



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

NOV 14 2016

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL 7009 1680 0000 7662 6576**  
**RETURN RECEIPT REQUESTED**

Ms. Beth Gotthelf  
Butzel Long  
Stoneridge West  
41000 Woodward Avenue  
Bloomfield Hills, Michigan 48304

Re: Perfection Industries, Inc., Detroit, Michigan  
MID 005 349 196

**RCRA-05-2017-0002**

Dear Ms. Gotthelf:

Enclosed is a fully executed RCRA § 3013 Administrative Order on Consent (AOC). As indicated by the filing stamp on its first page, we filed the AOC with the Regional Hearing Clerk on November 14, 2016.

Please direct any questions regarding this case to Rachel Zander at (312) 353-1505.

Sincerely,

A handwritten signature in cursive script that reads "Gary J. Victorine".

Gary J. Victorine, Chief  
RCRA Branch

Enclosure

cc: Rachel Zander, Office of Regional Counsel (zander.rachel@epa.gov)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604



IN THE MATTER OF: )  
)  
PERFECTION INDUSTRIES, INC. )  
18571 WEAVER STREET )  
DETROIT, MICHIGAN )  
)  
)  
EPA ID No. MID 005 349 196 )  
)  
Respondent. )  
\_\_\_\_\_ )

ADMINISTRATIVE  
ORDER ON CONSENT

Docket No.: RCRA-05-2017-0002

PROCEEDING UNDER SECTION  
3013 OF THE RESOURCE  
CONSERVATION AND RECOVERY  
ACT, 42 U.S.C. § 6934

## RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT

### I. JURISDICTION

1. This Consent Order (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA or Agency) by Section 3013(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6934 (RCRA). The authority to issue this Consent Order has been duly delegated to the Regional Administrators, and further delegated to the Director, Land and Chemicals Division, Region 5.
2. This Consent Order is issued to Perfection Industries, Inc. (Perfection Industries or Respondent) of Detroit, Michigan, a corporation organized under the laws of the State of Michigan. Respondent consents to and agrees not to contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require Respondent's full or interim compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims.
3. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's regional office at 77 West Jackson Boulevard, Chicago, Illinois 60604.
4. On October 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Michigan the authorization to operate a hazardous waste program in lieu of the federal hazardous waste program established under RCRA Subtitle C. 51 Fed. Reg. 36804 (Oct. 30, 1986). Pursuant to the Memorandum of Agreement (MOA) between the State of Michigan and EPA, EPA expressly retains its rights to issue Orders and bring actions under Section 3013 of RCRA and any other applicable federal statute.

### II. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its successors, and assigns.

6. No change in ownership, corporate, or partnership status relating to the facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible for and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.
7. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Consent Order.
8. Any documents transferring ownership and/or operations of the facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

### **III. STATEMENT OF PURPOSE**

9. In entering into this Order, the mutual objectives of EPA and Respondent are the protection of human health and the environment through Respondent's implementation of sampling, analysis, monitoring and reporting at the Perfection Industries Detroit, Michigan facility (the Facility). In meeting these objectives, Respondent shall prepare and submit for approval to EPA a sampling and analysis work plan ("Work Plan") to perform testing, analysis, and reporting of soil samples in order to fully determine the nature and extent of the presence and/or release of hazardous waste, hazardous waste constituents, and/or Constituents of Concern ("COCs"), which are reasonably likely to be found in the environment as a result of the storage of drums at the Facility in an area of approximately 1,050 square feet as depicted in Exhibit A ("drum storage area"). COCs shall be specified in the Work Plan. After EPA approval of the Work Plan, Respondent must implement the Work Plan and any subsequent modifications to it made by EPA, as needed.

