

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

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WS

**IN THE MATTER OF:**

**Munce's Superior Petroleum Products, Inc.**  
620 Main Street  
Gorham, New Hampshire, 03581

and

**Munce's Superior, Inc.**  
620 Main Street  
Gorham, New Hampshire, 03581

Respondents.

Docket No. **CWA-01-2010-0040**

Proceeding Pursuant to § 309(g) of the  
Clean Water Act, 33 U.S.C. 1319(g)

**SUGGESTION OF BANKRUPTCY AND RESPONSE TO  
ORDER TO CLARIFY AND SUPPLEMENT THE RECORD**

Munce's Superior Petroleum Products, Inc. ("MSPP"), a respondent in the above-captioned administrative proceeding, by and through its undersigned bankruptcy counsel, files this Suggestion of Bankruptcy and Response to Order to Clarify and Supplement the Record.

1. MSPP and four affiliated entities filed chapter 11 bankruptcy petitions on March 16, 2011. A copy of MSPP's petition is attached hereto as Exhibit A. To date, MSPP's bankruptcy proceeding is still pending.

2. Undersigned counsel was not made aware of this adversary proceeding until September of 2011, and did not become aware of the Order to Clarify and Supplement the Record until some time after it was issued. All of the documents and pleadings in this administrative proceeding have been served directly on MSPP.

3. On or about September 9, 2011, the United States Environmental Protection Agency (the "EPA") filed a proof of claim in MSPP's bankruptcy case, alleging civil penalties in

an unspecified amount for the violations set forth in the complaint initiating this adversary proceeding. That proof of claim was subsequently amended on October 18, 2011 and again on October 20, 2011. A copy of the proof of claim is attached hereto as **Exhibit B**.

4. By filing a proof of claim, the EPA has submitted itself to the jurisdiction of the United States Bankruptcy Court of New Hampshire (the "Bankruptcy Court") and, accordingly, the amount of its claim should be adjudicated in that Court. Even apart from the jurisdictional issue, the Debtors take the position that this adversary proceeding must be stayed in accordance with 11 U.S.C. § 362.

5. In light of the foregoing, MSPP respectfully requests that the EPA stay this administrative proceeding and allow the parties to litigate the amount of the EPA's claim in the Bankruptcy Court, which is the proper forum.

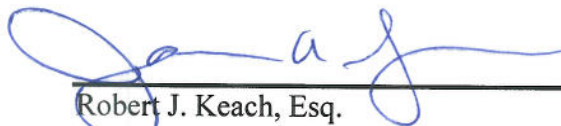
6. Finally, in response to this Court's order seeking clarification of the record, there is no entity by the name of Munce's Superior, Inc. MSPP, a corporation registered under the laws of the State of New Hampshire, often uses Munce's Superior, Inc. as a d/b/a. It is not a separate entity.

Dated: January 27, 2012

Respectfully submitted,

MUNCE'S SUPERIOR PETROLEUM PRODUCTS,  
INC.

By its attorneys,



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Robert J. Keach, Esq.  
Jessica A. Lewis, Esq.  
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**United States Bankruptcy Court**  
District of New Hampshire

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): <b>Munce's Superior Petroleum Products, Inc.</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): <b>AKA Munce's Superior Inc.</b>	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): <b>02-0367049</b>	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): <b>620 Main Street Gorham, NH</b>	Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code <b>03581</b>	ZIP Code
County of Residence or of the Principal Place of Business: <b>Coos</b>	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
ZIP Code	ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):	

<b>Type of Debtor</b> (Form of Organization) (Check one box)	<b>Nature of Business</b> (Check one box)	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box)
<input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other <hr/> <b>Tax-Exempt Entity</b> (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13  <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
<b>Filing Fee</b> (Check one box)		<b>Nature of Debts</b> (Check one box)
<input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.

