



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 10 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis P. Birke
DeWitt Ross & Stevens S.C.
Capitol Square Office
Two East Mifflin Street, Suite 600
Madison, Wisconsin 53703-2865

Re: QPI Holdings, Inc., f/k/a Quality Propane Inc., Burnsville and Hastings, Minnesota
Consent Agreement and Final Order
Docket No. **EPCRA-05-2015-0012**

Dear Mr. Birke:

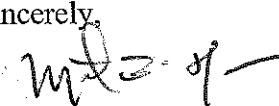
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 10, 2015.

Please have your client pay the EPCRA civil penalty in the amount of \$15,718 in the manner prescribed in paragraph 50 and reference your payment with the docket number EPCRA-05-2015-0012

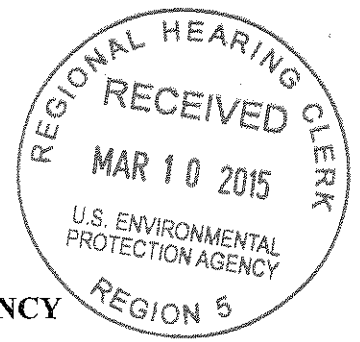
The payment is due on April 9, 2015.

Please feel free to contact Ruth McNamara at mcnamara.ruth@epa.gov or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Richard Nagle, Associate Regional Counsel, at nagle.richard@epa.gov or by telephone at (312) 353-8222. Thank you for your assistance in resolving this matter.

Sincerely,


Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2015-0012
)	
QPI Holdings, Inc., f/k/a)	Proceeding to Assess a Civil Penalty
Quality Propane Inc.)	
Burnsville and Hastings, Minnesota)	Under Section 325(c)(1) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986
)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is QPI Holdings, Inc., f/k/a Quality Propane, Inc., a corporation doing business in the State of Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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

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

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission, community emergency coordinator for the local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 12650 Zenith Avenue, Burnsville, Minnesota, (Facility 1) and the facility located at 22100 Lellehi Avenue, Hastings, Minnesota, (Facility 2).

17. At all times relevant to this CAFO, Respondent was an employer at both Facility 1 and Facility 2.

18. Respondent's facilities consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's Facility 1 is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Respondent's Facility 2 is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Propane is a flammable gas which may cause burns like frostbite, if the liquid comes in contact with skin. If inhaled at high concentrations it can displace the normal air and cause suffocation from lack of oxygen.

22. Propane CAS# 74-98-6 is classified as a physical and health hazard.

23. Propane CAS# 74-98-6 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

24. Propane CAS# 74-98-6 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

25. During at least one period of time in calendar year 2009 propane was present at Facility 1 in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2010 propane was present at the Facility 1 in an amount equal to or greater than the minimum threshold level.

27. During at least one period of time in calendar year 2009 propane was present at Facility 2 in an amount equal to or greater than the minimum threshold level.

28. During at least one period of time in calendar year 2010 propane was present at Facility 2 in an amount equal to or greater than the minimum threshold level.

29. OSHA requires Respondent to prepare, or have available, an MSDS for propane.

30. Section 312 of EPCRA required Respondent to submit to the State Emergency Response Commission (SERC) and fire department with jurisdiction over Facility 1 on or before March 1, 2010 a completed emergency and hazardous chemical inventory form including propane for calendar year 2009.

31. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over the Facility 1 on or before March 1, 2011 a completed emergency and hazardous chemical inventory form including propane for calendar year 2010.

32. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over Facility 2 on or before March 1, 2010 a completed emergency and hazardous chemical inventory form including propane for calendar year 2009.

33. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over Facility 2 on or before March 1, 2011 a completed emergency and hazardous chemical inventory form including propane for calendar year 2010.

34. At all times relevant to this Complaint, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

35. At all times relevant to this Complaint, the Burnsville Fire Department was the fire department with jurisdiction over Facility 1.

36. At all times relevant to this Complaint, the Hastings Fire Department was the fire department with jurisdiction over Facility 2.

Burnsville, Minnesota (Facility 1)

37. Respondent submitted to the SERC and Burnsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2009.

38. Each day that Respondent failed to submit to the SERC and Burnsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

39. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2010.

40. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. Respondent submitted to the Burnsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2010.

42. Each day that Respondent failed to submit to the Burnsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Hastings, Minnesota (Facility 2)

43. Respondent submitted to the SERC and Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2009.

44. Each day that Respondent failed to submit to the SERC and Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

45. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2010.

46. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

47. Respondent submitted to the Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane on June 22, 2011, for calendar year 2010.

48. Each day that Respondent failed to submit to the Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including propane by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

49. Complainant has determined that an appropriate civil penalty to settle this action is \$15,718. In determining the penalty amount, Complainant considered the nature, circumstances,

extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,718 civil penalty for the EPCRA violations by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: QPI Holdings, Inc., f/k/a Quality Propane, Inc., and the docket number of this CAFO.

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

52. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 65, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

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

Supplemental Environmental Project

54. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment public health by increasing the security of their property and providing hazardous materials response equipment to the local responders to reduce the risk to the community should a release occur.

55. Respondent must complete the SEP by:

- a) Purchasing and provide emergency response equipment to the Burnsville Fire Department. ("Project A")
- b) Upgrading the security and fire alarm system at the Burnsville, Minnesota facility. ("Project B")

56. Respondent must spend at least \$47,987 for the SEPs described in Paragraph 55a and 55b, specifically \$32,700 on Project A and \$15,287 on Project B.

