

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
Dearborn Refining Company)
3901 Wyoming Avenue)
Dearborn, Michigan 48120)
U.S. EPA ID. NO.:)
MID 005 510 805)
Respondent)

DOCKET NO.: RCRA-05-2001-0017
019

COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a). RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This action is also instituted pursuant to Sections 22.01(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance or Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"),

64 Fed. Reg. 40137 (July 23, 1999), codified at 40 CFR Part 22.

2. Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

3. The Complainant is, by lawful delegation, the Chief, Enforcement & Compliance Assurance Branch, Waste, Pesticides & Toxics Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

4. U.S. EPA has promulgated regulations, codified at 40 CFR Parts 260 through 279, governing generators and transporters of hazardous waste, facilities that treat, store and dispose of hazardous waste, and facilities that generate, process and/or re-refine used oil.

5. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C.

§ 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). The U.S. EPA granted Michigan final authorization to administer certain HSWA and additional RCRA requirements effective January 23, 1990, 54 Fed. Reg. 48608 (November 24, 1989); June 24, 1991, 56 Fed. Reg. 18517 (April 23, 1991); November 30, 1993, 58 Fed. Reg. 51244 (October 1, 1993); April 8, 1996, 61 Fed. Reg. 4742 (February 8, 1996); and December 28, 1998, 63 Fed. Reg. 57912 (October 29, 1998) (stayed and corrected effective June 1, 1999), 64 Fed. Reg. 10111 (March 2, 1999). The U.S. EPA-authorized Michigan regulations are codified at Michigan Administrative Code (MAC) Rules 299.9101 *et seq.* See also 40 CFR § 272.1151 *et seq.*

7. The State of Michigan's requirements equivalent to 40 CFR Part 279, Standards for the Management of Used Oil, became effective in the State of Michigan on October 15, 1996. These requirements are contained in Michigan Part 111 Administrative Rules (R 299.9809 - R 299.9816). On June 1, 1999, the State of Michigan achieved Federal authorization for these rules.

8. U.S. EPA has provided notice of commencement of this action to the State of Michigan pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

General Allegations

9. The Respondent is Dearborn Refining Company ("DRC" or "Respondent").

10. Respondent is a "person" as defined at MAC R 299.9106(i) (Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 CFR § 260.10).

11. Respondent is a corporation incorporated under the laws of Michigan.

12. Respondent is the owner and operator of the property and equipment located at 3901 Wyoming Avenue, Dearborn, Michigan (hereinafter referred to as the "facility").

13. The facility encompasses approximately 8.5 acres. It is located in a predominantly industrialized section on the eastern side of Dearborn, Michigan. The facility is situated approximately 1/4 mile northwest of the nearest residential community. The facility is located on Wyoming Avenue, a heavily-traveled, four-lane roadway.

14. From at least June 15, 1999, to the present, there were at least 80 above-ground storage tanks (ASTs) at the facility.

15. The total present volume of oil stored at the facility is between 1 million and 1.7 million gallons.

16. DRC blends and markets lubricating and metal working products primarily from virgin oils and various additives.

17. MAC R 299.9190(o) (40 CFR § 279.1) defines "used oil" to

mean "any oil that has been refined from crude oil, used, and, as a result of such use, contaminated by physical or chemical impurities."

18. DRC receives from outside generators, stores and processes used oil and oil/water mixtures at the facility. DRC uses the following methods to process used oil: physical separation of the oil and water layers, chemical addition (such as sulfuric acid and caustic), and raising the temperature of the oil to drive off volatile and semi-volatile organic compounds and water.

19. On or about June 15 through June 17, 1999, the U.S. EPA conducted an inspection and compliance investigation at the facility (hereinafter referred to as "multi-media inspection" or "MMI").

20. The MMI was conducted to determine compliance with state and federal laws including, but not limited to the Resource Conservation and Recovery Act.

21. During and subsequent to the MMI, U.S. EPA examined the facility to determine its compliance with the RCRA regulations for hazardous waste management (pursuant to 40 CFR Parts 262 and 265), used oil management (pursuant to 40 CFR Part 279), and management of underground storage tanks (pursuant to 40 CFR Parts 211 and 280), and other environmental requirements.

22. As part of the MMI, U.S. EPA obtained information from

the facility operating log of the following monthly inbound manifest summaries, which indicates, from left to right: calendar month and year, volume total of all inbound shipments received by the facility in that calendar month (gallons), total volume of oil contained in the inbound shipments (gallons), and total bottom sediments and water (BS&W) contained in the inbound shipments (gallons):

<u>Month</u>	<u>Total gallons</u>	<u>Total Oil</u>	<u>Total BS&W</u>
12/93	144,016	14,659.5	6,066
1/94	71,244	12,400.5	3,488.5
2/94	66,820	10,451.5	7,752
3/94	125,423	18,361	5,767
4/94	140,800	9,856	6,823
5/94	151,989	24,872	10,196
6/94	146,389	9,249	7,734
7/94	149,546	12,758	4,656
8/94	172,426	11,334	10,754
9/94	224,982	14,420	15,411
10/94	195,324	20,896	15,065
11/94	242,042	18,713	12,524
12/94	232,787	35,437	23,032
1/95	216,901	22,260	13,371

23. The presence of bottom sediments and water in the inbound shipments received by the facility, for the months shown

in paragraph 22 above, are indications of physical impurities. For the months identified above, BS&W values range from a minimum of approximately 3.1% by volume, for July 1994, to a maximum of approximately 11.6% by volume, for February 1994.

