

Date: January 31, 2020

To: Legislative Committee on Joint Finance

From: Charlotte Gibson
Administrator, Division of Legal Services,
DOJ

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Services, DOJ

Subject: Update on requests for approval of proposed plans under Wis. Stat.
§ 165.08(1)

This memorandum again seeks your Committee's review of proposed plans of resolution or settlement. It also updates you on our progress to address cases pending in bankruptcy proceedings.

Cases on which DOJ Again Seeks Review

Of the cases on which our agency previously requested your Committee's approval, we now have three where the defendants have agreed to make the terms of the proposed plan public. *We are renewing our request for your Committee to hear those matters.*

This memo does not contain confidential information. As you may remember, the Legislative Reference Bureau determined that it could "not find any authority that would require a member of the legislature who serves on a committee to keep confidential any information delivered in a closed session unless the information was required by state or federal law to be kept confidential *or was information that the member had agreed to keep confidential under a confidentiality agreement signed by the member.*" DOJ agrees with this analysis. For the three cases below, we are providing the terms of the proposed settlements, which the defendants have agreed to make public. We still need to work with you to figure out how to maintain confidentiality in the many cases where that is not possible.

1. ***State of Wisconsin v. Dave's Sewer Service, Inc. and David Neelis Junior*** (Waupaca County Case No. 2018-CX-3). We have already provided you with information about the background of the case, the relevant violations and corresponding alleged statutory violations, and a copy of the relevant pleading. Mr. Neelis wants to begin his remedial efforts as soon as possible and wants a final settlement before he undertakes that.

The parties have agreed to settle for a total monetary penalty of \$39,000, paid in three annual installments of \$13,000 each; all of this money is forfeitures that will be paid to the court and flow to the school fund. The parties have also agreed that the defendants must complete a phytoremediation project on property where the defendants illegally disposed of septage. This requires the defendants to plant pine seedlings and maintain the trees for 50 years to absorb contaminants in the soil. If the defendants fail to comply with the requirements of the phytoremediation project, they will excavate and remove the contaminated soil from the property instead.

2. *United States of America, Louisiana Department of Environmental Quality, and the State of Wisconsin v. Superior Refining Company LLC and Valero Refining – Meraux LLC* (Western Dist. Wis. 3:10-CV-00563-bbc). We have already provided you with information about the background of the case and copies of the relevant pleadings. Recall that this is not an active case, but rather an amendment to an existing consent decree. We continue to believe that Wis. Stat. § 165.08 does not apply to this type of agreement; we are sending this case again in the interest of ensuring that the resolution is final.

The United States of America, the State of Wisconsin, and Superior Refining Company LLC have negotiated an amendment to the consent decree requiring Superior Refining Company to take measures to mitigate the harm from the emissions that resulted from the incident on April 26, 2018, and install additional safety-focused enhancements to the refinery.

Specifically, in exchange for a release of liability for the potential violations that occurred as a result of the incident, Superior Refining will implement a wood-burning appliance change-out project and a solar photovoltaic panel project to offset the estimated excess emissions from the incident. In addition, Superior Refining will implement a hydrofluoric acid (HF) unit upgrade project to provide safety enhancements to the refinery's HF alkylation process. The parties have drafted an amended consent decree that contains these terms, and a copy is included here.

3. *UW Board of Regents v. Sonnleitner and Wells* (Dane County Case No. 2017-CV-106). This is the civil-side plaintiff's case arising out of agreements made by the two defendants for the University of Wisconsin to guaranty private debt undertaken by UW Oshkosh Foundation. Under Wisconsin's Constitution, the State cannot guaranty private debt. The Foundation undertook significant borrowing in order to build a welcome center for the UW Oshkosh campus and two biodigesters that the Foundation believed would have economic and educational benefit. Sonnleitner and Wells guaranteed that debt, purportedly on behalf of UW.

The Foundation became unable to meet its repayment obligations. When it defaulted on the loans, the commercial lenders and Foundation sought to enforce the guaranties against UW. The resulting potential liability led to numerous court cases, including cases by the commercial lenders against UW and claims by the Foundation in its eventual bankruptcy filing. UW filed this civil case against Sonnleitner and Wells. The State filed criminal charges against them.

In December 2018, the defense cases were resolved at mediation. Part of the resulting settlements included UW obtaining clear ownership of the UW Oshkosh Welcome Center and one of the biodigesters. In 2019, UW received an additional \$1.5 million payment from its insurance carrier on a crime policy.

On January 15, 2020, Sonnleitner and Wells each pled guilty to one count of felony misconduct in public office. As part of their pleas, they agreed to pay \$140,000 in restitution to UW. Unlike amounts UW could have sought in a civil case, the restitution obligation would be enforceable even if one of the defendants sought bankruptcy protection.

The parties agreed that if the defendants entered guilty pleas and agreed to the restitution amount, UW would dismiss the civil case. That dismissal is conditional upon this Committee's approval. If the Committee disapproves of the dismissal, the defendants would have a right to reopen the criminal case and seek an amendment of their restitution obligation.

Update on Bankruptcy Cases

We are withdrawing a previous request for your Committee to consider a bankruptcy case that we asked you to review. That is because we have concluded that bankruptcy matters are not "civil action[s]" subject to approval under Wis. Stat. § 165.08. Thus, we resolved *State v. Mancini*, a bankruptcy case pending in the U.S. Bankruptcy Court for the District of Minnesota involving Medicaid fraud claims, at mediation in November. We are withdrawing our earlier request for you to consider that matter.

We will not be sending proposed plans regarding future bankruptcy matters to the Committee for approval.

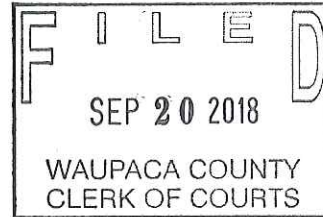
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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

WAUPACA COUNTY

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-
7857,



Plaintiff,

v.

Case No. 18-CX-3
Complex Forfeiture: 30109

DAVE'S SEWER SERVICE,
INC., a domestic business
with its principal office at,
E2017 King Road
Waupaca, Wisconsin 54981,

and

DAVID NEELIS JUNIOR
E2017 King Road
Waupaca, Wisconsin 54981,

Defendants.

THE AMOUNT CLAIMED
IS GREATER THAN THE
AMOUNT CLAIMED
UNDER WIS. STAT. §
799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Brad D. Schimel and Assistant Attorneys General Emily M. Ertel and Bradley J. Motl, brings this action against the above-named defendants at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (715) 258-6460 (TTY -- (715) 258-6302 (HUMAN SERVICES)) AND ASK FOR THE WAUPACA COUNTY CIRCUIT COURT ADA COORDINATOR.

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

2. Defendant Dave's Sewer Service, Inc. (Dave's Sewer Service) is a domestic business with its principal office located at E2017 King Road, Waupaca, Waupaca County, Wisconsin 54981. Its registered agent is David A. Neelis Junior at the same address.

3. Defendant David Neelis Junior (Mr. Neelis) is an adult resident of the State of Wisconsin who resides at E2017 King Road, Waupaca, Waupaca County, Wisconsin 54981 (Neelis Junior Property).

4. Mr. Neelis was born on July 13, 1972.

5. Wisconsin Stat. §§ 23.55(1) and 23.54(3)(a) require inclusion of Mr. Neelis's social security number in this Complaint. Pursuant to Wis. Stat. § 801.19, Mr. Neelis's social security number is submitted on confidential form GF-241.

6. At all times relevant to the allegations in this Complaint, Mr. Neelis was the owner and sole operator of Dave's Sewer Service. As the only septage truck operator for Dave's Sewer Service, Mr. Neelis personally authorized, directed, performed, or failed to perform the acts that constitute the violations alleged in this Complaint.

APPLICABLE LAW

7. Wisconsin Stat. §§ 281.17 and 281.48 govern septage servicing.
8. Wisconsin Stat. § 281.48(2)(d) defines “septage” as “the scum, liquid, sludge or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system.”
9. Wisconsin Stat. § 281.48(2)(f) defines “servicing” as “removing septage from a septic tank; soil absorption field, holding tank, grease interceptor, privy, or other component of a private on-site wastewater treatment system and disposing of the septage.”
10. Wisconsin Stat. § 281.48(3) requires persons engaging in septage servicing to obtain a license (Business License).
11. Wisconsin Stat. § 281.17(3) requires persons operating septage-servicing vehicles to obtain a certification (Operator Certification).
12. Wisconsin Admin. Code chs. NR 113 and 114 were adopted under the authority of Wis. Stat. ch. 281 to regulate businesses and persons engaged in septage servicing.

PRIOR NONCOMPLIANCE

13. Until approximately January 15, 2014, Dave’s Sewer Service and Mr. Neelis had Business License number 646, and from January 15, 2014

until March 17, 2017, Dave's Sewer Service and Mr. Neelis had Business License number 2357.

