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

SEP 3 0 2009

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LR-8J

Mr. Michael Usher
President
Usher Enterprises
9000 Roselawn Avenue
Detroit, Michigan 48204

Re: Consent Agreement and Final Order

Usher Oil Company, Inc.	Usher Oil Company, Inc.	Usher Transportation, Inc.
9000 Roselawn Avenue	10585 Grand River Avenue	8900 Roselawn Avenue
Detroit, Michigan 48204	Detroit, Michigan 48204	Detroit, Michigan 48204
ID No.: MID016985814	ID No.: MIK678128570	ID No.: MIK949844534

Docket No.: RCRA **RCRA-05-2009-0023**

Dear Mr. Usher:

Enclosed, please find an original signed and fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The originals were filed on SEP 3 0 2009 with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of $19,700 in the manner prescribed in paragraphs 44-48 of the CAFO, and reference all checks with the number BD **2750942R015** and docket number RCRA **RCRA-05-2009-0023**. Your first payment is due within 30 calendar days of the effective date of the CAFO. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings.* Thank you for your cooperation in resolving this matter.

Sincerely,

Willie H. Harris, P.E.
Chief, RCRA Branch
Land and Chemicals Division

Enclosures

cc: Mark Daniels, MDEQ (w/CAFO)

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NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

A. Such proceeding is material to the business or financial condition of the registrant;
B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	) Docket Number: RCRA-05-2009-002[illegible]
	)
Usher Enterprises, Inc.	) Proceeding to Assess
Doing Business As:	) Administrative Penalty
	) under Section 3008(a) of the
Usher Oil Company, Inc.	) Resource Conservation and
Usher Transportation, Inc.	) Recovery Act (RCRA),
Usher Properties, Inc.	) 42 U.S.C. §6928(a)
Roselawn Acquisition Company	)

EPA Id No.: MIK678128570
MID016985814
MIK949844534

RECEIVED
SEP 30 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency ("EPA" or "Complainant") and Usher Enterprises, Inc. ("Usher" or "Respondent") operating at 10585 Grand River Avenue ("Grand River facility") and 8900 and 9000 Roselawn Avenue ("Roselawn facility") in Detroit, Michigan have agreed to a settlement of this action before filing of a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules") by the filing of this Consent Agreement and Final Order ("CAFO" or "Order"), 40 C.F.R. §§22.13(b), 22.18(b)(2) and (3).

Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

I. PRELIMINARY STATEMENT OF JURISDICTION

This civil administrative action is instituted pursuant to the authority vested in the Administrator of EPA pursuant to Sections 2002(a)(1), 3006(b) and (h), and 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §§6912(a)(1), 6926(b) and (h) and 6928(a) and pursuant to the Consolidated Rules against Respondent for administrative penalties and appropriate injunctive relief. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division.

II. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to sections 3001 through 3038 of RCRA, 42 U.S.C.§§6901 through 6938, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 268, 270 and 273, governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste, and 40 C.F.R. Part 279 governing the management of used oil.

2. Pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste and used oil management programs in lieu of the federal program. Pursuant to Sections 3006(b) and (h) of RCRA, 42 U.S.C. §6926(b) and (h), the Administrator of EPA granted the State of Michigan final authorization to administer its hazardous waste and used oil programs in lieu of the federal RCRA program. The EPA-authorized Michigan regulations are codified at Michigan Administrative Code (MAC) Rules 299.9101 *et seq.* *See also*, Title 40 of the Code of Federal Regulations, Section 272.1151, 40 C.F.R. §272.1151 *et seq.*

3. For purposes of this CAFO, the parties agree that EPA may enforce the State authorized regulations. Any violation of any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA and may be subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C.§6928.

4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), EPA provided notice of commencement of this action to the State of Michigan.

III. GENERAL ALLEGATIONS

A. Respondent's Corporate Status

5. Usher is the Respondent. Usher is the holding company for Usher Oil Company, Inc., Usher Transportation, Inc, Usher Properties, Inc. and Roselawn Acquisition Company.

6. Usher Oil Company is a centralized waste treatment and used oil recycling business operating at the Roselawn and Grand River facilities.

7. Usher Transportation, Inc. transports liquids to and from the Grand River and Roselawn facilities.

8. Respondent and/or one or more of its subsidiaries is the owner and/or operator of the property, business and/or equipment located at the Roselawn and the Grand River facilities.