24. The following incoming shipping manifests are for June 1999. The data include, from left to right: date, generator name, manifest number, shipment volume, waste number (See Part 121, Liquid Industrial Wastes, Michigan Compiled Laws (MCL) 324.11101 et seq. of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended), oil content (% by volume), and BS&W content (% by volume):

<u>Date</u>	<u>Generator</u>	<u>Manifest No.</u>	<u>Volume</u>	<u>No.</u>	<u>Oil</u>	<u>BS&W</u>
6/1/99	Acenico, Inc.	MI7379556	2250 gal	021L	10%	2%
6/2/99	Waste Reductions	MI4584925	6000 gal	021L	8%	2%
6/3/99	Moore Flame	MI4225717	55 gal	020L	10%	2%
6/8/99	Taryn Tech	MI7373863	400 gal	019L	25%	10%
6/9/99	Active Ind.	MI7379589	4000 gal	021L	25%	10%
6/11/99	Dimensions Machinery	MI7379598	1250 gal	021L	10%	2%

25. The presence of bottom sediments and water in the inbound shipments received by the facility, for the manifests identified in paragraph 24 above, are indications of physical impurities. For the manifests identified above, BS&W values range from a minimum of approximately 2% by volume to a maximum

of approximately 10% by volume.

26. During the MMI, all of the ASTs lacked one or more of the following secondary containment features: dikes, berms or retaining walls and flooring covering the entire area within the dikes, berms or retaining walls, each of which are sufficiently impervious to used oil to prevent any migration of used oil to soil, groundwater or surface water in the event of a release; or, an equivalent secondary containment system. U.S. EPA conducted a Geoprobe investigation conducted in January 2000. The results of the Geoprobe investigation showed the migration into soil of oil and contaminants typically associated with used oil. During the MMI there was oil-stained or oil-saturated soils in the active processing area of the facility (e.g., in the large tank farm in the southwest quadrant and near the two oil-water separators).

27. During the MMI, there were more than 100 55-gallon drums on the facility property.

28. The above-mentioned 55-gallon drums were in various locations throughout the facility, including two drum storage pads, inside former boiler rooms, resting directly upon the ground adjacent to a group of vertical tanks, and in trailers left abandoned on the facility property.

29. Many of the drums were rusting, with several of them bulging or severely damaged.

30. During the MMI, surface soils were contaminated with

oil around Tanks 59, 60, 75, 78, 80, 81 and 82.

31. During the MMI, surface soils were contaminated with oil in the area near the two oil-water separators (identified as "sumps 1 and 2" infra). These sumps were located in the center of the facility.

32. During the MMI, the former boiler rooms contained dismantled and abandoned equipment and motors; rusted, unmarked drums; and oily rags strewn about. Oil was spilled throughout these rooms. There was a trench running along the western face of these boiler rooms which was filled with oil.

33. Each of the used oil treatment or storage tanks at the facility were in existence prior to June 1, 1999. These included: ASTs 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 38, 39, 44, 45, 46, 48, 49, 59, 60, 62, 63, 64, 65, 66, 67, 68, 75, 76, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 301, 302, and the Uniflash tank, as well as sumps 1 and 2.

34. On June 16 and 17, 1999, as part of the MMI, U.S. EPA conducted environmental sampling at the facility. U.S. EPA obtained liquid samples from 10 ASTs (tank nos. 5, 12, 17, 27, 59, 62, 70, 101, 102 and the Uniflash tank), one underground storage tank, two 55-gallon drums, two sumps and one large (approximately 500 gallon), unlabeled and unnumbered open tote. U.S. EPA also obtained two composite soil samples from two

locations near groups of ASTs: (i) soil sample no. 1, between tank nos. 59, 60, 75 and 76; and (ii) soil sample no. 2, between tank nos. 42 and 43.

35. From January 24, 2000 to January 26, 2000, U.S. EPA conducted additional sampling at the facility.

36. During the January 2000 sampling effort, investigative samples were collected from 21 ASTs (tank nos. 1, 2, 5, 12, 22, 23, 25, 26, 27, 48, 51, 59, 60, 62, 70, 71, 75, 78, 81, 90 and 94) and five unmarked 55-gallon drums. A total of 29 composite soil samples were taken from 10 soil boring locations, at depths of 0 to 20 feet below ground surface.

37. On March 21 and 22, 2000, U.S. EPA obtained additional investigative samples. The March 2000 sampling event included additional soil sampling and groundwater sampling (from one existing monitoring well, OW-1), as well as two more samples from Tank 1, for polychlorinated biphenyls (PCBs).

38. Analytical results from sampling conducted on June 16 and 17, 1999, documented total halogen concentrations for the following tanks and containers, expressed as parts per million (ppm): Tank 5 (9,800 ppm); Tank 12 (15,000 ppm); Tank 17 (4,100 ppm); Tank 59 (5,400 ppm); Tank 62 (6,300 ppm); Tank 70 (7,100 ppm); Drum 2 (6,200 ppm); the Uniflash tank (12,000 ppm); and sumps 1 and 2 (3,300 and 5,800 ppm, respectively).

39. A total of 39 soil samples were collected at the

facility during the January and March 2000 sampling events. Ten of the 39 samples were surficial samples, one from each of ten borings, B-1 through B-10. The remaining 29 samples were subsurface composite samples collected from four-foot intervals, to a maximum depth of 20 feet below ground surface.

40. Many of the subsurface samples contained oily material. At boring locations B-1 through B-6, B-8 and B-10, there was the presence of a petroleum odor throughout the borehole. At boring B-7, a slight petroleum odor was noted throughout the borehole, while at boring B-9 a strong petroleum odor was noted throughout the borehole.

