



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

OCT 09 2008

REPLY TO THE ATTENTION OF:

C-14J

FEDERAL EXPRESS

Wolverine Oil and Supply Company
c/o William B. Clifford
Butzel Long
Stoneridge West
41000 Woodward
Bloomfield Hills, Mi 48304

Re: Wolverine Oil and Supply Company, 10455 Ford Road, Dearborn, Michigan
Consent Agreement and Final Order, Docket Nos. **EPCRA-05-2009-0002 RCRA-05-2009-0001**

Dear Mr. Clifford:

MM-05-2009-0001 CWA-05-2009-0001

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on OCT 09 2008.

Please pay the civil penalty in the amount of \$25,000 in the manner prescribed in paragraphs 71 to 73 and reference you check with the billing document number 2750906M001 and the docket number **EPCRA-05-2009-0002 RCRA-05-2009-0001 MM-05-2009-0001 CWA-05-2009-0001**

Your payments are due within 60 days of DEC 09 2008.

Please feel free to contact me at (312) 886-0559 if you have any questions regarding the enclosed documents. Thank you for your assistance in resolving this matter.

Sincerely yours,

Richard J. Clarizio,
Associate Regional Counsel

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

S. Brauer
J. Entzminger
B. Carr
Marcy Toney
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Wolverine Oil & Supply Company
10455 Ford Road
Dearborn, Michigan

) **EPCRA-05-2009-0002**
) **RCRA-05-2009-0001** **CWA-05-2009-0001**
) **MM-05-2009-0001**
) Proceeding to Assess Administrative
) Penalty under Section 3008(a) of the
) Resource Conservation and Recovery
) Act, Section 325 of the Emergency
) Preparedness and Community Right-to-Know
) Act, 42 U.S.C. §§ 6928(a) and 11045; and
) Class II Civil Penalty under Section 311 of
) the Clean Water Act, 33 U.S.C. § 1321

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CONSENT AGREEMENT AND FINAL ORDER

The Environmental Protection Agency (“EPA” or “Complainant”) and Wolverine Oil and Supply Company (“Wolverine” or “Respondent”) operating at 10455 Ford Road, Dearborn, Michigan (“Ford Road facility” or “facility”), have agreed to a settlement of this action before filing of a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) of 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* (“Consolidated Rules”) by the filing of this Consent Agreement and Final Order (“CAFO”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

I. PRELIMINARY STATEMENT OF JURISDICTION

This civil administrative action is instituted pursuant to the authority vested in the Administrator of EPA by the President pursuant to Section 311(b)(6) of the Clean Water

Act (“CWA”), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990 (“OPA”), Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (“RCRA”), 42 U.S.C. § 6928(a), Section 325(c) of the Emergency Preparedness and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c), and pursuant to the Consolidated Rules against Respondent for administrative penalties and appropriate injunctive relief. The Complainants are, by lawful delegation, the Director of the Land and Chemicals Division, the Director of the Superfund Division and the Chief, Emergency Response Branch 2, Superfund Division. They jointly issue this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

A. RESOURCE CONSERVATION AND RECOVERY ACT

1. Pursuant to sections 3001 through 3038 of RCRA, 42 U.S.C. §§ 6901 through 6938, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 269 and 270 and 273 governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste and 40 C.F.R. § 279 governing the management of used oil.
2. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program and used oil management program in lieu of the federal program. Pursuant to Section 3006(b) and (h) of RCRA, 42 U.S.C. §§ 6926(b) and (h), the Administrator of EPA granted the State of Michigan final authorization to administer its hazardous waste and used oil management programs in lieu of the federal RCRA program. The EPA-authorized Michigan

regulations are codified at Michigan Administrative Code (MAC) Rules 299.9101 *et seq.*
See also, Title 40 of the Code of Federal Regulations, Section 272.1151, 40 C.F.R. §
272.1151 *et seq.*

3. EPA may enforce the State authorized regulations. Any violation of any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA and may be subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.
4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA provided notice of commencement of this action to the State of Michigan.