14. At all times relevant to the allegations in this Complaint until March 17, 2017, Mr. Neelis had Operator Certification number 80803.

15. DNR has been investigating Dave's Sewer Service and Mr. Neelis for alleged septage servicing violations since 2012.

16. On August 22, 2012, DNR issued Dave's Sewer Service and Mr. Neelis a Notice of Violation for failing to timely submit to DNR both an annual land application report and an "annual other method of disposal or distribution" report for 2008, 2009, 2010, and 2011. On September 12, 2012, DNR held an enforcement conference with Mr. Neelis regarding the August 22, 2012 Notice of Violation.

17. In November 2013, Mr. Neelis landspread industrial waste sludge without a Wisconsin Pollutant Discharge Elimination System permit (WPDES permit), which is required by Wis. Admin. Code ch. NR 214, on a field that was not approved for septage or industrial wastewater disposal. Mr. Neelis admitted that he had been landspreading industrial waste sludge for years. Mr. Neelis and the industrial waste generator never had a WPDES permit.

18. In December 2013, DNR performed an audit of Mr. Neelis's septage servicing records. Mr. Neelis refused to produce electronic records

related to his septage servicing. In July 2014, DNR executed a search warrant at Mr. Neelis's home office at the Neelis Junior Property for records related to his septage servicing.

19. DNR's review of Mr. Neelis's records showed thousands of recordkeeping violations during 2013.

20. On December 15, 2014, DNR issued Mr. Neelis a Notice of Violation/Request for an Enforcement Conference that alleged violations of Wis. Admin. Code ch. NR 113 based on DNR's review of Mr. Neelis's records. On January 8, 2015, DNR held an enforcement conference with Mr. Neelis regarding the December 15, 2014 Notice of Violation.

21. On July 16, 2015, DNR issued Mr. Neelis a Second Notice of Violation for failing to submit to DNR an annual land application report and an annual other method of disposal or distribution report for 2014.

FACTS RELEVANT TO THE VIOLATIONS IN THIS COMPLAINT

22. On August 9, 2016, DNR issued Mr. Neelis a Notice of Violation/Request for Enforcement Conference for failing to submit to DNR an annual land application report and an annual other method of disposal or distribution report for calendar year 2015.

23. On September 1, 2016, Conservation Warden Kaitlin Kernosky obtained a search warrant that authorized conservation wardens to enter the Neelis Junior Property and install, maintain, and monitor an electronic

tracking device on a septage truck, referred to as target vehicle 2, for 30 days.¹

24. Target vehicle 2 was a 1993 International truck with a red cab and white tank, bore Wisconsin license plate number GD68357, and was owned and regularly operated by Mr. Neelis and parked at the Neelis Junior Property.

25. On September 2, 2016 shortly after 12:00 a.m., Warden Kernosky and Conservation Warden Ted Dremel entered the Neelis Junior Property and placed an electronic tracking device on the underside of target vehicle 2.

26. The electronic tracking device was a "live-feed" device that provided the location of target vehicle 2 in real-time to conservation wardens.

27. On September 8, 2016, Wardens Dremel and Kernosky entered the Neelis Junior Property and placed a battery booster on the electronic tracking device on target vehicle 2.

¹ The September 1, 2016 search warrant also authorized conservation wardens to enter David Neelis Senior's property located at E2011 King Road, Waupaca, Waupaca County, Wisconsin 54981, and install, maintain, and monitor an electronic tracking device on a septage truck, target vehicle 1, for 30 days. Target vehicle 1 was a 1979 Ford truck with a green cab and white tank, bore Wisconsin license plate number FB30789, and was owned and regularly operated by David Neelis Senior.

28. On September 27, 2016 at approximately 11:30 p.m., Wardens Dremel and Kernosky entered the Neelis Junior Property and removed the electronic tracking device from target vehicle 2.

29. While the electronic tracking device was on target vehicle 2, Mr. Neelis engaged in septage servicing on numerous days.

30. During September 2016, Dave's Sewer Service and Mr. Neelis were approved by DNR to dispose of septage on three agricultural fields:

- a. DNR number 108011, field number SH-1, approved for 4.5 acres, owned by Steven Hamm and located in Section 25, T21N, R11E, Town of Dayton, Waupaca County (Field SH-1);
- b. DNR number 108012, field number SH-2, approved for 2.5 acres, owned by Steven Hamm and located in Section 25, T21N, R11E, Town of Dayton, Waupaca County; and
- c. DNR number 93196, field number SH-3, approved for 9.5 acres, owned by John Hamm and located in Section 36, T21N, R11E, Town of Dayton, Waupaca County.

31. Based on Mr. Neelis's prior noncompliance and the acts that constitute the violations in this Complaint, DNR summarily suspended and then revoked Mr. Neelis's Business License and Operator Certification in March and April 2017, respectively.

VIOLATION ONE: SEPTAGE DISPOSAL ON AN UNAPPROVED SITE

32. Wisconsin Admin. Code § NR 113.07(1)(a) states, "Disposal of septage shall be by discharge into a [publicly owned treatment works] or other facility for treatment or storage under a WPDES permit or to approved agricultural lands."

33. Wisconsin Admin. Code § NR 113.03(4) defines "approved site" as "property approved by [DNR] or its agent for the disposal, recycling or storage of septage."

34. The Neelis Junior Property is approximately 23 acres including two acres surrounding and containing Mr. Neelis's residence and approximately 21 acres of forest.

35. The Neelis Junior Property is not approved by DNR for septage disposal.

36. Wisconsin Admin. Code § NR 113.07(3)(b)6. requires a vehicle landspreading septage to "be moving forward at all times while septage is being spread." Dumping septage while the vehicle is stationary is referred to as "spot dumping."

37. Electronic tracker data shows that on 12 occasions on nine separate days in September 2016, Mr. Neelis spot dumped septage on a grassy hilltop surrounded by trees located south of his residence on the Neelis Junior Property ("grassy hilltop").

38. Conservation wardens covertly accessed the Neelis Junior Property from the south on eight separate days in September 2016 to independently confirm septage was dumped on the grassy hilltop.

39. On September 4, 2016 at approximately 11:20 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

40. On September 4, 2016 at approximately 7:43 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

41. On September 5, 2016 at approximately 10:40 a.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

42. On September 5, 2016, Wardens Dremel and Kernosky observed two areas where septage had been recently spot dumped and had ponded.

43. On September 5, 2016, Wardens Dremel and Kernosky observed toiletry products and smelled strong septage odors.

44. On September 5, 2016, Wardens Dremel and Kernosky observed tire tracks leading to the septage.

45. On September 6, 2016 at approximately 8:20 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

46. On September 6, 2016 at approximately 10:05 a.m., Warden Kernosky and Conservation Warden Tyler Flood covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

47. On September 6, 2016, Wardens Kernosky and Flood observed septage had been recently spot dumped and had ponded.

48. On September 6, 2016, Wardens Kernosky and Flood observed toilet paper and smelled a strong odor of septage.

49. On September 6, 2016 at approximately 4:56 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

50. On September 9, 2016 at approximately 8:32 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

51. On September 9, 2016 at approximately 11:42 a.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

52. On September 9, 2016, Wardens Kernosky and Dremel observed septage had been recently spot dumped, had ponded, and was "thick" in consistency.

53. On September 9, 2016, Wardens Kernosky and Dremel smelled a strong odor of septage.

54. On September 12, 2016 at approximately 8:46 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

55. On September 12, 2016 at approximately 10:59 a.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

56. On September 12, 2016 at approximately 10:59 a.m., Wardens Dremel and Kernosky observed septage had been recently spot dumped and had ponded.

57. On September 12, 2016, Wardens Dremel and Kernosky smelled a strong odor of septage.

58. On September 14, 2016 at approximately 1:54 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

59. On September 14, 2016 at approximately 4:31 p.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

60. On September 14, 2016, Wardens Dremel and Kernosky observed septage had been recently spot dumped and had ponded.

61. On September 14, 2016, Wardens Dremel and Kernosky observed toiletry products and smelled a strong odor of septage.

62. On September 19, 2016 at approximately 7:32 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

63. On September 19, 2016 at approximately 10:59 a.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

64. On September 19, 2016, Wardens Dremel and Kernosky observed septage had been recently spot dumped and had ponded.

65. On September 19, 2016, Wardens Dremel and Kernosky observed toiletry products and smelled a strong odor of septage.

66. On September 23, 2016 at approximately 1:46 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

67. On September 23, 2016 at approximately 2:54 p.m., Wardens Dremel and Kernosky covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

68. On September 23, 2016, Wardens Dremel and Kernosky observed septage had been recently spot dumped and had ponded.

69. On September 23, 2016, Wardens Dremel and Kernosky smelled a strong odor of septage.

70. On September 23, 2016 at approximately 7:13 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

71. On September 24, 2016 at approximately 1:39 p.m., Warden Dremel and Conservation Warden Jon Kaiser covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

72. On September 24, 2016, Wardens Dremel and Kaiser observed septage had been recently spot dumped, had ponded, and was "thick" in consistency.