9. Respondent is a corporation incorporated under the laws of the State of Michigan.

10. Respondent is a "person" as defined under MAC R 299.9106(i), 42 U.S.C. §6903(15) and 40 C.F.R. §260.10.

B. Roselawn Site Features and Operations

11. Usher Transportation, Inc. has offices located at 8900 Roselawn Avenue in Detroit, Michigan. Usher Transportation Inc. uses EPA identification number MIK949844534.

12. Usher Oil Company, Inc. operates used oil processing operations at 9000 Roselawn Avenue in Detroit, Michigan. It uses EPA identification number MID016985814 for the Roselawn facility.

13. The 8900 and 9000 Roselawn Avenue addresses are contiguous and share a common entrance.

14. At the Roselawn facility there are Pits 2-4 and 51 aboveground tanks (Tanks 5-53, 101 and 102).

C. Grand River Site Features and Operations

15. During the period 2002 through 2005, Usher Oil Company, Inc. operated the Grand River facility. It used EPA identification number MID985653344 for this facility until it received a new site-specific number, MIK678128570.

16. At the Grand River facility there are two aboveground tanks (North and South Tanks) with individual capacities of 467,326 gallons. The combined total capacity of these tanks is 934,652 gallons.

17. Used oil has been stored at the Grand River facility in the North and South Tanks.

18. Used oil was transported between the Roselawn and the Grand River facilities. Used oil was also transported from the Grand River facility to customers of Usher.

D. Summary of Used Oil Activities

19. Since at least 2002, Usher Oil Company has been a used oil processor, transporter, transfer facility and marketer of both on- and, prior to 2004, off-specification used oil.

Usher Oil Company accepted used oil with total halogen concentrations greater than 1,000 parts per million (ppm). It stored used oil at both the Roselawn and Grand River facilities. It processed used oil at the Roselawn facility.

20. Pit 2-4 and Tanks 5-16 at the Roselawn facility and the North and South Tanks at the Grand River facility are used oil existing tanks as that term is defined in MAC R 299.9109(u), 40 C.F.R. §279.1. Tanks 19-23 are used oil new tanks as defined in MAC R 299.9109(y), 40 C.F.R. § 279.1.

E. Summary of Investigative Activities and Tolling Agreements

21. On or about June 18-22 and 24-28, 2002, and November 15, 2005, EPA inspected the Roselawn and Grand River facilities to determine compliance with RCRA.

22. On February 10, 2004, EPA sent Usher a request for information pursuant to section 3007 of RCRA, 42 U.S.C. §6927. On April 19 and 20, 2004, Usher submitted a response to EPA's RCRA information request.

23. On March 28, 2006, EPA sent Usher a notice of violation ("NOV") identifying potential violations of RCRA. On June 5, 2006, Usher submitted a response to the NOV.

24. On August 7, 2007, EPA sent Usher a pre-filing notice letter ("Pre-Filing Notice") identifying potential violations of RCRA and its potential penalty exposure. Usher and EPA agreed to delay Usher's response to that letter while they were conducting settlement discussions.

25. Usher and EPA agreed to toll any applicable statute of limitations for violations of RCRA alleged in the March 28, 2006, and August 7, 2007, letters. Usher and EPA entered into a series of tolling agreements which resulted in tolling any applicable statute of limitations for the RCRA violations from May 1, 2006, to September 30, 2009.

IV. ALLEGED VIOLATIONS

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

26. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

27. EPA alleges that from January 2002 to February 2004 Usher accepted shipments of used oil with total halogen concentrations greater than 1,000 ppm. It stored or processed these used oils in the North Tank at the Grand River facility and Tanks 5-8 and 21 at the Roselawn facility. EPA alleges that Usher failed to demonstrate that its used oil had not been mixed with a listed hazardous waste as required by MAC R 299.9809(2)(b), 40 C.F.R. §279.10(b)(1)(ii). During the period January 2002 to February 2004, Usher did not have an operating license for the treatment or storage of hazardous waste pursuant to MAC R 299.9502(1) and section 3005 of RCRA, 42 U.S.C. §6905.

COUNT II - Insufficient Secondary Containment

28. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

29. During the June 2002 inspection, EPA observed cracks in the secondary containment walls around Tanks 5-12 and 19-23 and containers of used oil and used oil filters on dirt and/or gravel at the Roselawn facility. EPA observed that the walls of the secondary containment at the Grand River facility were composed partially of soils, and that the floor of the secondary containment consisted of gravel. During the November 2005 inspection, EPA observed that milled asphalt had been added to the walls and floor of the secondary containment at Grand River, and further observed rain soaking through the asphalt millings. EPA alleges that Usher Oil Company failed to have secondary containment for used oil storage tanks and containers at the Roselawn and Grand River facilities which met the requirements of MAC R 299.9813(3) and (7), 40 C.F.R. §§279.54(c), (d) and (e).

