EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for SARAH MEEKS (Name of Case Attorney) 7/26/19 (Date)

in the ORC (RAA) (Office & Mail Code) at 918-1113 (Phone number)

Case Docket Number CAA-01-2019-0018 - EPCRA-01-2019-0025

Site-specific Superfund (SF) Acct. Number _____

_____ This is an original debt ____ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

ELLIOT AUTO SUPPLY CO., INC.
D/B/A SPLASH PRODUCTS
95 FITCHBURG ROAD
AYER, MA 01435

Total Dollar Amount of Receivable $ 197,075 Due Date: 8/25/19

SEP due? Yes _____ No ✓ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST $ _____ on _____

2nd $ _____ on _____

3rd $ _____ on _____

4th $ _____ on _____

5th $ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

July 26, 2019

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *Elliott Auto Supply Company, Inc.*, Docket Nos. CAA-01-2019-0018; EPCRA-01-2019-0025

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Please file the documents in the usual manner.

Sincerely,

Sarah Meeks
Senior Enforcement Counsel

Enclosures

cc: Thad Lightfoot, Esq.
Sherry Stenerson, Esq., Factory Motor Parts

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	)	
Elliott Auto Supply Company, Inc. d/b/a Splash Products 95 Fitchburg Road Ayer, Massachusetts 01435,	)	Docket Nos.: CAA-01-2019-0018 EPCRA-01-2019-0025
Respondent.	)	
Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)	)	

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") and Elliott Auto Supply Company, Inc. d/b/a Splash Products ("Respondent" or "Splash") 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 Respondent's liability for alleged violations of Section 112(r)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1) and Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11022.

2. EPA and Respondent 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 Respondent 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 Consent Agreement and Final Order is entered into under Section 113(d) of the CAA, 42 U.S.C. §7413(d), Section 325(c) of, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

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

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

8. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA and EPCRA violations that Complainant alleges occurred in conjunction with Respondent's storage and handling of methanol, an extremely hazardous substance, at its windshield wiper fluid manufacturing facility in Ayer, Massachusetts:

a. failure to identify hazards which may result from accidental releases of extremely hazardous substances, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

b. failure to design and maintain a safe facility, taking such steps as are necessary to prevent such releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

c. failure to minimize the consequences of accidental releases, should they occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); and

d. failure to timely submit hazardous chemical inventory forms to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370.

II. STATUTORY AND REGULATORY AUTHORITY

CAA Statutory Authority

9. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), 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 which 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 which do occur. This section of the CAA is referred to as the "General Duty Clause."

10. The term "extremely hazardous substance" means an extremely hazardous substance within the meaning of Section 112(r)(1) of the Clean Air Act. Such substances include 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 Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

11. 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.

12. 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.

13. The term "have a general duty in the same manner and to the same extent as section 654, 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 ("OSHA") administered by Occupational Safety and Health Administration.[2]

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

[2] Section 654 of OSHA provides, in pertinent part, that "[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees" and "shall comply with occupational safety and health standards promulgated under [OSHA]." 29 U.S.C. § 654. *See* Durion Company, Inc. v. Secretary of Labor, 750 F.2d 28 (6th Cir. 1984). According to the legislative history of the CAA General Duty Clause, Durion is cited as a guide for EPA's application of the General Duty Clause. Durion criteria are those established earlier in National Realty & Construction Co. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973), namely, that OSHA must prove (1) the employer

14. Sections 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts of up to $37,500 per day for violations occurring from January 12, 2009 through November 2, 2015, and up to $47,357 per day per violation for violations that occurred after November 2, 2015 and are assessed on or after January 15, 2019.

EPCRA Statutory and Regulatory Authority

15. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), the owner or operator of a facility that is required under OSHA to prepare or have available a Safety Data Sheet ("SDS") for a hazardous chemical must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the state emergency response commission ("SERC"), the local emergency planning committee ("LEPC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish

failed to render the workplace free of a hazard; (2) the hazard was recognized either by the cited employer or generally within the employers' industry; (3) the hazard was causing or was likely to cause death or serious physical harm; and (4) there was a feasible means by which the employer could have eliminated or materially reduced the hazard.

minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

16. The regulations promulgated pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. 40 C.F.R. § 370.45. The LEPC, SERC, or local fire department may request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. 40 C.F.R. § 370.45. The Massachusetts SERC requires the more comprehensive Tier 2 form. See https://www.mass.gov/service-details/massachusetts-state-emergency-response-commission-serc (last visited March 25, 2019).