#### IV. FINDINGS OF FACT

10. Respondent owns and operates a chrome plating and black oxide coating business located at 18571 Weaver Street, (the Facility) that occupies approximately two-thirds of an acre in Wayne County, Michigan.
11. The Facility provides chrome plating and black oxide coating for the automotive, aerospace, and small engine industries. In addition, Perfection Industries operates a ring gauge machine shop.
12. Approximately 11,700 sq. ft. of the Facility is under roof with a concrete floor, and the majority of the remaining area to the rear of the building is unpaved.
13. The company property is bordered on the east side by Weaver Street, and on the west side by railroad tracks. The surrounding area is industrial. However, there is a residential area just northwest of the Facility.
14. Approximately 148,363 residents live within a 3-mile radius of the Facility (source EnviroFacts database).
15. Respondent currently employs approximately 12 people at the Facility.
16. Perfection Industries has been operating at the Weaver Street location since 1963.
17. The Facility has an EPA ID number (MID 005 349 196) and is listed as a Small Quantity Generator of hazardous waste. Hazardous wastes are generated in the chrome plating shop, black oxide shop and gauge shop at the Facility.
18. Perfection Industries submitted a RCRA Hazardous Waste notification 8700-12 form to EPA as a Small Quantity Generator on October 16, 1980. The Facility is currently regulated under RCRA as a Small Quantity Generator.
19. Wastes generated on-site include D001 (sodium hydroxide cake) waste generated from the black oxide shop, D035 (methyl ethyl ketone (MEK)) waste generated from removing masking paint from parts after chrome plating, D007 waste (chrome sludge) generated from cleaning out electoplating tanks, and D001 waste (naptha) generated in the Lapping Area in the Gauge Shop.<sup>1</sup> Solvent and waste paint are also generated from cleaning

---

<sup>1</sup>EPA first promulgated regulations on May 19, 1980 (45 Fed. Reg. 33073), for the identification and listing of wastes that are regulated under RCRA as hazardous wastes for purposes of 40 CFR Parts 262 through 265, 268, 270, 271, and 261 (regulatory hazardous wastes). Regulatory hazardous wastes include wastes that are designated by waste codes beginning with the letters D, F, K, P and U. Waste codes D000 through D003 are described in 40

painted parts after chrome plating. Used glass bead and aluminum oxide media blast material is discarded as a non-hazardous waste. Other wastes include used fluorescent lamps and used rags.

20. On February 5 and 6, 2013, EPA and the Michigan Department of Environmental Quality (MDEQ) conducted a hazardous waste compliance evaluation inspection at the Facility. Containers of waste were stored outside after a fire at the Facility in 2006.
21. During the February 2013 EPA and MDEQ RCRA inspection, the inspectors observed approximately 40 55-gallon containers stored outdoors in an unpaved area at the rear of the facility. Some of the rusty 55-gallon containers had opened and contents were spilled onto the unpaved ground.
22. During the February 2013 EPA and MDEQ inspection, the inspectors reviewed the last off-site hazardous waste manifest, which was dated August 14, 2003.
23. The February 2013 EPA and MDEQ inspection documented illegal storage of various wastes that were generated on-site and stored, exceeding the 90 day storage limit.
24. After the February 2013 EPA and MDEQ RCRA inspection, EQ-Detroit LPS, Detroit, Michigan sampled the forty 55-gallon containers and recorded their results on a "Lab Fingerprinting Worksheet."
25. EQ-Detroit prepared a "Compatibility Group Worksheet" where various 55-gallon containers were combined into various groups which included Sludge (D007); Caustic (D002); Combustible (D001/D035/F003); Solids (None); Non-Hazardous Liquid/Oily Water (D007/MEK); Oil (Used Oil); Red/Brown Solid (D008); Red/Brown Liquid (D006/D007); Gray Powder (D008); and Empty Drums.
26. The releases or potential release of hazardous wastes and hazardous substances or potential hazardous wastes and potential hazardous substances at the Facility identified in Paragraphs 22, above, may result in a release of hazardous wastes and hazardous

---

CFR §§ 261.21 through 261.23. Waste codes D004 through D043 are described in 40 CFR § 261.24. Wastes codes beginning with "F" are listed and described in 40 CFR § 261.31. Waste codes beginning with "K" are listed and described in 40 CFR § 261.32. Waste codes beginning with "P" and waste codes beginning with "U" are listed and described in 40 CFR § 261.33.