B. CLEAN WATER ACT

5. Section 311(j)(1)(C) of the Clean Water Act, 33 U.S.C. § 1321(j)(1)(C), provides the President with the authority to promulgate regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil from onshore facilities, and to contain such discharges. Pursuant to Executive Order the President delegated this authority to the EPA.
6. EPA promulgated regulations found at 40 C.F.R. Part 112. These regulations set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United State (“harmful quantity”). The regulated facilities include those that drill for, produce, gather, store,

process, refine, transfer, distribute or consume oil or oil products including, but not limited to, used oil.

7. The regulations found at 40 C.F.R. Part 112 require, among other things, the development and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan. EPA amended certain portions of the Part 112 regulations in the July 17, 2002, Federal Register, 67 FR 47042. The regulations were also renumbered at that time. However, EPA delayed the effective date of these amendments until July 1, 2009. See, May 16, 2007, Federal Register, 72 FR 27443.

C. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

8. Section 312(a) of EPCRA, 42 U.S.C. §11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (“OSHA”), 29 C.F.R. Part 1910, to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical, to prepare and submit to the state emergency response commission (“SERC”), community emergency coordinator for the local emergency planning committee (“LEPC”) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d) covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or

the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

9. Under 29 C.F.R. §1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to those covered by MSDS.
10. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous.

III. GENERAL ALLEGATIONS

A. Respondent's Corporate Status

11. Wolverine is the Respondent. Respondent is the owner and/or operator of the property, business and/or equipment located at the Ford Road facility.
12. Respondent is a corporation incorporated under the laws of the State of Michigan.
13. Respondent is a "person" as defined under RCRA (MAC R 299.9106(i), 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10); the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2; and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

B. Ford Road Features and Operations

14. Wolverine is a manufacturer and supplier of bulk and packaged industrial lubricants. In addition to lubricant blending, the Ford Road facility operates a laboratory for lubricant testing, product development, and quality control. Wolverine also recycles used oil.
15. There are two buildings located on the property. One of the buildings includes offices, a warehouse and the laboratory ("Warehouse"). The other building is referred to as the Lube Oil Heater Building.

16. There are five overhead doors leading into the Warehouse. Three of the doors are located on the west side of the Warehouse. The other two doors are located on the east side of the Warehouse.
17. Wolverine blends virgin and used oil for sale to its customers. Oil blending occurs in aboveground mixing tanks within the Warehouse.
18. A North Tank Farm, South Tank Farm, Truck Loading/Unloading Rack (Fill Rack) and Railroad Tank Car Unloading Structure are also located on the property. The loading/unloading area is located directly east of the Warehouse. The tank farms are located east of the loading/unloading area.
19. The loading/unloading area is sloped toward the Warehouse (6 inches) with a berm on the north end of the area. The ground consists of gravel over clay.
20. There are ten aboveground used oil storage tanks located in the South Tank Farm. Each tank has a reported capacity of 20,000 gallons. The tanks are located in secondary containment. Seven of the ten tanks in the South Tank Farm are leased to another company. Wolverine has represented that those tanks that are not leased are empty.
21. Pre-blended oil is stored in eighteen 15,000-gallon, aboveground tanks located in the North Tank Farm. The pre-blended oil is transferred from the North Tank Farm by way of pumps and underground pipes to the Warehouse where it enters mixing tanks to generate lubricant products. The North Tank Farm includes a 12-foot masonry wall and an earthen base.

22. The Lube Oil Heater Building is located on the north side of the property. This building houses one lube oil heater and a fuel oil storage tank with a reported capacity of 275 gallons. The lube oil heater is fired with fuel oil and raises the temperature of heat exchange oil that supplies heat to tanks in the Warehouse.
23. Oil is stored in drums, totes and aboveground tanks inside the Warehouse, and in aboveground storage tanks in the North Tank Farm.
24. The Warehouse contains tanks, drums, and totes for the storage of virgin product, used oil, and blending tanks that are used to blend both virgin and used oil. The total oil storage capacity in the Warehouse is approximately 60,000 gallons.
25. Finished lubricant products are either directly loaded into delivery vehicles, 55-gallon drums or totes, or stored in aboveground tanks located in the North Tank Farm.
26. Product is transferred into tanker trucks at the Fill Rack, which is located within the designated Truck Loading/Unloading Area.
27. Wolverine removes used oil from its customers' facilities and transports it back to the Ford Road facility. Wolverine filters out impurities and removes water from the used oil in an oil reclamation unit located within its Warehouse. The reclaimed used oil is used to make cutting oil, quench oil, and hydraulic oil products.
28. Wolverine's used oil recycling operations involve the storage of used oil collected from customers in one or more aboveground tanks located inside the Warehouse.