41. Soil sample results were evaluated based on the RCRA Toxicity Characteristic Leaching Procedure (TCLP) standards. (See 40 CFR § 261.24, Table 1).

42. Six soil samples exceeded the TCLP lead standard of 5 milligrams per liter (mg/L):

B-2, at 4-8' depth interval: 7.0 mg/L;
B-5, at 4-12' depth interval: 7.7 mg/L;
B-7, at 0-4' depth interval: 5.1 mg/L;
B-8, at 4-8' depth interval: 21 mg/L;
B-10, at 4-8' depth interval: 6.9 mg/L; and
B-10, at 8-12' depth interval: 23 mg/L.

43. The soils identified in paragraph 42 above are therefore contaminated with RCRA characteristic hazardous waste pursuant to 40 CFR Part 261, Subpart C.

44. One groundwater sample, taken from borehole B-4 during the January 2000 sampling investigation, was analyzed for pH, oil

and grease, and PCBs. It was found to have an oil and grease content of 12,000 mg/kg.

45. During the MMI and during subsequent field sampling events, there were approximately 80 unmarked (i.e., lacking any markings such as "Used Oil") tanks, including the ASTs identified in paragraph 33 above, as well as more than 100 unmarked 55-gallon drums, some of which contained waste oil, according to one DRC employee during the MMI, more than 20 unmarked five-gallon containers, several large metal and plastic totes situated on a concrete pad, sumps containing oil, oil-stained and/or oil-saturated soils, open totes containing oily materials, rusting tanks, and oil-filled trenches and oil-stained floors of buildings in the used oil portion of the facility layered with oil.

COUNT I

STORING USED OIL WITHOUT SUFFICIENT SECONDARY CONTAINMENT

46. Complainant incorporates paragraphs 1-26 and 30-45 of this complaint as though set forth in this paragraph.

47. Michigan Administrative Code rule 813, MAC R 299.9813, (40 CFR § 279, Subpart F) establishes standards for used oil processors and re-refiners.

48. MAC R 299.9813(1) establishes that owners or operators of facilities that process used oil must comply with the requirements of Rule 813 (MAC R 299.9813).

49. MAC R 299.9813(3) and (7) require a used oil processor to comply with 40 CFR §§ 279.51, 52, 54-58, except 54(a).

50. Pursuant to MAC R 299.9813(3) and (7) and 40 CFR § 279.54(d), existing ASTs used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

51. MAC R 299.9813(3) and (7) and 40 CFR § 279.54(d)(1) require the secondary containment system to consist of, at a minimum: (i) dikes, berms or retaining walls; and (ii) a floor covering the entire containment area within the dike, berm or retaining wall, except for areas where existing portions of the tank meet the ground; or (iii) an equivalent secondary containment system.

52. MAC R 299.9813(3) and (7) and 40 CFR § 279.54(d)(2) require that the entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

53. MAC R 299.9109(z) (40 CFR § 279.1) defines "used oil processor/re-refiner" to be a facility that processes used oil.

54. MAC R 299.9106(t) (40 CFR § 279.1) defines "processing" to include physical operations designed to produce from used oil or to make used oil more amenable for production of used-oil derived products. It provides examples of processing activities

including, but not limited to, filtration and chemical or physical separation.

55. MAC R 299.9109(q) (40 CFR § 279.1) defines "used oil above-ground tank" to mean a tank which is used to store or process used oil and which is not an underground storage tank as defined in 40 CFR § 280.12. 40 CFR § 280.12 defines an underground storage tank as one with volume 10 percent or greater below the surface of the ground.

56. MAC R 299.9109(u) (40 CFR § 279.1) defines "used oil existing tank" to include a tank used for storage or processing of used oil, and that is in operation, or for which installation has commenced on or prior to the effective date of the amendments to the State's rules that establish its used oil program under RCRA. The State of Michigan adopted these used oil regulations on October 15, 1996.

57. The liquids contained in the tanks identified in paragraph 33 above were contaminated with various physical or chemical impurities as alleged in paragraphs 22-25 and 38 above. These oils were "used oil" as that term is defined in MAC R 299.9109(p) (40 CFR § 279.1).

58. The tanks identified in paragraph 33 above were used to store or process used oil. All of these tanks were located above-ground with no more than 10 percent of their volume located below the surface of the ground. These tanks thus were "used oil

aboveground storage tanks" as that term is defined in MAC R 299.9109(q).

59. The tanks identified in paragraph 33 above were used to collect used oil from at least June 1, 1999. These tanks have been located at the facility from before June 1, 1999. These tanks thus were "used oil existing tanks" as that term is defined in MAC R 299.9109(u) (40 CFR § 279.1).

60. DRC's actions as identified in paragraph 18 above was "processing" of used oil in that it was designed to make used oil more amenable for production of lubricants or other used oil-derived product. DRC's actions described herein thus meet the definition of "processing" as contained in MAC R 299.9106(t) (40 CFR § 279.1).

61. DRC's actions as alleged in paragraphs 18 and 60 above makes DRC a "used oil processor" as defined in MAC R 299.9109(z).