73. On September 24, 2016, Wardens Dremel and Kaiser smelled a strong odor of septage.

74. On September 26, 2016 at approximately 9:33 a.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

75. On September 26, 2016 at approximately 10:51 a.m., Warden Kernosky and DNR Environmental Enforcement Specialist Karl Roovers covertly accessed the Neelis Junior Property from the south and inspected the grassy hilltop.

76. On September 26, 2016, Warden Kernosky and Mr. Roovers observed septage had been recently spot dumped and had ponded.

77. On September 26, 2016, Warden Kernosky and Mr. Roovers smelled a strong odor of septage.

78. On September 27, 2016 at approximately 4:33 p.m., Mr. Neelis spot dumped septage on the grassy hilltop at the Neelis Junior Property.

79. On May 7, 2018, Warden Kernosky obtained a search warrant that authorized DNR to enter the Neelis Junior Property, collect soil samples, and inspect the grassy hilltop area.

80. On May 7, 2018, DNR staff collected nine soil samples from the grassy hilltop area and inspected the grassy hilltop area.

81. Subsequent analysis of the soil samples demonstrates that the grassy hilltop area shows elevated levels of nitrogen, among other contaminants, in the soil.

82. Mr. Neelis violated Wis. Admin. Code § NR 113.07(1)(a) on at least twelve occasions between at least September 4, 2016 and September 27, 2016 by spot dumping septage on the Neelis Junior Property, which is not approved by DNR for septage disposal.

**VIOLATION TWO: FAILURE TO COMPLY WITH VECTOR
ATTRACTION REDUCTION REQUIREMENTS**

83. Wisconsin Admin. Code § NR 113.07(3)(e) requires one of the following three methods to be used for vector attraction reduction when septage is applied to agricultural land:

1. Septage is injected below the surface of the land such that no significant amount of the septage shall be present on the land surface within one hour after the septage is injected.
2. Septage applied to the land surface shall be incorporated into the soil within 6 hours after application to or placement on the land.
3. The pH of septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes. When this option is utilized, each container of septage which is applied shall be monitored for compliance.

84. Electronic tracker data shows that Mr. Neelis landspread septage on Field SH-1 on September 2, 6, 8, 9, 12, 14, 15, 16, 20, 26, and 27, 2016.

85. During September 2016, Field SH-1 was planted in hay.

86. Conservation wardens inspected Field SH-1 on five days from September 9, 2016 to October 1, 2016 and observed that septage landspread on Field SH-1 had not been injected or incorporated.

87. On September 9, 2016, Wardens Dremel and Kernosky inspected Field SH-1.

88. On September 9, 2016, Wardens Dremel and Kernosky observed tire tracks in Field SH-1, three sections where septage had been spread on the hay, and toiletry products.

89. On September 10, 2016 at approximately 7:04 p.m., Warden Dremel inspected Field SH-1.

90. On September 10, 2016, Warden Dremel observed tire tracks in Field SH-1, septage on the hay in the same locations as on September 9, 2016, and toiletry products.

91. On September 14, 2016 at approximately 10:05 a.m., Conservation Warden Benjamin Mott inspected Field SH-1.

92. On September 14, 2016, Warden Mott observed tire tracks in Field SH-1, two sections where septage had been spread on the hay, and toiletry products.

93. On September 14, 2016 after inspecting Field SH-1, Warden Mott went to a field south of Crystal Lake Road to investigate an unrelated septage violation against a different septage hauler.

94. On September 14, 2016 at approximately 10:30 a.m., Mr. Neelis was driving target vehicle 2 to Field SH-1 and saw Warden Mott, and they drove to Field SH-1 together.

95. On September 14, 2016, Mr. Neelis stated that he had been landspreading septage in a field on the south side of Crystal Lake Road for the previous week or two.

96. Electronic tracker data shows that Mr. Neelis landspread septage in Field SH-1 and on the Neelis Junior Property from September 2, 2016 to September 14, 2016.

97. On September 14, 2016 after speaking with Warden Mott, Mr. Neelis did not landspread septage in target vehicle 2 to Field SH-1. Instead, Mr. Neelis drove target vehicle 2 to the Neelis Junior Property and spot dumped septage on the grassy hilltop.

98. On September 14, 2016 at approximately 4:50 p.m., Warden Mott inspected Field SH-1 again.

99. On September 14, 2016, Warden Mott observed tire tracks in Field SH-1, the two sections of septage that he had observed earlier, and toiletry products.

100. On September 16, 2016 at approximately 3:10 p.m., Warden Mott inspected Field SH-1.

101. On September 16, 2016, Warden Mott observed tire tracks in Field SH-1, four sections where septage had been spread on the hay, and toiletry products.

102. On October 1, 2016 at approximately 4:35 p.m., Wardens Mott and Kaiser inspected Field SH-1.

103. On October 1, 2016, Wardens Mott and Kaiser observed multiple areas with tire tracks, septage on the hay, and toiletry products.

104. From September 2, 2016 to October 1, 2016, based on the wardens' observations of Field SH-1, Mr. Neelis did not inject septage at Field SH-1.

105. From September 2, 2016 to October 1, 2016, based on the wardens' observations of Field SH-1, Mr. Neelis did not incorporate septage into the soil at Field SH-1.

106. Electronic tracker data shows that on September 2, 6, 8, 12, 20, 21, and 26, 2016, Mr. Neelis arrived at the location of a septage system, pumped the septage from the system, drove to Field SH-1, and landspread the septage all in less than 35 minutes.

107. Pumping septage from a septage system and monitoring the pH of the septage to ensure it is above a pH of 12 for at least 30 minutes, which requires pH testing at least twice, takes greater than five minutes at a minimum.

108. On September 2, 6, 8, 12, 20, 21, and 26, 2016, Mr. Neelis failed to raise the pH of septage he applied to Field SH-1 to a pH of 12 or higher for at least 30 minutes.

109. Mr. Neelis violated Wis. Admin. Code § NR 113.07(3)(e) by failing to use one of the three required vector attraction reduction methods on at least September 2, 6, 8, 12, 20, 21, and 26, 2016.

**VIOLATION THREE: LAND APPLICATION OF SEPTAGE ON HAY
OVER 6 INCHES TALL**

110. Wisconsin Admin. Code § NR 113.07(3)(c)2. states, "Septage may be surface applied to hay fields after the hay has been harvested but not after the new growth of hay has reached a height of 6 inches."

111. On September 14, 2016 at approximately 4:50 p.m., Warden Mott measured the height of the hay in Field SH-1.

112. On September 14, 2016, the hay in Field SH-1 was over 9 inches tall.

113. From September 14, 2016 until October 1, 2016, based on the wardens' observations of Field SH-1, the hay was not cut.

114. On October 1, 2016, Warden Mott observed that the hay in Field SH-1 was at least as tall as it was on September 14, 2016.

115. From at least September 14, 2016 until October 1, 2016, Mr. Neelis landspread septage on hay over 6 inches tall each time he landspread septage on Field SH-1.

116. Mr. Neelis violated Wis. Admin. Code § NR 113.07(3)(c)2. on at least September 14, 15, 16, 20, 26, and 27, 2016, by landspreading septage on hay over 6 inches tall.

**VIOLATION FOUR: FAILURE TO PRODUCE RECORDS
REQUESTED BY DNR**

117. Wisconsin Admin. Code § NR 113.11(3)(c)6. states, "All servicing records (log books or invoice records) shall be kept on file and available for inspection for a period of 5 years."

118. Wisconsin Admin. Code § NR 113.11(3)(c) states, "Each licensed business and any person who services a septage system shall keep [log books and invoices] and make those records available to [DNR] representatives upon request."

119. The August 9, 2016 Notice of Violation/Request for Enforcement Conference requested Mr. Neelis bring to the enforcement conference his vehicle log books or invoice records, vector attraction reduction records, pathogen reduction records, and lime purchase receipts for 2014, 2015, and 2016.

120. On August 19, 2016, Mr. Neelis asked DNR Environmental Enforcement Specialist Pamela Buss via email why DNR was asking for his records.

121. On August 23, 2016, Ms. Buss told Mr. Neelis via email that DNR requests records as part of an enforcement conference and cited DNR's authority to request records pursuant to Wis. Admin. Code § NR 113.11(3)(c).

122. On September 18, 2016, Mr. Neelis stated to Ms. Buss via email that he would not attend the enforcement conference requested by DNR.

123. On September 18, 2016, Mr. Neelis stated, "I will still be sending my log sheets for half of 2015 and 2016 and lyme receipt to show im doing everything correct (sic)."