17. In accordance with Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), 40 C.F.R. §§ 370.10(a) and 355 establish minimum threshold levels for hazardous chemicals that trigger reporting requirements for the purposes of Part 370. The threshold limit is 10,000 pounds for methanol under 40 C.F.R § 370.10(a)(2)(i).

18. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), in amounts of up to $37,500 per day for violations occurring from January 12, 2009 through November 2, 2015, and in amounts up to

$57,317 per day per violation for violations that occurred after November 2, 2015 and are assessed on or after January 15, 2019.

III. GENERAL ALLEGATIONS

19. Respondent, Elliott Auto Supply Company, Inc., operates a facility located at 95 Fitchburg Road in Ayer, Massachusetts, where it makes windshield wiper fluid (the "Facility").

20. As a corporation, Respondent is a "person" within the meaning of:

a. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e); and

b. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

21. The Facility is a "stationary source" as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

22. At the time of EPA's 2016 and 2017 inspections of the Facility, more than 10,000 pounds of methanol were present at the Facility. The Facility's 2012 Tier 2 Inventory Form stated that the Facility had an average of 300,000 pounds and a maximum of 483,000 pounds of methanol at any one time.

23. 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 or flammability. 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 also is toxic. A very small amount of pure methanol can cause severe injury; swallowing less than a quarter of a cup (10-30 ml) can kill an adult. Accordingly, it is an "extremely hazardous substance," within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

24. The unanticipated emission of methanol into the ambient air from the Facility would constitute an "accidental release," as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

25. On January 27, 2016, EPA received notice from the Massachusetts Department of Environmental Protection ("MassDEP") that there was a 7,000-gallon spill of methanol during a tanker truck to railcar product transfer at the Facility ("2016 Methanol Spill"). The rail car was located within six feet of the facility and was used as a methanol storage tank for Respondent's windshield wiper fluid manufacturing process. EPA, MassDEP, and local fire department responders assisted with the response to the spill. Respondent notified its hazardous materials cleanup agent, Clean Harbors, Inc., of the spill, and Clean Harbors performed the cleanup within hours of the spill. The cleanup was completed on January 27, 2016, and Respondent performed confirmation sampling in the spill area after the cleanup to ensure that all methanol was removed. The release was caused when a delivery of methanol from a tanker truck was mistakenly pumped onto the ground through a disconnected hose rather than to the intended location, a railcar.

26. On February 10, 2016, an authorized representative of EPA Region 1 (the "Inspector") conducted an inspection of the Facility (the "2016 Inspection") pursuant to Section 114 of the CAA, 42 U.S.C. § 7414; and EPCRA, 42 U.S.C. § 11001 et seq. Officials from the Ayer Fire Department accompanied the Inspector.

27. As more fully described in Counts 1, 2 and 3 below, during the 2016 Inspection the Inspector observed several examples of deficient chemical management practices relating to methanol, an extremely hazardous substance, at the Facility, that increased the risk of a chemical

release, fire, or explosion, or that would make it difficult to mitigate the effects of such an incident, including the following:

a. failure to conduct a hazard analysis or review that identifies hazards posed by the stationary source producing, processing, handling and/or storing a substance that is considered extremely hazardous;

b. failure to provide written standard operating procedures;

c. failure to properly store flammable liquids;

d. failure to have secondary containment for flammable liquid storage;

e. failure to properly label all pipes, hoses, and storage tanks;

f. failure to have an emergency response plan;

g. failure to properly train employees on potential hazards; and

h. failure to provide fire suppression for flammable liquid storage.