<b>Chapter 11 Debtors</b> Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).	THIS SPACE IS FOR COURT USE ONLY
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**Statistical/Administrative Information**

Debtor estimates that funds will be available for distribution to unsecured creditors.  
 Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

**Estimated Number of Creditors**

<input type="checkbox"/> 1-49	<input type="checkbox"/> 50-99	<input checked="" type="checkbox"/> 100-199	<input type="checkbox"/> 200-999	<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> 5,001-10,000	<input type="checkbox"/> 10,001-25,000	<input type="checkbox"/> 25,001-50,000	<input type="checkbox"/> 50,001-100,000	<input type="checkbox"/> OVER 100,000
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**Estimated Assets**

<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input checked="" type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion
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**Estimated Liabilities**

<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,001 to \$100,000	<input type="checkbox"/> \$100,001 to \$500,000	<input type="checkbox"/> \$500,001 to \$1 million	<input checked="" type="checkbox"/> \$1,000,001 to \$10 million	<input type="checkbox"/> \$10,000,001 to \$50 million	<input type="checkbox"/> \$50,000,001 to \$100 million	<input type="checkbox"/> \$100,000,001 to \$500 million	<input type="checkbox"/> \$500,000,001 to \$1 billion	<input type="checkbox"/> More than \$1 billion
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<p><b>Voluntary Petition</b></p> <p><i>(This page must be completed and filed in every case)</i></p>	<p>Name of Debtor(s): <b>Munce's Superior Petroleum Products, Inc.</b></p>
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All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)		
Location Where Filed: <b>- None -</b>	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)		
Name of Debtor: <b>- None -</b>	Case Number:	Date Filed:
District:	Relationship:	Judge:

<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align: center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).</p> <p><b>X</b> _____ Signature of Attorney for Debtor(s) (Date)</p>
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**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.

No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**

(Check any applicable box)

Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**

(Check all applicable boxes)

Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

\_\_\_\_\_  
(Name of landlord that obtained judgment)

\_\_\_\_\_  
(Address of landlord)

Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

**Voluntary Petition**

*(This page must be completed and filed in every case)*

Name of Debtor(s):

**Munce's Superior Petroleum Products, Inc.**

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.  
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.  
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

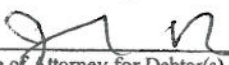
X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of Attorney\***

X  \_\_\_\_\_  
Signature of Attorney for Debtor(s)

**Jennifer Rood ME (3486), NH (2877)**  
Printed Name of Attorney for Debtor(s)

**Bernstein, Shur, Sawyer & Nelson**  
Firm Name  
**670 North Commercial Street**  
**Suite 108**  
**Manchester, NH 03105**

\_\_\_\_\_  
Address

**603-623-8700 Fax: 603-623-7775**

\_\_\_\_\_  
Telephone Number  
**315/11**

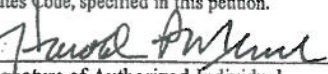
\_\_\_\_\_  
Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X  \_\_\_\_\_  
Signature of Authorized Individual

**Harold P. Munce**  
Printed Name of Authorized Individual

**President**

\_\_\_\_\_  
Title of Authorized Individual

**3-14-2011**  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X \_\_\_\_\_  
Signature of Foreign Representative

\_\_\_\_\_  
Printed Name of Foreign Representative

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

X \_\_\_\_\_

\_\_\_\_\_  
Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.*

**ACTION TAKEN BY UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
MUNCE'S SUPERIOR PETROLEUM PRODUCTS, INC.**

The undersigned, being all of the Directors of MUNCE'S SUPERIOR PETROLEUM PRODUCTS, INC. (the "Company"), a corporation organized and existing under New Hampshire law, pursuant to N.H. R.S.A. 293-A:7.04, and pursuant to Article 10 of the Company's Bylaws, hereby take the following action without holding a meeting, such action being stated in the form of and to be as fully effective as if taken by unanimous resolution of the Board of Directors at a meeting thereof duly called and held on the date hereof at which the undersigned Director was present and acting throughout:

**RESOLVED:** That in the judgment of the undersigned Directors of the Company, it may be desirable and in the best interests of the Company, its creditors, shareholders, and other interested parties that a petition be filed by the Company seeking relief under the provisions of Chapter 11 of Title 11, United States Code (the "Code"); and further,

**RESOLVED:** That the Company be and hereby is authorized and empowered to execute and verify or certify a petition under Chapter 11 of the Code and to cause the same to be filed in the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court") at such time as the Company shall determine and in such form or forms as the Company may approve; and further,

**RESOLVED:** That any officer of the Company be and hereby is authorized on behalf of, and in the name of, the Company to execute and file any and all petitions, schedules, motions, lists, applications, pleadings and other papers, to take any and all such other and further actions which the Company or its legal counsel may deem necessary or appropriate to file the voluntary petition for relief under Chapter 11, and to take and perform any and all further acts and deeds which they deem necessary, proper and desirable in connection with the Chapter 11 case, with a view to the successful prosecution of such case, including, without limitation, seeking authority to use cash collateral or to borrow under a post-petition credit facility, to grant liens, guarantees, pledges, mortgages and other security therefor, to file and prosecute a plan of reorganization and/or to sell all or substantially all of the Company's assets in one or more transactions designed to maximize the value of such assets; and further

**RESOLVED:** That the Company be and hereby is authorized to retain the law firm of Bernstein, Shur, Sawyer & Nelson ("BSSN") as general bankruptcy counsel to the Company in connection with the Chapter 11 case if the Company determines that the filing of a voluntary petition for relief is proper, and to pay BSSN at its standard hourly rates in connection with its representation of the Company and to provide BSSN with a retainer in an amount to be agreed upon by BSSN and the Company, and to reimburse BSSN for any actual expenses incurred in connection with its employment by the Company; and further,

**RESOLVED:** That any officer of the Company be and is hereby authorized and directed to take such actions and to make, sign, execute, acknowledge and deliver (and record in a relevant office of the county clerk, if necessary) any and all such agreements listed above (including exhibits thereto), including any and all affidavits, orders,

reimburse BSSN for any actual expenses incurred in connection with its employment by the Company; and further,

**RESOLVED:**

That the Company be and hereby is authorized to retain the firm of Spinglass Management Group, LLC ("Spinglass") as its financial advisor in connection with the Chapter 11 case if the Company determines that the filing of a voluntary petition for relief is proper, and to pay Spinglass a retainer in an amount reasonably requested by Spinglass and agreed to by the Company, and additional fees at Spinglass's standard hourly rates for its services, and to reimburse Spinglass for any actual expenses incurred in connection with its employment by the Company; and further,

**RESOLVED:**

That any director of the Company be and is hereby authorized to take such actions and to make, sign, execute, acknowledge and deliver all such additional documents, agreements and certificates as may reasonably be required to give effect to the consummation of the transactions contemplated by these resolutions to any Chapter 11 plan, and to execute and deliver such documents, agreements and certificates, and to fully perform the terms and provisions thereof, and further

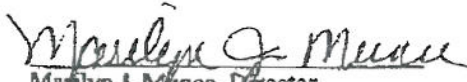
**RESOLVED:**

That to the extent that any of the actions authorized by any of the foregoing resolutions have been taken by the Company, such actions are hereby ratified and confirmed in their entirety.

Dated: March 9, 2011


  
Harold P. Munce, Director

Dated: March 9, 2011

  
Marilyn J. Munce, Director



B 10 (Official Form 10) (04/10)