The scope of RCRA § 3013 extends not only to such regulatory hazardous wastes, but also to wastes that are hazardous wastes pursuant to RCRA § 1004(5), even though they might not be regulatory hazardous wastes.

substances into the environment causing soil contamination and/or soil vapor intrusion due to the storage locations of the hazardous wastes or hazardous substances; the physical nature of the hazardous wastes and hazardous substances; and the physical condition of the storage area.

27. Hazardous wastes and hazardous substances released into the environment at or from the Facility have the potential to migrate off-site and impact human or ecological receptors through direct contact with contaminated soils; ingesting contaminated soils; or inhaling vapor from contaminated soils.
28. Health effects to Facility employees, Facility visitors, and trespassers that can result from inhalation, ingestion, and direct contact exposures to the hazardous wastes or hazardous substances generated or stored at the Facility, identified in the paragraphs above and including known human carcinogens, include effects to the cardiovascular, gastrointestinal, hematological, immunological, musculoskeletal, neurological, ocular, reproductive, renal, respiratory organ systems. Some of the hazardous substances also effect human development.
29. Exposure to cadmium in humans can affect various organ systems including: cardiovascular (heart and blood vessels); developmental (effects during periods when organs are developing); gastrointestinal (digestive); neurological (nervous system), renal (urinary system or kidneys), reproductive (producing children), respiratory (from nose to the lungs). Known to be a human carcinogen.
30. Exposure to chromium in humans can affect various organ systems including: immunological (immune system); renal (urinary system or kidneys); respiratory (from nose to the lungs). Known to be a human carcinogen.
31. Exposure to lead in humans can affect various organ systems including: cardiovascular (heart and blood vessels); developmental (effects during periods when organs are developing); gastrointestinal (digestive); hematological (blood forming); musculoskeletal (muscles and skeleton); neurological (nervous system); ocular (eyes); renal (urinary system or kidneys); reproductive (producing children). Reasonably anticipated to be a human carcinogen.
32. Exposure to 2-butanone (also known as methyl ethyl ketone (MEK)) can affect various organ systems including: ocular (eyes); and respiratory (from the nose to the lungs).

## V. DETERMINATIONS AND CONCLUSIONS OF LAW

33. Respondent's Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

34. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
35. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).
36. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27) defines the term “solid waste” to mean “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . . .”
37. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term “hazardous waste” to mean:
  - a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—
    - (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
    - (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
38. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term “disposal” to mean:
  - the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
39. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and/or operated by Respondent, is a facility at which hazardous waste is or has been stored, treated, or disposed of.
40. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that there may be a substantial hazard to human health or the environment due to the presence and/or release of hazardous wastes at or from the Facility.
41. EPA has further determined that Respondent, as owner and/or operator of the Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of the hazard to human health or the environment.



## VI. ORDER

42. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent consents to and is hereby ordered to perform the following actions in the matter and by the dates specified herein.

43. Within thirty (30) days of receipt of this Consent Order, Respondent shall submit a proposed Work Plan to EPA for approval. The Work Plan shall be used to determine the nature and extent of contamination for hazardous wastes and hazardous constituents likely to be present at Respondent's Facility in the drum storage area and in run-off from the drum storage area. The Work Plan shall include a discussion about proposed soil sample locations to be analyzed for the primary constituents likely to be present at the drum storage area and the following RCRA metals: cadmium (D007), chromium (D006), and lead (D008) as well as for MEK (D035) and caustic liquids (D002). Such proposed Work Plan shall be specific and shall include, but is not limited to, the following:

Soil sampling and analysis, including schedule and proposal for progress reports, to collect and analyze representative soil samples to determine the nature and extent of any soil contamination in and around the area where the forty 55-gallon containers were stored behind the facility, as well as run-off sampling and analysis, including schedule and proposal for progress reports, to determine the nature and extent of contaminated run-off to the railroad right-of-way. The plan shall include the number, location, depth of samples, the parameters of the analyses, and quality assurance measures. The plan may provide for either the immediate analysis of the run-off samples or for those samples to be held within the acceptable soil sample holding time, with analysis required if decided by the EPA Project Coordinator

44. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with EPA Region 5's Environmental Investigations Standard Operating Procedures and Quality Assurance Manual.

45. The soil samples shall be collected to adequately determine the horizontal and vertical extent of contamination. The samples shall be analyzed using EPA-approved analytical methods to provide total concentrations of the requested analyses.

46. Each Work Plan above shall be designed to define the nature, location, extent, direction and rate of movement of any hazardous wastes or hazardous waste constituents which are present at or have been released from the Facility. Each Work Plan shall document the procedures the Respondent shall use to conduct the investigations necessary: (1) to characterize the potential pathways of migration of hazardous waste and hazardous waste constituents; (2) characterize the sources of hazardous waste and/or hazardous waste

constituent contamination; (3) define the degree and extent of hazardous waste and/or hazardous constituent contamination; and (4) identify actual or potential receptors. Each Work Plan shall, at a minimum, include:

- a. Objectives of the Work Plan;
  - b. A preliminary facility-specific Conceptual Site Model (CSM) for contaminants and exposure pathways;
  - c. Field investigation procedures;
  - d. Field sample collection procedures;
  - e. Field measurements;
  - f. Quality assurance/quality control ("QA/QC") procedures;
  - g. Data management;
  - h. Schedule;
  - i. Sample analysis and testing; and
  - j. Health and Safety Plan.
47. In accordance with the Work Plan schedules, or within forty-five (45) days of completion of any additional work required pursuant to Paragraph 50, below, Respondent shall submit a final report to EPA addressing the activities proposed in the Work Plan, and the requirements and goals outlined in Paragraphs 42 through 46, above, including a summary of all actions taken to comply with this Consent Order and recommendations for further actions, including any remediation options. The report will serve as a Current Conditions Report, summarizing the results of soil investigations for work completed in accordance with the Work Plan, including the nature, location, extent, direction and rate of movement of any hazardous wastes and/or hazardous constituents identified at or as having been released from the Facility.
48. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data required by this Consent Order. Such previous work may be used to meet the requirements of this Consent Order upon submission to, and formal approval by, EPA.
49. All work undertaken pursuant to this Consent Order shall be developed and performed in accordance with RCRA and its implementing regulations, and all relevant EPA guidance documents, including those found at <http://www.epa.gov/epawaste/hazard/correctiveaction/resources/guidance/index.htm>. All attachments to this Consent Order are incorporated herein by reference.

## **VII. ADDITIONAL WORK**

50. Based on work performed under the work plan described above, EPA may determine that additional investigation, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health or the environment which may be presented by the presence or release of hazardous wastes at or from the Facility. If EPA determines that Respondent shall perform additional work, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the contents of such work plan. Such work plan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

## **VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL**

51. NTH Consultants, Ltd. is approved as Respondent's contractor pursuant to this Consent Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Consent Order.