124. On September 22, 2016, Ms. Buss reiterated DNR's request that Mr. Neelis send DNR his septage-servicing records for 2014, 2015, and 2016.

125. As of the date of this Complaint, Mr. Neelis has not provided DNR with the records originally requested in the August 9, 2016 Notice of Violation.

126. Mr. Neelis violated Wis. Admin. Code § NR 113.11(3)(c) when he failed to produce the septage-servicing records requested by DNR.

PENALTIES AND RELIEF AUTHORIZED

127. Wisconsin Stat. § 281.98(1) states, "[A]ny person who violates [Wis. Stat. ch. 281], or any rule promulgated . . . under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense."

128. Wisconsin Stat. § 281.98(2) states that “the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of [Wis. Stat. ch. 281], including attorney fees.”

129. Wisconsin Stat. § 281.98(3) states that “the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.”

130. Wisconsin Stat. § 23.50 states, “The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees and surcharges imposed under ch. 814 for violations of ss. . . . 281.48(2) to (5)[.]”

131. Wisconsin Stat. § 23.50(2) states:

All actions to recover these forfeitures and costs, fees, and surcharges imposed under ch. 814 are civil actions in the name of the state of Wisconsin, shall be heard in circuit court for the county where the offense occurred, and shall be recovered under the procedure set forth in ss. 23.50 to 23.82.

RELIEF REQUESTED

WHEREFORE, the Plaintiff State of Wisconsin asks for judgment as follows:

1. A court order requiring the Defendants to clean up and remediate septage that the Defendants unlawfully treated and/or disposed of and any contamination caused by such septage;

2. Forfeitures as provided for in Wis. Stat. § 281.98(1);

3. The costs of the investigation and the reasonable and necessary expenses of the prosecution, including attorney fees, as provided for in Wis. Stat. § 281.98(2);

4. The 26% penalty surcharge provided for in Wis. Stat. § 814.77(11); the 20% environmental surcharge provided for in Wis. Stat. § 814.77(5); the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1); the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2); the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.77(1m); the 1% jail surcharge pursuant to Wis. Stat. § 814.77(7); and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.77(8); and

5. Such other relief as the Court may find just and appropriate.

Dated this 18th day of September, 2018.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
the LOUISIANA DEPARTMENT OF)
ENVIRONMENTAL QUALITY)
and the STATE OF WISCONSIN,)

Plaintiffs,)

v.)

SUPERIOR REFINING COMPANY)
LLC and VALERO REFINING –)
MERAUX LLC,)

Defendant.)

CIVIL ACTION NO. 3:10-cv-00563-bbc

THIRD AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America (hereinafter “the United States”); the Louisiana Department of Environmental Quality; the State of Wisconsin; and Murphy Oil USA, Inc. (hereinafter “Murphy”) are parties to a Consent Decree addressing Clean Air Act violations at Murphy’s petroleum refineries located in Superior, Wisconsin (hereinafter “the Superior Refinery”) and in Meraux, Louisiana (hereinafter “the Meraux Refinery”), entered by this Court on February 16, 2011 (hereinafter “the Consent Decree”);

WHEREAS, in the fall of 2011, Murphy sold the Superior Refinery to Calumet Superior, LLC (hereinafter “Calumet”) and the Meraux Refinery to Valero Refining – Meraux LLC (hereinafter “Valero”), which sales and transfers of both refineries were memorialized in the First Amendment to this Consent Decree entered by this Court on May 2, 2012 (and a motion to revise the caption to reflect the new owners was granted by this Court on June 14, 2019);

WHEREAS, on or about November 8, 2017, Calumet changed its name to Superior Refining Company LLC (hereinafter “Superior Refining”);

WHEREAS, an explosion and fire at the Superior Refinery on April 26, 2018 (the “Incident”), damaged or destroyed certain refining equipment and process units subject to the Consent Decree (including the fluidized catalytic cracking unit, components in light liquid and gaseous service, and other Consent Decree-covered units), as well as other refinery emission sources (such as the saturated gas plant, vacuum unit, and storage tanks), which resulted in the shutdown of the Superior Refinery following the Incident;

WHEREAS, on May 3, 2018, pursuant to Paragraph 237 of the Consent Decree, Superior Refining provided an initial notice to the United States and the State of Wisconsin of its claim that the Incident and shutdown constituted a *force majeure* event that adversely affected Superior Refining’s performance of its obligations under the Consent Decree;

WHEREAS, in follow-up correspondence pursuant to the *force majeure* provisions of the Consent Decree, on May 15 and July 31, 2018, the United States required Superior Refining to keep the United States and Wisconsin apprised of the Superior Refinery’s status by periodically reporting on, *inter alia*, ongoing response and recovery efforts, plans for repairs and rebuilding, and the anticipated schedule for completing such repairs. In addition, the United States temporarily suspended certain Consent Decree requirements in light of the non-operational status of the Superior Refinery and required Superior Refining to continue to coordinate with the United States and the State of Wisconsin on its efforts and plans to restart the Superior Refinery. The United States’ responses to Superior Refining’s *force majeure* claim were provided in consultation with, and on behalf of, the State of Wisconsin, as provided in Paragraph 239 of the Consent Decree;

WHEREAS, as a result of the Incident, an estimated 31.6 tons of particulate matter (“PM”), 0.2 tons of nitrogen oxides (“NO_x”), between 22.6 tons and 48.3 tons of volatile organic compounds (“VOCs”), 6.3 tons of carbon monoxide (“CO”), and 16.8 tons of sulfur dioxide (“SO₂”) emissions were released into the air;

WHEREAS, the emissions emitted from the Superior Refinery as a result of the Incident may have violated Paragraph 156B of the Consent Decree and the following federally enforceable Wisconsin Department of Natural Resources (“WDNR”) regulatory and permit requirements: Wis. Admin. Code § NR 420.05(3)(b) and Permit 16-RAB-184, Part I, § DD.1.b(5); Wis. Admin. Code § NR 429.04(1) and Permit 16-RAB-184, Part II, § C.2.j; and Wis. Admin. Code § NR 431.05 and Permit 16-RAB-184, Part II, § C.2.l; and the following provisions in the Superior Refinery’s Title V permit, Permit 816009590-P01: Part II, §§ C.10 and C.11;

WHEREAS, Superior Refining announced its intention shortly after the Incident to rebuild and restart the Superior Refinery, which will involve the modification of some of the emission units at the Superior Refinery;

WHEREAS, Superior Refining submitted to the WDNR on March 29, 2019, an application for a Clean Air Act Prevention of Significant Deterioration (“PSD”) permit for construction related to rebuilding and restarting emission units at the Superior Refinery and that, when final, would contain emission limitations that are Best Available Control Technology (“BACT”) where BACT is applicable;

WHEREAS, the State of Wisconsin, the United States, and Superior Refining filed a Second Amendment to Consent Decree on May 17, 2019, that related to the Superior Refinery’s Sulfur Recovery Plant;

WHEREAS, the State of Wisconsin, the United States, and Superior Refining also seek to include additional measures to mitigate the harm from the emissions that resulted from the Incident;

WHEREAS, hydrofluoric acid (“HF”) was not released from the Hydrofluoric Acid Alkylation Unit (“HF Unit”) at the Superior Refinery as a result of the Incident, there have been no prior reported safety incidents with respect to the HF Unit operations, and Superior Refining has agreed in this Third Amendment to install additional safety-focused enhancements to the HF Unit that will provide additional safeguards for workers at the Superior Refinery and members of the public;

WHEREAS, the provisions of this Third Amendment materially modify the requirements of the Consent Decree, and Paragraph 284 of the Consent Decree requires that a material modification must be signed by the applicable parties and approved by the Court as fair, reasonable, and in the public interest before it is effective;

NOW THEREFORE, before the taking of any testimony, and without the adjudication or admission of any issue of fact or law, the United States, the State of Wisconsin, and Superior Refining hereby agree that upon approval by the Court of this Third Amendment, the Consent Decree shall be modified as follows:

I. APPLICABILITY OF PARTS I-XVII OF THE CONSENT DECREE TO THE THIRD AMENDMENT

1. Sections of the Consent Decree That Continue to Apply to the Third Amendment.

The requirements of Sections I through IV [Jurisdiction, Applicability, Objectives, and Definitions], Section VI [Emission Credit Generation] (except Paragraphs 149-150), Section VIII [Reporting and Recordkeeping], Sections XI through XIV [Interest, Right of Entry, Force Majeure, and Retention of Jurisdiction/Dispute Resolution] (except as specifically provided for

in Sections IV.A and IV.C below), and Section XVI [General Provisions] that are applicable to the Superior Refinery are and will continue to apply to the requirements of this Third Amendment.

