UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

In the Matter of:		3/4/22
Highline Warren LLC 163 Pioneer Drive Leominster, Massachusetts 01453		
Highline Aftermarket Acquisition, LLC 4500 Malone Road Memphis, Tennessee 38118	Docket No. CAA-01-2022-0033	Received by EPA Region 1 Hearing Clerk
South/Win, LLC 4500 Malone Road Memphis, Tennessee 38118		
Respondents.		
Proceeding under Section 113 of the Clean Air Act		

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant"), and Highline Warren LLC ("Highline Warren"), Highline Aftermarket Acquisition, LLC ("Highline Aftermarket"), and South/Win, LLC ("South/Win") (collectively, "Respondents") consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondents' liability for alleged violations of Sections 112(r)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1).

2. EPA and Respondents hereby agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. §§ 22.13(b) and 22.18(b).

3. EPA and Respondents agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

4. Therefore, before taking any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, it is hereby ordered as follows:

I. PRELIMINARY STATEMENT

5. This CAFO is entered into under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

6. EPA and the U.S. Department of Justice jointly determined that this matter is appropriate for administrative penalty assessment, pursuant to 42 U.S.C. § 7413(d)(1) and 40 C.F.R. § 19.4.

7. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes a settlement between Complainant and Respondents. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. The issuance of this CAFO simultaneously initiates and concludes this proceeding. 40 C.F.R. § 22.13(b).

II. STATUTORY AND REGULATORY AUTHORITY

Clean Air Act

9. The purpose of Section 112(r) of the CAA and its implementing regulations is "to prevent the accidental release and to minimize the consequences of any such release" of an "extremely hazardous substance." 42 U.S.C. § 7412(r)(1).

10. Section 112(r)(1) of the CAA is referred to as the "General Duty Clause" or the "GDC." Pursuant to the GDC, owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur.

11. The term "have a general duty in the same manner and to the same extent as section 654 of title 29" of the United States Code means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act administered by the Occupational Safety and Health Administration ("OSHA").

12. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.[1] The term includes, but is not limited to, regulated substances listed in CAA Section 112(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is

[1] See Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

extremely hazardous.[2] Under Section 112(r)(3) of the CAA, the term "extremely hazardous substances" also includes, without limitation and in addition to substances listed in 40 C.F.R. § 68.130, those substances listed in 40 C.F.R. Part 355, Appendices A and B, published under Section 302 of EPCRA, 42 U.S.C. § 11002.

13. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

15. The General Duty Clause is a performance standard with requirements that often can be achieved in a variety of ways. EPA routinely consults chemical Safety Data Sheets ("SDSs"), codes, standards, and guidance issued by chemical manufacturers, trade associations, and fire prevention associations (collectively, "industry standards") to understand the hazards posed by using various extremely hazardous substances. The industry standards also are evidence of the standard of care that industry itself has found to be appropriate for managing those hazards. These industry standards are consistently relied upon by industry safety and fire prevention experts and are sometimes incorporated into state building, fire, and mechanical codes.

16. Section 112(r)(8), 42 U.S.C. § 7412(r)(8), of the CAA requires EPA to develop and disseminate information on how to conduct hazard assessments. According to EPA's Guidance for Implementation of the GDC CAA Section 112(r)(1) ("EPA GDC Guidance," May 2000),

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[2] Id.

available at https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf, the General Duty Clause's duty to identify hazards that may result from hazardous releases requires determining: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard review ("PHR").

17. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), provide for the assessment of civil penalties for violations of CAA Section 112(r). Statutory maximum penalties as adjusted for inflation are provided in 40 C.F.R. Part 19.

III. GENERAL FACTUAL ALLEGATIONS

18. Respondent Highline Warren is a national distributor of windshield washer fluid, engine lubrications, and a wide variety of consumable automotive products. Respondent Highline Warren operates facilities with over 1,200 employees at multiple locations throughout the United States.

19. Respondent Highline Aftermarket, until November of 2020, was a manufacturer and national distributor of windshield washer fluid and anti-freeze with over 500 employees and 23 facilities, eight of which are manufacturing facilities. As of November 2020, South/Win became a subsidiary of Highline Warren. As of November 2020, Highline Aftermarket became the managing member of Highline Warren.

20. In November of 2020, Pritzker Private Capital purchased Highline Aftermarket and Warren Distribution, Inc., merging the two companies to create Highline Warren.

21. Respondents' corporate headquarters are located at 4500 Malone Road, Memphis, Tennessee.

22. Highline Warren and Highline Aftermarket were incorporated under the laws of Delaware, and South/Win was incorporated under the laws of North Carolina.

23. Highline Warren operates a manufacturing facility at 163 Pioneer Drive, Leominster, Massachusetts ("Facility"). The Facility manufactures windshield wiper fluid and recreational vehicle ("RV") antifreeze solutions. Until approximately November of 2020, the Facility was operated by Highline Aftermarket and its subsidiary, South/Win.

24. The Facility is located in an industrial park that includes commercial businesses directly to the north and northwest of its property boundaries. A residential development is located approximately one quarter of a mile to the northwest of the Facility, and a commercial shopping center is located approximately one third of a mile to the southwest of the Facility.

