, and work practices to comply with any recommendations made by the CSP.

g. CAP Approval

The preliminary and final CAPs must be approved in writing by the President or Chief Executive Officer or by the Principal Owner or Chief Operations Officer AND the contractor's Safety Manager/Officer/Director. Upon internal approval of the CAP, the contractor must then submit it to the AMPP Program Manager or Program Director, along with the accompanying documentation that verifies the independent safety professional's review. Any changes made to company policies, procedures, and work practices must also be included and clearly identified. Failure to submit required Corrective Action Plans when due results in revocation of accreditation for a minimum of one year.

11.3. Exemptions

- a. Within 30 calendar days after the date of initial notification to AMPP of the incident, a QP contractor may submit a letter to AMPP indicating its intent to apply for an exemption from disciplinary action. The letter of intent must be submitted to the appropriate AMPP official (QP Program Manager or Program Director). This letter may be submitted if the contractor suspects that the incident was caused by one or more of the following:
 - i. acts of terrorism
 - ii. criminal acts by an employee or outsider
 - iii. acts of God
 - iv. third parties not under the contractor's control or supervision
 - v. an off-site accident involving a company vehicle
 - vi. an accident at or near the job site involving a bystander's vehicle
 - vii. unforeseen circumstances, such as a pre-existing health condition not induced by the workplace (painting project), as confirmed by an official investigation by the Jurisdictional Regulatory Authority (e.g., OSHA), law enforcement agency, or Coroner/Medical Examiner

- viii. a plant operation or other operation that could not be directly controlled by the contractor
- ix. other circumstances deemed acceptable by AMPP after its review of the circumstances of the fatality

To be considered timely, the contractor must formally apply in writing for an exemption from disciplinary action no later than six months after the incident or upon completion of the Jurisdictional Regulatory Authority's (ex: OSHA's) investigation or pathologist's report (whichever comes first).

If AMPP denies the contractor's request for exemption from disciplinary action, AMPP will proceed with applicable disciplinary action as provided under the DAC. If Contractor exhausts the appeals processes made available within Section 6 of the DAC and continues to disagree with the disciplinary action imposed by AMPP, including AMPP's denial of any request for exemption, Contractor's sole remedy is to pursue binding arbitration as provided in the DAC.

11.4. First Incident

Upon confirming a contractor's first reportable, non-exempt incident resulting in one or more fatalities in connection with one of its painting projects, AMPP will place the accredited contractor on the AMPP DAC Watch List for a minimum period of one (1) year. If citations for violations are issued by a Jurisdictional Regulatory Agency (ex: OSHA) in relation to the incident, or criminal charges are filed against the contractor or one of its principles in relation to the incident, the contractor shall remain on the "Watch List" until violations are made final, the criminal proceedings have concluded, or the contractor is exonerated of any or all wrong doings.

11.5. Subsequent Incidents

- a. In the event that the contractor (or affiliated company) has a second reportable non-exempt incident in connection with any of its painting projects in the 5-year period following the first reported incident, AMPP will place the contractor on notice that AMPP intends to suspend the contractor's accreditation for a period of twenty-four (24) months pending the result of any due process proceeding with OSHA, the court system or any other Jurisdictional Regulatory Agency.
- b. In the event the contractor (or affiliated company) has an additional (e.g., third, fourth, etc.) reportable non-exempt incident in connection with any painting project in a 10-year period following the first reportable incident, AMPP will place the contractor on notice that it intends to revoke the contractor's accreditation for a period of thirty-six

(36) months, pending the result of any due process proceeding with OSHA, the court systems or any other Jurisdictional Regulatory Agency.

11.6. Other Special Provisions

- a. Owners, managers, and controlling shareholders of the contracting firm disciplined by AMPP under the “fatalities” special provision are prohibited from starting, financing, or owning a different painting contracting firm and obtaining QP accreditation for that firm, until after the penalty period is completed. In the event the disciplined contractor or controlling shareholders start, finance, or own or control a different firm after the penalty period is completed, those reported fatal incidents will carry forward to the new or different contracting firm.
- b. Contracting firms or affiliated companies that have suffered or caused a reportable incident in connection with any painting project prior to applying for QP accreditation are ineligible for QP accreditation until the appropriate penalty period has elapsed. The AMPP APC shall make the final determination if an applicant appeals AMPP’s denial of its application for accreditation based on a reportable incident attributed to the applicant.
- c. Multiple fatalities occurring as a result of one incident are considered “one” fatality for the purposes of this Fatalities provision. One incident of multiple fatalities shall occur on the same job site, at the same date and time and be a result of the same root cause.
- d. Any fatality occurring on or in relation to a joint-venture (JV) project is considered a fatality for each of the QP accredited firms in the joint venture.

11.7. Failure to Notify

The actions stated under “Failure to Notify” are applied independent of any assessed disciplinary actions taken in accordance with this special provision or other sections of this document. Actions regarding ‘failure to notify’ are as follows:

- a. Failure to notify the AMPP QP Program Manager or QP Program Director of an occupational fatality in writing within five (5) calendar days of occurrence results in a “Warning.”
- b. Failure to notify AMPP in writing within 10 calendar days results in “Probation.”

- c. Failure to notify AMPP in writing within 30 calendar days results in an automatic one (1) year “Suspension.”