2. Sections of the Consent Decree That Do Not Apply to the Third Amendment.

The requirements of Section V [Affirmative Relief/Environmental Projects], Section VII [Supplemental Environmental Projects], Section IX [Civil Penalty] (except as specifically provided in Section IV.A below), Section X [Stipulated Penalties] (except as specifically provided for in Section IV.A below), Section XI [Interest] (except as specifically provided for in Section IV.A below), Section XV [Effect of Settlement], and Section XVII [Termination] do not apply to this Third Amendment. Separate requirements covering affirmative relief, stipulated penalties, permitting, and termination, as specified in Sections II through IV of this Third Amendment below, are solely applicable to this Third Amendment.

3. Separate Termination of Consent Decree and Third Amendment. The requirements of this Third Amendment and the Consent Decree (as amended by the First and Second Amendments) may be terminated separately, as provided in this Third Amendment.

- a. Unless and until terminated pursuant to Section XVII [Termination], the requirements of Sections I through XVII of the Consent Decree (as amended by the First and Second Amendments) that are applicable to the Superior Refinery remain in full force and effect.
- b. Termination of the requirements of this Third Amendment shall be governed by the provisions of Section VI of this Third Amendment and may be terminated separately from the requirements of Sections I through XVII of the Consent Decree (as amended by the First and Second Amendments).

II. MITIGATION PROJECTS

4. Mitigation of Emissions Released Into the Air from the Incident. Superior Refining shall complete the projects identified in this Section II and as provided for in the specified Appendices of this Third Amendment. The total estimated emission reductions from these projects equal or exceed the quantity of PM, VOCs, CO, and NO_x emitted during the Incident, and most of the SO₂ that was emitted. Because the health and environmental effects of SO₂ and PM are similar, the total quantity of PM and SO₂ reductions from both projects together offset the health and environmental impacts of the total quantity of PM and SO₂ that was emitted.

a. A Wood-Burning Appliance Change-Out Project shall be implemented in Douglas County, Wisconsin (in which the Superior Refinery is located), as well as in other adjacent and nearby counties in the same airshed, as provided in Appendix A. The Wood-Burning Appliance Change-Out Project is estimated to result in emission reductions of 31.5 tons of PM, 80.7 tons of VOCs, and 177.2 tons of CO.

b. A State of Wisconsin Solar Photovoltaic Panels Project shall be implemented in the Superior, Wisconsin vicinity, as provided in Appendix B. The Solar Photovoltaic Panels Project is estimated to result in emission reductions of 9.2 tons of SO₂, 1.7 tons of PM, 1.2 tons of VOCs, 10.4 tons of CO, and 6.5 tons of NO_x.

5. Certification. With regard to the mitigation projects, Superior Refining certifies the truth and accuracy of each of the following:

a. That, as of the date of executing this Third Amendment, Superior Refining is not required to perform or develop the mitigation projects by any federal, state, or local

law or regulation and is not required to perform or develop the mitigation projects by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. That the mitigation projects are not projects that Superior Refining was planning or intending to construct, perform, or implement other than in settlement of the potential violations resolved in this Third Amendment;

c. That Superior Refining has not received and will not receive credit for the mitigation projects in any other enforcement action; and

d. That Superior Refining shall neither generate nor use any pollutant reductions from the mitigation projects as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

III. ADDITIONAL REFINERY UPGRADE PROJECT

6. An HF Unit Upgrade Project shall be implemented at the Superior Refinery, as provided in Appendix C. This project is intended to provide safety enhancements to the design, maintenance, and operation of the Superior Refinery's HF alkylation process.

IV. ADDITIONAL PROVISIONS APPLICABLE TO MITIGATION AND UPGRADE PROJECTS

A. Stipulated Penalties for Third Amendment Requirements

7. Stipulated penalties shall be paid to the United States and to the State of Wisconsin for each failure by Superior Refining to comply with the terms of this Third Amendment as provided herein. In no event shall any stipulated penalty assessed exceed \$32,500 per day for any individual violation of this Third Amendment. Stipulated penalties shall be calculated in the amounts specified in this Part IV.

8. Paragraphs 230-234 (related to Stipulated Penalties and Interest), as the provisions of those paragraphs apply to the United States, the State of Wisconsin, and to

Superior Refining, shall apply to violations of this Third Amendment with respect to the demand, payment, and dispute of stipulated penalties, and Paragraphs 162 and 164 regarding the process for payment of stipulated penalties.

9. Non-Compliance with Requirements for Mitigation and Additional Projects. For failure to comply with any requirements of Appendices A through C:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1500
Beyond 60 th day after deadline	\$3000

B. 26 U.S.C. § 162(f)(2)(A)(ii) Identification

10. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Mitigation Projects) is restitution or required to come into compliance with law.

C. Retention of Jurisdiction

11. This Court will retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Third Amendment and any subsequent amendments thereto, and for the purpose of adjudicating all disputes between the United States, the State of Wisconsin, and Superior Refining that may arise under the provisions of this Third Amendment, until this Third Amendment terminates in accordance with Section VI of this Third Amendment.

V. EFFECT OF SETTLEMENT

12. Resolution of Liability. Entry of this Third Amendment shall resolve the civil liability of Superior Refining to the United States and the State of Wisconsin for emissions

violations of the following requirements resulting from the Incident: Paragraph 156B of the Consent Decree; Wis. Admin. Code § NR 420.05(3)(b) and Permit 16-RAB-184, Part I, § DD.1.b(5); Wis. Admin. Code § NR 429.04(1) and Permit 16-RAB-184, Part II, § C.2.j; Wis. Admin. Code § NR 431.05, Permit 16-RAB-184, Part II, § C.2.1; and the following provisions in the Superior Refinery's Title V permit, Permit 816009590-P01: Part II, §§ C.10 and C.11.

13. Reservation of Rights. Notwithstanding Paragraph 11 of this Section V, the release of liability by the United States and the State of Wisconsin for violations resolved by this Third Amendment shall be rendered void if Superior Refining materially fails to comply with the obligations and requirements of Section II, provided however, that the release identified above shall not be rendered void if Superior Refining remedies such material failure and pays any stipulated penalties due as a result of such material failure.

VI. TERMINATION OF THIRD AMENDMENT

14. Certification of Completion. Prior to moving for termination under Paragraph 18 of this Part VI, Superior Refining may seek to certify completion of the requirements of one or more of the following Sections of this Third Amendment:

- a. Section II, Paragraph 4.a and Appendix A: Wood-Burning Appliance Change-Out Project;
- b. Section II, Paragraph 4.b and Appendix B: State of Wisconsin Solar Photovoltaic Panels Project; and
- c. Section III and Appendix C: Hydrofluoric Acid Alkylation Unit Upgrade Project.

15. Certification of Completion: Superior Refining Actions. If Superior Refining concludes that any of the projects required by Sections II and III of this Third Amendment have

been completed, Superior Refining may submit a written report to EPA and the State of Wisconsin describing the activities undertaken and certifying that the applicable project(s) have been completed in full satisfaction of the requirements of this Third Amendment, and that Superior Refining is in substantial and material compliance with all of the other requirements of this Third Amendment. The report will contain the following statement, signed by a responsible corporate official of the Superior Refinery:

To the best of my knowledge, after appropriate investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

16. Certification of Completion: EPA Actions. Upon receipt of Superior Refining's certification and after opportunity for comment by the State of Wisconsin, EPA will notify Superior Refining whether the requirements set forth in the applicable project(s) have been completed in accordance with this Third Amendment:

a. If EPA, after consultation with the State of Wisconsin, concludes that the requirements have not been fully complied with, EPA will notify Superior Refining as to the activities that must be undertaken to complete the applicable Section of this Third Amendment. Superior Refining will perform all activities described in the notice, subject to its right to invoke the dispute resolution procedures set forth in Part XIV (Dispute Resolution) of the Consent Decree; and/or

b. If EPA, after consultation with the State of Wisconsin, concludes that the requirements of the applicable project have been completed in accordance with this Third Amendment, EPA will so certify in writing to Superior Refining. This certification will

constitute the certification of completion of the applicable project for purposes of this Third Amendment.

The Parties recognize that ongoing obligations under Sections II or III of this Third Amendment may remain and necessarily continue (*e.g.*, reporting, recordkeeping, etc. requirements), and that Superior Refining's certification is that it is in current compliance with all such obligations.

17. Certification of Completion: No Impediment to Stipulated Penalty Demand.

Nothing in Paragraphs 15 and 16 of this Section VI will preclude the United States or the State of Wisconsin from seeking stipulated penalties for a violation of any of the requirements of this Third Amendment regardless of whether a Certification of Completion has been issued under Paragraph 16.b of this Section VI of this Third Amendment. In addition, nothing in this Paragraph 17 will permit Superior Refining to fail to implement any ongoing obligations under this Third Amendment regardless of whether a Certification of Completion has been issued.