28. During the 2016 Inspection, the Respondent was not able to provide its reporting year 2014 chemical inventory form and offered to provide the form to EPA following the inspection. EPA did not receive the 2014 form, and no form for inventory in 2014 was posted to the SERC's Tier II manager system. The 2015, 2016, and 2017 forms were submitted on time. Forms for 2018 were due March 1, 2019. As of March 26, 2019, a 2018 chemical inventory form has not been submitted to the SERC's Tier II manager system, but the form has been submitted to the local fire department.

29. On April 26, 2016, EPA issued the 2016 Inspection report along with a Notice of Potential Violations ("NOPV") of CAA Section 112(r)(1) and EPCRA Section 312 to Respondent. This inspection report and NOPV provided Respondent with the details of the 2016

inspection, warned Respondent about the dangerous conditions listed in paragraph 27 above, and indicated EPA had not received the 2014 chemical inventory form.

30. On June 17, 2016, representatives of EPA and Respondent met at EPA's Region 1 office to discuss progress on issues identified in the NOPV and 2016 Inspection report.

31. Respondent submitted a draft process hazard analysis to EPA on July 26, 2016. EPA provided comments on the draft and Respondent submitted a revised process hazard analysis to EPA.

32. On November 7, 2017, the Inspector along with additional authorized representatives of EPA, including a fire safety expert, conducted a second inspection of the Facility (the "2017 Inspection").

33. As more fully described in Counts 1, 2, and 3 below, during the 2017 Inspection, the Inspector and fire safety expert observed several examples of deficient chemical management practices relating to an extremely hazardous substance at the Facility that increased the risk of a chemical release, fire, or explosion, or that would make it difficult to mitigate the effects of such an incident, including the following:

a. lack of containment in tanker truck off-loading area;

b. lack of containment or spill control in railroad tank car off-loading area and storage areas;

c. failure to property ground and bond methanol equipment;

d. lack of emergency relief venting for the 1,000 and 2,000-gallon stainless steel storage tanks;

e. failure to use appropriate material (steel only) for connecting lines between the tank farm and the Facility;

f. failure to properly label storage tanks and supply lines;

g. improper electrical outlets adjacent to the washer fluid bottle filling machine;

h. failure to provide adequate fire suppression for rack storage of wooden pallets and cardboard boxes that are stored near a process using flammable methanol;

i. failure to provide an adequate distance or fire protection between the tank car area and the Facility;

j. failure to conduct a hazard analysis or review that identifies hazards posed by the stationary source producing, processing, handling and/or storing a substance that is considered extremely hazardous;

k. failure to provide written standard operating procedures;

l. failure to properly store flammable liquids;

m. failure to have secondary containment for flammable liquid storage;

n. failure to properly label all pipes, hoses, and storage tanks;

o. failure to have an emergency response plan;

p. failure to properly train employees on potential hazards; and

q. failure to provide fire suppression for flammable liquid storage.

34. On March 16, 2018, EPA issued a second inspection report and Notice of Potential Violations of Clean Air Act Section 112(r)(1) to Respondent. The 2018 inspection report and NOPV provided Respondent with the details of the 2017 inspection and warned Respondent about the dangerous conditions still present at the Facility during the 2017 Inspection, which are listed in paragraph 33 above.

35. On May 31, 2018, EPA and Respondent and its representatives met at EPA Region 1 offices to discuss the status of Respondent's compliance with CAA Section 112(r)(1). At the meeting Respondent presented an outline for work to address the conditions noted in the 2016 and/or 2018 Inspection reports. Following the meeting, Respondent presented a preliminary schedule for the completion of design plans and construction at the Facility.

36. On September 28, 2018, EPA issued a Finding of Violation and Administrative Order on Consent ("AOC"). The AOC required Respondent to make improvements at the Facility to address the General Duty Clause violations discussed above. The work to be performed included constructing a containment pond and containment pads for the tanker truck and railcar off-loading/storage areas, modifying the process for off-loading methanol to the storage railcars. The AOC required substantial completion of the work by December 31, 2018.