## **IX. SUBMISSIONS / AGENCY REVIEW**

52. EPA will review Respondent's Work Plan and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVIII, below.
53. Within thirty (30) calendar days of receipt of EPA's comments on the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission. In the event that EPA disapproves the revised submission, Respondent may invoke the dispute resolution procedures of Section XVIII, below. Otherwise, EPA reserves the right to revise such submission and seek to recover from Respondent the costs thereof, in accordance with any rights that it may have under RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

54. Within thirty (30) days following EPA's written approval of a submission or portion thereof, Respondent shall implement such approved document or portion.
55. Prior to approval in writing, or approval with modifications in writing, no plan, report, or other submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.
56. Upon disapproval by EPA of a revised submission, and in the event Respondent does not invoke the dispute resolution procedures of Section XVIII, below, Respondent shall, within fifteen (15) days, submit to EPA for approval a subsequent revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a subsequent revised submission.
57. In the event EPA and Respondent cannot resolve issues relating to EPA's comments and EPA disapproves of any subsequent revised submission, Respondent may invoke the dispute resolution procedures of Section XVIII, below. Otherwise, EPA reserves the right to revise such submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.
58. Respondent shall provide EPA with semi-annual progress reports if the site work extends beyond a six-month period demonstrating that the activities approved under this Consent Order are being carried out. The first such report shall be submitted within three months after the effective date of this Consent Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Consent Order is effective. These semi-annual progress reports shall be due at the end of the month for each six month period.
59. Two (2) copies (one (1) hard copy, double-sided if possible, and one (1) electronic copy) of all submissions (including revised submissions) required to be submitted by this Consent Order shall be delivered to the EPA Project Coordinator designated pursuant to Section X, Project Coordinator, below.
60. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Consent Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent, nor shall any failure to comply with the provisions of this paragraph be subject to the dispute resolution provisions set forth in Section XVIII, below.

61. All written proposals, work plans, reports, and/or other submissions required by this Consent Order are, upon approval or approval with modifications by EPA, incorporated into this Consent Order as if fully set forth in text herein. Any noncompliance with such EPA-approved plans, reports, specifications, schedules, and attachments shall be noncompliance with this Consent Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain any formal, written approvals required by this Consent Order.
62. In all instances which this Consent Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a “responsible official”:

I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the facility official having supervisory responsibility for the person who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a “responsible official” means person in charge of a principal Facility function, or any other person who performs similar decision-making functions for the Facility.

#### **X. PROJECT COORDINATORS**

63. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent to Project coordinators as follows:
64. EPA hereby designates as its Project Coordinator:

Walt Francis (LR-8J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

65. Respondent hereby designates as its Project Coordinator:

Kerry Ryan  
Perfection Industries  
18571 Weaver Street

Detroit, Michigan 48228

66. Each Project Coordinator shall, on behalf of the party that designated that Project Coordinator, oversee the implementation of this Consent Order and function as the principal project contact.
67. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

#### **XI. QUALITY ASSURANCE/QUALITY CONTROL**

68. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan (QAPP) for all sampling and analysis conducted under this Consent Order. The Work Plan shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in an approved work plan must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.
69. The name, address, telephone number and contact person of each analytical laboratory Respondent proposes to use must be specified in the each applicable Work Plan.
70. All work plans required under this Consent Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
71. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require resampling and additional analysis.
72. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA, and that the laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846) or other methods deemed

satisfactory to EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required. If methods other than EPA methods are to be proposed, Respondent shall submit all protocols to be used for analysis to EPA at least 30 calendar days prior to the commencement of the analyses.

## **XII. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT**

73. If EPA's Project Coordinator determines that activities in compliance or noncompliance with this Consent Order have caused or may cause a release of hazardous waste or waste constituents, or a threat to the public health or to the environment, EPA may require that Respondent stop further implementation of this Consent Order for such a period of time as may be needed to abate any such release or threat and/or undertake any action which EPA determines is necessary to abate such release or threat; and may require Respondent to resume implementation of this Consent Order.

