UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CWA-05-2017-0005**
	)	
Metalworking Lubricants Company	)	**Proceeding to Assess a Class II Civil Penalty**
Indianapolis, Indiana,	)	**Under Section 311(b)(6) of the Clean Water**
	)	**Act, 33 U.S.C. § 1321(b)(6)**
Respondent.	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), and Sections 22.1(a)(6), 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. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Metalworking Lubricants Company, a corporation doing business in Indiana.

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 to the terms of this CAFO.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

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

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), 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

Spill prevention, control and countermeasure plan requirements

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. § 112.1(b).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention, Control, and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7 requires the owner or operator of a subject facility to follow the sequence specified in 40 C.F.R. 112.7 for the SPCC Plan; otherwise, the owner or operator must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in 40 C.F.R. Part 112 and must supplement it with a section cross-referencing the location of requirements listed in 40 C.F.R. Part 112 and the equivalent requirements in the other prevention plan.

14. 40 C.F.R. § 112.7(a)(3) requires the owner or operator of a subject facility to describe in the SPCC Plan the physical layout and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located.

15. 40 C.F.R. § 112.7(a)(3)(i) requires the owner or operator of a subject facility to address in the SPCC Plan the type of oil in each fixed container and its storage capacity, and further requires that for mobile or portable containers, to either provide the type of oil and storage capacity for each container or to provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.

16. 40 C.F.R. § 112.7(a)(3)(iii) requires the owner or operator of a subject facility to address in the SPCC Plan discharge and drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

17. 40 C.F.R. § 112.7(b) requires the owner or operator of a subject facility to include, where experience indicates that a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), in the SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

18. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures to prevent a discharge as described in 40 C.F.R. § 112.1(b).

19. 40 C.F.R. § 112.7(e) requires the owner or operator of a subject facility to conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures developed for the facility, and further requires that the written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, be kept with the SPCC Plan for a period of three years.

20. 40 C.F.R. § 112.7(j) requires the owner or operator of a subject facility to include in the SPCC Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in 40 C.F.R. Part 112 or any applicable more stringent State rules, regulations, and guidelines.

21. 40 C.F.R. § 112.8(b)(3) requires the owner or operator of a subject facility to design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility, and prohibits catchment basins from being located in areas subject to periodic flooding.

22. 40 C.F.R. § 112.8(c)(2) requires the owner or operator of a subject facility to construct all bulk storage tank installations so that there is a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and to ensure that all diked areas are sufficiently impervious to contain discharged oil.

23. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a subject facility to test or inspect each aboveground container for integrity on a regular schedule and whenever repairs are made, and requires the owner or operator to determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and types of testing and inspections, which take into account container size, configuration, and design. The owner or operator of a subject facility must keep comparison records.

24. 40 C.F.R. § 112.8(d)(2) requires the owner or operator of a subject facility to cap or blank-flange the terminal connection at a transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

25. 40 C.F.R. § 112.8(c)(8)(v) requires the owner or operator of a subject facility to regularly test liquid level sensing devices to ensure proper operation.

Facility response plan requirements

26. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of an onshore facility that, because of its location could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters or adjoining shorelines, to submit a plan for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of oil or a hazardous substance. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

27. The oil pollution prevention regulations at 40 C.F.R. Part 112, Subparts A and D, implement the requirements of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and require owners and operators of subject facilities to prepare and submit a facility response plan ("FRP") to EPA in accordance with the requirements of 40 C.F.R. §§ 112.20 and 112.21.

28. Pursuant to 40 C.F.R. 112.20(a) and (f), owners or operators of subject facilities must determine whether, because of a facility's storage capacity and location, a facility could reasonably be expected to cause substantial harm to the environment by discharging into or on

the navigable waters or adjoining shorelines pursuant to criteria established by EPA in Appendix C to Part 112, Substantial Harm Criteria.

29. A facility is classified as a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation with each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1); Substantial harm criteria listed in Attachment C-I of Appendix C to Part 112.

30. If a facility is determined to be a substantial harm facility under the criteria described 40 C.F.R. § 112.20(f)(1) and Appendix C to Part 112, the owner or operator of the facility is required to prepare and submit to EPA an FRP that details the facility's emergency plans for responding to an oil spill. 40 C.F.R. § 112.20(a).

31. All facilities in operation on or before February 18, 1993 were required to submit an FRP in accordance with the requirements of 40 C.F.R. § 112.20 by August 30, 1994. 40 C.F.R. § 112.20(a)(i).