<b>UNITED STATES BANKRUPTCY COURT</b> District of New Hampshire		Corrected <b>PROOF OF CLAIM</b>
Name of Debtor: <b>Munce's Superior Petroleum Products, Inc.</b>		Case Number: <b>11-10975</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>United States on Behalf of Environmental Protection Agency</b>		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: <u>80</u> (If known)  Filed on: <u>9/9/11</u>
Name and address where notices should be sent: <b>Catherine Adams Fiske, Senior Counsel</b> <b>United States Department of Justice - Environmental Enforcement Section</b> <b>One Gateway Center - Suit 616, Newton MA 02495</b>  Telephone number: <b>(617) 450-0444</b>		
Name and address where payment should be sent (if different from above): <b>To be provided.</b>  Telephone number: <b>(617) 450-0444</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <u>see attached</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  Amount entitled to priority: \$ _____  *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>See attached.</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>n/a</u>  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		FOR COURT USE ONLY
Date: <u>10/20/11</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <div style="text-align: center;">  </div>		Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

<hr/>	)	
<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>MUNCE’S SUPERIOR PETROLEUM PRODUCTS, INC., et. al.,</b>	)	<b>Case No. 11-10975</b>
	)	
<b>Debtors.</b>	)	
<hr/>	)	

**CORRECTED PROOF OF  
CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

This Proof of Claim is filed by the United States at the request of the United States Environmental Protection Agency (“EPA”). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim relates to the liability of Munce’s Superior Petroleum Products, Inc. (“Debtor”) under federal authorities, including the sections 308, 309, and 311(b)(7) and (j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318, 1319 and 1321(b)(7) and (j). Debtor is liable to the United States for civil penalties for its (1) failure to adequately respond to a request for information pursuant to sections 308 and 309(d) of the CWA, 33 U.S.C. §§ 1318 and 1319(d); and (2) failure to maintain and fully implement a Spill Prevention Control and Countermeasure (“SPCC”) plan pursuant to sections 311(b)(7) and (j) of the CWA, 33 U.S.C. §§ 1321(b)(7) and (j), and 40 C.F.R. part 112, regarding four bulk oil storage and distribution facilities Debtor owns and/or operates at 443, 615, 619, and 620/624 Main Street, in Gorham, New Hampshire (the “Facilities”). With respect to equitable remedies that are not within the Bankruptcy Code’s definition of “claim,” 11 U.S.C. §101(5), and with respect to post-petition violations, this Proof of Claim is filed only in a protective fashion. *See* Paragraphs 33-35 and 40 below.

### I. GENERAL ALLEGATIONS

1. Debtor is an “owner or operator” within the meaning of section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Facilities.
2. The Debtor has owned and/or operated the Facilities since before 2002.
3. The Facilities are located approximately 50-500 feet from the Androscoggin River.  
  
There are downward sloping paths from all the Facilities that travel overland to either the Androscoggin River or to storm drains that empty into the Androscoggin River. Due to the location of the Facilities with respect to the River, storm drains, and the topography of the area, the Facilities could reasonably be expected to discharge oil into the Androscoggin River and downstream bodies of water.
4. The Androscoggin River flows into the Merrymeeting Bay in Maine, which flows into the Lower Kennebec River and ultimately into the Atlantic Ocean. These rivers are “navigable waters” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1, and are, therefore, subject to the jurisdiction of section 311 of the CWA, 33 U.S.C. § 1321.
5. Under the authority of section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, at 40 C.F.R. part 112 (“Part 112”), establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as

defined in 40 C.F.R. part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

6. For facilities in operation prior to 2002, such as Debtor, under 40 C.F.R. § 112.3(a), the owner or operator of a regulated onshore facility must prepare and fully implement a Spill Prevention Control and Countermeasure (“SPCC”) Plan in accordance with 40 C.F.R. § 112.7, and any other applicable sections of Part 112, and thereafter maintain the SPCC Plan and full implementation.
7. As of at least July 25, 2000, the 443 Main Street Facility had one 15,000-gallon aboveground diesel fuel storage tank, subjecting it to the requirements of Part 112 since at least July 25, 2000. At some time prior to September 22, 2011, Debtor closed the 443 Main Street Facility.
8. As of at least September 16, 1998, the 615 Main Street Facility had one 20,000-gallon aboveground diesel fuel storage tank, one 20,000-gallon aboveground kerosene storage tank, three 20,000-gallon aboveground #2 heating oil tanks, and one 20,000-gallon aboveground red diesel fuel tank, subjecting it to the requirements of Part 112 since at least September 16, 1998.
9. As of at least December 9, 2001, the 619 Main Street Facility had two 8,000-gallon aboveground motor oil tanks, one 6,000-gallon aboveground motor oil tank, one 6,000-gallon aboveground hydraulic oil tank, three 4,000-gallon aboveground motor oil tanks, one 4,000-gallon aboveground hydraulic oil tank, three 2,000-gallon aboveground motor oil tanks, and two 2,000-gallon aboveground hydraulic oil tanks, subjecting it to the