## **XIII. SAMPLING AND DOCUMENT AVAILABILITY**

74. The Respondent shall submit to EPA upon request, the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent in implementing the requirements of this Consent Order.
75. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of engaging in any field activities at the Facility conducted pursuant to this Consent Order. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Consent Order, provided that such sampling shall not delay EPA's proposed sampling activities. Upon request, Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent pursuant to this Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

#### **XIV. ON-SITE AND OFF-SITE ACCESS**

76. Respondent shall provide access at all reasonable times to the Facility and Facility property and to all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Consent Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Facility in order to conduct activities which EPA determines to be necessary.
77. To the extent that activities required by this Consent Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts as used in this paragraph shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.
78. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

#### **XV. RECORD PRESERVATION**

79. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to:

Walt Francis  
U.S. Environmental Protection Agency  
Region 5 (LR-8J)  
77 West Jackson Boulevard  
Chicago, IL 60604

In addition, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five year period at the written request of EPA.



## **XVI. INFORMATION SUBMITTED TO EPA**

80. Any information that Respondent is required to provide or maintain pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.
81. Respondent may assert a business confidentiality claim in the manner described in 40 CFR § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 CFR § 2.204(e)(4). Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 CFR Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.
82. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed and the basis therefore in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable case law. EPA may dispute any such claim of privilege pursuant to the dispute resolution provisions set forth in Section XVIII, below.

## **XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

83. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XIX, Force Majeure, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA.
84. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:
- a. For any failure to commence, perform or complete work as prescribed in this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$700 per day for each day of noncompliance, or part thereof, thereafter;

- b. For any failure to submit any draft or final work plans, plans, or reports as required by this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$700 per day for each day of noncompliance, or part thereof, thereafter; and
  - c. For any failure to submit other deliverables as required by this Consent Order: \$700 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter.
  - d. For failure to complete work under Section VI and submit a final report per Section IX, notwithstanding further work required by Section VII, by 120 days after the date EPA approves of the work plan under this order: \$3,000.
85. All stipulated penalties shall begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.
86. All stipulated penalties owed to EPA under this section shall be due within thirty (30) calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures under Section XVIII, below. Such demand for payment shall describe the noncompliance and shall indicate the amount of stipulated penalties due.
87. All stipulated penalty payments may be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. Department of the Treasury  
Attention: EPA Region 5, Office of the Comptroller  
P.O. Box 70753  
Chicago, Illinois 60673

All payments shall reference the Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5 (E-19J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

88. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVIII, Dispute Resolution. Stipulated penalties shall continue to accrue, but are not required to be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit

to EPA within twenty-one (21) calendar days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in Paragraph 87 of this Section.

89. Neither the filing of a petition to resolve a dispute nor the payment of stipulated penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.
90. The assessment of stipulated penalties set forth in this section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

### **XVIII. DISPUTE RESOLUTION**

91. If a dispute arises under this Consent Order, the procedures of this section shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.
92. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefor, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within the twenty-eight (28) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision.
93. Except as provided in Paragraphs 91 and 92 above, the existence of a dispute, as defined in this section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.
94. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review.

## **XIX. FORCE MAJEURE**

95. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. A *force majeure* does not include: increased costs of performance; changed economic circumstances; failure to obtain federal, State or local permits; reasonably foreseeable weather conditions which could have been overcome by due diligence.
96. Respondent shall notify EPA, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA's efforts to protect human health or the environment, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.
97. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXIII, Subsequent Modification of Order. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVIII, Dispute Resolution.

## **XX. RESERVATION OF RIGHTS**

98. EPA expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, Work Plan or in this Consent Order, consistent with the objectives of this Consent Order.
99. EPA expressly reserves all statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, specifically including, without limitation, the right to commence a civil action against Respondent seeking an order requiring compliance with this Consent Order and/or the assessment of penalties under § 3013(e) of RCRA, 42 U.S.C. § 6934(e), and all rights EPA has pursuant to RCRA § 3013(d) to conduct monitoring, testing, analysis at the Facility and to seek reimbursement from Respondent for the costs of such activity. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.
100. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, and to order that Respondent perform additional tasks.