29. Wastewater and a rag layer generated from the facility's used oil processing operation are accumulated in two aboveground tanks located in the Warehouse and then sent off site to a Centralized Waste Treatment facility.
30. Wolverine is a used oil processor, transporter and transfer facility as a result of its activities at the Ford Road facility and/or notification it submitted. EPA identification number MIR000023812 is assigned to the Ford Road facility.

C. Summary of Investigative Activities and Tolling Agreements

31. On or about April 23, 2002, September 30, 2003, July 12 and November 17, 2005, EPA inspected the Ford Road facility to determine compliance with RCRA, SPCC and/or EPCRA.
32. On August 30, 2006, EPA sent Wolverine a request for information pursuant to section 3007 of RCRA, 42 U.S.C. § 6927. On November 11, 2006, Wolverine submitted a response to EPA's RCRA Information Request.
33. On February 2, 2007, EPA sent Wolverine a letter identifying potential violations under RCRA, SPCC and EPCRA and potential penalty exposure. Wolverine submitted responses to the February 2, 2007, letter on March 20, May 9 and 10, 2007. EPA and Wolverine subsequently entered into settlement discussions. Wolverine submitted additional information on August 16, 2007, January 7, March 3 and June 9, 2008. Wolverine's responses included information that it did not store used oil in the North Tank Farm nor burn used oil in its Black Gold space heater. Based on the information submitted by Wolverine and its representations the Parties enter into this agreement and

EPA withdraws its allegations related to used oil violations involving the North Tank Farm and the Black Gold heater.

34. Wolverine and EPA agreed to toll any applicable statute of limitations for violations of RCRA, SPCC and EPCRA alleged in the February 2, 2007, letter. The tolled time period included the time from May 1, 2006 to August 31, 2008.

IV. SPECIFIC ALLEGATIONS

Paragraphs 1-34 are incorporated herein as if set forth in their entirety.

COUNT I - Failure to comply with the used oil rebuttable presumption

35. MAC R 299.9813(6), 40 C.F.R. §§ 279.10(e)(3) and 262.11 require a company to adequately characterize the solid waste that it generates. Wolverine's used oil process uses filter media to remove impurities. Wolverine disposes of the filter media after it has been used. Wolverine failed to adequately characterize the spent filter media as a solid and hazardous waste as required by MAC R 299.9813(6), 40 C.F.R. §§ 279.10(e)(3) and 262.11. Consequently, Wolverine violated MAC R 299.9813(6), 40 C.F.R. §§ 279.10(e)(3) and 262.11.

COUNT II - Failure to comply with used oil processor requirements

36. MAC 229.9813, 40 C.F.R. § 279, Subpart F establishes standards for used oil processors. MAC 299.9813(3) and (7) require the owner or operator of a used oil processing facility to comply with the federal requirements for notification (40 C.F.R. § 279.51), maintenance and operation of the facility (40 C.F.R. § 279.52(a)(1)), contingency plan (40 C.F.R. § 279.52(b)), secondary containment (40 C.F.R.

§§ 279.54(c)(2) and (d)(2)), labeling (40 C.F.R. § 279.54(f)), analysis plan (40 C.F.R. § 279.55), and annual reports (40 C.F.R. § 279.57(b)).

37. Wolverine does not have a separate contingency plan for its Ford Road facility. It relies upon its SPCC Plan. Pursuant to MAC R 299.9813(3) and (7), 40 C.F.R. § 279.52(b), a used oil processor may amend an SPCC Plan that is in accordance with 40 C.F.R. Part 112 to comply with the contingency plan requirements. EPA reviewed Wolverine's SPCC Plan and determined that:

a. Wolverine failed to timely send a copy of the contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response services, as required by MAC R 299.9813(3), 40 C.F.R. § 279.52(b)(3)(ii);

b. Wolverine failed to include in its contingency plan the home telephone number of its emergency contacts as required by MAC R 299.9813(3), 40 C.F.R. § 279.52(b)(2)(iv); and

c. Wolverine failed to include an adequate description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency response teams to coordinate emergency services, and the addresses and home phone numbers of all persons qualified to act as emergency coordinator, as required by MAC R 299.9813(3), 40 C.F.R. §§ 279.52(b)(2)(iii) and (iv).