General provisions and enforcement of the CWA

32. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as waters of the United States. 40 C.F.R. § 112.2 further defines "navigable waters" to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

33. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define "oil" as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

34. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define "owner or operator" in the case of an onshore facility as any person owning or operating such onshore facility.

35. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define "person" as including an individual, firm, corporation, association, and a partnership.

36. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define "onshore facility" as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

37. Appendix A to 40 C.F.R. § Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines "non-transportation-related" facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining

facilities including all equipment and appurtenances related thereto; oil storage facilities, including all equipment and appurtenances related thereto; fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

38. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(ii).

39. EPA may assess a class II civil penalty of up to $16,000 per violation for each day of violation for violations that occurred on or before November 2, 2015, and $17,816 per violation for each day of violation for violations that occurred after November 2, 2015, up to a maximum of $222,695, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

40. Respondent owns and operates a used oil processing and blending facility located at 1509 South Senate Avenue, Indianapolis, Indiana ("the facility").

41. Respondent began operating the facility in 1977.

42. Respondent is a corporation, and is therefore a "person" as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

43. Respondent is an "owner" and "operator" of the 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.

44. Respondent engages in drilling, producing, gathering, storing, processing, refining, transferring, using, distributing or consuming oil or oil products at the facility.

45. The facility is located on land within the United States is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

46. The facility is located on land within the United States is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

47. The facility is an industrial facility that uses and stores oil, and is therefore an onshore "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112, Appendix A.

48. The facility has a total oil storage capacity of more than two million gallons.

49. The White River is located approximately 2,000 feet to the west of the facility.

50. The White River is an interstate river that is used by interstate travelers for recreational or other purposes and is a navigable in fact water, and is therefore a "navigable water" of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

51. The oil that Respondent stores, handles, processes and consumes at the facility could reasonably be expected to discharge to the White River.

52. Respondent is an operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful as

described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

53. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

54. At all times relevant to this Complaint, Respondent's SPCC Plan for the facility was dated September of 2012 ("2012 SPCC Plan"). A professional engineer certified and signed the 2012 SPCC Plan on March 19, 2013.

55. On July 31, 2013, EPA issued Respondent a request for information pursuant to Sections 308 and 311 of the CWA, 33 U.S.C. §§ 1318 and 1321, to evaluate Respondent's compliance with the CWA and oil pollution prevention regulations at 40 C.F.R. Part 112.

56. On August 12, 2013, Respondent submitted a response to EPA's information request.

57. On November 5, 2013, EPA conducted an inspection of the facility ("the inspection").

58. During the inspection, EPA inspectors observed mobile oil containers and equipment such as tanker trucks and railroad cars located outside in the southwest area of the facility ("mobile container storage area").

59. Respondent's 2012 SPCC Plan failed to follow the sequence specified 40 C.F.R. § 112.7 and Respondent failed to prepare an equivalent SPCC Plan with a section cross-referencing the location of the requirements listed in 40 C.F.R. § Part 112, in violation of 40 C.F.R. § 112.7.

60. Respondent failed to include in the 2012 SPCC Plan a diagram of the facility which marked the locations of the storage areas where mobile or portable containers were located, in violation of 40 C.F.R. § 112.7(a)(3).

61. Respondent failed to address in the 2012 SPCC Plan the type of oil and storage capacity for each mobile or portable container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities, in violation of 40 C.F.R. § 112.7(a)(3)(i).

62. Respondent failed to address in the 2012 SPCC Plan the discharge and drainage controls such as secondary containment around the containers and other structures, equipment, and the procedures for control of a discharge for mobile containers, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

63. Respondent failed to include in the 2012 SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

64. Respondent failed to provide appropriate containment and/or diversionary structures for the mobile container storage area to prevent a discharge as described in 40 C.F.R. § 112.1(b), in violation of 40 C.F.R. § 112.7(c).

65. Respondent failed to include in the 2012 SPCC Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in 40 C.F.R. Part 112 or any applicable more stringent State rules, regulations, and guidelines, in violation of 40 C.F.R. § 112.7(j).

66. Respondent failed to design facility drainage systems from undiked areas within the mobile storage area with a potential for a discharge to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility, in violation of 40 C.F.R. § 112.8(b)(3).

67. Respondent failed to construct all bulk storage tank installations so that there is a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and to ensure that all diked areas are sufficiently impervious to contain discharged oil, in violation of 40 C.F.R. § 112.8(c)(2).