62. From at least June 15 through 17, 1999, the large tank farm located in the far northwest quadrant of the facility, and which includes tank nos. 59, 60, 75, 76, 78, 80, 81 and 82, lacked an impervious dike, berm or retaining wall around the tank farm. These tanks rested directly on the ground. There were flexible hoses on the ground between these tanks, and extensive spillage of oil directly upon the ground. There was oil-saturated soil between these tanks, indicating the complete absence of an impervious floor in this area. An earthen berm, with some

foliage, was observed near tanks 80 and 81, approximately twenty (20) feet west-northwest of these two tanks. The other tanks in this area did not have any type of berm, dike or retaining wall down-gradient (*i.e.*, in terms of topographical relief), and, with the exception of the above-mentioned berm west-northwest of tanks 80 and 82, there was no berm, dike or retaining wall immediately up-gradient (*i.e.*, in terms of topographical rise) of tanks 59, 60, 75, 76 and 78.

63. A surface soil sample, taken in June 1999 from between ASTs 59, 60, 75 and 76, reported the following results: (i) oil and grease content of 33,000 mg/kg (ppm); (ii) heating value of 5,965 British thermal units (BTU) per pound; (iii) lead concentration of 570 mg/kg (ppm).

64. From at least June 15 through 17, 1999, horizontal tanks 62 through 66 were resting directly upon the ground, without any containment system of berms, dikes or retaining walls.

65. From at least June 15 through 17, 1999, vertical tanks 42 and 43 were situated directly on the ground, with no secondary containment system in place. A surface soil sample from between these two tanks, taken in June 1999, reported the following results: (i) oil and grease content of 20,000 mg/kg (ppm); (ii) heating value of 19,780 BTU per pound; (iii) lead concentration of 570 mg/kg (ppm).

66. From at least June 15 through 17, 1999, tanks 13, 22, 23, 83 through 89 and 93 were situated upon a concrete pad. There were, however, no dikes, berms or retaining walls around these tanks.

67. DRC's failure to have adequate secondary containment for the tanks as alleged in paragraphs 62-66 represents a violation for at least 179 days of MAC R 299.9813(3) (40 CFR § 279.54(d)).

COUNT II

FAILURE TO LABEL TANKS AND CONTAINERS WITH "USED OIL"

68. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

69. MAC R 299.9813(3) and (7) and 40 CFR § 279.54(f)(1) require that containers and ASTs used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

70. The tanks identified in paragraph 33 above were used to store and/or process used oil. All of these tanks were located above-ground with no more than 10 percent of their volume located below the surface of the ground. These tanks thus were "used oil aboveground storage tanks" as that term is defined in MAC R 299.9109(q).

71. DRC's actions as identified in paragraph 18 above was

"processing" of used oil in that it was designed to make used oil more amenable for production of lubricants or other used oil-derived product. DRC's actions described herein thus meet the definition of "processing" as contained in MAC R 299.9106(t) (40 CFR § 279.1).

72. DRC's actions as alleged in paragraphs 18 and 71 above makes DRC a "used oil processor" as defined in MAC R 299.9109(z).

73. From June 15-17, 1999, none of the tanks identified in paragraph 33 above and containers identified in paragraph 27 above were marked with the words "Used Oil." The drums identified in paragraph 27 above meet the definition for "container" as that term is defined in MAC R 299.9102(o) (40 CFR § 279.1).

74. Respondent's failure to label, with the words "Used Oil," its used oil storage tanks and containers as identified in paragraph 74 above represents a violation for at least three days of MAC R 299.9813(3) and (7) (40 CFR § 279.54(f)(1)).

COUNT III

STORING USED OIL IN TANKS AND CONTAINERS IN POOR CONDITION

75. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

76. MAC R 299.9813(3) and (7) and 40 CFR § 279.54(b) require that containers and above-ground tanks used to store or

process used oil at processing and re-refining facilities must be: in good condition (no severe rusting, apparent structural defects or deterioration), and not leaking (no visible leaks).

77. MAC R 299.9102(o) defines the term "container" to mean any portable device in which a material is stored, treated, transported, disposed of, or otherwise handled.

78. The liquids contained in tanks 5, 12, 17, 18, 26, 59, 65, 66 and 75 and in the drums located in the former boiler rooms, in abandoned trailers and in two drum storage areas, as alleged in paragraphs 33, 34, 36, 38 and 45 above contained used oil. These oils were used and contaminated with various physical or chemical impurities as alleged in paragraphs 22 through 25 and 35 above. These oils thus were "used oil" as that term is defined in MAC R 299.9109(p) (40 CFR § 279.1).

79. Tanks 1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 38, 39, 44, 45, 46, 48, 49, 59, 60, 62, 63, 64, 65, 66, 67, 68, 75, 76, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 301, 302 were used to store used oil, and tanks 91 and 92 were used to process used oil. All of these tanks were located above-ground with no more than 10 percent of their volume located below the surface of the ground. These tanks thus were "used oil aboveground storage tanks" as that term is defined in MAC R 299.9109(q).

80. The drums identified in paragraph 78 above were

portable. DRC stored or handled used oil in these drums. The drums thus were "containers" as that term is defined in MAC R 299.9102(o) (40 CFR § 279.1).

81. DRC's actions of physically separating the oil and water layers, adding chemicals, and raising the temperature of the oil to drive off volatile and semi-volatile organic compounds and water, as identified in paragraph 18 above constitutes "processing" of used oil in that it was designed to make used oil more amenable for production of lubricants or other used oil-derived product. DRC's actions described herein thus meet the definition of "processing" as contained in MAC R 299.9106(t) (40 CFR § 279.1).

82. DRC's actions as alleged in paragraphs 18 and 81 above make DRC a "used oil processor" as defined in MAC R 299.9109(z).