18. Termination: Conditions Precedent. This Third Amendment will be subject to termination upon motion by the Parties or upon motion by Superior Refining acting alone under the conditions identified in this Paragraph 18. Prior to seeking termination, Superior Refining must have completed and satisfied all of the following requirements of this Third Amendment:

a. Compliance with all provisions contained in this Third Amendment, and such compliance as may be established for specific Sections of this Third Amendment in accordance with Paragraphs 14 through 16 of this Part VI; and

b. Payment of all stipulated penalties due under the terms of this Third Amendment; unless all stipulated penalties owed to the United States or the State of Wisconsin are fully paid as of the time of the Motion.

19. Termination: Procedure. At such time as Superior Refining believes that it has satisfied the requirements for termination set forth in Paragraph 18 of this Section VI, Superior Refining will certify such compliance and completion to the United States and the State of Wisconsin in accordance with the certification language of Paragraph 15 of this Section VI. Unless the United States or the State of Wisconsin objects in writing with specific reasons within 120 days of receipt of Superior Refining's certification under this Paragraph 19, the Court may upon motion by Superior Refining order that this Third Amendment be terminated. If the United States or the State of Wisconsin objects to the certification by Superior Refining, then the matter will be submitted to the Court for resolution under Part XIV of the Consent Decree (Retention of Jurisdiction/Dispute Resolution). In such case, Superior Refining will bear the burden of proving that this Consent Decree should be terminated.

VII. FINAL JUDGMENT

20. Upon approval and entry of this Third Amendment by the Court, this Third Amendment shall constitute a final judgment of the Court as to the United States, the State of Wisconsin, and Superior Refining.

VIII. APPENDICES

21. The following appendices are attached to and incorporated as part of this Third Amendment:

APPENDIX A: Wood-Burning Appliance Change-Out Project

APPENDIX B: State of Wisconsin Solar Photovoltaic Panels Project

APPENDIX C: Hydrofluoric Acid Alkylation Unit Upgrade Project

IX. SIGNATORIES

22. Each of the undersigned representatives certifies that they are fully authorized to enter into this Third Amendment on behalf of such Parties, and to execute and to bind such Parties to this Third Amendment.

ORDER

Before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED that the foregoing Third Amendment to the Consent Decree is hereby approved and entered as a final order of this court.

Dated and entered this _____ Day of _____, 2019.

BARBARA B. CRABB
UNITED STATES DISTRICT JUDGE

**FOR PLAINTIFF THE UNITED STATES OF
AMERICA:**

Date: _____

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: _____

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Special Appointment as a Department of Justice
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Environment and Natural Resources Division
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SCOTT C. BLADER
United States Attorney
Western District of Wisconsin

By:

Date: _____

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**FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY:**

Date: _____

ROSEMARIE A. KELLEY
Director
Office of Civil Enforcement
Office Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, DC 20460

**FOR PLAINTIFF THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY:**

Date: _____

T. LEVERETT NELSON
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U.S. Environmental Protection Agency, Region 5

Date: _____

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**FOR PLAINTIFF THE STATE OF
WISCONSIN:**

JOSHUA L. KAUL
Attorney General of Wisconsin

By:

Date: _____

BRADLEY J. MOTL
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**FOR DEFENDANT SUPERIOR REFINING
COMPANY LLC:**

Date: _____

JEROME P. MILLER
Vice President
Superior Refining Company LLC

Date: _____

KOLLIN S. SCHADE
Vice President
Superior Refining Company LLC

APPENDIX A

Wood-Burning Appliance Change-Out Project in Wisconsin

1. General Requirements. Superior Refining shall implement a wood-burning appliance change-out and retrofit project (“Wood-Burning Appliance Change-Out Project” or “Project”), as provided in this Appendix A.

a. The Project shall be implemented in the counties surrounding the Superior Refinery, as provided in Paragraph 4 of this Appendix A. Superior Refining may implement this Project through the use of rebates, vouchers, and/or discounts, and may further engage an appropriate contractor or consultant to assist Superior Refining’s implementation of the Wood-Burning Appliance Change-Out Project (“Contractor” or “Third-Party Implementer”).

b. Superior Refining shall spend at least \$290,000.00 to implement the Project (“Wood-Burning Appliance Change-Out Project Dollars” or “Project Dollars”), unless Superior Refining can document that the target emissions offsets for this Project set forth in Paragraph 4.a of the Third Amendment have been met while spending less than that amount, as provided in Paragraph 9.a of this Appendix A (“Deadline for Completion of Project”). “Wood-Burning Appliance Change-Out Project Dollars” means Superior Refining’s expenditures and payments incurred or made in carrying out this Wood-Burning Appliance Change-Out Project, to the extent that such expenditures or payments represent (i) costs for administrative support and outreach (subject to the 12% limitation below); and (ii) the value of vouchers provided for the acquisition of replacement wood-burning appliances and technologies.

c. No greater than 12 percent of the Wood-Burning Appliance Change-Out Project Dollars shall go towards administrative support and outreach costs associated with implementation of the Wood-Burning Appliance Change-Out Project; expenses for Superior Refining's (or any affiliate of Superior Refining or Husky Energy Inc.) use of "in-house" support personnel for the design, implementation, and management of the Project are not to be credited to this Project.

2. Qualified Existing Appliances and Technologies. The Wood-Burning Appliance Change-Out Project shall replace or retrofit inefficient, higher-polluting wood-burning appliances, including the following existing appliances and technologies:

- a. Existing non-EPA-certified hydronic heaters or forced air furnaces;
- b. Existing non-EPA-certified wood stoves;
- c. Existing non-Phase 2-qualified wood-burning fireplaces; or
- d. Spent catalysts in EPA-certified catalytic wood stoves.

3. Qualified Replacement or Retrofitting Appliances and Technologies. Cleaner-burning, more energy efficient heating appliances and technologies that qualify for the Project as replacement or retrofitting appliances and technologies include the following:

a. EPA-certified hydronic heaters or forced air furnaces as identified by the EPA-Certified Wood Stove Database

(<https://cfpub.epa.gov/oarweb/woodstove/index.cfm?fuseaction=app.searchwh>);

b. EPA-certified pellet or wood stoves as identified by the EPA-Certified Wood Stove Database

(<https://cfpub.epa.gov/oarweb/woodstove/index.cfm?fuseaction=app.search>);

- c. Energy Star-certified gas or propane appliances
(<https://www.energystar.gov/productfinder/product/certified-furnaces/results>);
- d. Energy Star-certified heat pumps
(<https://www.ahridirectory.org/Search/SearchForm?programId=69&searchTypeId=4&labEledes=1>);
- e. Other Energy Star-certified residential or commercial heating appliances;
- f. Replacement catalysts for spent catalysts in EPA-certified catalytic wood stoves;
- g. EPA Phase 2-qualified fireplace retrofit devices
(<https://www.epa.gov/burnwise/list-qualified-fireplaces-and-fireplace-retrofit-devices>);
- h. EPA-certified wood fireplace inserts (for open fireplaces shown to be used as a primary or significant source of home heating) as identified by the EPA-Certified Wood Stove Database (<https://cfpub.epa.gov/oarweb/woodstove/index.cfm>);
- i. Pellet, gas, propane, or electric fireplace inserts; or
- j. Other cleaner-burning, more energy-efficient residential or commercial heating appliances (*e.g.*, masonry heaters).

4. Implementation Requirements. The wood-burning appliances that are replaced under this Project shall be permanently removed from use and recycled/disposed of appropriately. Preference shall be given to installation of non-wood burning replacement appliances and technologies listed in Paragraph 3 of this Appendix A with lower emissions than replacement wood-burning appliances, including pellet, gas, propane, or electrical appliances. For replacement wood-burning appliances, preference shall be given to wood-burning appliances that are at least 70% efficient and meet EPA 2015 Step 2 emission standards (*Standards of*

Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, 80 Fed. Reg. 13,672 (Mar. 16, 2015); 40 C.F.R. Part 60, Subpts. AAA & QQQQ), effective March 16, 2020.

5. Qualification for Replacement/Retrofitting. To qualify for the Wood-Burning Appliance Change-Out Project, the wood-burning appliance or fireplace must be in regular use in a primary residence, in a non-seasonally rented property (occupied all year around), or in a frequently used non-residential building (*e.g.*, churches, greenhouses, schools) during the heating season, and preference shall be given to those appliances that are a primary or significant source of heat.

6. Low-Income Assistance. A minimum of 12 percent of the Project Dollars shall be spent on rebates, vouchers, and/or discounts for income-qualified households. Income eligibility will be determined by participation in one of the following programs or other pertinent/substantially equivalent income eligibility criteria:

- a. Supplemental Nutrition Assistance Program (“SNAP”);
- b. Health Care and Nutrition Assistance Benefit Programs Offered through the Wisconsin Department of Health Services Medical Assistance (ForwardHealth), such as BadgerCare, FoodShare Wisconsin, etc.;
- c. Women, Infants, and Children’s (“WIC”) Program;
- d. Wisconsin Home Energy Assistance Program (“WHEAP”)/HomeEnergy+;
- e. Head Start (or equivalent);
- f. Federal Free and Reduced Price Meals (“FRPM”)/National School Lunch Program (“NSLP”); or

g. Other proof of low-income status showing income up to 185% of the federal poverty level under the U.S. Department of Health and Human Services Poverty Guidelines.

