

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter Of:

**Michigan Petroleum Technologies, Inc.,
Port Huron, Michigan,**

Respondent.

Docket No. CWA-05-2012-0009

**Proceeding to Commence and Conclude
an Action to Assess a Class II Civil
Penalty Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)**

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

RECEIVED
AUG 20 2012

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), 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. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Michigan Petroleum Technologies, Inc., an entity incorporated and doing business in the State of Michigan.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 terms of this CAFO and to the civil penalty assessed herein.

JURISDICTION AND WAIVER OF THE RIGHT TO A HEARING

7. Respondent admits the jurisdictional allegations in this CAFO, neither admits nor denies the factual allegations in this CAFO and makes no admission of any violation of law or rule or liability in entering into 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.

9. Respondent certifies that it is complying fully with section 311 of the CWA, 33 U.S.C. § 1321.

STATUTORY AND REGULATORY BACKGROUND

10. Section 101(a) of the CWA, 33 U.S.C. § 1251(a), states that the objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the nation's waters.

11. Section 311(j)(5)(A)(i) of the CWA, 33 U.S.C. § 1321(j)(5)(A)(i), requires the President to issue regulations which require an owner or operator of a tank vessel or facility to prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

12. Pursuant to section 311(j)(5)(A)(i) of the CWA, 33 U.S.C. § 1321(j)(5)(A)(i), the President, through the Administrator of U.S. EPA, promulgated the Oil Pollution Prevention rule, found at 40 C.F.R. part 112.

13. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.1, applies to owners and operators of non-transportation related onshore facilities engaged in storing or distributing oil

and oil products, which due to their location, could reasonably be expected to discharge oil in harmful quantities, as that term is defined in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines.

14. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.2, defines “discharge” as any spilling, leaking, pumping, pouring, emitting, emptying or dumping.”

15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7) defines “navigable waters” as “the waters of the United States.” The Oil Pollution Prevention rule, at 40 C.F.R. § 112.2, further defines “navigable waters” to include interstate waters and intrastate lakes, rivers and streams used by interstate travelers for recreational or other purposes and from which fish or shellfish are taken and sold in interstate commerce.

16. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.2, defines “oil” as oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

17. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.2, defines “onshore facility” as any facility of any kind located in, on or under any land within the United States other than submerged lands.

18. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.2, defines “owner or operator” as any person owning or operating an onshore facility.

19. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.3(a), requires that owners or operators of onshore facilities that, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. part 110, into or upon the navigable waters of the United States to prepare a spill prevention control and countermeasures (SPCC) plan in writing and according to the requirements of 40 C.F.R. § 112.7.

20. The Oil Pollution Prevention rule, at 40 C.F.R. § 112.3(a), further requires that owners and operators of a facility for which a SPPC plan must be prepared should maintain a copy of the plan at the facility.

21. The Administrator, at 40 C.F.R. § 110.3, through proper delegation from the President, determined that discharges of oil that are harmful to the public health or welfare or the environment of the United States include discharges that violate an applicable water quality standard or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

22. Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), authorizes the Administrator to assess a Class I or Class II penalty against any owner, operator or person in charge of any onshore facility who fails to comply with any regulation issued under section 311(j) of the CWA, 33 U.S.C. § 1321(j).

23. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), provides that a Class II penalty may not exceed \$10,000 per day of violation to a maximum of \$125,000. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a Class II civil penalty of up to \$11,000 per day for each violation to a maximum of \$157,000 that occurred after March 15, 2004 through January 12, 2009, and \$16,000 per day for each violation to a maximum of \$177,500 that occurred after January 12, 2009.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

24. At all times relevant to this CAFO, Respondent was the “operator” of a petroleum storage facility located at 11134 North Saginaw Road, Clio, Michigan. The facility is not subject to the authority and control of the U.S. Department of Transportation as defined in a memorandum of understanding between U.S. EPA and the U.S. Department of Transportation dated November 24, 1971, and found at 36 Fed. Reg. 24080, and is thus not transportation-related. Respondent also operates similar petroleum storage facilities located at 3030 Moak Street, Port Huron, Michigan, and at 5704 Black River Road, Croswell, Michigan.

25. In the event of a discharge, Respondent’s facility in Clio, Michigan, could reasonably be expected to discharge petroleum to a drainage ditch which flows into Benjamin Run. Benjamin Run then flows into the Flint, Shiawassee and Saginaw Rivers, which are “navigable waters.”

26. The petroleum stored at Respondent’s Clio, Michigan, facility constitutes an “oil” under the Oil Pollution Prevention rule and, in the event of a discharge, could reasonably be expected to cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines of receiving waters.