83. From at least June 15 through 17, 1999, many of the drums identified in paragraph 78 above were rusting and situated directly on the ground with no containment. At least one drum was found to be bulging at the top. These drums were located in the former boiler rooms, in abandoned trailers on the facility and in two drum storage locations underlain by concrete. During this same time, ASTs 5, 12, 17, 18, 26, 59, 65, 66, and 75 were also rusting.

84. DRC's failure to maintain the drums and containers in good condition as alleged in paragraph 83 above represents a

violation for at least 179 days of MAC R 299.9813(3) and (7) (40 CFR § 279.54(d)).

COUNT IV

INADEQUATE COMMUNICATION DEVICES

85. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

86. MAC R 299.9813(3) and (7) and 40 CFR § 279.52(a)(4) require that whenever used oil is being poured, mixed, spread or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, and that if there is ever just one employee on the premises while the facility is in operation, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such device is not required by 40 CFR § 279.52(a)(2).

87. During the MMI, there was a public address system loudspeaker mounted on the southeastern corner of the roof of the southeastern-most boiler room. There was no two-way communication system either in this area or in any area of the facility where oil processing occurred. Adjacent to the boiler

rooms there is located one of two oil-water separators wherein waste oil shipments from off-site are received. There were no two-way communication systems in the large tank farm area in the northwest quadrant of the facility. This area is isolated from the single loudspeaker identified above. In this tank farm, used oil is stored and transferred via flexible hoses running along the ground to processing tanks in other areas of the facility. There were no one-way public address loudspeakers in this tank farm. In the above areas, used oil is handled by facility employees, and is done so without the presence of a two-way communication system. Moreover, there is no direct line of sight between these areas and the office building.

88. DRC's failure to have an adequate internal communications system as alleged in paragraph 87 above represents a violation for at least three days of MAC R 299.9813(3) and (7) (40 CFR § 279.54(a)(4)).

COUNT V

INADEQUATE CONTINGENCY PLAN

89. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

90. MAC R 299.9813(3) and (7) (40 CFR § 279.52(b)) requires a contingency plan. The owner or operator may substitute its Spill Prevention, Control, and Countermeasures Plan (SPCC Plan)

for a separate contingency plan provided, the owner or operator, amends the SPCC Plan to include, among other things, a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment, where this equipment is required, 40 CFR § 279.52(b)(2)(v). The list must be kept up to date and include a description of the location of the equipment, a physical description of the equipment and an outline of its capabilities.

91. During the MMI inspection DRC personnel provided U.S. EPA with a copy of the facility's May 27, 1999, SPCC Plan. DRC did not have a separate contingency plan at the facility.

92. The May 27, 1999, SPCC Plan (page 4) indicated that oil absorbent was "maintained throughout the facility at strategic locations." Attachment "A" to the May 27, 1999, SPCC Plan identified at least four locations where oil absorbents were stored: (i) the southeastern-most of three former boiler rooms; (ii) the water treatment building; (iii) between Tank 54 and the pump house; and (iv) blending room. The map also indicated that fire extinguishers were located in the large boiler house and in each of the three boiler rooms next to the furnaces.

93. From at least June 15, 1999 to June 17, 1999, oil absorbent materials were not located at each of the locations identified in the May 27, 1999, SPCC plan. Specifically, oil

absorbents were not found in the boiler rooms nor between Tank 54 and the pump house. Also, during this time several fire extinguishers located in the large boiler house and in each of the three boiler rooms next to the furnaces had tags which indicated that they were last inspected in April 1998.

94. The boiler rooms are marked with a circled "7" on the SPCC Plan facility map, indicating, according to the map legend, that oil absorbent is available to respond to spills. During the June 17, 1999, MMI, there were no oil absorbents or spill response equipment in the boiler rooms.

95. The boiler rooms are marked with a circled "9" on the SPCC Plan facility map, indicating, according to the map legend, that intra-plant paging is present. During the June 17, 1999, MMI, there were not any two-way communication devices.

96. Dearborn Refining Company's failure to maintain emergency equipment as alleged in paragraphs 93-95 above represents a violation for at least three days of MAC R 299.9813(3) and (7) (40 CFR § 279.54(b)(2)(v)).

COUNT VI

INADEQUATELY MAINTAINED EMERGENCY EQUIPMENT

97. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

98. MAC R 299.9813(3) and (7) and 40 CFR § 279.52(a)(3)

require all facility fire protection equipment to be tested and maintained as necessary to assure their proper operation in time of emergency.

99. During the MMI, several fire extinguishers throughout the facility were not inspected in over one year as alleged in paragraph 93 above.

100. DRC's failure to maintain its fire extinguishers as alleged in paragraph 99 above represents a violation for at least one day of MAC R 299.9813(3) and (7) (40 CFR § 279.52(a)(3)).

COUNT VII

FAILURE TO HAVE WRITTEN ANALYSIS PLAN

101. Complainant incorporates paragraphs 1-41, 43-45, 47-49, and 53-61 of this complaint as though set forth in this paragraph.

102. MAC R 299.9813(3) and (7) and 40 CFR § 279.55 require owners and operators of used oil processing and re-refining facilities to develop and follow a written analysis plan. The owner or operator must keep the written analysis plan at the facility. The plan must specify, at a minimum, how it will ascertain the total halogen content of the used oil at the facility; the sampling method(s) and frequency it will use if it conducts sampling; and the type of information that it will use to determine the total halogen content.

103. From at least June 15 through June 17, 1999 Dearborn

Refining Company did not have at the facility a written analysis plan which satisfied the requirements of MAC R 299.9813(3) and (7) and 40 CFR § 279.55.