If after three years from the Date of Entry Superior Refining believes it will be unable to implement 12 percent of the Project for income-qualified households, Superior Refining may submit documentation supporting its position to EPA and WDNR and describing (with support) the basis for being unable to reach sufficient income-qualified households, and EPA in consultation with WDNR may waive or modify this requirement in whole or in part.

7. Areas for Implementation. The Wood-Burning Appliance Change-Out Project shall be implemented within the following areas surrounding the Superior Refinery: the counties of Ashland, Bayfield, Burnett, Douglas, Iron, Sawyer, and Washburn in Wisconsin; and the tribal lands, reservations, and/or trust areas partially or completely located in those counties, specifically the Bad River Reservation (located in Ashland County and Iron County), the Lac Courte Oreilles Reservation (located in Sawyer County, and the trust areas in Burnett and Washburn Counties), the Red Cliff Band Reservation (located in Bayfield County), the Lac du Flambeau Band Reservation (located in Iron County and Vilas County), and the St. Croix Chippewa Reservation (located in Burnett County and Washburn County). Outreach shall include the tribal government and members of the five reservations listed above. Superior Refining may propose the inclusion of additional counties in Wisconsin to EPA and WDNR if demand is determined to be insufficient in the above-participating counties, or if significantly increased environmental benefit in the same airshed can be accomplished in neighboring counties.

8. Installation and Operationally-Related Requirements.

a. Information for Project Participants. Each Wood-Burning Appliance Change-Out Project participant shall receive information and either training or a demonstration related to proper operation of their new appliance and the benefits of proper operation (*e.g.*, lower emissions, better efficiency), including, if applicable, information related to the importance of burning dry seasoned wood. Every Wood-Burning Appliance Change-Out Project participant shall also be asked to sign a pledge committing to only burning dry seasoned wood and shall be offered a moisture meter. If the program participant accepts the moisture meter, the retailer/installer is required to demonstrate and provide written information regarding the proper use of the wood moisture meter.

b. Installer Qualifications. Superior Refining (or its Contractor or Third-Party Implementer) shall include measures to ensure that: (i) installation of new, cleaner burning heating appliances is done by a certified or equivalent professional in conformity with all applicable manufacturers' installation instructions, state laws, and local codes; (ii) only appropriately certified professionals or equivalent professionals are used to remove and dispose of old appliances, as well as for any other related activities (*e.g.*, weatherization offices, individual stove retailers, etc.) that may be part of the Project; and (iii) hydronic heaters are installed according to the Air Conditioning Contractors of America's Manual J protocol or an equivalent methodology to ensure the hydronic heater is properly sized.

9. Deadline for Completion of Project. The Wood-Burning Appliance Change-Out Project shall be completed no later than four years after the Date of Entry of the Third Amendment, except as provided below:

a. If at any time Superior Refining documents that the emission reduction targets for this Project specified in Paragraph 4.a of the Third Amendment have been met without spending all Wood-Burning Appliance Project Dollars, Superior Refining may request EPA's and WDNR's joint approval to end the Project. EPA, after consultation with WDNR, shall approve the request if a determination is made that the emission reduction targets have been met.

b. Superior Refining may request an extension of time to complete the Project if less than 75% of the Wood-Burning Appliance Project Dollars will not be spent within the first three years of implementation. If Superior Refining can document that it is or will be difficult to find sufficient participants in the counties in which the Project is approved to be implemented, Superior Refining may also request that the Project be expanded to include additional counties within the same airshed and deadline for completion extended. EPA, after consultation with WDNR, shall respond to the request within 60 days of receipt.

10. Progress Reporting. Commencing with its first progress report pursuant to Section VIII [Reporting and Recordkeeping] of the Consent Decree that is due following the Date of Entry of this Third Amendment, and continuing semi-annually thereafter until completion of the Wood-Burning Appliance Change-Out Project, Superior Refining shall include in the progress report the following:

a. The schedule for implementing the Project;

- b. A summary-level budget for the Project;
- c. A description of the anticipated environmental and other benefits of the mitigation project through the end of the semi-annual period, including an estimate of emission reductions (*e.g.*, NO_x, SO₂, PM, VOCs, CO) achieved up through the reporting period.
- d. The criteria Superior Refining (or its Contractor(s)/Third-Party Implementer(s)) has used and/or will be used (as applicable) to determine which income-qualified owners shall be eligible for up to full-cost replacement; and
- e. The outreach program that Superior Refining (or its Contractor(s)/Third-Party Implementer(s)) has used and/or will be used (as applicable) to raise awareness of the Wood-Burning Appliance Change-Out Project within the designated geographic area.

Once Superior Refining identifies its plans for Project implementation in a progress report, Superior Refining shall identify any planned changes from the original plan in future progress reports.

11. Completion of Project. Within 60 days following the completion of the Project, Superior Refining shall submit to EPA and WDNR for approval a Project completion report that documents:

- a. The date the Project was completed;
- b. The results of implementation of the Project, including the estimated emission reductions or other benefits achieved;
- c. The Project Dollars incurred by Superior Refining in implementing the Project; and

d. The final number and type of appliances replaced, the cost per unit, and the value of the rebate or incentive per unit.

EPA and/or WDNR may request additional information on the Project after the Superior Refinery submits the completion report, if the information provided is not adequate to conclude that the Project has been performed and completed in accordance with this Third Amendment.

12. Approval or Disapproval of Project's Completion. The following procedure shall be followed for determining whether the Project is completed:

a. Approval. If EPA, in consultation with WDNR, concludes based on the Project completion report or subsequent information provided by Superior Refining that the Project has been performed and completed as required by this Third Amendment, then EPA will approve completion of the Project.

b. Disapproval. If EPA, in consultation with WDNR, concludes based on the Project completion report or subsequent information provided by Superior Refining that the Project has not been performed and completed in accordance with this Third Amendment, then EPA will disapprove completion of the Project. EPA, in consultation with WDNR, shall provide written comments explaining the basis for declining approval of the Project's completion and the action(s) needed to complete the mitigation project as soon as reasonably practicable. Within 60 days of receiving written comments from EPA, Superior Refining shall either:

- i. Implement the action(s) needed to complete the Project; or
- ii. Submit the matter for dispute resolution, including the period of informal negotiations, under Section XIV [Retention of Jurisdiction/Dispute Resolution] of the Consent Decree.

APPENDIX B

State of Wisconsin Solar Photovoltaic Panels Project

A. Solar Photovoltaic Panels Project Requirements

1. Superior Refining shall, by no later than four years from the Date of Entry of this Third Amendment, implement a project to install solar photovoltaic panels (“Solar PV Project” or “Project”) on the campus of University of Wisconsin – Superior (the “Project Beneficiary”) in Superior, Wisconsin, as provided in this Appendix B. Superior Refining may engage an appropriate contractor or consultant to assist in the implementation of the Project (“Contractor” or “Third-Party Implementer”). To the extent possible, Superior Refining shall use North American Board of Certified Energy Practitioners-certified energy professionals to ensure proper installation and performance of the Solar PV Project system. The Solar PV Project shall, at a minimum, consist of:

a. The installation of a system of conventional flat panels or thin film solar photovoltaics (“solar panels”) at one or more locations with unrestricted solar access on the campus of the Project Beneficiary, producing a total installed capacity of at least 440 kilowatts (“kW”);

b. Use of industry best practices in sizing the solar thermal collectors’ surface area to match the intended storage tank and end-use application;

c. A grid-tied inverter, appropriately sized for the capacity of solar panels installed at the location;

d. The appropriate solar panel mounting equipment for the type of roof or Project site location (*i.e.*, roof mount or ground mount);

e. Wiring, conduit, and associated switchgear and metering equipment required for interconnecting the solar generator(s) to the utility grid, which shall meet all

applicable requirements under the National Electric Safety Code, and all wiring, conduit, and fasteners must meet industry best practices for use in outdoor environments (such as corrosion resistance) and local or national code requirements;

2. Solar panels shall be installed on the customer side of the meter and ownership of the system, and any environmental benefits that result from the installation of the Solar PV Project (including associated renewable energy credits and renewable resource credits that may be available), shall be conveyed to the Project Beneficiary.

3. Installed Solar PV Project systems should provide for adequate freeze protection appropriate for the climate in which the system operates.

4. Superior Refining shall ensure that there is a warranty in place for the Project Beneficiary covering the major subcomponents of the Solar PV Project which, at a minimum, covers the solar panels (modules) for 25 years and the inverters for 10 years with an efficiency of 95% or higher.