requirements of Part 112 since at least December 9, 2001. At some time prior to September 22, 2011, Debtor closed the 443 Main Street Facility.

10. As of at least November 20, 2009, the 620/624 Main Street Facility had a multitude of 55-gallon drums of oil, of an aggregate aboveground storage capacity of approximately 10,500 gallons, subjecting it to the requirements Part 112, since at least November 20, 2009.
11. Debtor is the owner or operator of Facilities engaged in storing, distributing, using, and consuming oil or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States, and is therefore subject to Part 112.
12. On November 20, 2009, a representative of EPA conducted an SPCC inspection of the Facilities. On September 22, 2011, a representative of EPA conducted a second SPCC inspection of the facilities.
13. Pursuant to sections 308(a) and 311(m) of the CWA, 33 U.S.C. §§ 1318(a) and 1321(m), on January 4, 2010, EPA issued an information request to Debtor (the “308 Letter”), informing Debtor that it did not have adequate and fully implemented SPCC plans for the 443, 615 and 619 Main Street Facilities as required by Part 112, and that Debtor was required to submit a copy of a revised SPCC plan for those Facilities. The 308 Letter also informed Debtor that the 620/624 Main Street Facility did not have an SPCC plan as required by Part 112, and that Debtor was required to submit a SPCC plan for that Facility. Finally, the 308 Letter informed Debtor that if it could not be fully compliant

within 30 days of receipt of the letter, it must submit a detailed schedule including a list of deficiencies to be corrected and dates for completion.

14. As of this date, Debtor has not submitted a complete response to the 308 Letter.
15. On or about June 23, 2010, EPA served an administrative complaint upon the Debtor seeking civil penalties for Debtor's failure to respond to the 308 Letter and failure to maintain and fully implement SPCC plans at its Facilities, Docket No. CWA-01-2010-0040 (the "Administrative Action").
16. On or about July 12, 2011, EPA moved for a default judgment in the Administrative Action in the amount of \$45,400 for Debtor's failure to respond to the 308 Letter and failure to maintain and fully implement SPCC plans at its Facilities through June 23, 2010. As of today's date, the administrative law judge has not ruled on EPA's motion for a default judgment.

## II. VIOLATIONS

### Count I

#### Failure to Respond to a Request for Information

17. Paragraphs I through 16 are incorporated by reference as if fully set forth herein.
18. Debtor failed to respond to or otherwise provide all the information requested by the 308 Letter within thirty (30) days of receipt, in violation of section 308 of the CWA, 33 U.S.C. § 1318. Debtor has not yet provided a complete response to the 308 Letter.
19. By failing to provide a complete response to the 308 Letter, Debtor violated section 308 of the CWA, 33 U.S.C. § 1318, at least through the date of this Proof of Claim.
20. Under section 309(d) of the CWA, 33 U.S.C. § 1319(d), Debtor is liable for civil

penalties for violations of section 308 of the CWA, 33 U.S.C. § 1318.

21. Pursuant to section 309(d) of the CWA, Debtor is liable for civil penalties up to \$25,000 per day for each day during which the violation continues. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, codified at 40 C.F.R. Part 19, increased the statutory maximum penalties up to \$37,500 per day for each violation that occurred after January 12, 2009. 73 Fed. Reg. 75340-346 (Dec. 11, 2008).
22. Debtor is liable for penalties in the amount of any judgment to be entered in the Administrative Action for those violations that occurred prior to June 21, 2010. In addition, Debtor is liable for civil penalties up to \$37,500 per day for each day Debtor failed to respond to EPA's 308 Letter during the period from June 21, 2010 through March 16, 2011, the date of Debtor's bankruptcy petition. The United States asserts a general unsecured claim for these pre-petition penalties.