68. Respondent failed to test or inspect each aboveground container for integrity on a regular schedule and whenever repairs are made, and to determine, in accordance with industry standards, the appropriate qualifications for personnel performing integrity tests and inspections, the frequency and types of testing and inspections and failed to keep comparison records, in violation of 40 C.F.R. § 112.8(c)(6).

69. Respondent failed to cap or blank-flange the terminal connection at a transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time, in violation of 40 C.F.R. § 112.8(d)(2).

70. Respondent failed to regularly test liquid level sensing devices to ensure proper operation, in violation of 40 C.F.R. § 112.8(c)(8)(v) and/or failed to keep records of testing in violation of 40 C.F.R. § 112.7(e).

71. Effective November 3, 2012, CWA Authority, Inc., on behalf of the City of Indianapolis, Department of Public Works, issued Respondent a permit for the facility. The permit authorizes Respondent to discharge industrial wastewater to the Indianapolis combined sewer systems from an outfall located at the facility in accordance with the permit ("Industrial

User Discharge Permit"). The fact sheet for the permit provides that a discharge from the facility's permitted outfall flows to the combined sewer system and could discharge directly to the White River from three separate outfalls during overflow events.

72. Respondent's September 2012 SPCC Plan provides that discharges from the facility could flow southwest along Senate Avenue and reach sewer systems in the area.

73. Approximately 900 feet to the south of the facility, there is a storm water drainage box and a sewer access chamber located along Senate Avenue. The storm water drainage box and access chamber lead to combined sewer systems. These combined sewer systems may discharge to the White River.

74. Respondent is an operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1), and is therefore subject to the facility response plan regulations and must prepare, submit and maintain an FRP in accordance with the requirements of 40 C.F.R Part 112, Subparts A and D.

75. Respondent failed to prepare and submit to EPA an FRP, in violation of 40 C.F.R. § 112.20.

76. On January 19, 2016, Respondent submitted to EPA an FRP. On June 18, 2016 and August 31, 2016, Respondent submitted to EPA a revised FRP.

77. On June 2, 2016, Respondent submitted to EPA revisions to Respondent's SPCC Plan dated December 15, 2015.

78. On June 2, 2016, Respondent submitted a schedule for tank integrity testing in accordance with industry standards, and the appropriate qualifications for personnel performing integrity tests and inspections.

Civil Penalty

79. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, and Respondent's agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is $49,651.

80. Respondent must pay a $49,651 civil penalty with interest in four quarterly installments: $12,536.88 within 90 days of the effective date of this CAFO; $12,505.85 within 180 days of the effective date of this CAFO; $12,474.81 within 270 days of the effective date of this CAFO; and $12,443.78 within 360 days of the effective date of this CAFO.

Installment	Due by	Payment	Principle	Interest
Payment #1	Within 90 days of effective date of CAFO	$12,536.88	$12,412.75	$124.13
Payment #2	Within 180 days of effective date of CAFO	$12,505.85	$12,412.75	$93.10
Payment #3	Within 270 days of effective date of CAFO	$12,474.81	$12,412.75	$62.06
Payment #4	Within 360 days of effective date of CAFO	$12,443.78	12,412.75	$31.03

81. Respondent must pay the installments by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

82. The comment or description field of the electronic funds transfers must state Respondent's name and the docket number of this CAFO.

83. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

85. If Respondent does not pay any installment payment as set forth in paragraph 80, above, or timely pay any stipulated penalties due under paragraph 104, below, the entire unpaid balance of the civil penalty and/or stipulated penalties and any amount required by paragraph 86, below, shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

86. 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 attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

Supplemental Environmental Project

87. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by developing and implementing a Compliance-Focused Environmental Management System (EMS) for the facility. The overall goal of the EMS is a compliance-focused approach to: clearly communicate management commitment to

achieving compliance with applicable federal, state, and local environmental statutes, regulations, and permits; minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants; and continual improvement in environmental performance.

88. Respondent must spend at least $71,004 to develop and implement the EMS.

89. Preparation of EMS Manual. Within six (6) months of the effective date of this CAFO, Respondent must draft and submit to EPA for review and approval an EMS Manual which describes and documents the integrated EMS developed for the facility and contains an EMS implementation schedule for the entire facility.

a. The EMS Manual must describe or contain, as appropriate, overarching policies, procedures, and programs that compose the EMS framework, and respective management systems, subsystems, and tasks for the 12 key elements of the EMS listed in EPA's *Compliance-Focused Environmental Management System Enforcement Agreement Guidance*, Revised June 2005, available at: https://www.epa.gov/sites/production/files/documents/cfems_05.pdf.

b. The EMS implementation schedule must contain specific deadlines for each of the 12 key elements of the EMS.

c. If EPA determines that that EMS Manual or any revision thereof pursuant to paragraph 91 fails to comply with the requirements of paragraph 89.a or b, then EPA will send written notification of its determination. Respondent must correct the deficiencies found within 30 days.