37. On January 18, 2019, Respondent sent EPA a final report documenting completion of work under the AOC.

IV. VIOLATIONS

Count 1: Failure to Identify Hazards Which May Result from Accidental Releases, In Violation of the Clean Air Act's General Duty Clause

38. The allegations in paragraphs 1 through 37 are hereby realleged and incorporated herein by reference.

39. The General Duty Clause is a performance standard with requirements that often can be achieved in a variety of ways. EPA routinely consults codes, standards, and guidance ("industry standards") issued by trade and fire prevention associations to understand the hazards posed by the use of various extremely hazardous substances. The industry standards are also 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 and fire prevention experts and are sometimes incorporated into state building, fire, and mechanical codes. For facilities handling flammable and toxic liquids, EPA often consults National Fire Prevention Association ("NFPA") standards (such as NFPA 30, Flammable and Combustible Liquids Code, and NFPA 400, Hazardous Materials Code), state fire codes, OSHA standards, and for methanol in particular, the Methanol Institute's Safe Handling Manual.

40. The first duty of the General Duty Clause is to identify hazards which may result from accidental releases of extremely hazard substances, using appropriate hazard assessment techniques. 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. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with methanol is, among other things, to use (and periodically repeat) an analysis technique appropriate to the complexity of the process to identify, evaluate, and ensure that hazards arising from process, and from inventories or hazardous chemicals connected to the process, are controlled. See e.g., Methanol Institute's *Methanol Safe Handling Manual* (4th ed.), Section 5.4.7; NFPA 30, Section 6.4 ("Hazards Analysis"); and NFPA 40, Section 7.2 ("Process Review and Plan Preparation").

41. As described in paragraphs 27 and 33 above, the EPA Inspector observed potentially dangerous conditions at the Facility that indicated a failure to identify hazards associated with processes at the Facility. This failure could substantially endanger the environment, employees, neighboring commercial operations, and first responders.

42. At the time of the 2016 Inspection, Respondent had not conducted a Process Hazard Analysis for its operations (involving methanol) at the Facility, and lacked the information necessary to understand how to operate its Facility safely.

43. At the time of the 2017 Inspection, Respondent had conducted a process hazard analysis, but the process hazard analysis failed to: (a) take into account environmental hazards of releases and (b) address loss of containment or spills from tanker trucks or tanker rail cars, some of which were being used to store materials on site, and Respondent did not establish a system to address the process hazard analysis's findings and recommendations and verify that hazards were controlled.

44. Accordingly, Respondent has violated the General Duty Clause's requirement to identify hazards at the Facility using industry-recognized hazard assessment techniques, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Design and Maintain a Safe Facility, In Violation of the Clean Air Act's General Duty Clause

45. The allegations in paragraphs 1 through 44 are hereby realleged and incorporated herein by reference.

46. Pursuant to the General Duty Clause, CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a second general duty, in the same manner and to the same extent as section 654 of Title 29, to design and maintain a safe facility taking such steps as are necessary to prevent releases. The recommended industry practice and standard of care for designing and maintaining a safe facility is to base design considerations upon applicable

design codes, federal and state regulations, and industry guidelines to prevent releases or minimize their impacts, and to develop and implement standard operating procedures, preventative maintenance programs, personnel training programs, management of change procedures, and incident investigation procedures. NFPA and the Methanol Institute have developed standards and guidelines for this purpose including those referenced in paragraph 39 above.

47. As mentioned in paragraphs 27 and 33 above, on February 10, 2016 and/or November 7, 2017, the Inspector observed deficient practices relating to the processing, handling, and storage of extremely hazardous substances at the Facility, including the deficiencies in subparagraphs a-h below. The hazards associated with the deficiencies are an increased risk of chemical spill, spill spread, fire or explosion.

a. **Failure to provide proper containment for chemical off-loading and storage areas**. The Inspector observed: 1) lack of containment in tanker truck off-loading area, and 2) lack of containment or spill control in railroad tank car off-loading area and storage areas. Industry standards of care require containment of flammable liquid spills. For example, NFPA 30 (2012 ed.) (hereinafter "NFPA 30"), Section 28.9 requires that unloading facilities have a means to contain spills. The Annex note to this code section explains the intent as being able to control the spill from the volume of the tanker or rail car being offloaded. Section 3.2 of the Methanol Institute's *Methanol Safe Handling Manual* (4th ed.) (hereinafter the "MSHM"), requires berming for storage.