104. DRC's failure to have a waste analysis plan as alleged in paragraph 103 above represents a violation for at least 179 days of MAC R 299.9813(3) and (7) and 40 CFR § 279.55.

COUNT VIII

ILLEGAL STORAGE AND DISPOSAL OF HAZARDOUS WASTE WITHOUT A PERMIT

105. Complainant incorporates paragraphs 1-25, 30, 33, 34, 39-43, 47-49, 53, 54, 57-61, 63, and 65 of this complaint as though set forth in this paragraph.

106. MAC R 299.9502(1) requires an operating license for the treatment, storage or disposal of hazardous waste. Section 3005 of RCRA, 42 U.S.C. § 6905, requires a permit for such facilities.

107. MAC R 299.9809(2)(b) (CFR § 279.10(b)(ii)) states that used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste on the basis of having been mixed with one or more halogenated hazardous wastes listed in Subpart D of 40 CFR Part 261.

108. MAC R 299.9107(cc) (40 CFR § 260.10) defines "storage" as the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, stored or disposed of elsewhere.

109. MAC R 299.9102(y) (40 CFR § 260.10) defines "disposal"

to include the discharge, deposit, dumping, spilling, leaking or placing of any hazardous waste into or on the land in such a manner that the hazardous waste or a constituent of the hazardous waste might enter the environment.

110. MAC R 299.9109(gg) and R 299.9202(1) define "waste" to include any discarded material. "Discarded material" is further defined to include any material that is abandoned by being disposed of or recycled or accumulated or stored prior to recycling. (40 CFR § 261.2 defines "solid waste" and "discarded material").

111. MAC R 299.9104(d) and R 299.9203 (40 CFR § 261.3) define "hazardous waste" to include any waste which exhibits the characteristic of hazardous waste identified in MAC R 299.9212 or is listed in MAC R 299.9213 or 9214.

112. MAC R 299.9212(4) (40 CFR § 261.24) states that a waste exhibits the toxicity characteristic when it contains any of the contaminants listed in Table 201a at a concentration equal to or greater than the respective values in Table 201a.

113. Table 201a to MAC R 299 lists the following chemical and its regulatory concentration limit:

chemical name (waste code)	regulatory limit
lead (D008)	5.0 mg/l

114. The following tanks contained used oil with concentrations of total halogens in excess of 1000 ppm: Tank 5

(9,800 ppm); Tank 12 (15,000 ppm); Tank 17 (4,100 ppm); Tank 59 (5,400 ppm); Tank 62 (6,300 ppm) and Tank 70 (7,100 ppm).

115. From June 1, 1999, to the present, Respondent has stored or disposed of used oil with total halogen content exceeding 1000 ppm in Tanks 5, 12, 17, 59, 62 and 70 as alleged in paragraph 114 above, and as such, pursuant to MAC R 299.9809(2)(b) (40 CFR § 279.10(b)(ii)) such used oil is a hazardous waste.

116. From June 1, 1999, to the present, Respondent did not have a permit to store or dispose of hazardous waste at its facility in Tanks 5, 12, 17, 59, 62 and 70. Consequently, DRC was in violation of MAC R 299.9502(1) (42 U.S.C. § 6905, 40 CFR § 270.10(f)) from at least June 15, 1999.

117. Soil contaminated with lead and oil was found at the facility as alleged in paragraphs 42, 63 and 65 above. The oil and contaminated soils located at the facility were "wastes" as that term is defined in MAC R 299.9109(gg) and R 299.9202(1) (40 CFR § 261.2).

118. The concentrations of lead found in the soils at the facility, identified in paragraph 42 above, were greater than the regulatory limit established for this chemical in Table 201a to MAC R 299. Consequently, the soils were contaminated with wastes which exhibited the toxicity characteristic and are thus hazardous wastes as defined by MAC R 299.9212(4) (40 CFR §

261.24).

119. DRC's actions identified in paragraph 118 constituted disposal of hazardous waste as defined by MAC R 299.9102 (40 CFR § 260.10).

120. As of at least June 15, 1999, DRC did not have an operating license for the disposal of hazardous waste at its facility. Consequently, DRC has violated MAC R 299.9502 (1).

121. DRC's failure to have an operating license as alleged in paragraph 120 above for the storage and disposal of hazardous waste at its facility represents a violation for at least 179 days of MAC R 299.9501(1) (40 CFR § 270.10(f)).

PROPOSED CIVIL PENALTY

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), states that "any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation." Section 3008(g) is the statutory penalty authority for each violation alleged in this Complaint. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 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 CFR Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997.

Title 40, Section 22.14(a)(4)(ii) of the Code of Federal Regulation provides that Complainant may demand a non-specific penalty amount, so long as the Complaint states "the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint." Complainant accordingly demands a penalty pursuant to Section 3008(g), recited above, in an amount not greater than \$27,500 per day of violation for each of the eight counts alleged herein, as follows:

a. Count 1: Storing Used Oil Without Sufficient Secondary Containment. A penalty will be sought for 179 days of violation of this requirement. Respondent's practice of storing and treating used oil in tanks which lacked sufficient secondary containment directly led to actual contamination of the environment through the spillage of used oil. The presence of oil-saturated soils and numerous rusting tanks proves a release of used oil and a lack of proper used oil management practices and adequate provisions for preventing releases of used oil

during transfer operations in processing areas lacking secondary containment. The absence of adequate secondary containment features, as required by MAC R 299.9813(3) and (7) and 40 CFR § 279.54(d), represents a deviation from the regulatory requirement to such an extent that there is substantial non-compliance with the requirement, and the intent of the regulation, in this case, is rendered inoperative. The violation therefore represents a major potential for harm and a major deviation from the regulatory requirement.