57. Respondent must complete the SEP as follows:

- a) Project A - By March 31, 2015, Respondent will purchase and donate to the Burnsville Fire Department 10 sets of fire gear, 9 helmets, and 2 portable radios.

- b) Project B – By January 31, 2015, Respondent will purchase and install an integrated security and fire alarm system, including perimeter cameras at its Burnsville facility.

58. Respondent certifies as follows:

I certify that QPI Holdings, Inc., f/k/a Quality Propane, Inc., is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that QPI Holdings, Inc., f/k/a Quality Propane, Inc., has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that QPI Holdings, Inc., f/k/a Quality Propane, Inc., is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

59. U.S. EPA may inspect the facility at any time to monitor Respondent’s compliance with this CAFO’s SEP requirements.

60. Respondent must submit a SEP completion report to U.S. EPA by April 31, 2015.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

61. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara, Chemical Emergency Preparedness and Prevention Section, Superfund Division, US EPA Region 5, 66 West Jackson Boulevard (SC-5J), Chicago, Illinois 60604.

62. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

63. Following receipt of the SEP completion report described in paragraph 60, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report, or correct deficiencies as required in b, above, and U.S. EPA will seek stipulated penalties under paragraph 65.

64. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent

will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 65, below.

65. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

"PROJECT A"

- a. Except as provided in subparagraph b, below, if Respondent did not complete "Project A" satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$32,700.
- b. If Respondent did not complete "Project A" satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 56 Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed "Project A" satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 56, Respondent must pay the difference between what was spent on Project A and \$29,430.

"PROJECT B"

- d. Except as provided in subparagraph b, below, if Respondent did not complete "Project B" satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$15,287.
- e. If Respondent did not complete "Project B" satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 56 Respondent will not be liable for any stipulated penalty under subparagraph d, above.
- f. If Respondent completed "Project B" satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 56, Respondent must pay the difference between what was spent on Project B and \$13,758.
- g. If Respondent did not submit timely the SEP completion report Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$200	1st through 14th day
\$300	15th through 30th day
\$400	31st day and beyond

66. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

67. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 50, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

68. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 312 of the Emergency Planning and Community Right-to-Know Act."

69. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

70. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

71. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

73. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

74. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws and regulations.

75. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

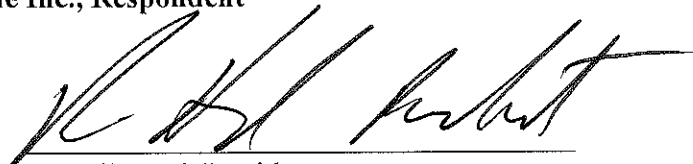
77. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

QPI Holdings, Inc., f/k/a Quality Propane Inc., Respondent

2/19/15
Date



Russell Head, President
QPI Holdings, Inc., f/k/a Quality Propane Inc.

In the Matter of: QPI Holdings, Inc., f/k/a Quality Propane Inc., Burnsville and Hastings,
Minnesota

Docket No. EPCRA-05-2015-0012

U.S. Environmental Protection Agency, Complainant

3/5/2015

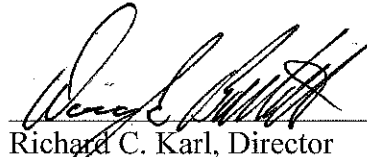
Date



Evette L. Jones, Acting Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

3/5/2015

Date



fr

Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

**In the Matter of: QPI Holdings, Inc., f/k/a Quality Propane Inc., Burnsville and Hastings,
Minnesota
Docket No. EPCRA-05-2015-0012**

Final Order

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

3/6/2015

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**In the Matter of: QPI Holdings, Inc., f/k/a Quality Propane Inc., Burnsville and Hastings,
Minnesota**

Docket No. EPCRA-05-2015-0012

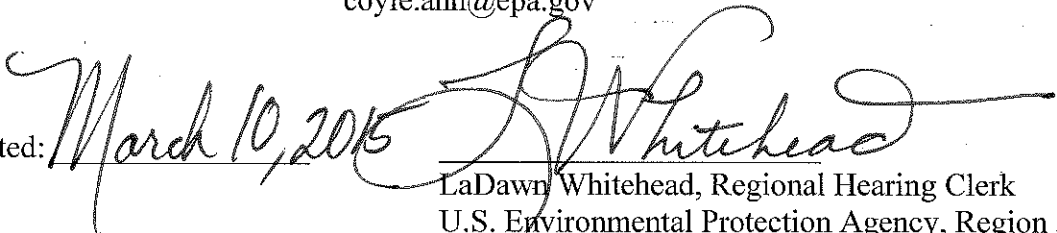
Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order,
which was filed on March 10, 2015 in the following manner to the addresses:

Copy by Certified Mail 7011 1150 0000 2640 7254
Return Receipt Requested: Dennis P. Birke
 DeWitt Ross & Stevens S.C.
 Capitol Square Office
 Two East Mifflin Street, Suite 600
 Madison, Wisconsin 53703-2865

Copy by E-mail to
Attorney for Complainant: Richard Nagle
 nagle.richard@epa.gov

Copy by E-mail to
Regional Judicial: Ann Coyle
 coyle.ann@epa.gov

Dated: March 10, 2015 
LaDawn Whitehead, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604