b. **Failure to provide adequate fire suppression for product storage**. To reduce the chance that methanol vapor could ignite, industry standards of care call for protection from heat and ignition sources. Respondent did not protect the methanol from

ignition by failing to provide adequate fire suppression for rack storage of wooden pallets and cardboard boxes. For example, NFPA's standard for the Installation of Sprinkler Systems, NFPA 13 (2016 ed.), Section 5.6.3.4 and the Annex note A.5.6.3.4 defines cardboard boxes and polyethylene plastics as a Class IV commodity. Some of the pallets at the Facility are wrapped in plastic which is defined as encapsulated product. NFPA 13, Table 16.2.1.3.2 defines the type of protection required for this type of storage. Class IV products stored 22 feet to 25 feet high require in-rack sprinklers. Encapsulated products stored up to 20 feet high require in-rack sprinkler protection. A fire involving the pallets and boxes could cause a bigger incident involving the nearby methanol process. Also, NFPA 30, Section 6.5.1 requires precautions to control ignition sources, as does Section 6.6.2 of the MSHM.

c. **Lack of emergency relief venting for the 1,000 and 2,000-gallon stainless steel storage tanks.** To prevent buildup of explosive vapors, the industry standard of care for storage containers is to have proper emergency relief venting. For example, NFPA 30, Section 22.7.1.1 requires emergency relief venting for every above-ground flammable liquid storage tank, and Section 3.2 of the MSHM requires that storage containers have adequate ventilation.

d. **Improper electrical outlets adjacent to the washer fluid bottle filling machine.** To reduce the chance that methanol vapor could ignite, industry standards of care call for protection from heat and ignition sources. For example, the bottle filling area is a Class I, Division 2 electrical classification area based on NFPA 30, Table 7.3.3, and NFPA 30, Section 7.3.2 requires electrical utilization equipment and wiring to be of a type specified by and installed in accordance with NFPA 70, *National Electric Code*. Likewise, Section

6.2.2 of the MSHM calls for removing potential ignition sources from areas where fuel vapor may be present.

e. **Failure to properly ground and bond methanol equipment and use appropriate material (steel) for connecting lines between the tank farm and the Facility**. Industry standards of care for flammable liquids require grounding and bonding to reduce the risk of explosion or fire from static discharge. For example, NFPA 30, Section 27.9 requires bonding and grounding of all piping systems. Section 3.2.5 of the MSHM calls for grounding lighting systems, pipe racks, pumps, vessels, fillers, hoses, and all equipment near methane vapor. Also, the MSHM states that methanol transfer operations should be grounded and bonded and that metal containers and associated equipment should be bonded together and grounded during transfers. Fill pipes or hoses should be conductive and bonded to the filling system. Finally, OHSA Standard 1910.106, Flammable Liquids, requires materials for piping, valves, or fittings shall be steel, nodular iron, or malleable iron unless certain exceptions apply.

f. **Failure to maintain an adequate distance between methanol storage and the Facility.** To prevent fires, industry standards of care call for storing flammable liquids away from buildings. The railcars containing methanol were located within six feet of the building exterior. For example, NFPA 30, Section 28.4.1 requires a minimum separation distance of 25 feet.

g. **Lack of ventilation in the washer fluid bottle and drum filing area.** Ventilation prevents buildup of explosive vapors, so industry standards require ventilation in areas where flammable liquids are managed. For example, NFPA 30, Section 17.11 requires ventilation in enclosed processing areas handling or using Class I liquids (methanol is a Class

IB flammable liquid), and Section 4.2.1 of the MSHM recommends that ventilation is sufficient to ensure that methanol concentrations in air do not exceed 200 parts per million.

h. **Failure to properly label storage tanks and supply lines**. A PVC line from the outdoor tanker railcar area into the storage warehouse is labeled "100% Methanol" inside the warehouse and "Propylene Glycol" outside the warehouse.

i. **Failure to have operating procedures to prevent a release.**

48. The failures listed in paragraph 47 above constitute a failure by Respondent to design and maintain a safe facility, in violation of the General Duty Clause, CAA Section 112(r)(1), 42 U.S.C § 7412(r)(1).