## **XXI. OTHER APPLICABLE LAWS**

101. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.
102. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.
103. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit, under federal, state or local law; nor shall this Consent Order in any way affect Respondent's obligation, if any, to secure such a permit; nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed as conditions of such permit or of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or

cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

## **XXII. OTHER CLAIMS**

104. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous waste constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or migrating from the Facility.
105. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.
106. Neither the United States nor EPA shall be a party or be held out as a party to any contact entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order.

## **XXIII. SUBSEQUENT MODIFICATION OF CONSENT ORDER**

107. Except as provided in Paragraph 109, this Consent Order may only be modified by written amendment signed by the Division Director or the Regional Administrator, EPA, Region 5. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order. Any oral agreement between EPA and Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Respondent, shall have as its effective date the date of such oral agreement.
108. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XVII, Delay in Performance/Stipulated Penalties.
109. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as

an effective date the date on which the agreement is signed by the EPA Project Coordinator.

110. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Consent Order. Routine communications exchanged verbally, in person or by telephone, between the parties to facilitate the orderly conduct of work contemplated by this Consent Order shall not alter or waive any rights and/or obligations of the parties under this Consent Order.

#### **XXIV. STATEMENT OF SEVERABILITY**

111. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Order shall not be affected thereby and shall remain in full force.

#### **XXV. TERMINATION AND SATISFACTION**

112. Respondent may seek termination of this Consent Order by submitting to EPA a written document which indicates Respondent's compliance with all requirements of this Consent Order, and the associated dates of approval correspondence from EPA. The provisions of this Consent Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgment). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed.
113. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including without limitation, Section XV (Record Preservation), XX (Reservation of Rights), XXI (Other Applicable Laws).

#### **XXVI. SURVIVABILITY/PERMIT INTEGRATION**

114. Subsequent to the issuance of this Consent Order, an order may be issued to the Facility incorporating the requirements of this Consent Order by reference.

115. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby.

**XXVII. ATTORNEYS' FEES AND COSTS**

116. Except as otherwise provided herein, Respondent shall bear its own costs and attorneys' fees.

**XXVIII. EFFECTIVE DATE/DATE OF ISSUANCE**

117. The effective date of this Consent Order shall be the date on which Respondent receives a true and correct copy of the fully executed Consent Order.



**IT IS SO AGREED AND ORDERED**

*Margaret M. Guerriero*  
\_\_\_\_\_  
for Margaret M. Guerriero, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5

*11/2/16*  
\_\_\_\_\_  
Date

FOR COMPLAINANT

*Kerry Ryan*  
\_\_\_\_\_  
Kerry Ryan, Vice President  
Perfection Industries  
18571 Weaver Street  
Detroit, Michigan 48228

*8/31/16*  
\_\_\_\_\_  
Date

FOR RESPONDENT

Perfection Industries, Incorporated  
Detroit, MI

18605 Weaver St.  
Parcel Number 22068306.  
Approximate Lot Lines  
(50'x150')

18571 Weaver St.  
Parcel Number 22068307-9  
Approximate Lot Lines  
(150'x150')

Approximate Location of Drums  
based on 5-9-2010 Aerial  
Approx (70'x15'); 1,050 sq.ft.



Scale: 1" = 50'

100 ft

In the matter of: Perfection Industries, Inc.  
Docket Number: RCRA-05-2017-0002

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing Administrative Order on Consent, which was filed on 11/14/2016, this day in the following manner to the addressees:

Copy by certified mail  
return-receipt requested:

Beth Gotthelf  
Butzel Long  
Stoneridge West  
41000 Woodward Avenue  
Bloomfield Hills, MI 48304

Copy by e-mail to  
Attorney for Complainant:

Rachel Zander  
zander.rachel@epa.gov

Attorney for Respondent

Beth Gotthelf  
gotthelf@butzel.com

Dated: 11/14/2016



Walt Francis  
U.S. Environmental Protection Agency, Region 5