COUNT III - Failure to Comply with the Used Oil Analysis Plan Requirements

30. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

31. Usher's written used oil analysis plan in 2002 did not: (a) identify the sampling method or frequency of sampling for determining total halogens; (b) indicate if analyses were to be performed off-site or on-site; or (c) include consideration of total halogens and flash point as parameters when determining if blended oil meets specifications. EPA alleges that from at least June 18, 2002 to November 15, 2005, there were also instances when Usher did not follow its analysis plan by (a) failing to compare fingerprint testing with the original waste approvals; (b) using sampling methods not identified in the plans; (c) failing to maintain or produce records for total halogen and flash point for on-specification determinations; and (d) failing to properly prepare or retain generator profile sheets. EPA alleges that Usher failed to develop and follow an adequate written analysis plan as required by MAC R 299.9813(3) and (7), 40 C.F.R. §279.55.

COUNT IV - Inadequate Contingency Plans

32. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

33. Pursuant to MAC R 299.9813(3) and (7), 40 C.F.R. §279.52(b), a used oil processor may amend an SPCC Plan prepared in accordance with 40 C.F.R. Part 112 to comply with used oil contingency plan requirements. EPA reviewed Usher's 2004 SPCC Plan and alleges that from June 1, 1999 to April 15, 2004, that it did not: (a) describe emergency arrangements with local responders; (b) contain a complete list or description of emergency equipment for the Roselawn facility; (c) document transmission of the plan to the local hospital; (d) include an updated list of emergency coordinators or tanks; (e) describe arrangements with local emergency personnel; or (f) include a list of emergency

equipment for the Grand River facility. EPA alleges that Usher failed to comply with the contingency plan requirements of MAC R 299.9813(3) and (7), 40 C.F.R. §279.52(b)(2)(iii) and (v), (b)(3)(ii), and (b)(4)(iii).

COUNT V - Inadequate Operating Record

34. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

35. In 2002, Usher's operating record did not include: (a) a record of the total halogen content for incoming crankcase oil or for oil generated from the treatment of oily wastewater; (b) a record of the total halogen concentrations for certain shipments of used oil shipped by Usher as on-specification used oil fuel to certain of its customers; or (c) a record of the total halogen concentrations for Tanks 5-8 and 21 during certain periods of time. EPA alleges that Usher's operating record failed to meet the requirements of MAC R 299.9813(3) and (7), 40 C.F.R. § 279.57(a)(2)(i).

COUNT VI - Failure to Adequately Document Shipments of Used Oil

36. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

37. Between January 1, 2002 and December 31, 2004, Usher failed to track the following information for certain shipments of used oil between the Roselawn and Grand River facilities: (a) the name and/or EPA identification number of the facility sending the shipments; and (b) for deliveries - the name or EPA identification number of the destination of the shipment. EPA alleges that Usher did not comply with MAC R 299.9813(3) and (7), 40 C.F.R. §279.56(a)(2) and (4), (b)(2) and (4).

COUNT VII - Poor Condition Tanks

38. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

39. During the June 2002 and November 2005 inspections, EPA observed tanks at the Roselawn facility that were used to store used oil and that allegedly were severely rusted, corroded, had peeling paint, or were spalling (Tanks 9, 11, 12, 14-16, and 19). EPA alleges that Usher did not comply with MAC R 299.9813(3) and (7), 40 C.F.R. §279.54(b)(1).

COUNT VIII - Failure to Label Tanks and Containers

40. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

41. During the June 2002 inspection, EPA observed tanks and containers storing used oil at both the Roselawn and Grand River facilities that were not labeled "Used Oil." These tanks and containers included Tanks A-C, 2, 3, 4, 9, 14-16, 22, 23, a 300-gallon tote at the Roselawn facility and one of the 500,000-gallon tanks at the Grand River facility. EPA alleges that Usher failed to comply with MAC R 299.9813(3) and (7), 40 C.F.R. §279.54(f)(1).