b. Count 2: Failure to Label Tanks and Containers with the words, "Used Oil." A penalty will be sought for three days of violation of this requirement. Respondent's failure to label tanks and containers which store used oil represents a minor potential for harm to human health and environmental receptors. However, the Respondent substantially deviated from the regulatory requirements at MAC R 299.9813(3) and (7) (40 CFR § 279.54(f)(1)), resulting in a major deviation from the regulatory requirement.

c. Count 3: Storing Used Oil in Tanks and Containers in Poor Condition. A penalty will be sought for 179 days of violation of this requirement. Respondent's storage of used oil in rusting tanks and in bulging or otherwise damaged containers represents a major potential for harm to human health and environmental receptors. The presence of a large percentage of

its ASTs being rusted and dozens of rusted drums throughout the facility represents a significant degree of non-compliance with MAC R 299.9813(3) and (7) and 40 CFR § 279.54(b), and therefore a moderate deviation from the regulatory requirement.

d. Count 4: Failure to Maintain Adequate Communication Devices. A penalty will be sought for three days of violation of this requirement. Respondent's violation represents a significant adverse effect on the RCRA regulatory program and poses a moderate potential for harm to facility workers involved in used oil processing activities as workers, obstructed from clear view, could be placed at increased risk if injured during those times when used oil is being poured, mixed, spread or otherwise handled. Respondent's actions represent a significant degree of non-compliance with the regulation and therefore a moderate extent of deviation from the regulatory requirement at MAC R 299.813(3) and (7) (40 CFR § 279.54(a)(4)).

e. Count 5: Failure to Maintain Adequate Contingency Plan. A penalty will be sought for three days of violation of this requirement. Respondent's failure to maintain emergency equipment in the locations identified in its SPCC Plan poses a significant risk to employees and to human and environmental receptors off-site in the event of an emergency, and therefore represents a moderate potential for harm. Respondent's actions constitute a significant departure from the intent of MAC R

299.9813(3) and (7) (40 CFR § 279.54(b)(2)(v)) and, therefore, a moderate deviation from the regulatory requirement.

f. Count 6: Failure to Maintain Adequate Emergency Equipment. A penalty will be sought for one day of violation of this requirement. Respondent's failure to keep fire extinguishers up to date and to provide spill control equipment in processing areas poses a relatively low risk of exposure to employees and off-site human and environmental receptors and, therefore, represents a minor potential for harm. Respondent's failure also constitutes a minor extent of deviation from the regulatory requirement at MAC R 299.9813(3) and (7) and 40 CFR § 279.52(a)(3).

g. Count 7: Failure to Have Written Analysis Plan. A penalty will be sought for 179 days of violation of this requirement. The violation represents a major potential for harm as this deficiency renders the Respondent vulnerable to receiving used oil shipments contaminated with hazardous wastes. The violation also represented a major extent of deviation from the intent of the regulatory requirement at MAC R 299.9813(3) and (7) and 40 CFR § 279.55.

h. Count 8: Illegal Storage of Hazardous Waste Without a Permit. A penalty will be sought for 179 days of violation of this requirement. Respondent's practice of storing or disposing of hazardous waste without a permit and of disposing of hazardous

wastes onto the ground potentially poses a substantial risk of exposure to workers and to off-site humans and environmental receptors. Respondent's actions represents a major potential for harm. Respondent's practice also represents such a substantial departure from the regulatory intent of MAC R 299.9501(1) (40 CFR § 270.10(f)), and, therefore, a major extent of deviation from the regulatory requirement.

Pursuant to 40 CFR § 22.19(a)(4), U.S. EPA will propose a specific civil penalty, which shall include any economic benefit realized by the Respondent as a result of Respondent's non-compliance with the applicable requirements of RCRA, after any pre-hearing information exchange. Once a civil penalty has been proposed and accepted or ordered, the Respondents shall make payment by certified or cashier's check payable to the "Treasurer, the United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

Richard Clarizio
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Michael Valentino
Enforcement and Compliance Assurance Branch
Waste, Pesticides & Toxics Division (DE-9J)
U.S. Environmental Protection Agency

77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. COMPLIANCE ORDER

Based on the foregoing, Respondent is hereby ordered -- pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules -- to comply with the following requirements immediately upon the effective date of this Order:

1. Respondent shall, within ninety (90) calendar days from the effective date of this Order, submit a closure plan, pursuant to 40 CFR Part 264 Subpart G, to the Michigan Department of Environmental Quality (MDEQ), which shall address closure of ASTs 5, 12, 17, 59, 62 and 70, and all soils contaminated with hazardous wastes. The closure plan shall contain a closure schedule and activities which are consistent with applicable and enforceable State and Federal regulations, statutes and orders. Respondent shall submit a courtesy copy of the closure plan to the U.S. EPA at such time as it submits the closure plan to MDEQ. Respondent shall complete closure of these tanks in accordance with the approved closure plan and applicable and enforceable State and Federal regulations, statutes and orders.

2. Respondent shall, within one-hundred and twenty (120)

calendar days from the effective date of this Order, commence construction of sufficiently impervious secondary containment for all tanks and containers which contain used oil such that said secondary containment complies fully with 40 CFR § 279.54(d).