Count 3: Failure to Minimize Consequence of Releases, In Violation of the Clean Air Act's General Duty Clause

49. The allegations in paragraphs 1 through 48 are hereby realleged and incorporated herein by reference.

50. In addition to identifying hazards, and designing and maintaining a safe facility, the GDC requires Respondent to minimize the consequences of releases that do occur. Industry standards call for measures to minimize the consequences of releases. For example, MHSM Section 5.4.16 and 5.4.12 call for employee training, a site-specific emergency plan, emergency response drills, and mitigation design measures such as sprinkler/deluge systems, early warning devices, and alarms. Section 4.2.5 of the MHSM lists extensive safety gear requirements for incidents with a high risk of vapor, such as chemical resistant suits, gloves, respiratory protection, and rubber boots. Section 5.4.8 of the MHSM explains operators must know how and when to perform specific tasks associated with equipment operation and process control

during normal operations, as well as in the event of abnormal circumstances. This is done by the development and implementation of standard operating procedures for a facility. Section 5.4.8 of the MHSM recommends that the standard operating procedures should address normal and emergency operations, clearly state safe operating limits for process conditions such as temperature and pressure, and should be reviewed and updated at least every three years.

51. The conditions listed in paragraph 47 above are both failures to prevent a release, fire or explosion from occurring (Count 2) and failures to minimize the consequence of any release, fire or explosion that does occur (Count 3), as those conditions could make the incident more dangerous or hamper emergency response.

52. In addition, as described in paragraphs 27 and 33 above, on February 10, 2016 and/or on November 7, 2017, the Inspector observed deficient practices at the Facility, including the following: no emergency response plan, failure to properly train employees on potential hazards, lack of operating procedures to minimize effects of spill,[3] lack of coordination with local/state emergency planners, and lack of safety gear for employees. These failures prevented Respondent from minimizing the consequences of an accidental release. After the 2016 Methanol Spill, Respondent's employees responded to the spill without adequate training or equipment, and local responders and emergency planners reported to the Facility without knowing the type and quantity of hazardous substances at the Facility due the Respondent's failure to adequately coordinate with local and state emergency planners.

[3] The six-step operating procedure for disconnecting rail car hoses did not address emergency shutdown, consequences of and steps to avoid deviations, hazards of the chemicals, precautions to prevent exposure (such as personal protective equipment), control measures to be taken if exposure occurs, or safety systems and their function.

53. The failures listed in paragraphs 51 and 52 above constitute a failure by Respondent to minimize the consequences of releases, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 4: Failure to Submit Chemical Inventory Forms in Compliance With EPCRA Section 312

54. Complainant realleges and incorporates by reference paragraphs 1 through 53.

55. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370, commencing on or before the March 1 following the date upon which Respondent was required to prepare or have available a SDS for methanol at or in connection with the Facility, and on or before the March 1 of each year thereafter, Respondent was required to submit "emergency and hazardous chemical inventory forms," containing the data regarding methanol at the Facility, required under Section 312, for the preceding calendar year ("Inventory Form"), to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the facility.

56. The Facility's 2012 Tier 2 Inventory Form stated that an average of 300,000 pounds and a maximum of 483,000 pounds of methanol was at the Facility. At the time of the 2016 and 2018 inspections, there were more than 10,000 pounds of methanol (the minimum reporting threshold) present at the Facility, and the Tier 2 form for 2017 states 623,220 pounds of methanol were present at the Facility.

57. Respondent failed to submit required Inventory Forms to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility, at least on or before March 1, 2015 for reporting year 2014.

58. Pursuant to EPCRA Section 325(c)(3), 42 U.S.C. § 11045(c)(3), each day that Defendant failed to timely submit an Inventory Form for methanol to the appropriate LEPC,

SERC, and fire department with jurisdiction over the Facility, constitutes a separate violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

59. Accordingly, Respondent's failure to submit the required Inventory Forms for reporting year 2014 violated Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.