COUNT IX - Failure to Maintain Adequate Records

42. Paragraphs 1-25 are incorporated herein as if set forth in their entirety.

43. Usher failed to maintain adequate records of off-site shipments of on-specification and off-specification used oil fuel to certain of its customers from November 2000 to December 30, 2003. EPA alleges that Usher failed to comply with MAC R 299.9815(3)(e)(ii) and (f)(iv), 40 C.F.R. §279.74(a)(2), (a)(4), (b)(4) and (c).

V. CIVIL PENALTY

44. Paragraphs 1-43 are incorporated herein as if set forth in their entirety.

45. Based upon consideration of the statutory factors contained in RCRA and Respondent's submission of information related to its ability to pay a penalty, Complainant proposes and the Respondent consents to the assessment and payment of a civil penalty of $19,700 plus $300 interest to be paid in two equal installments of $10,000. The first installment is due within 30 days of the Effective Date of this Order. The second installment is due one year after the first installment.

46. The Respondent shall pay the civil penalty by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Treasurer, the United States of America" and addressed to:

U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63917-9000

The check shall reference the name of the Respondent, the Docket Number of this CAFO and BD number: ________________________. Interest and late charges shall be paid as specified below. If paying by EFT Respondent must pay the penalty to the "Treasurer, the United States of America" and send it to

Federal Reserve Bank of New York
ABA=021030004
Account=68010727
SWIFT Address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire should read "D 68010727 Environmental Protection Agency."

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

Regional Hearing Clerk
EPA Region 5
77 West Jackson Blvd. (E-19J)
Chicago, Illinois 60604-3590

Richard J. Clarizio
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Brenda Whitney
Land and Chemicals Division (LR-8J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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

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

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

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

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

VI. COMPLIANCE AGREEMENT

49. Immediately upon the Effective Date of this Order, subject to future regulatory action updating, amending, or replacing the test methods or record keeping requirements specified in this paragraph:

(A) Respondent shall analyze each incoming shipment of used oil for total halogens using one or more of the following SW-846 methods: Method 5050 followed by 9253 or 9056, Method 9077, Method 9076, or Method 9075.

(B) For each incoming shipment of used oil, Respondent shall record the method of analysis for total halogens, the concentration of total halogens, the incoming Michigan manifest number, and the generator's name.

(C) Respondent shall maintain a record of the analysis described in (A) and the information specified in (B) in an operating record until closure of the facility.

(D) Respondent shall comply with the tracking requirements for acceptance of used oil in MAC E 299.9813(3) and (7), 40 C.F.R. §279.56 and shall maintain the tracking records for at least three years.

50. Immediately upon the Effective Date of this Order, Respondent shall rebut the rebuttable presumption for used oil pursuant to MAC R 299.9809(2)(b), 40 C.F.R. §279.10(b)(1)(ii), on a used oil generator-specific basis.

51. Immediately upon the Effective Date of this Order, Respondent shall analyze each final-blended tank or each outbound shipment of on-specification used oil fuel to determine that the used oil fuel meets the specifications of MAC R 299.9809(1)(f), 40 C.F.R. §279.11.

(A) For metals and flash point, subject to action updating, amending or replacing the test methods specified in this paragraph, Respondent shall use the test methods specified in Table 6, 50 Federal Register 49189, November 29, 1985. Respondent shall use sample preparation and test methods that result in total metals analysis, not leachate test methods.

(B) For total halogens, Respondent shall use SW-846 methods, as specified in paragraph 49(A).

(C) For each outbound shipment of on-specification used oil fuel, Respondent shall record in the operating log a reference to analysis showing that the used oil fuel meets the specifications in MAC 299.9809(1)(f), 40 C.F.R. §279.11.

52. Immediately upon the Effective Date of this Order, for each outbound shipment of off-specification used oil fuel, Respondent shall comply with the requirements of MAC R 299.9813(3) and (7), 299.11003(1)(x) and 299.9815(3)(e) and (f), 40 C.F.R. §§279.56(b) and 279.74(a). Respondent shall maintain records for off-specification used oil as required by MAC R 299.9813(3) and (7) and R 299.11003(1)(x), 40 C.F.R. §279.56(c).