Consequently, Wolverine's SPCC Plan failed to comply with the contingency plan requirements of MAC R 299.9813(3) and (7); 40 C.F.R. §§ 279.52(b)(2)(iii) and (iv) and (b)(3)(ii).

38. During the inspections EPA observed in the Warehouse tanks and containers of used oil with no dikes, berms or retaining walls completely surrounding them. The overhead doorways to the Warehouse would not stop fluid flow. Consequently, Wolverine failed

to have containment for containers and tanks of used oil which met the requirements of MAC 299.9813(3) and (7), 40 C.F.R. § 279.54(c)(2) and (d)(2).

39. During the November 17, 2005, inspection EPA observed that there were three 250-275 gallon totes, 5 gallon buckets and tanks containing used oil in the Warehouse. There were also cartridge filters on a hand cart and 5 used bag filters on a mobile cart. The totes, 5 gallon buckets and tanks were not labeled with the words "used oil." Consequently, Wolverine failed to comply with the requirements of MAC 299.9813(3) and (7), 40 C.F.R. § 279.54(f).
40. Wolverine failed to timely file biennial reports as required by MAC R 299.9813(3) and (7), 40 C.F.R. § 279.57(b) by March 1, 2004 and March 1, 2006.
41. Wolverine failed to develop and follow an adequate written analysis plan that met the requirements of MAC 299.9813(3) and (7), 40 C.F.R. §§ 279.55(a) and 279.53, 53(a) and (b).
42. Wolverine failed to timely notify the Michigan Department of Environmental Quality (MDEQ) of its RCRA used oil management activities, including but not limited to used oil processing as required by MAC R 299.9813(3) and (7), 40 C.F.R. § 279.51.
43. During the September 30, 2003, inspection EPA observed oil staining on the ground. Consequently, Wolverine failed to adequately maintain and operate its facility so as to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human, health or the environment as required by MAC 299.9813(3) and (7), 40 C.F.R. § 279.52(a)(1).

COUNT III - Failure to have and/or implement an adequate SPCC Plan

44. Wolverine was required to have and implement an SPCC plan which met the requirements of 40 C.F.R. § 112.7.
45. Waters from the Ford Road facility may discharge to the Baby Creek Section of the Rouge River. The Rouge River in turn discharges to the Detroit River. The Rouge and Detroit Rivers are navigable waters of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. Consequently, the Ford Road facility, due to its proximity, could reasonably be expected to discharge oil to the Rouge and Detroit Rivers.
46. Respondent began operating at these facilities before August 16, 2002.
47. The Ford Road facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 42 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2. Consequently, Wolverine is an "owner or operator" of an onshore facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. The Ford Road facility is a non-transportation-related onshore facility, which due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").
48. Wolverine gathered, stored, or consumed oil or oil products at the Ford Road facility. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a capacity of at least 55 gallons.
49. Respondent as the owner and operator of an SPCC-regulated facility is subject to the SPCC regulations.

50. On April 23, 2002, inspectors from EPA reviewed the SPCC Plan which was on file for the Ford Road facility and conducted a visual inspection of the facility. EPA sent Notices of Deficiencies to Wolverine on December 24, 2002 and June 18, 2003.
51. On June 2, 2004, Wolverine had a new SPCC Plan which was dated May 2004.
52. On November 17, 2005, EPA conducted an on-site inspection of Wolverine to determine its compliance with 40 C.F.R. Part 112. At that time EPA conducted a visual inspection of the facility and reviewed its 2004 SPCC Plan.
53. Wolverine was required to have and implement an SPCC plan which met the requirements of 40 C.F.R. § 112.7. On February 2, 2007, EPA sent Wolverine a letter identifying the violations found at the Ford Road facility under 40 C.F.R. § 112. The letter identified the following deficiencies in the SPCC Plan as a result of the November 17, 2005, inspection:
 - a. the secondary containment was insufficient at the doorways to the Warehouse and the lube/oil building; and there were breaches and cracks in the containment wall for the North Tank Farm (Section 112.7(c) and (e)(2)(ii));
 - b. there were no records of Wolverine having conducted a tank integrity assessment within the 10 year time period specified in the plan (Section 112.7(e)(2));
 - c. the tanks in the North Tank Farm were not fitted with the visual float gauges (Section 112.7(e)(2)(viii));
 - d. the plan did not discuss the tank car unloading operations which occur in the Fill Rack containment area west of the Fill Rack (Section 112.7(e)(4));
 - e. a portion of the fence in the northeast corner of the facility was not in place (Section 112.7(e)(9)); and
 - f. the plan did not adequately document training of employees (Section 112.7(e)(10)(i) and (iii)).