V. TERMS OF SETTLEMENT

60. The provisions of this CAFO shall apply to and be binding on EPA, and on Respondent and its officers, directors, agents, successors, and assigns.

61. Respondent stipulates 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 Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue relating to the violations alleged in this CAFO.

62. Respondent neither admits nor denies the specific factual allegations contained in Section III of this CAFO or the violations alleged in Section IV of this CAFO. Respondent consents to the assessment of the penalty stated herein.

63. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

64. Respondent certifies that it is currently operating the Facility in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) and Section 312 of EPCRA, 42 U.S.C. § 11022.

65. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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 $197,075 for the violations

alleged in this matter. The penalty shall be apportioned in the following manner: $184,074 for the alleged CAA violations and $13,001 for the alleged EPCRA violation.

66. Respondent consents to the issuance of this CAFO and to the payment of the civil penalty cited in paragraph 65.

67. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the total penalty amount of $197,075 according to the following instructions:

a. Respondent shall pay the total penalty by submitting a company, bank, cashier's, or certified check, payable to the order of the "Treasurer, United States of America," in the amount of $197,075 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MP 63197-9000

b. Respondent may make payment by electronic funds transfer instead of check via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. Respondent shall include the case name and docket numbers ("*In re Elliott Auto Supply Company, Inc.*, Docket Nos. CAA-01-2019-0018, EPCRA-01-2019-0025") on the face of each check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of each check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk (Mail Code 04-6)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Sarah Meeks
Senior Enforcement Counsel (Mail Code 04-3)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

68. In the event that any portion of the civil penalty amount described in paragraph 65 is not paid by the required due date, the total penalty amount of $197,075, plus all accrued interest shall become due immediately to the United States upon such failure. Then, interest as calculated in paragraphs 69 and 70 shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by company, bank, cashier's, or certified check, or by electronic funds transfer, as described in paragraph 67.

69. **Collection of Unpaid EPCRA Penalty**: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains

delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

70. **Collection of Unpaid CAA Civil Penalty**: 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, Respondent 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 Respondent's 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.

71. 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, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 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.

72. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA and Section 325(c) of EPCRA for the violations alleged herein. 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 Respondent to comply with all applicable provisions of federal, state, or local law.

73. This CAFO in no way relieves Respondent or its 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 Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

74. In accordance with 40 CFR 22.18(c), nothing in this agreement shall be construed as affecting the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty in Paragraph 65 resolves Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

75. Nothing in this CAFO shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

76. This CAFO shall not relieve Respondent of its 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.

77. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other parties pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

78. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

79. EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

80. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of all parties and approval of the Regional Judicial Officer.

81. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

82. Each undersigned representative of the parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT ELLIOTT AUTO SUPPLY COMPANY, INC.:

Date: 16 Jul 19

Name: Elliott M. Badzin

Title: President

Elliott Auto Supply Company, Inc.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 1, is delegated the authority to settle civil administrative penalty proceedings under CAA Section 113(d) and EPCRA Section 325(c).

Date: 7-23-19

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	
Elliott Auto Supply Company, Inc. d/b/a Splash Products 95 Fitchburg Road Ayer, Massachusetts 01435,	Docket Nos.: CAA-01-2019-0018 EPCRA-01-2019-0025
Respondent.	
Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)	

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent, Elliott Auto Supply Company, Inc., is ordered to pay the civil penalty amount specific in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Date: 7/25/19

for LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Timothy Williamson, Acting RJO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the matter of:	Docket Numbers:
	CAA-01-2019-0018
ELLIOT AUTO SUPPLY CO., INC.	EPCRA-01-2019-0025
d/b/a Splash Products	
95 Fitchburg Road	
Ayer, Massachusetts 01435	
Respondent	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region 1 (04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

Thad Lightfoot, Esq.
Dorsey & Whitney LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498

Dated: 7/26/19

Sarah Meeks
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (04-3)
Boston, MA 02109-3912
Tel (617) 918-1438
Fax (617) 918-0438