25. The Facility includes, among other things, warehouse space, a windshield washer fluid fill line for gallon sized containers, a windshield washer fill line for 55-gallon drums, a methanol and ethanol diluting room, and an extruding line to produce one-gallon plastic containers. The exterior of the Facility contains a railroad spur that can hold multiple tank cars, a tank farm used to store methanol and ethanol, and a tank farm containing plastic components for bottle production.

26. One of the Facility's primary operations is diluting methanol with water and bottling the solutions in one-gallon high density polyethylene (HPDE) jugs and 55-gallon drums. The Facility receives two and a half million gallons of methanol each year. Approximately half of the methanol each year is delivered by rail and half by tank truck. The Facility has long term leases for three rail cars that are used to transport methanol to the Facility. Two railcars were observed at the Facility at the time of the inspection. The Facility also dilutes ethanol with water to produce an antifreeze product that is used in RVs.

27. Methanol is a chemical that may, as the result of short-term exposures associated with releases to the air, cause death, injury or property damage due to its toxicity, flammability, or volatility. Although methanol has many beneficial uses, it must be handled with care. Methanol is a class 1B flammable liquid that requires special firefighting attention because it can burn with no visible flame and stays flammable even when mixed with large quantities of water. A 75% water, 25% methanol mixture remains a flammable liquid. Methanol is also toxic. Ingestion of a very small amount of pure methanol can cause severe injury; swallowing less than one ¼ of a cup (10-30 ml) can kill an adult. It has an OSHA Permissible Exposure Limit (PEL) of 200 ppm and a flashpoint of 52 degrees Fahrenheit.

28. Ethanol is chemical that is a health hazard in its vapor state and is described in National Fire Protection Association ("NFPA") 30, *Flammable and Combustible Liquid Code*, as a Class 1B flammable liquid. Ethanol has a lower explosive limit (LEL) of 3.3% and upper explosive limit (UEL) of 19% by volume.

29. On March 5, 2020, EPA conducted an inspection of the Facility to determine compliance with the CAA's General Duty Clause and the Toxic Release Inventory reporting requirements of Section 313 of the Emergency Planning and Community Right to Know Act.

30. During the inspection, EPA observed that, among other things, Highline Aftermarket had not conducted a PHR of its methanol and ethanol storage and use, using appropriate hazard assessment techniques.

31. On May 22, 2020, Highline Aftermarket submitted to EPA a PHR dated April 24, 2020. The PHR was deficient in several significant respects.

32. On September 2, 2020, EPA issued an Administrative Order on Consent ("AOC") requiring that, as soon as possible, but no later than ninety (90) days after the effective date of

the AOC, Highline Aftermarket, with the assistance of a qualified consultant, would address the PHR deficiencies identified in the AOC using appropriate, industry-recognized hazard assessment techniques. The AOC further required that Highline Aftermarket submit to EPA a certification that the PHR had been completed; a brief statement about what actions Highline Aftermarket is taking at the Facility to improve safety as a result of conducting the PHR ("Safety Plan Statement"); and a list of expenditures associated with implementing the requirements of the AOC.

33. On December 15, 2020, EPA received a response to the AOC. Following review of the submission and meeting with company representatives, EPA concluded that the revised PHR remained deficient. On April 13, 2021, EPA provided comments developed by EPA's contractor, ERG, on the draft PHR. On May 6, 2021, Highline Warren's Environmental Manager advised EPA that Highline Warren had engaged a consultant to update the PHR and address items raised in ERG's comments, and that the work would take place the week of June 14, 2021. On June 8, 2021, Highline Warren's Environmental Manager advised EPA that it would provide a final PHR by August 16, 2021. EPA received it on August 13, 2021. On August 16, 2021, EPA concluded that the final PHR is in compliance with the requirement of the General Duty Clause to identify hazards. Further, Respondents are undertaking efforts to implement the PHR in accordance with a spreadsheet provided to EPA prior to the execution of this CAFO.

34. Each Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom an administrative penalty order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

35. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

36. Highline Warren is the "operator" of the Facility within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1), of a stationary source.

37. Until about November 2020, Highline Aftermarket and South/Win were the "operator" of the Facility within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1), of a stationary source.

38. Methanol and ethanol are "extremely hazardous substances," within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

IV. ALLEGED VIOLATION

Failure to Identify Hazards under the General Duty Clause

39. Complainant realleges and incorporates by reference Paragraphs 1 through 38.

40. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

41. To identify hazards that may result from accidental releases of extremely hazardous substances under the GDC and Section 112(r)(1) of the CAA, owners and operators of stationary sources should determine: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the

potential effect of these releases on the public and the environment, using appropriate hazard assessment techniques.

42. As part of the Process, Respondents used, handled, or stored methanol, an extremely hazardous substance, without properly identifying the hazards that may result from accidental releases or otherwise conducting a PHR using appropriate, industry-recognized hazard assessment techniques.