54. The deficiencies identified in the February 2, 2007, letter and in this Count resulted in Wolverine's failure to fully implement an SPCC Plan at its Ford Road facility which complied with 40 C.F.R. § 112.7. Consequently, Wolverine violated 40 C.F.R. §§ 112.3(a) and 112.7 when it failed to implement at its Ford Road facility an SPCC Plan that complied with 40 C.F.R. §§ 112.7 and 112.3.

COUNT IV - Failure to file EPCRA Tier I forms

55. At all times relevant to this Complaint, Respondent was an employer at the Facility.
56. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.
57. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
58. The Michigan State Emergency Response Commission was the state emergency response commission ("SERC") for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
59. The Wayne County Local Emergency Planning Committee was the local emergency planning committee ("LEPC") for Wayne County Michigan, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).
60. The City of Dearborn Fire Department was the fire department with jurisdiction over the Facility.

61. Under 29 C.F.R. § 1910, OSHA defines hazardous chemical as any chemical which is a physical hazard or a health hazard.
62. A-1 quench oil has a hazard rating of 1 for flammability and a hazard rating of 1 for health.
63. A-1 quench oil is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
64. A-1 quench oil has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
65. OSHA requires Respondent to prepare, or have available, an MSDS for A-1 quench oil.
66. During at least one period of time in each calendar year 2002- 2005 A-1, quench oil was present at the Facility in an amount equal to or greater than the minimum threshold level.
67. Respondent was required to submit to the SERC, LEPC, and fire department on or before the following March 1, (i.e., March 1, 2003-March 1, 2006) a completed Emergency and Hazardous Chemical Inventory Form for A-1 quench oil, ethylene glycol, hydraulic oil, petro resin, hygold P-70N, A-1 cutting oil, and #2 fuel oil.
68. As of June 14, 2006, Respondent had not timely submitted to the SERC, the LEPC, or the local fire department with jurisdiction over the facility a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2002, 2003 and 2005.
69. The Respondent had not timely submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2004 as of June 14, 2006. The Respondent had not submitted to the LEPC or the local fire department with jurisdiction

over the facility a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2004 as of September 16, 2005.

70. Each day Respondent failed to timely submit to the SERC, the LEPC, or the local fire department with jurisdiction over the facility a completed Emergency and Hazardous Chemical Inventory Form by March 1, for the preceding calendar year is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

V. CIVIL PENALTY

71. Based upon consideration of the statutory factors contained in RCRA, EPCRA and the Clean Water Act and Respondent's submission of information related to its ability to pay a penalty, Complainant proposes and the Respondent consents to the assessment and payment of a civil penalty in the amount of \$25,000.
72. No later than 60 days after the effective date of the Final Order, the Respondent shall pay the amount of \$25,000 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Treasurer, the United States of America" and addressed to:

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

The check shall reference the name of the Respondent, the Docket Number of this CAFO, and BD Number: 2750906M001. Interest and late charges shall be paid as specified below. If paying by electronic funds transfer then Respondent must pay the penalty payable to "Treasurer, United States of America," and send it to:

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 should read "D 68010727 Environmental Protection Agency."

