



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
NOV 09 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

Don Brown  
President  
Overton Chicago Gear  
530 Westgate Drive  
Addison, IL 60101

Re: Overton Chicago Gear, Chicago, Illinois, Consent Agreement and Final Order  
Docket Nos. **MM-05-2017-0001** **CERCLA-05-2017-0001** **EPCRA-05-2017-0001**

Dear Mr. Brown:

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 November 9, 2016.

Please pay the CERCLA civil penalty in the amount of \$4,433 in the manner prescribed in paragraphs 70 and 71, and reference your check with the billing document number **2751730B001** and the docket number **CERCLA-05-2017-0001**.

Please pay the EPCRA civil penalty in the amount of \$14,037 in the manner prescribed in paragraphs 72 and 73, and reference your check with the docket number **EPCRA-05-2017-0001**.

Your payments are due on December 9, 2016.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cathleen Martwick, Associate Regional Counsel, at (312) 886-7166. 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**

<b>In the Matter of:</b>	)	<b>Docket Nos. MM-05-2017-0001</b>
	)	<b>CERCLA CERCLA-05-2017-0001</b>
<b>Overton Chicago Gear Addison, IL</b>	)	<b>EPCRA EPCRA-05-2017-0001</b>
	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Respondent.</b>	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation and</b>
	)	<b>Liability Act, and Section 325(b)(2) and</b>
	)	<b>(c)(1) of the Emergency Planning and</b>
	)	<b>Community Right-to-Know Act of 1986</b>

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**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) and (c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2) and (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, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Overton Chicago Gear, a corporation doing business in the State of Illinois.

*D. Am 10-6-16*

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 the terms of the 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

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11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. 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 submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, 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

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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.

15. 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.

16. 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.

17. 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).

18. 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.

19. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325 (b)(2) and (c)(1) of EPCRA, 42 U.S.C. § 11045(b)(2) and (c)(1), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103, EPCRA Sections 304 and 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

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**Factual Allegations and Alleged Violations**

20. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

22. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 530 Westgate Drive, Addison, Illinois (facility).

23. At all times relevant to this CAFO, Respondent was an employer at the facility.

24. At all times relevant to this CAFO, Respondent was in charge of the facility.

25. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

26. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. Respondent’s facility 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.

28. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

29. Anhydrous ammonia, CAS #7664-41-7, is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. Anhydrous ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

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31. Anhydrous ammonia, CAS #7664-41-7, is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified, according to the National Institute for Occupational Safety and Health.

32. Anhydrous ammonia, CAS #7664-41-7, is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

33. Anhydrous ammonia, CAS #7664-41-7, has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

34. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent's facility.

35. Anhydrous ammonia, CAS #7664-41-7, is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

36. During at least one period of time in calendar year 2010, anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

37. During at least one period of time in calendar year 2011, anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

38. OSHA requires Respondent to prepare, or have available, a MSDS for anhydrous ammonia, according to 29 CFR 1910.1200.

39. Respondent was required to submit to the state emergency response commission, local emergency planning committee and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia on or before March 1, 2011 for calendar year 2010.

40. Respondent was required to submit to the state emergency response commission, local emergency planning committee and fire department a completed emergency and hazardous

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chemical inventory form including anhydrous ammonia on or before March 1, 2012 for calendar year 2011.

41. On July 1, 2012, at or about 12:15 p.m., a release occurred from Respondent's facility of approximately 348 pounds of anhydrous ammonia (the release).

42. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

43. During the release, approximately 348 pounds of anhydrous ammonia spilled, leaked, discharged, or escaped, into the air.

44. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

45. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

46. Respondent had knowledge of the release on July 1, 2012 at approximately 12:15 p.m.

47. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

49. The release was likely to affect Illinois.

50. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

51. The release was likely to affect DuPage County.

52. At all times relevant to this CAFO, the DuPage County Local Emergency Planning Committee was the LEPC for DuPage County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).



53. At all times relevant to this CAFO, the Addison Fire Department was the fire department with jurisdiction over the facility.

54. Respondent notified the NRC of the release on July 1, 2012, at 7:20 p.m.

55. Respondent did not immediately notify the NRC after Respondent had knowledge of the release.

56. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

57. Respondent notified the Illinois SERC of the release on July 1, 2012, at 6:20 p.m.

58. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

59. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

60. As of November 7, 2012, Respondent had not notified the LEPC of the release.

61. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

62. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

63. As of November 7, 2012, Respondent had not provided the written follow-up emergency notice to the LEPC.

64. Respondent did not provide the LEPC with written follow-up emergency notice of the release as soon as practicable after the release occurred.