## Count II

### Failure to Maintain and Fully Implement an SPCC Plan at the Facilities

23. Paragraphs I through 16 are incorporated by reference as if fully set forth herein.
24. Debtor prepared an SPCC plan for the 443 Main Street Facility dated July 25, 2000, but as of November 20, 2009 failed to
  - (a) maintain records of inspection, testing, and training, as required by 40 C.F.R. §§ 112.7(e) and (f) and 112.8;
  - (b) certify, amongst other things, that the plan was prepared in accordance with good engineering practices;

- (c) periodically update and review the plan, as required by 40 C.F.R. § 112.5(b);
  - (d) maintain a copy of the plan on-site, as required by 40 C.F.R. § 112.3(e); and
  - (e) provide for measures to prevent the discharge of oil from reaching waters of the United States and to fully implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8.
25. At some time prior to September 22, 2011, Debtor closed the 443 Main Street Facility, without properly closing the aboveground storage tank as required by 40 C.F.R. §112.2.
26. Debtor prepared an SPCC plan for the 615 Main Street Facility dated September 16, 1998 and updated the plan on December 12, 2001, but as of November 20, 2009 failed to
- (a) maintain sufficiently impervious secondary containment for aboveground bulk storage and the loading rack such that discharged oil would be contained within the bermed area, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2);
  - (b) maintain adequate security measures for the aboveground bulk storage, as required by 40 C.F.R. § 112.7(g);
  - (c) maintain records of inspection, testing, and training, as required by 40 C.F.R. §§ 112.7(e) and (f) and 112.8;
  - (d) periodically update and review the plan, as required by 40 C.F.R. § 112.5(b); and
  - (e) provide for measures to prevent the discharge of oil from reaching waters of the United States and to fully implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8.
27. The SPCC plan for 615 Main Street Facility was updated on or about January 29, 2011.



28. Debtor prepared an SPCC plan for the 619 Main Street Facility dated December 9, 2001 but as of November 20, 2009 failed to
- (a) maintain sufficiently impervious secondary containment for some of its aboveground bulk storage such that discharged oil would be contained within the bermed area, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2);
  - (b) maintain adequate security measures for the loading/unloading of oil hoses, as required by 40 C.F.R. § 112.7(g);
  - (c) maintain records of inspection, testing, and training, as required by 40 C.F.R. §§ 112.7(e) and (f) and 112.8;
  - (d) certify, amongst other things, that the engineer who prepared the plan was familiar with the requirements of 40 C.F.R. § 112, that he had examined the 619 Main Street Facility, and that the plan was prepared in accordance with good engineering practices;
  - (e) obtain management approval of the plan, as required by 40 C.F.R. § 112.3;
  - (f) periodically update and review the plan, as required by 40 C.F.R. § 112.5(b); and
  - (g) maintain a copy of the plan on-site, as required by 40 C.F.R. § 112.3(e).
29. At some point prior to September 22, 2011, Debtor closed the 619 Main Street Facility without properly closing the aboveground storage tank as required by 40 C.F.R. § 112.2.
30. Debtor failed to prepare or fully implement an SPCC plan for the 624 Main Street Facility in violation of 40 C.F.R. § 112.3 and section 311(j) of the CWA, 33 U.S.C. § 1321(j) until on or about February 28, 2011.