Upon payment of the civil penalty, Respondent shall send to each of the persons listed below a copy of the check and a transmittal letter referencing the name of Respondent, the docket number of this CAFO and the billing document number:

Regional Hearing Clerk
EPA, Region 5
77 West Jackson Blvd. (E-13J)
Chicago, Illinois 60604

Richard J. Clarizio
Office of Regional Counsel (C-14J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Sue Rodenbeck Brauer
Land and Chemicals Division (LR-8J)
EPA, Region 5
77 West Jackson Boulevard
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James Entzminger
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Barbara A. Carr
Oil Planning and Response Section (SE-5J)
Superfund Division
EPA, Region 5

77 West Jackson Boulevard
Chicago, Illinois 60604

73. Pursuant to 31 U.S.C. § 3717, Respondent shall pay the following amounts on any amount overdue under this CAFO:

(a) **Interest.** Any unpaid portion of a civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

(b) **Monthly Handling Charge.** Respondent shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.

(c) **Non-Payment Penalty.** On any portion of a civil penalty more than 90 calendar days past due, Respondent shall pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b) above.

(d) **Additional Fees.** Failure of the Respondent to pay the civil penalty in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

The penalty specified in this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

VI. WORK

74. Respondent will install permanent concrete berms in each of the four overhead doorways to the Warehouse. The berms shall be installed and maintained so that they prevent a release of oil stored in the Warehouse from leaving the Warehouse. Respondent will coat

the berms with epoxy. The Respondent will complete the installation and coating of the berms within 90 days of the Effective Date of this CAFO. Respondent shall maintain the berms for five years.

75. Respondent will engineer and install a curbed truck loading/unloading area between the Warehouse and the tank farms as shown on Attachment 1. The curbed loading/unloading area shall be installed and maintained so that it prevents the migration of spills of oil to the environment. The containment area will begin at the Ford Road gate and extend south to the South Tank Farm. The area will be curbed on each side and will abut the loading rack east of the Warehouse. The loading rack west of the North Tank Farm will be curbed and incorporated into the loading/unloading area. The loading/unloading area will be sloped to one or more catch basins that will be equipped with an oil/water separator and an emergency shut-off valve that will allow the tank loading/unloading area to be isolated from the municipal sewer system in the event of a spill. Catch basins will drain to the municipal sewer system. The Respondent shall use concrete. The Respondent shall complete installation required by this paragraph within nine months of the Effective Date of this CAFO. Respondent shall maintain this area for five years.
76. Respondent will submit a completion report to EPA within twelve months of the Effective Date of this CAFO. The completion report will include information on the costs associated with the Work, photographs of the completed Work and documentation sufficient to demonstrate that the Work was completed on time. The completion report will also include a schedule for maintenance of the completed Work and a certification in the form required by paragraph 78 below.

77. Respondent will submit an annual maintenance report to EPA for five years on the anniversary date of the Effective Date of this CAFO. The maintenance report will include information on any maintenance or repairs required or completed to the Work required by this CAFO. The annual maintenance report will include information on the costs associated with the maintenance or repairs, photographs of any maintenance or repairs and documentation sufficient to demonstrate when the maintenance or repairs were completed. The annual maintenance reports will include a certification in the form required by paragraph 78 below.
78. In each report that Respondent submits pursuant to this CAFO it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

79. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's Work requirements.
80. Respondent shall promptly correct any deficiencies in the Work or reports required by this CAFO.

VII. GENERAL TERMS OF SETTLEMENT

81. Complainant and Respondent agree that the settlement of this matter pursuant to 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and that the entry

of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

82. Respondent admits the jurisdictional allegations set forth in this CAFO.
83. Respondent neither admits nor denies the factual allegations set forth in this CAFO.
84. Respondent waives any right to contest or appeal the factual allegations contained in this CAFO and any right to appeal the Final Order that accompanies this Consent Agreement.
85. Respondent has demonstrated and hereby certifies that it is now in compliance with the requirements that formed the basis of the alleged violations identified this CAFO. Based upon Respondent's demonstration and certification, EPA believes that Respondent is in compliance with the regulations and requirements cited in this CAFO.
86. Without further adjudication, Respondent consents to the issuance of this CAFO, and the assessment of a penalty and performance of work as identified in Section V and VI. Respondent consents to all of the conditions in this CAFO.
87. This CAFO constitutes the entire agreement and settlement between the parties and constitutes final disposition of the violations alleged in this CAFO.
88. Respondent waives the right to a hearing under Section 311(b) of the Clean Water Act, Section 3008 of RCRA and Section 325 of EPCRA, 33 U.S.C. § 1321(b) and 42 U.S.C. § 6928 and § 11045.
89. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for noncompliance with the CAFO.

90. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b) and Section 325 of EPCRA, 42 U.S.C. § 11045 for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.
91. Nothing in this CAFO shall be construed to relieve the Respondent from its obligation to comply with all applicable federal, state and local statutes and regulations.
92. Notwithstanding any other provision of this CAFO, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies, penalties or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, other than the specific matters resolved herein.
93. Notwithstanding any other provision of this CAFO, EPA may bring an action pursuant to Section 7003 of RCRA, or other statutory authority, if any handling, storage, treatment, transportation or disposal of solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment. EPA also expressly reserves the right: (a) for any matters other than violations alleged in this CAFO, to take any action authorized under RCRA, EPCRA or the Clean Water Act; (b) to enforce compliance with the applicable provisions of the Michigan administrative code; and (c) to enforce compliance with this CAFO, including through a referral to the Department of Justice.

94. Each party shall bear its own costs and fees, including attorneys' fees, in connection with the action resolved by this CAFO.
95. Respondent shall submit all reports, submissions, and notifications required by this CAFO to Richard J. Clarizio, Sue Rodenbeck Brauer, James Entzminger and Barbara Carr at the addresses listed in paragraph 72 above.
96. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.
97. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication with an EPA official identified in 40 C.F.R. § 22.08 where the purpose of such discussion, memorandum or communication is to persuade that official to accept and issue the CAFO.
98. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.
99. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.
100. Respondent and EPA agree to the issuance and entry of the accompanying Final Order.
101. The Final Order does not constitute a waiver, suspension or modification of the requirements of EPCRA, the Clean Water Act or RCRA or any regulations promulgated

thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

102. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. §§ 3501 et seq.
103. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.
104. This CAFO terminates when EPA determines that Respondent has fully complied with all terms and conditions of this CAFO, including payment, in full, of all penalties due and owing.

Agreed to this 29TH day of SEPTEMBER 2008.

By:



Kevin Daudlin, President
Wolverine Oil & Supply Company

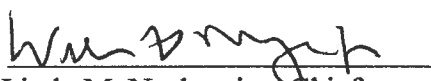
IN THE MATTER OF:


Wolverine Oil & Supply Company


Dearborn, Michigan

Docket No.: EPCRA-05-2009-0002 RCRA-05-2009-0001 MM-05-2009-0001 CWA-05-2009-0001

Agreed to this _____ day of _____, 2008.

By: 
Linda M. Nachowicz, Chief
Emergency Response, Branch 2
Superfund Division
EPA, Region 5

By: 
Margaret M. Guerriero,
Director
Land and Chemicals Division
EPA, Region 5

By: 
Richard C. Karl
Director
Superfund Division
EPA, Region 5

IN THE MATTER OF:
Wolverine Oil & Supply Company
Dearborn, Michigan

Docket No.: **EPCRA-05-2009-0002 RCRA-05-2009-0001 MM-05-2009-0001 CWA-05-2009-0001**

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this FINAL ORDER. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

The Respondent is ordered to comply with the terms of this Consent Agreement.

Ordered this 2^d day of October, 2008.

By: Lynn Buhl
Lynn Buhl
Regional Administrator
EPA, Region 5

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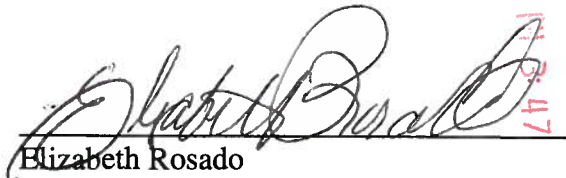
CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), 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:

Kevin Daudlin
Wolverine Oil & Supply Company
10455 Ford Road
Dearborn, Michigan 48126

William B. Clifford, Jr.
Butzel Long
Stoneridge West
41000 Woodward Avenue
Bloomfield Hills, Michigan 48304

Dated: 10-09-08, 2008



Elizabeth Rosado
Administrative Program Assistant
United States Environmental
Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590

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