65. Respondent's failure to provide written follow-up emergency notice to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

66. As of November 7, 2012, Respondent had not submitted to the SERC, LEPC and Addison Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar year 2010.

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

68. As of November 7, 2012, Respondent had not submitted to the SERC, LEPC and Addison Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar year 2011.

69. Each day Respondent failed to submit to the SERC, LEPC, and Addison fire department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2012 for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Civil Penalty**

70. Complainant has determined that an appropriate civil penalty to settle this action is \$4,433 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, 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

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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).

71. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,433 civil penalty for the CERCLA violation. Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," 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 should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Overton Chicago Gear, the docket number of this CAFO and the billing document number.

72. Complainant has determined that an appropriate civil penalty to settle this action is \$14,037 for the EPCRA violations. 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 EPCRA/CERCLA Enforcement Response Policy.

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73. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,037 civil penalty for the EPCRA violations. Respondent must pay the penalty by 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 should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Overton Chicago Gear and the docket numbers of this CAFO.

74. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3511

Ginger Jager, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Cathleen Martwick, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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76. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 87, 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.

77. 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**

78. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing emergency response equipment and training for the Addison Fire Department.

79. Respondent must spend at least \$18,775 to purchase the equipment which includes the following:

- 1) 3 HCN monitors, vehicle mounts, and calibration equipment - \$4,100
- 2) 5 CO<sub>2</sub> monitors and calibration equipment - \$3,675
- 3) Addison and MABAS-12 Haz-sim monitor training program - \$9,000
- 4) 4 MABAS-12 throat mics for the Hazmat team - \$2,000

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80. Respondent certifies as follows:

I certify that Overton Chicago Gear 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 Overton Chicago Gear has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Overton Chicago Gear 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.

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

82. Respondent must submit a SEP completion report to U.S. EPA by December 15, 2016. 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).

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83. Respondent must submit all notices and reports required by this CAFO by first class mail to Ginger Jager of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 74, above.

84. 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.

85. Following receipt of the SEP completion report described in paragraph 82, 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 and U.S. EPA will seek stipulated penalties under paragraph 87.

86. 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 87, below.

87. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 82, Respondent must pay a penalty of \$11,625
- b. If Respondent did not complete the SEP 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 79, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 79, Respondent must pay a penalty of \$1,502.
- d. 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>
\$250	1st through 14th day
\$500	15th through 30th day
\$750	31st day and beyond

88. 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.

89. 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 paragraphs 71-73, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

90. 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

*Dr. Ben 10-6-11*



Environmental Protection Agency's enforcement action against Respondent for violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)."

91. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

92. 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.

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

*Don Am 10-6-16*

**General Provisions**

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

95. 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.

96. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Sections 304 and 312(a) of EPCRA, 42 U.S.C. §§ 11004, and 11022(a).

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

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

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

100. 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.


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

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

**Overton Chicago Gear, Respondent**

10-6-16

Date

  
\_\_\_\_\_  
Don Brown  
President/CEO  
Overton Chicago Gear

**In the Matter of: Overton Chicago Gear**

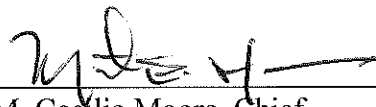
**Docket No. MM-05-2017-0001**

**CERCLA-05-2017-0001**


**EPCRA-05-2017-0001**

**U.S. Environmental Protection Agency, Complainant**

11-7-16  
Date

  
Michael E. McI  
M. Cecilia Moore, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

11/7/2016  
Date

  
Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: Overton Chicago Gear

Docket No. MM-05-2017-0001

CERCLA-05-2017-0001

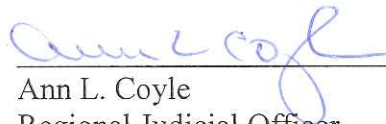
EPCRA-05-2017-0001

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.

November 8, 2016

Date



\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: Overton Chicago Gear  
Docket No. MIM-05-2017-0001

CERCLA-05-2017-0001

EPCRA-05-2017-0001

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 November 9, 2016 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Don Brown  
Overton Chicago Gear  
530 Westgate Drive  
Addison, Illinois 60101

Copy by E-mail to

Attorney for Complainant: Cathleen Martwick  
martwick.cathleen@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle  
Coyle.ann@epa.gov

Dated: November 9, 2016



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6998