31. Pursuant to section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), Debtor is liable for civil penalties of up to \$25,000 per day for each day during which the violation continues or continued. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, codified at 40 C.F.R. Part 19, increased the statutory maximum penalties up to \$37,500 per day for each violation that occurred after January 12, 2009. 73 Fed. Reg. 75340-346 (Dec. 11, 2008).
32. Debtor is liable for penalties in the amount of any judgment to be entered in the Administrative Action for those violations that occurred prior to June 21, 2010. In addition, Debtor is liable for civil penalties up to \$37,500 per day for each day Debtor failed to maintain and fully implement SPCC plans at each Facility during the period from June 21, 2010 through March 16, 2011, the date of Debtor's bankruptcy petition. The United States asserts a general unsecured claim for these pre-petition penalties.

### **III. GENERAL PROVISIONS**

33. The United States asserts that the penalties for violations during the period of time from the petition date to the effective date of any plan of reorganization or liquidation in this bankruptcy are entitled to priority as administrative expenses. Without limitation, the United States intends to file an administrative expense claim with respect to these penalties. The United States is including penalties for these post-petition violations in its Proof of Claim, as a general unsecured claim, only in a protective manner in case the appropriate court ultimately determines that the United States is not entitled to administrative expense priority with respect to these penalty claims. The United States

asserts that since Debtor's March 16, 2011 petition for bankruptcy, the Debtor has not provided a complete response to EPA's 308 Letter; has failed to maintain and fully implement appropriate SPCC plans at each Facility; and/or has failed to properly close certain aboveground storage tanks. Debtor is liable to the United States for post-petition penalties in an amount up to \$37,500 per day for each day Debtor fails to

(a) provide a complete response to EPA's 308 Letter, under sections 308 and 309 of the CWA, 33 U.S.C. §§ 1318 and 1319;

(b) come into compliance with Debtor's obligations to maintain and fully implement appropriate SPCC plans at each Facility, under sections 311(b)(7) and (j) of the CWA, 33 U.S.C. §§ 1321(b)(7) and (j), and 40 C.F.R. Part 112.3; and

(c) close aboveground storage tanks as required by 40 C.F.R. § 112.2.

34. Protective Filing for Work Obligations. The United States is not required to file a proof of claim with respect to Debtor's injunctive obligations to comply with work requirements arising under court orders, judicial Consent Decrees, administrative orders, and other environmental regulatory requirements imposed by law that are not claims under 11 U.S.C. § 101(5). Debtor and any reorganized Debtor must comply with such mandatory injunctive and regulatory and compliance requirements including, without limitation, the obligations of Debtor to respond to EPA's 308 Letter and to maintain and fully implement SPCC plans at each Facility. The United States reserves the right to take future actions to enforce any such obligations of Debtor. While the United States believes that its position will be upheld by the Court, the United States has filed only in a protective fashion with respect to such obligations and requirements as indicated herein

to protect against the possibility that Debtor will contend that it does not need to comply with any such obligations and requirements and the Court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements, but only in the event that the Court finds that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5), rather than obligations and requirements that Debtor and reorganized Debtor must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

35. The United States is entitled to administrative expense priority for, *inter alia*, any response costs it incurs with respect to property of the estate after the petition date. The United States reserves the right to file an application for administrative expenses and to take other appropriate action in the future with respect to property of the estate.
36. No judgments against Debtor have been rendered on this Proof of Claim, except as provided herein.
37. No payments have been made by Debtor on this claim.
38. This claim reflects the known liability of Debtor to the United States on behalf of EPA, for which liability the United States has decided to file a proof of claim. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to Debtor by EPA, or any other federal entity or agency.
39. The United States has not perfected any security interest on its claim against Debtor.

40. This claim is filed as a general unsecured claim except to the extent: (1) of any secured/trust interest in insurance proceeds received by Debtor on account of environmental liability to the United States in connection with the Facilities; (2) any rights of setoff to secure the United States' claims; (3) administrative priority exists with respect to property of the estate, post-petitions violations of law, or otherwise. The United States will file any application for administrative expenses at the appropriate time.
41. Additional documentation in support of this Proof of Claim is too voluminous to attach, but is available upon request.

Respectfully submitted,

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/s/ C. A. Fiske

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