



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

MAR 02 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald P. Kragt
President
Michigan Natural Storage Company
1200 Judd Avenue, SW
Wyoming, Michigan 49509

Re: Michigan Natural Storage Company, Wyoming, Michigan, Consent Agreement and Final Order, Docket Nos. CAA-05-2012-0012 EPCRA-05-2012-0010 MM-05-2012-0001

Dear Mr. Kragt:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 2, 2012.

Please pay the Emergency Planning and Community Right-to-Know Act and the Clean Air Act civil penalty in the amount of \$27,275.65 plus interest in the manner prescribed in paragraph 84, and reference your check with the billing document number 2751203A014 2751244E009 and the docket numbers CAA-05-2012-0012 EPCRA-05-2012-0010.

Your payment schedule is in paragraph 84 and the first payment is due on April 2, 2012.

Please feel free to contact James Entzminger at 312-886-4062 or Monika Chrzaszcz at 312-886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert L. Thompson, Associate Regional Counsel, at 312-353-6700. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Captain Thomas Sands, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)
MI SERC

Mr. William H. Heritage, Jr. (w/ enclosure)
Attorney
Wheeler Upham, P.C.
Second Floor Trust Building
40 Pearl Street, N.W.
Grand Rapids, Michigan 49503 (certified)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. CAA-05-2012-0012 EPCRA-05-2012-0010
)	MM-05-2012-0001
Michigan Natural Storage Company)	Proceeding to Assess a Civil Penalty Under
Wyoming, Michigan)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, and Section 113(d) of the Clean
_____)	Air Act, 42 U.S.C. § 7413(d)

**Consent Agreement and Final Order
Preliminary Statement**

RECEIVED
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1. This is an administrative action commenced and concluded under Section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(2), Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Michigan Natural Storage Company, a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311 of EPCRA, 42 U.S.C. § 11021, 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 Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. 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 OSHA to

prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, 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, 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 U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. 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, MSDS.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation

that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

15. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occurred after January 31, 1997 through January 12, 2009 and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

16. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

17. On June 20, 1996, the U.S. EPA promulgated a final rule known as the Risk Management Program (RMP), 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement an RMP that must be submitted to the U.S. EPA.

18. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999 or the date on which a regulated substance is first present above the threshold quantity in a process.

19. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

20. "Stationary source" shall mean any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

21. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

22. "Regulated substance" shall mean any substance listed pursuant to section 112(r)(3) of the CAA as amended. 40 C.F.R. § 68.3.

23. "Process" shall mean any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. 40 C.F.R. § 68.3.

24. Complainant has authority under Section 113 of the CAA to pursue civil penalties for violations of the Section 112(r)(7) regulations found at 40 C.F.R. Part 68.

25. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

27. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997, through March 15, 2004; may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

28. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

29. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1200 Judd Avenue, SW, Wyoming, Michigan (facility).

30. At all times relevant to this CAFO, Respondent was an employer at the facility.

31. 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.

32. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

33. Sulfuric acid (CAS #7664-93-9) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

34. Sulfuric acid (CAS #7664-93-9) 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).

35. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

36. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

37. Anhydrous ammonia (CAS #7664-41-7) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

38. Anhydrous ammonia (CAS #7664-41-7) 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).

39. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

40. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

41. As of December 31, 2005, sulfuric acid was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

42. As of December 31, 2005, anhydrous ammonia was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

43. During at least one period of time in calendar year 2005, sulfuric acid and anhydrous ammonia were present at the facility in an amount equal to or greater than the minimum threshold level.

44. During at least one period of time in calendar year 2006, sulfuric acid and anhydrous ammonia were present at the facility in an amount equal to or greater than the minimum threshold level.

45. During at least one period of time in calendar year 2007, sulfuric acid and anhydrous ammonia were present at the facility in an amount equal to or greater than the minimum threshold level.

46. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

47. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia.

48. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2006, an MSDS for sulfuric acid or a list including sulfuric acid.

49. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2006, an MSDS for anhydrous ammonia or a list including anhydrous ammonia.

50. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and anhydrous ammonia on or before March 1, 2006, for calendar year 2005.

51. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and anhydrous ammonia on or before March 1, 2007, for calendar year 2006.

52. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and anhydrous ammonia on or before March 1, 2008, for calendar year 2007.

53. At all times relevant to this CAFO, the Michigan Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

54. That pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia (CAS #7664-41-7) as a substance regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), identifying a threshold quantity of 10,000 lbs. of anhydrous ammonia (CAS #7664-41-7) as causing regulations promulgated there under to be applicable. 40 C.F.R. § 68.130, Table 1.

55. That the Administrator has defined “stationary source” to mean “any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.” 40 C.F.R. § 68.3.

56. That the Facility, identified at paragraph 29, is a “stationary source” as defined at 40 C.F.R. § 68.3.

57. That 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

58. That the Administrator has defined “process” to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

59. That in June 1999, having held for use in its operations at the Facility 16,000 lbs. of anhydrous ammonia (CAS #7661-41-4), Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 CFR Part 68.

60. That pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 CFR Part 68 no later than June 21, 1999.

61. That 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. § 150.

Count 1

62. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

63. Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid on December 4, 2008.

64. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 30, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2

65. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

66. Respondent submitted to the SERC an MSDS for anhydrous ammonia or a list showing anhydrous ammonia on December 4, 2008.

67. Each day Respondent failed to submit to the SERC an MSDS or a list for anhydrous ammonia by March 30, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3

68. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

69. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia on December 9, 2008, for calendar year 2005.

70. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4

71. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

72. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia on December 9, 2008, for calendar year 2006.

73. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5

74. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

75. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia on December 4, 2008, for calendar year 2007.

76. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and anhydrous ammonia by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 6

77. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

78. On February 10, 2010, U.S. EPA issued an Information Request to the Respondent under Section 114(a) of the Act, 42 U.S.C. § 7414(a). The purpose of the Information Request

was to determine whether the Facility was in compliance with Section 112(r) of the CAA and the regulations implementing Section 112(r) at 40 C.F.R. Part 68.

79. Based on Respondent's response, since 1991, the Respondent had present at the Facility an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. § 68.130, as determined in accordance with the threshold determination requirements of 40 C.F.R. § 68.115.

80. Because the Respondent had present at the Facility an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. § 68.130 on June 21, 1999, Respondent was required to prepare, implement, and submit an Risk Management Plan no later than June 21, 1999. 40 C.F.R. §§ 68.10(a), 68.150.

81. Despite the presence of an amount greater than the threshold quantity of anhydrous ammonia in a process at the Facility, the Respondent failed to prepare and submit its Risk Management Plan, violating the requirements of 40 C.F.R. Part 68.

Civil Penalty

82. Complainant has determined that an appropriate civil penalty to settle the alleged EPCRA violations in this action is \$8,200.65. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental

Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

83. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, prompt return to compliance by the Respondent and an agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$19,075.

84. Respondent must pay a \$27,389.30 civil penalty in six installments with interest as follows:

SUMMARY:				
1st 30 days interest free	Due by:	Payment	Principal	Interest
Payment 1	within 30 of File Date	4,545.95	4,545.95	0
Payment 2	File Date+90 days	4,583.82	4,545.94	37.88
Payment 3	File Date+150 days	4,576.25	4,545.94	30.31
Payment 4	File Date+210 days	4,568.67	4,545.94	22.73
Payment 5	File Date+270 days	4,561.09	4,545.94	15.15
Payment 6	File Date+330 days	4,553.52	4,545.94	7.58
Totals:		27,389.30	27,275.65	113.65

Respondent must pay the installments by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

[for checks sent by express mail] sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
 Government Lockbox 979077 U.S. EPA Fines and Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2-GL
 St. Louis, MO 63101

The check must note the following: Michigan Natural Storage Company, the docket numbers of this CAFO, and the billing document number_____.

85. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers, and the billing document number must accompany each payment. Respondent must send a copy of each check and transmittal letter to:

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

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

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

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

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

87. If Respondent does not timely pay any installment payment as set forth in paragraph 84, above, or any stipulated penalties due under paragraph 103, below, the entire unpaid balance of the civil and stipulated penalty and any amount required by paragraph 103, below, shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency.

U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

88. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environmental Project

89. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and installing an ammonia detection system and related controls, and enhanced security cameras and loss prevention equipment.