43. By failing to properly identify hazards that may result from accidental releases of an extremely hazardous substance used, handled, or stored as part of the Process, Respondents violated the General Duty Clause at Section 112(r)(1) of the Clean Air Act.

V. TERMS OF SETTLEMENT

44. The provisions of this CAFO shall apply to and be binding on EPA, and on Respondents and their officers, directors, agents, successors, and assigns.

45. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim, upon which relief may be granted, against Respondents. Respondents hereby waive any defenses they might have as to jurisdiction and venue relating to the violation alleged in this CAFO.

46. Respondents neither admit nor deny the specific factual allegations contained in IIIthis CAFO. Respondents consent to the assessment of the penalty stated herein.

47. Respondents hereby waive their right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waive their right to appeal the Final Order.

48. Respondents certify that they corrected the violation alleged in Section IV of the CAFO by conducting a PHR, which was reviewed by EPA, and are undertaking efforts to implement the PHR in accordance with a spreadsheet provided to EPA prior to the execution of this CAFO.

49. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in this CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of $48,908.00 for the violation alleged in this matter, applicable to the Respondents collectively as one single penalty.

50. Respondents agree to the issuance of this CAFO and to the payment of the civil penalty cited in Paragraph 49.

51. Within thirty (30) days of the effective date of this CAFO, Respondents shall pay the total penalty amount of $48,908.00 using any method or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa. Respondents shall include the case name ("*In re Highline Warren LLC*") and docket number (CAA-01-2022-0033) on the face of each check or wire transfer confirmation. In addition, at the time of payment Respondents shall simultaneously send notice of proof of payment[3] to Chris Rascher, Inspector, U.S. EPA, Region 1, 5 Post Office Square, Suite 100, Mail Code ECC 05-4, Boston, MA 02109-3912, and by e-mail to Rascher.Chris@epa.gov.

52. In the event that any portion of the civil penalty amount described in Paragraph 49 is not paid by the required due date, the total penalty amount of $48,908.00, plus all accrued interest shall become due immediately to the United States upon such failure. Then interest, as calculated in Paragraph 53, shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondents shall be liable for such amount regardless of whether EPA has notified Respondents of their failure to pay the penalty amount by

[3] Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with Docket No. CAA-01-2022-0033.

the due date or made a demand for payment. All payments to the United States under this paragraph shall be made as described in Paragraph 51.

53. In the event that any portion of the civil penalty amount relating to the alleged CAA violations is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondents will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorney's fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondents' outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

54. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 C.F.R § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

55. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA for the violations alleged herein as to all Respondents.

Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondents to comply with all applicable provisions of federal, state, or local law.

56. In accordance with 40 C.F.R. § 22.18(c), this CAFO in no way relieves Respondents or their employees of any criminal liability and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

57. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of any issue related to any federal, state, or local permit.

58. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

VI. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

59. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondents' liability for federal civil penalties for the violations specifically alleged above that occurred at the Facility.

60. By signing this CAFO, Respondents acknowledge that this document will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

61. By signing this CAFO, the undersigned representative of Complainant and the undersigned representatives of Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

62. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

63. Except as qualified by Paragraph 53 (collection of unpaid penalty), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondents specifically waive any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

64. Complainant and Respondents, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by e-mail, at: **rebecca.fox@highlinewarren.com; cc to: vsilke@bairdholm.com.** Respondents understand that these e-mail addresses may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

EFFECTIVE DATE

65. Respondents and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will electronically transmit a copy of the filed CAFO to the Respondents. This

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

FOR RESPONDENT Highline Warren LLC:

Signature _____ Date 2/22/22

Printed Name: Darcy Curran

Title: Pres + CEO

Address: 163 Pioneer Drive Leominster, Massachusetts 01453

FOR RESPONDENT Highline Aftermarket Acquisition, LLC:

Signature _____ Date 2/22/22

Printed Name: Darcy Curran

Title: Pres + CEO

Address: 4500 Malone Road Memphis, Tennessee 38118

FOR RESPONDENT South/Win, LLC:

Signature _____ Date 2/22/22

Printed Name: Darcy Curran

Title: Pres + CEO

Address: 4500 Malone Road Memphis, Tennessee 38118

FOR COMPLAINANT:

KAREN MCGUIRE

Digitally signed by KAREN MCGUIRE
Date: 2022.03.01 11:43:13 -05'00'

Signature

Date

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

In the Matter of: Highline Warren LLC 163 Pioneer Drive Leominster, Massachusetts 01453 Highline Aftermarket Acquisition, LLC 4500 Malone Road Memphis, Tennessee 38118 South/Win, LLC 4500 Malone Road Memphis, Tennessee 38118 Respondents. Proceeding under Section 113 of the Clean Air Act	Docket Number: CAA-01-2022-0033

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondents Highline Warren LLC, Highline Aftermarket Acquisition, LLC, and South/Win, LLC are ordered to pay the civil penalty of $48,908.00 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS ___ DAY OF _____ 2022.

LEANN JENSEN Digitally signed by LEANN JENSEN
Date: 2022.03.03 16:52:37 -05'00'

LeAnn Jensen, Regional Judicial Officer
U.S. EPA, Region 1