ALLEGATIONS OF LIABILITY **Failure to Prepare and Maintain SPCC Plan**

27. Respondent is the operator of an onshore petroleum storage facility which is not transportation-related and which, in the event of a spill, could reasonably be expected to discharge oil in harmful quantities to the navigable waters of the United States.

28. Between August 24, 2006, and April 1, 2010, Respondent had not prepared and maintained a SPCC plan according to the requirements of 40 C.F.R. § 112.7.

29. Respondent's failure to prepare and maintain a copy of a SPCC plan for its facility in Clio, Michigan, is a violation of 40 C.F.R. § 112.3(a) and (e), and consequently authorizes the assessment of a civil penalty under section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

CIVIL PENALTY

30. Pursuant to CWA section 311(b)(8), 33 U.S.C. § 1321(b)(8), Complainant determined that an appropriate civil penalty to settle this action is \$15,052. In determining the penalty amount, Complainant took into account Respondent's seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of violations, the nature, extent and degree of success of efforts of the violator to minimize or mitigate the effect of any discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. Complainant also considered Respondent's willingness to implement the supplemental environmental project detailed below. Complainant further considered U.S. EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, dated August 1998.

31. Within 30 days after filing of this CAFO with the Regional Hearing Clerk, Respondent must pay a \$15,052 civil penalty for the CWA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must bear the designation OSLTF – 311 in the memo line, as well the case title *In the Matter of Michigan Petroleum Technologies, Inc.*, the docket number of this CAFO and the billing document number.

32. A transmittal letter, stating, Respondent's name, the case title *In the Matter of Michigan Petroleum Technologies, Inc.*, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

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

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

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

34. If Respondent does not timely pay the civil penalty, 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.

35. 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 payment

was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

36. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the likelihood or extent of releases at Respondent's Clio facility and Respondent's facilities in Croswell and Port Huron, Michigan.

37. At the facilities described in the above paragraph, and within 90 days of the filing of this CAFO with the Regional Hearing Clerk, Respondent must install 16 wireless tank monitors to monitor product levels in the tanks and alert personnel if leaks occur. Respondent will install four monitors at the Clio facility, three at the Croswell facility and nine at the Port Huron facility.

38. Respondent must spend at least \$10,575 on the projects listed in the previous paragraph.

39. Respondent must continuously use or operate the equipment installed as the SEPs for 2 years following its installation.

40. Respondent, by its undersigned signatory, certifies as follows:

I certify that Michigan Petroleum Technologies, Inc., is not required to perform or develop the SEP by any law, regulation, prior order, or prior agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Michigan Petroleum Technologies, Inc., has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Michigan Petroleum Technologies, 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 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.

41. Until Complainant approves the SEP completion report pursuant to paragraph 42, below, U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements. Additionally, Respondent must maintain copies of underlying data for all reports submitted to U.S. EPA according to this CAFO. Upon Complainant's request, Respondent must provide the documentation of any underlying data to U.S. EPA within seven days or a period of time agreed between the parties.

42. Respondent must submit a SEP completion report to U.S. EPA by a date 120 days from the date of this CAFO is filed with the Regional Hearing Clerk. 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).

43. Respondent must submit all notices and reports required by this CAFO by first class mail to Ellen Riley of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 32, above.

44. 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.

45. Following receipt of the SEP completion report described in paragraph 42, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report; or
- 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 47, below.

46. 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 reasonable requirements 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 in the manner provided in paragraph 37, above.

47. 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 37, above, Respondent must pay a penalty of \$19,221; or

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 38, Respondent will not be liable for any stipulated penalty under subparagraph a, above; or

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 38, Respondent must pay a penalty of \$3,844; or

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>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$500	31 st day through submission

48. 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.

49. Respondent must pay any stipulated penalties within 15 business days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 31 - 32, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

50. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project in settlement of a United States Environmental Protection Agency enforcement action against Michigan Petroleum

Technologies, Inc., for alleged violations of the oil spill emergency planning requirements of the Clean Water Act.”

51. 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

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

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

54. This CAFO does not affect Respondent’s responsibility to comply with the CWA and other applicable federal, state, local laws or permits.

55. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998).

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

57. Each person signing this 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.

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

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

60. Complainant has provided public notice of the issuance of this order according to section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i).

Michigan Petroleum Technologies, Inc., Respondent

6-26-12

Date


Brad Secory, President

United States Environmental Protection Agency, Complainant

7/31/12
Date


Richard Karl, Director
Superfund Division

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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.

Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5