53. Within thirty (30) days after the end of the first complete calendar month following the Effective Date of this Order, Respondent shall provide a photocopy of the following documents for that calendar month:

(A) The operating record required by MAC R 299.9813(3) and (7) and 299.11003(1)(x), 40 C.F.R. §279.57(a));

(B) The tracking documents required by MAC R 299.9813(3) and (7), 299.11003(1)(x) and 299.9815(3)(e) and (f), 40 C.F.R.§279.56(b) and 40 C.F.R. §279.74(a) for off-specification used oil fuel;

(C) The tracking documents required by MAC R 299.9813(3) and (7), 299.11003(1)(x) and 299.9815(3)(e) and (f), 40 C.F.R. §§279.56(b) and 279.74(b) for on-specification used oil fuel;

(D) Each certification notice that Respondent received pursuant to MAC R 299.9815(3)(d) and (4), 299.9813(3) and (7), and 299.11003(1)(x), 40 C.F.R. §279.75 corresponding to shipments of off-specification used oil fuel;

(E) The used oil analysis plan required by MAC R 299.9813(3) and (7) and R 299.11003(1)(x), 40 C.F.R. §279.55. The analysis plan shall describe procedures that will be used to comply with the analysis requirements of MAC R 299.9813(4), 40 C.F.R. §279.53 and, if applicable MAC R 299.9815, 40 C.F.R. §279.72. It shall also describe procedures that will be used to determine if materials generated in the wastewater treatment process are solid wastes MAC R 299.9302, 40 C.F.R. §262.11 and if used oil processing residues are solid waste MAC R 299.9809(2)(e),

299.9813(6) and 299.9816, 40 C.F.R. §§279.10(e), 279.59 and 279.81.

54. Within 90 days of the Effective Date of this Order, Respondent shall submit to the Michigan Department of Environmental Quality ("MDEQ") and EPA a plan (the "Interim Decontamination Plan" or "IDP") that satisfies the provisions of this paragraph.

(A) Units Covered

(1) Except as provided below, the IDP shall apply to Tanks 5, 6, 7, 8, and 21 at the Roselawn facility and the North Tank at the Grand River Facility; their respective ancillary equipment (e.g. pipes, valves, fittings, flanges, valves and pumps); and secondary containment systems and the structures and equipment therein. Collectively, these will be referred to as the "Covered Units." The IDP also shall apply to contents removed from the Covered Units, as described below.

(2) The IDP need not include any Covered Unit that Respondent has emptied and cleaned since November 2005, provided that Respondent demonstrates to MDEQ that the cleanout was sufficient to satisfy paragraphs 54(C)(2)-(4).

(B) Performance Standard.

The IDP shall provide for: (1) the removal of the contents of the Covered Units; and (2) the proper management of the contents removed from the Covered Units in accordance with applicable laws and regulations and this paragraph. Contents removed from the Covered Units shall be managed as hazardous waste if they are determined to be hazardous waste in accordance with the procedures required by paragraph 54(C)(2) and incorporated in the IDP.

(C) Content of Interim Decontamination Plan.

The IDP shall identify the steps necessary to meet the Performance Standard on the schedule contained therein. The IDP shall include the following:

(1) Procedures for removing the contents of each Covered Unit on and after the date of cleanout. The date of cleanout and the schedule for implementing the IDP shall be determined in accordance with section 54(D) below. Prior to the date of clean-out, the contents of the Covered Units are not subject to the characterization requirements of section 54(C)(2).

(2) Procedures for determining whether the contents removed from each Covered Unit on or after the date of cleanout are hazardous waste. On the date of clean-out and until clean-out is completed, the contents of the

Covered Units are subject to the characterization requirements of this section 54(C)(2).

(a) Contents removed from Covered Units on or after the date of cleanout that may be sold for fuel shall first be tested for total halogens. If the total halogens are less than 1,000 ppm, then no further testing is required. If the total halogens are greater than 1,000 ppm, then Respondent shall manage the contents as hazardous waste unless a representative sample analyzed for the constituents listed in Table 1 below indicates that the specified constituents are below the maximum concentration specified in Table 1.

(b) Characterization of all other contents removed from Covered Units on or after the date of cleanout shall consist of analysis of one or more representative samples of the contents at an outside laboratory for: (i) the constituents listed in Table 1 below, and (ii) the hazardous waste characteristics described in MAC R 299.9212, 40 C.F.R. Part 261, Subpart C.