11.8. Confidentiality

All non-public information of contractor that is designated by contractor as confidential and provided to AMPP in response to requests by AMPP under the DAC will be treated by AMPP as contractor’s confidential information and not be disclosed to third parties, except as required by a valid court order, subpoena or applicable law or regulation. ***Notwithstanding the foregoing terms, as provided in Section 8.2 of the DAC, contractors subjected to discipline under the DAC or failing to meet audit standards will be identified by name on AMPP’s public-facing website, along with the action taken against them, a summary of the reasons for the action and the effective dates of the discipline.***

11.9. Appeal

Any contractor to whom the fatalities provision applies has the right to appeal the issuance of any disciplinary action under the DAC appeals procedures included in Section 6. If the contractor’s appeal is successful, the contractor will not be penalized under this provision of the DAC. The contractor must provide documented proof by an independent authority (e.g., coroner, Jurisdictional Regulatory Authority, law enforcement agency, government regulating body) that the fatality was not the result of a work-related incident in connection with any painting project or is exempt as covered above. Contractor’s sole remedy if contractor’s appeals regarding application of the fatalities provision are denied by AMPP is to pursue binding arbitration as provided in the DAC.

Table 11-1: AMPP Fatalities Actions

| Date to Notify AMPP QP Accreditation Staff | Notification Requirement | Notes | Notes |
|---|---|--|---|
| Within 5 calendar days of occurrence | Initial Notification (Written) | Must call AMPP to verify receipt of initial notification | Failure to notify: 5 calendar days: warning; 10 calendar days: probation; 30 calendar days: automatic 1 year suspension. |
| Within 5 calendar days of OSHA or another agency visits | Notification of Investigation (Written) | Must call AMPP to verify receipt of notification of visit by outside agencies | |
| Within 15 business days of issuance | Issuance of Citations | Provide copies to AMPP | |
| Within 15 business days of the date charges are filed | Criminal Charges | Provide copies to AMPP | |
| Develop and submit to AMPP within 30 calendar days of reporting incident | Preliminary Corrective Action Plan | Approval in writing by company officers and safety manager required | |
| Within 30 calendar days after date of initial notification to AMPP | Exemption: Letter of Intent | | |
| Within 90 days of affirmation of citations or completion of any legal proceedings | Final Corrective Action Plan | CAP shall fully describe incident and events leading to it and plan to prevent similar incidents in the future | Approval in writing by company officers and safety manager required. Independent written review by Certified Safety Professional also required and provided to AMPP |
| No longer than 6 months after the incident or upon completion agency investigation or pathologist report, whichever comes first | Exemption: Formal Application | If exemption rejected, request review panel no more than 7 calendar days later | |

APPENDIX A: EVALUATION FORM

Table A-1: AMPP ACCREDITED CONTRACTOR/SHOP PERFORMANCE EVALUATION FORM

Please evaluate the contractor for your project only:

| Project No. | Dates on Site: _____ through _____ | | | | | |
|---|------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|----------|
| Name of Contractor: | | | | | | |
| Contractor Representative on Job: | | | | | | |
| I. Safety | Yes | Usually | Usually Not | No | Unsure | Describe |
| Contractor meets safety requirements of OSHA or other Jurisdictional Regulatory agencies and has usually good safety practices without constant Owner reminder. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Coating subcontractors hired are qualified per specification and approved by Facility Owner when such approval is required. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Reports have been issued by public agencies on safety violations of the contractor. If yes, explain. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has received a citation for a serious or willful violation from OSHA or other Jurisdictional Regulatory Authority resulting from a work site or shop incident. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has to be informed by the owner of potential safety hazards/violations. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| II. Environmental Compliance | | | | | | |
| Contractor meets environmental compliance regulatory and contract requirements, follows health and safety plan, and containment plan, when applicable. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

| | | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--|
| Contractor has received a citation for environmental violations. If YES, explain. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has received a citation for a serious environmental violation such as illegal disposal of hazardous materials. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor is frequently advised by the owner of potential violations and requests for adjustments in field operations in order to comply with requirements/regulations. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| III. Quality of Work/Service | | | | | | |
| Contractor meets quality/service requirements by complying with specs and good painting practices without constant reminder by the owner. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has deliberately violated specification requirements. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor's work is of poor quality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor demonstrates ability to manage work force and communicates with owner when necessary. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor meets overall project work schedule and has necessary manpower and equipment to perform the work. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Reports have been issued of quality/service violations by the contractor. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor's work requires close inspection to ensure acceptable performance. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has satisfactory quality assurance records. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

| | | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|----------|
| IV. Ethical Practice | | | | | | |
| Contractor meets ethical practice requirements. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has committed fraud. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has altered reports, documents, or test results. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor (owner, officers, etc.) has been convicted for a felony related to surface preparation and coatings operations of the business. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor has engaged in illegal business practices, such as falsification of certified payroll, or systematic violation of labor or tax laws. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Reports have been issued of ethical practices violations by the contractor. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Contractor completed work on time and within specifications. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Would you recommend this contractor to other owners? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| | Excel lent | Good | Acceptable | Unacceptable | | Comments |
| Owner's rating of contractor at end of season or completion of work. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |

Thank you for your cooperation and support. AMPP will follow up on areas found to be deficient.

Print Name

Print Title

Date

Signature