90. At its Wyoming Michigan facility, Respondent must complete the SEP as follows:

- a. Within 18 months of the effective date of the CAFO, Respondent must purchase and install the ammonia detection system and related controls.
- b. Within 18 months of the effective date of the CAFO, Respondent must purchase and install the enhanced security cameras and loss prevention equipment.

91. Respondent must spend at least \$145,000 to purchase and install the ammonia detection system and related controls, \$19,039 to purchase and install the enhanced security cameras and loss prevention equipment, and \$263 per month to maintain the enhanced security

cameras and loss prevention equipment for two years after the installation.

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

93. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

94. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

95. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

96. Within 30 months after the effective date of the CAFO, Respondent must submit an interim report to U.S. EPA. The interim report may be in the form of a letter identifying the date the SEPS were installed and the money required to maintain the enhanced security cameras and loss prevention equipment.

97. Within 42 months of the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed, including a listing of the equipment installed in the SEPs;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

98. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger and Monika Chrzaszcz of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 85, above.

99. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

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

100. Respondent certifies to the following statement:

I am not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

101. Following receipt of the SEP completion report described in paragraph 97, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;

- b. There are deficiencies in the SEP as completed or in the SEP report and U.S EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 103.

102. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 103, below.

103. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 90, Respondent must pay a penalty of \$81,827.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 91, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 91, Respondent must pay a penalty of \$8,183.
- d. If Respondent did not submit timely the SEP completion report or any other report required by this CAFO, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

104. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

105. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 84, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

106. Any public statement that Respondent makes referring to the SEP must include the following language, "Michigan Natural Storage Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Michigan Natural Storage Company for alleged violations of Sections 311 and 312 of EPCRA and Section 112(r) of the CAA."

107. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

108. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

109. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

111. Respondent certifies that it is complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), and Section 112(r) of CAA, 42 U.S.C. § 7412(r).

112. This CAFO does not affect Respondent's responsibility to comply with EPCRA, CAA, and other applicable federal, state and local laws, and regulations.

113. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

114. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

116. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

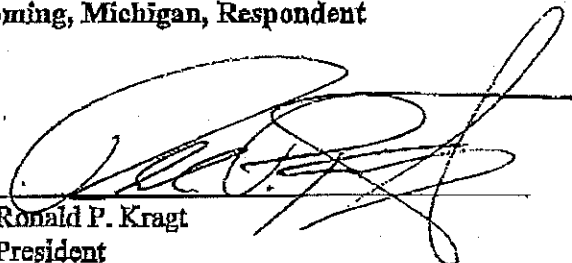
117. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of: Michigan Natural Storage Company, Wyoming, Michigan
Docket No. _____

Michigan Natural Storage Company, Wyoming, Michigan, Respondent

24 Feb 2012
Date



Ronald P. Kragt
President
Michigan Natural Storage Company

U.S. Environmental Protection Agency, Complainant

Date

Richard C. Karl, Director
Superfund Division

U.S. Environmental Protection Agency, Complainant

2/29/2012
Date



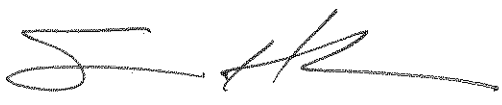
Richard C. Karl, Director
Superfund Division
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In the Matter of: Michigan Natural Storage Company, Wyoming, Michigan
Docket No. CAA-05-2012-0012 MM-05-2012-0001
EPCRA-05-2012-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-1-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Ronald P. Kragt
President
Michigan Natural Storage Company
1200 Judd Avenue, SW
Wyoming, Michigan 49509

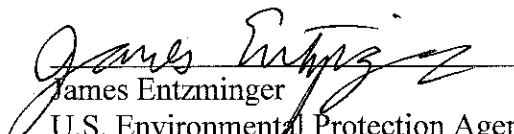
Mr. William H. Heritage, Jr.
Attorney
Wheeler Upham, P.C.
Second Floor Trust Building
40 Pearl Street, N.W.
Grand Rapids, Michigan 49503

RECEIVED

MAR 03 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 2 day of March 2012


James Entzminger
U.S. Environmental Protection Agency
Region 5