Table 1
Maximum Concentration of Select Halogenated Organics

Chemical Name	CAS No.	Maximum Concentration (mg/kg)
Total Organic Halogens as Cl	NA*	25 (40 C.F.R. 261.38, Table 1, Fn 1)
Carbon tetrachloride	56-23-5	39
1,1,2 Trichloro-1,2,2-trifluoroethane	76-13-1	30 (40 C.F.R. 268.40, Table 1)
1,2-Dichlorobenzene (o-Dichlorobenzene)	95-50-1	2400
Chlorobenzene	108-90-7	39
Dichlorodifluoromethane (CFC-12)	75-71-8	39
Methylene chloride (Dichloromethane)	75-09-2	39
Trichlorofluoromethane (Trichloromonofluormethane)	75-69-4	39
Tetrachloroethylene (Perchloroethylene)	127-18-4	39
1,1,1-Trichloroethane (Methyl chloroform)		39
Trichloroethylene	79-01-6	39
1,1,2-Trichloroethane (Vinyl trichloride)	79-00-5	39

*Not Applicable

(3) Procedures for properly managing the contents removed from each Covered Unit on or after the date of cleanout in accordance with applicable laws and regulations.

(4) Procedures for causing each Covered Unit to be inspected for integrity and suitability for continued use after it has been emptied and cleaned. The inspection shall be conducted by an inspector certified by the American Petroleum Institute (API) or Steel Tank Institute and Steel Plate Fabricators Association (STI). The inspector shall use Method SP001 (published by the STI), Method API 653, another approved industry standard, or a combination thereof. Respondent shall provide to MDEQ and EPA a written statement certified by the inspector that summarizes the condition of the tank.

(D) Time for Completion; Schedule.

The IDP shall include a schedule for implementing the IDP. The IDP shall provide for clean-out of the Covered Units in the sequence that Respondent determines appropriate, in its sole reasonable discretion; provided that Respondent shall complete the clean-out of the Covered Units within three (3) years after the Effective Date of this Order. Respondent shall provide MDEQ and EPA with 60 days prior written notice of its initiation of IDP activities. If Respondent changes its schedule for implementing the IDP it shall provide EPA and the MDEQ with the revised schedule.

(E) Notices.

Within 60 days after the activities described in the IDP have been completed, Respondent shall provide written certification by itself and an independent registered or licensed environmental professional to EPA and MDEQ that it has completed the activities and has achieved the Performance Standard. This certification shall also include a summary of the activities completed, the dates when completed and the methods used for testing for tank integrity. Documentation supporting the notice of completion shall be provided to EPA and MDEQ upon request.

55. Respondent shall notify the MDEQ and EPA in writing at least 60 days prior to the date(s) on which Respondent expects to begin closure of the Roselawn and Grand River facilities pursuant to MAC R 299.9813(3) and (7), 299.11003(x), 40 C.F.R.§279.54(h). This notice shall also be given prior to any change in ownership status of these two facilities.

56. Within three (3) years of the Effective Date of this Order, Respondent shall upgrade the imperviousness of the secondary containment at the Grand River facility consistent with Attachment 1 ("Secondary Containment Upgrade") and such that it meets MAC R299.9813(3) and (7), 299.11003(1)(x), 40 C.F.R. § 279.54(d).

57. Within three (3) years of the Effective Date of this Order, Respondent shall construct a concrete vault with a high level switch and remote wireless terminal (alarm) for the management of storm water within the secondary containment at the Grand River facility consistent with Attachment 2 ("Concrete Vault with High Level Switch and Remote Wireless Terminal"). Within 60 days of the Effective Date of this Order, Respondent shall submit a schedule for completion of the work required by this paragraph. Immediately upon the Effective Date of this Order, Respondent shall submit quarterly reports of its progress in completing the work required by this paragraph.

58. Within three (3) years of the Effective Date of this Order, Respondent shall decommission and remove Tanks 9-12 and install one new 30,000 gallon tank. Within five years of the Effective Date of this Order, Respondent shall remove Tanks 13-16 and install two new 30,000 gallon tanks. Respondent shall decommission and remove the tanks in accordance with the used oil closure requirements found in MAC R299.9813(3) and (7), 299.11003(1)(x), 40 C.F.R. §279.54(h). Respondent shall install the new tanks consistent with the used oil management requirements found in MAC R299.9813(3) and (7), 299.11003(1)(x), 40 C.F.R. §279.54 and the installation requirements found in Attachment 3 ("Tank Installation Process"). Within 60 days of the Effective Date of this Order Respondent, shall submit a schedule for completion of the work required by this

paragraph. Immediately upon the Effective Date of this Order, Respondent shall submit quarterly reports of its progress in completing the work required by this paragraph.