90. Upon Respondent's receipt of EPA's approval of the EMS Manual, Respondent must commence implementation of the EMS in accordance with the schedule contained in the EMS Manual. The EMS Manual as approved by EPA must be used during the EMS Audits. Respondent must submit implementation status reports to EPA on a monthly basis (i.e., reports due every 30 days after receipt of EPA's approval of the EMS Manual) until implementation is

complete. The status reports must include: a description of the actions completed; and a description of the actions that are not yet completed with an estimated timeframe by when those actions will be completed; and include the name and title of the person knowledgeable in the operations who will be responsible for completion of the actions.

91. Revisions to the EMS Manual. Any material revisions to the EMS Manual subsequent to its initial approval must be submitted to EPA for review and approval. Upon approval by EPA, the changes shall be incorporated into the EMS Manual.

92. EMS Audits. In accordance with the procedure set forth in paragraph 93, Respondent must hire an EMS Auditor to conduct an EMS Audit pursuant to paragraph 94. Respondent shall bear all costs associated with the EMS Auditor, cooperate fully with the EMS Auditor, and provide the EMS Auditor with access to all records, employees, contractors, and areas of the facility that the EMS Auditor deems reasonably necessary to effectively perform the duties described in paragraph 94.

93. Selection of EMS Auditor. Respondent has selected ACS Engineering to act as the EMS Auditor for purposes of this CAFO, or shall select an alternate auditor in accordance with this paragraph. If Respondent elects to select an alternate auditor, Respondent must propose to EPA for approval a proposed alternate EMS Auditor who meets the qualifications of ISO 14001 and has expertise and competence in the regulatory programs under federal and state environmental laws. The proposed alternate EMS Auditor must have no direct financial stake in the outcome of the EMS Audit conducted pursuant to this CAFO. Respondent must disclose to EPA any past or existing contractual or financial relationships when the proposed alternate EMS Auditor is identified.

a. EPA must notify Respondent in writing of whether EPA approves the proposed alternate EMS Auditor. If EPA does not approve the proposed alternate EMS Auditor, the Respondent must submit another proposed alternate EMS Auditor to EPA within 30 days of receipt of EPA's written notice.

b. Within 10 days of the date that EPA notifies Respondent of the approval of the proposed alternate EMS Auditor, Respondent must retain the proposed alternate EMS Auditor, thereafter designated the "EMS Auditor" to perform the EMS Audit as further described in paragraph 94 below.

94. Duties of the EMS Auditor. Respondent must direct the EMS Auditor to perform the following duties:

a. The EMS Auditor must perform an initial EMS Audit of the Respondent's EMS regarding the first six (6) months of implementation of the EMS. After the initial EMS Audit, Respondent must conduct an EMS Audit once every six (6) calendar months. Respondent must complete a minimum of three (3) EMS Audits, including the initial EMS Audit. The scope of these EMS Audits shall be consistent with an ISO 14001certification audit, recertification audit, or surveillance audit, as applicable based on the timing of the audit.

b. Each EMS Audit must evaluate the adequacy of EMS implementation at the facility and identify areas of concern, from top facility management down, throughout each major organizational unit with responsibilities under the EMS.

c. Each EMS Audit must be conducted in accordance with ISO 14001, and must determine the following:

(i) Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;

(ii) To what extent the system, subsystem, program, or task has been implemented, and is being maintained;

(iii) The adequacy of the facility's internal self-assessment procedures for programs and tasks composing the EMS, including but not limited to a review of the Respondent's conformance with processes and procedures;

(iv) Whether Respondent is effectively communicating environmental requirements to affected parts of the organization, or those working on behalf of the organization;

(v) Whether written targets, objectives, and action plans for improving environmental performance are being achieved. Targets and objectives must include actions that reduce the risk of non-compliance with environmental requirements and minimize the potential for unplanned or unauthorized releases of hazardous or harmful contaminants;

(vi) Whether further improvements should be made to the EMS; and

(vii) Whether there are nonconformances from Respondent's written requirements or procedures.