3. Respondent shall, within three-hundred and sixty (360) calendar days from commencing construction pursuant to paragraph 2 of this section, complete construction of sufficiently impervious secondary containment for all tanks and containers which contain used oil such that said secondary containment complies fully with 40 CFR § 279.54(d).

4. Respondent shall, within thirty (30) calendar days from the effective date of this Order, permanently label all tanks and containers which contain used oil with the words "Used Oil" in accordance with 40 CFR § 279.54(f)(1).

5. Respondent shall, within one-hundred and twenty (120) calendar days from the effective date of this Order, use only tanks and containers in good condition, which are not leaking, are not significantly rusting and whose structural integrity is not compromised via structural defects or deterioration, in accordance with 40 CFR § 279.54(b).

6. Respondent shall immediately, upon the effective date of this Order, install, or make available to all employees, a two-way communication device to be used throughout the facility whenever used oil is being poured, mixed, spread, or otherwise

handled, pursuant to 40 CFR § 279.52(a)(4).

7. Respondent shall immediately, upon the effective date of this Order, maintain all facility alarm systems, fire protection equipment and spill control equipment to assure its proper operation in time of emergency pursuant to 40 CFR § 279.52(a)(3).

8. Respondent shall, within forty-five (45) calendar days from the effective date of this Order, prepare and submit to U.S. EPA an analysis plan pursuant to 40 CFR § 279.55, which shall comply fully with the analysis requirements at 40 CFR § 279.53.

9. Respondent shall, within ninety (90) calendar days from the effective date of this Order, complete and submit to U.S. EPA a total halogen determination on the contents of all the tanks at the facility which contain used oil, by using an analytical method from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition (November 1986). If the contents of any of these tanks are found to have a total halogen concentration equal to or greater than 1,000 ppm, Respondent shall, within sixty (60) calendar days of completion of the total halogen determination, submit a supplemental closure plan to MDEQ, which shall identify any and all such tanks. The supplemental closure plan shall contain a closure schedule and activities which are consistent with applicable and enforceable State and Federal regulations, statutes and orders for the closure of these tanks. Respondent

shall send a courtesy copy of the supplemental closure plan to the U.S. EPA at such time it submits the supplemental closure plan to MDEQ.

Respondent shall complete closure of these tanks in accordance with the approved closure plan and applicable and enforceable State and Federal regulations, statutes and orders.

10. To the extent such tanks are not already subject to other legally enforceable orders, Respondent shall, immediately upon completion of the total halogen determination pursuant to paragraph 9 of this section, comply with all applicable regulations at 40 CFR Parts 260-268 and 279 based on total halogen results.

11. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to treatment, storage and disposal facilities, codified at or incorporated by Michigan Administrative Code Part 3, TSD Requirements (40 CFR Part 264).

12. Respondent shall notify U.S. EPA in writing upon achieving final compliance with all the conditions of this Order within fifteen (15) calendar days after the date it achieves compliance. If Respondent has not taken or completed any requirement of this Order, Respondent shall notify U.S. EPA of the failure, its reasons for the failure, and the proposed date for compliance within ten (10) calendar days after the due date

set forth in this Order.

13. Respondent shall submit all reports, submissions, and notifications required by this Order to the United States Environmental Protection Agency, Region 5, Waste, Pesticides & Toxics Division, Enforcement and Compliance Assurance Branch, Attention: Michael Valentino (DE-9J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

14. Failure to comply with any requirements of the Order shall subject Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued noncompliance with the deadlines contained in this Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

IV. OPPORTUNITY TO REQUEST A HEARING

You have the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," to be codified at 40 CFR Part 22. A copy of these rules accompanies this Complaint. **To request a hearing,**

Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within thirty (30) calendar days of the date this Complaint is filed with the Regional Hearing Clerk. Consolidated Rules at § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. Consolidated Rules at § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. the facts Respondent intends to place at issue; and
3. **whether Respondent requests a hearing.**

Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's failure to admit, deny, or explain any material fact in the Complaint constitutes an admission of that allegation.

Consolidated Rules at § 22.15.

Respondent must file its Answer with the Regional Hearing Clerk (R-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent to Richard Clarizio, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Clarizio may be telephoned at (312) 886-0559.

If Respondent fails to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order pursuant to § 22.17 of the Consolidated Rules. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default may result in a penalty and compliance order consistent with § 22.17(b) and (c) becoming due and payable by Respondent without further proceedings thirty (30) calendar days after issuance of a final order upon default under § 22.27 of the Consolidated Rules. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate

established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 for each subsequent thirty (30) day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer. In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint. I

A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.* The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

V. SETTLEMENT CONFERENCE

Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent should write to Michael Valentino, Enforcement and Compliance Assurance Branch (DE-9J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr.

Valentino at (312) 886-4582.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

Dated this 28th day of September, 2001.



 Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

Complaint Docket No. R5-RCRA-01 RCRA-05- 2001-0019

CASE NAME: Dearborn Refining Company

DOCKET NO: **RCRA-05- 2001-0019**

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Complaint and Compliance Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Mr. Aram Moloian, President
Dearborn Refining Company
3901 Wyoming Avenue
Dearborn, Michigan 48120

Certified Mail # 7099 3400 0000 9586 7526

Mr. Jeffrey Haynes, Esq.
Beier Howlett, P.C.
200 East Long Lake Road
Suite 110
Bloomfield Hills, MI 48304-2361

Certified Mail # 7099 3400 0000 9586 1586

Dated: 28 September, 2001

for

Michael Valentin
Mary Ann Stephen, Secretary
Enforcement & Compliance
Assurance Branch
United States Environmental
Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 886-4435