59. Respondent shall submit all reports, submissions, and notifications required by this Order to the U. S. EPA, Region 5, Land and Chemicals Division, Attention: Brenda Whitney (LR-8J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

VII. STIPULATED PENALTIES

60. Unless there has been a written modification by EPA of a compliance date or other term of this Order, or a delay that has been excused under Section IX Force Majeure and Excusable Delay, Respondent must pay the following stipulated penalties to the United States for violations of this Order

(A) For failure to timely submit an Interim Decontamination Plan that meets the requirements of paragraph 54(C): $750 per day for the first 14 days and $1,500 per day thereafter.

(B) For failure to timely and appropriately complete the work required for the Covered Units identified in paragraph 54(A) in accordance with the Performance Standard in paragraph 54(B) and the Time for Completion in paragraph 54(D): $1,000 per day for the first 14 days and $2,000 per day thereafter.

(C) For failure to timely and appropriately complete the work required by paragraphs 56 and 57 (upgrading the secondary containment and installation of the vault and alarm system) and 58 (remove and install select tanks) according to the schedule and terms of paragraphs 56, 57, and 58 respectively: $1,000 per day for the first 14 days and $2,000 per day thereafter.

(D) For failure to timely submit any information, notices or reports required by paragraphs 53-55, 57 and 58 not otherwise covered by this paragraph: $250 per day for the first 14 days and $500 per day thereafter.

61. Respondent's submissions to EPA required by this Order shall be considered timely if they are post-marked and mailed, faxed or electronically signed and submitted on or before the due dates identified in this Order, unless otherwise specified. In computing any period of

time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.

62. Whether or not Respondent has received notice of a violation, stipulated penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue until Respondent completes the task or submits the required deliverable. Separate stipulated penalties for separate violations of this Order shall accrue simultaneously.

63. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section VIII: Dispute Resolution. A written demand for stipulated penalties shall describe the violation and shall indicate the amount of penalties due.

64. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives EPA's demand letter. Interest shall accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. §3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue (e.g., more than 90 days after Respondent receives EPA's demand letter) and shall pay a monthly handling charge as specified in paragraph 48(b).

65. Respondent must pay all stipulated penalties by certified or cashier's check payable to the United States of America, and must send the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 631197-9000

A transmittal letter stating the name of the Facility, Respondent's name and address, and the EPA docket number of this action must accompany the payment. Respondent must simultaneously send a copy of the check and transmittal letters to the EPA employees identified in paragraph 47.

66. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section VIII: Dispute Resolution. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Respondent must submit such payment to EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

67. Neither invoking dispute resolution nor paying penalties shall affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

68. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Respondent's violation of any term of this Order. However, EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

VIII. DISPUTE RESOLUTION

69. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

70. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Technical Contact of the dispute. The Technical Contact for EPA is Brenda Whitney. The Technical Contact for the Respondent is Lyle Salsbury. Technical Contacts will attempt to resolve the dispute informally.

71. If the Technical Contacts cannot resolve the dispute informally, either party may pursue the matter informally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's opposition, and any matters which it considers necessary for determination.

72. The parties will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

73. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, the parties may submit additional written information to the Director of the Land and Chemical Division, EPA, Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemical Division, EPA, Region 5.

74. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement EPA's selected final written decision on the dispute, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

IX. *FORCE MAJEURE* AND EXCUSABLE DELAY

75. Force majeure, for the purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify EPA within two business days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within 15 business days thereafter Respondent must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

77. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, or if EPA determines that the delay is excusable, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations.

X. GENERAL TERMS OF SETTLEMENT

78. Respondent admits the jurisdictional allegations set forth in this CAFO.

79. Respondent neither admits nor denies the factual allegations set forth in this CAFO.

80. Respondent consents to the issuance and terms and conditions of this CAFO.

81. This CAFO constitutes the entire agreement and settlement between the parties.

82. Respondent waives the right to a hearing under Section 3008 of RCRA, 42 U.S.C. §6928, 40 C.F.R. §22.15(c); to contest the jurisdiction of this CAFO; to appeal any Final Order in this matter issued or entered in conformance with the terms of this Agreement; and consents to the issuance of a Final Order that conforms to the terms of this Agreement

without further adjudication.

83. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of EPA to bring an action in the appropriate United States District Court to compel compliance with this CAFO and seek appropriate penalties for such non-compliance.

84. This CAFO constitutes a full and final settlement by EPA of all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a), for the violations alleged in this CAFO, the NOV, and the Pre-Filing Notice. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not specified in the CAFO, the NOV, and the Pre-Filing Notice. Nothing in this CAFO shall be construed to relieve the Respondent from its obligation to comply with RCRA and all applicable federal, state and local statutes and regulations.