95. EMS Audit Report. The EMS Auditor must develop an EMS Audit Report. Within 45 Days following the six month period that is the subject of the initial and each subsequent EMS Audit, Respondent must submit the EMS Audit Report to EPA. Each EMS Audit Report must contain:

(i) Audit scope, including the period of time covered by the audit;

(ii) The date(s) the on-site portion of the audit was conducted;

(iii) Identification of audit team members;

(iv) Identification of Respondent's representatives observing the audit;

(v) A summary of the audit process, including any obstacles encountered;

(vi) Detailed EMS Audit Findings, including the basis for each finding and each area of concern identified;

(vii) Identification of any EMS identification of any EMS Audit Findings corrected or areas of concern addressed during the audit;

(viii) Recommendation for resolving any area of concern or otherwise achieving full implementation of the EMS Manual; and

(ix) A certification by the Respondent that the EMS Audit was conducted in accordance with the provisions of this CAFO.

(x) Each EMS Audit Report after the initial EMS Audit Report may reference portions of prior EMS Audit Reports in the event there has been no intervening change in that portion.

96. Follow-up Corrective Measures. Within 45 Days of receiving each EMS Audit Report, Respondent must submit to EPA for review and approval a report responding to the EMS Audit Findings and areas of concern identified in each EMS Audit Report and providing an action plan for expeditiously coming into full conformance with the provisions in the EMS (the "Audit Response and Action Plan"). Each Audit Response and Action Plan must include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified actions and measures, including those that may have already been completed.

a. EPA will have 45 days from its receipt of the Audit Response and Action Plan from Respondent to provide comments on the Audit Response and Action Plan. If any comments are provided by EPA, Respondent must, within 30 days of receipt of EPA's comments, submit to EPA a final Audit Response and Action Plan responding to and addressing EPA's comments. If no comments are provided by EPA within 45 days of receiving the Audit Response and Action Plan, then the version of the EMS Audit Report provided pursuant to paragraph 95 as modified by the respective Audit Response and Action Plan shall be deemed the final version.

b. After making any necessary modifications to each Audit Response and Action Plan based on EPA comments, if any, Respondent must implement each final Audit Response and Action Plan in accordance with the schedules set forth therein.

97. Respondent certifies as follows:

I certify that Metalworking Lubricants Company's facility is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Metalworking Lubricants Company has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Metalworking Lubricants Company is 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 that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For 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 expired.

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

99. Respondent must submit a SEP completion report to EPA within 30 days of completing the SEP. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any problems in developing and/or implementing the SEP and the actions taken to correct the problems;

c. Itemized cost 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 cost 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).

100. In each report or document that Respondent submits as required by this CAFO, it must certify that the report or document 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.

101. Respondent must submit all documents and reports required by this CAFO by email to riley.ellen@epa.gov.

102. Following receipt of the SEP completion report described in paragraph 99, above, 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 that EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 104.

103. If 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 EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 104, below.

104. 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 89, Respondent must pay a penalty of $71,004.

b. If Respondent did not complete the SEP satisfactorily, but 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 88, Respondent must pay a penalty $12,838.

c. If Respondent did not submit timely the EMS Manual, any EMS implementation status reports, any EMS Audit Reports, any Audit Response and Action Plans, and/or the SEP completion report, required by paragraphs 89, 90, 94, 95, and 96, or any other report required by this CAFO, Respondent must pay penalties in the following amounts for each day after such report or document was due until it submits the report or document:

Penalty per violation per day	Period of violation
$500	1st through 14th day
$1000	15th through 30th day
$1500	31st day and beyond

105. 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.

106. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 81, above, and will pay interest and nonpayment penalties on any overdue amounts.

107. Any public statement that Respondent makes referring to the SEP must include the following language: "Metalworking Lubricants Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Metalworking Lubricants Company for violations of Section 311 of the Clean Water Act and its implementing regulations at 40 C.F.R. Part 112."

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. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: barton.kasey@epa.gov (for Complainant); and ABujoll@metalworkinglubricants.com (for Respondent).

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

111. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

112. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with the requirements of the oil pollution prevention regulations at 40 C.F.R. Part 112 and the SPCC Plan for the Facility.

113. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Except as provided in paragraph 110 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

114. This CAFO constitutes a "prior violation(s)" as that term is used in EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

115. The terms of this CAFO bind Respondent, 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 fees in this action.

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

119. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C.§ 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

Metalworking Lubricants Company, Respondent

1/13/2017
Date

Adam Bujoll
Vice President
Metalworking Lubricants Company

United States Environmental Protection Agency, Complainant

1/19/2017
Date

Douglas E. Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

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.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5