85. Notwithstanding any other provision of this CAFO, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies, penalties or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, other than the specific matters resolved herein.

86. Notwithstanding any other provision of this CAFO, EPA may bring an enforcement action pursuant to Section 7003 of RCRA, or other statutory authority, if any handling, storage, treatment, transportation, or disposal of solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment. EPA also expressly

reserves the right: (a) for any matters other than violations alleged in Section IV of this Agreement, to take any action authorized under RCRA: (b) to enforce compliance with the applicable provisions of the Michigan administrative code; and (c) to enforce compliance with this CAFO, including through a referral to the Department of Justice.

87. Each party shall bear its own costs and attorneys fees in connection with this action.

88. The undersigned representative of each party to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and bind that Party to them.

89. Respondent waives any right it may have pursuant to 40 C.F.R. §22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication with an EPA official identified in 40 C.F.R §22.08 where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue the CAFO.

90. This CAFO binds the Respondent, its successors and assigns.

91. This CAFO is a "final order" for purposes of 40 C.F.R. §22.31, the EPA's RCRA Civil Penalty Policy, and the EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

92. The Final Order does not constitute a waiver, suspension or modification of the requirements of the RCRA or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for

federal civil penalties for the violations and facts stipulated to and alleged in this CAFO, the NOV, or the Pre-Filing Notice.

93. This CAFO is effective from the date it is filed with the Regional Hearing Clerk, Region 5.

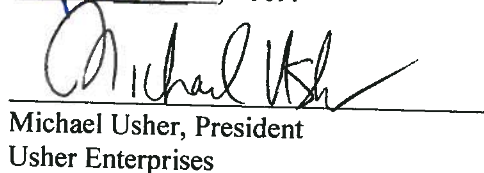
94. EPA shall provide written notice to Respondent of the termination of this CAFO if EPA determines that Respondent has paid all penalties and any related charges pursuant to Sections V and VII and completed the actions required by Section VI of this CAFO. Respondent may request termination of this CAFO at any time provided the Respondent submits the request in writing and includes sufficient information to determine if the Respondent has completed the actions required by Section VI of this CAFO and made the payments required by Sections V and VII of this CAFO.

95. This Order may be modified only by the mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by the appropriate representative of both parties, shall be effective on the date of signature by EPA, and shall be incorporated into this Order.

96. Respondent and EPA agree to the issuance and entry of the accompanying Final Order.

Agreed to this 24th day of September, 2009.

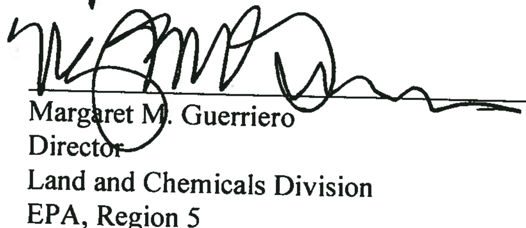
By Respondent:



Michael Usher, President
Usher Enterprises

Agreed to this 29th day of September, 2009.

By Complainant:



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

IN THE MATTER OF:
Usher Enterprises

Docket No.: RCRA-05-2009-0023

FINAL ORDER

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

Ordered this 29th day of September, 2009.

By: Walter W. Kovalick for
Bharat Mathur
Acting Regional Administrator
EPA Region 5

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USEPA
REGION 5

CASE NAME: Usher Enterprises, Inc.
DOCKET NO: RCRA-05-2009-0023

CERTIFICATE OF SERVICE

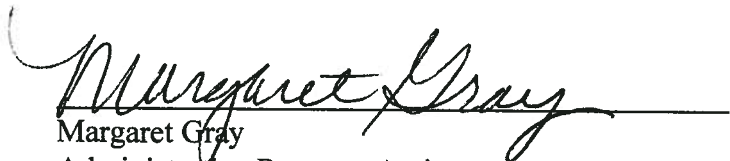
I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. Michael Usher
President
Usher Enterprises
9000 Roselawn Avenue
Detroit, Michigan 48204

Certified Mail Receipt #: ____________________________

Dated: Sept 30, 2009



Margaret Gray
Administrative Program Assistant
United States Environmental Protection Agency

Region V
Land and Chemicals Division LR-8J
RCRA Branch
77 W. Jackson Blvd, Chicago, IL 60604-3590

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