B. Project Reporting and Completion

5. Progress Reporting. Commencing with its first progress report pursuant to Section VIII [Reporting and Recordkeeping] of the Consent Decree that is due following the Date of Entry of this Third Amendment, and continuing semi-annually thereafter until completion of the Solar PV Project, Superior Refining shall include in the progress report the following:

a. The progress made on completing the Project for the period of time covered by the report, and an updated schedule or timeline for implementing the Project;

b. A summary of the number of solar panels installed, their type and size (kW), the type of buildings on which solar panels are installed, and other relevant information; and

c. An estimate of the capacity in kW installed for the period of time covered by the report, together with updated estimates of the total emission reductions achieved through the date of the report.

6. Project Completion. Within 90 days following the completion of the Solar PV Project, the Superior Refinery shall submit to WDNR for approval, with a copy to EPA, a Project Completion Report that documents:

a. The date the Project was completed;

b. A summary of the costs incurred in implementing the Project; and

c. The total number of solar panels installed, the total capacity in kW of the solar panels installed, and their locations; and

d. The estimated emission reductions achieved by the Project.

7. WDNR may request additional information on the Solar PV Project after Superior Refining submits the Project Completion Report, if the information provided is not adequate to conclude that the Project has been performed and completed in accordance with this Third Amendment.

C. Approval and Disapproval Procedures

8. Approval or Disapproval of Project Completion Report. The following procedure shall be followed for approving the Project Completion Report.

a. Approval. If WDNR concludes, based on the relevant submittal for and on any subsequent information provided by Superior Refining, that the Project

Completion Report demonstrates that the Project has been performed and completed as required by this Appendix B, then WDNR will approve the relevant submittal. WDNR may, at its option, consult with EPA during its review of the submittal; if requested, EPA shall consult with WDNR.

b. Disapproval. If WDNR concludes, based on the relevant submittal for and on any subsequent information provided by Superior Refining, that the Project Completion Report does not demonstrate that the Project has been performed and completed as required by this Appendix B, then WDNR will disapprove the relevant submittal. WDNR may, at its option, consult with EPA during its review of the submittal; if requested, EPA shall consult with WDNR. WDNR shall provide written comments explaining the basis for declining approval and the action(s) needed to complete the Solar PV Project as soon as reasonably practicable. Within 60 days of receiving written comments from WDNR, Superior Refining shall either:

i. Submit a revised Project Completion Report addressing WDNR's comments, or if applicable to commence implementation of the action(s) needed to complete the Project; or

ii. Submit the matter for dispute resolution, including the period of informal negotiations, under Section XIV [Retention of Jurisdiction/Dispute Resolution] of the Consent Decree.

APPENDIX C

Hydrofluoric Acid Alkylation Unit Upgrade Project

1. Superior Refining shall implement a project to enhance and upgrade its HF Unit as provided in this Appendix C (the “Hydrofluoric Acid Alkylation Unit Upgrade Project” or “HF Project”). Superior Refining shall retain a qualified, third-party consultant or consultants with knowledge in refinery processes and operations relevant to the HF Unit to assist Superior Refining’s development and implementation of each of the upgrades to the HF Unit included in this Appendix C.

A. Laser Leak Detection System

2. Laser Leak Detection System. Superior Refining shall install a laser leak detection system around the perimeter of the Superior Refinery’s HF Unit to supplement the Superior Refinery’s current point-source HF detection system, with the goal of early detection of an HF release. The laser leak detection system shall be designed:

- a. To provide constant monitoring around the perimeter of the HF Unit and early detection of HF;
- b. To detect HF in the vicinity of the HF Unit, including the HF loading/unloading area;
- c. To be integrated into the Superior Refinery’s HF Unit Control Room; and
- d. To include the sounding of an audible and visual alarm if the system detects a leak.

3. Laser Leak Detection System Implementation Schedule. Superior Refining shall complete installation of the laser leak detection system, and confirm that it is fully operational and ready for use, by no later than 30 days prior to restart of the HF Unit.

B. Rapid Acid Transfer System

4. Rapid Acid Transfer System. Superior Refining shall install a rapid acid transfer system that is capable of deinventorying the HF from the settler and reactor of the HF Unit to an HF-dedicated emergency holding vessel. The rapid acid transfer system shall:

- a. Transfer the HF inventory from the locations above in less than 10 minutes under leak conditions; and
- b. Be capable of being remotely activated from the HF Unit Control Room.

5. Rapid Acid Transfer System Implementation Schedule. Superior Refining shall complete installation of the rapid acid transfer system, and confirm that it is fully operational and ready for use, by no later than 30 days prior to restart of the HF Unit.

C. Water Mitigation System

6. Water Mitigation System. Superior Refining shall maintain a water mitigation system, including fixed-spray curtains and monitors, and install additional curtains and monitors as appropriate, to prevent or minimize the airborne transport of HF in the event of an atmospheric release of HF gases or vapors. The water mitigation system, comprised of existing and any upgraded/new equipment, shall include the following operational, engineering, and design elements:

- a. Fixed-spray curtains designed to provide adequate coverage of the HF Unit;
- b. Remotely-operated water cannons installed in multiple locations in the HF Unit to mitigate a potential accidental release of HF, including the HF loading/unloading area;
- c. Deluge systems in high risk areas, as appropriate;

- d. Sufficient water capacity and flowrate to allow for simultaneous operation of the water mitigation system for an appropriate period of time;
- e. Be capable of being remotely activated from both the HF Unit Control Room and from the field; and
- f. Provide a ratio of water to HF of at least 40 to 1 on a volume-to-volume basis.

7. Water Spray Mitigation System Implementation Schedule. Superior Refining shall complete installation of the water spray mitigation system, and confirm that it is fully operational and ready for use, by no later than 30 days prior to restart of the HF Unit.

D. Isolation Valves

8. HF Isolation Valves. To reduce the magnitude of an HF release, Superior Refining shall install isolation valves to quickly isolate the inventory of the Superior Refinery's HF from the source of an HF leak or spill, including in the HF loading/unloading area. Superior Refining shall consider installing the following types of isolation valves as practicable:

- a. Remotely-operable emergency block valves to allow refinery personnel to shut down equipment from another location, including by HF Unit Control Room operators; and
- b. Automatic valves or shutoff switches to deactivate malfunctioning equipment and/or valves that enable a leak area to be quickly isolated.

9. HF Isolation Valves Implementation Schedule. Superior Refining shall complete the installation of all isolation valves and confirm that they are fully operational and ready for use by no later than 30 days prior to restart of the HF Unit.

E. Video Cameras

10. Video Cameras. Superior Refining shall maintain multiple video cameras within and around the perimeter of the HF Unit, and install additional video cameras as needed, to provide continuous surveillance of the alkylation process and equipment and to provide operators in the HF Unit Control Room the ability to remotely observe potential issues in the unit and focus on conditions in the event of a release:

- a. Allow observational coverage of the HF Unit, including the HF loading/unloading area;
- b. Feed images back to the HF Unit Control Room and a secondary location;
- c. Have the ability to zoom and pan; and
- d. Designed with components and materials consistent with API RP 751.

11. Video Cameras Implementation Schedule. Superior Refining shall complete the installation of all cameras and confirm that they are fully operational and ready for use by no later than 30 days prior to restart of the HF Unit.

F. Point Sensor Leak Detection System

12. Point Sensor Detection System. Superior Refining shall maintain a point sensor detection system within and around the perimeter of the HF Unit, and install additional sensors as needed, to provide early detection of low-level releases of HF. The point sensor leak detection system shall be designed:

- a. To provide constant monitoring and installed in locations providing coverage of the HF Unit, including the HF loading/unloading area;
- b. To be integrated into the HF Unit Control Room;
- c. To include an audible and visual alarm if the system detects a leak; and

d. To include handheld or mobile point sensor detectors that can be deployed by operators and emergency responders, as appropriate, in the event of a release.

13. Point Sensor Leak Detection System Implementation Schedule. Superior Refining shall complete installation of, and have commenced operations of, the point sensor leak detection system for the HF Unit, confirm that it is fully operational and ready for use by no later than 30 days prior to restart of the HF Unit.

G. Acid-Detecting Paint

14. Acid-Detecting Paint. Superior Refining shall implement an acid-detecting paint program. Pursuant to this program, Superior Refining shall:

a. Paint, at a minimum, threaded connections and all flanges in acid service in accordance with API RP 751, Section H.3.2.9 with surface temperatures under 120°F with paint capable of detecting and indicating exposure to varying levels of HF, including the HF loading/unloading area. In implementing the acid detecting paint program, Superior Refining shall conduct a survey that identifies all required areas (*e.g.*, flanges, threaded connections, compression fittings, pump seals) that are not painted or require repainting.

b. Enhance its maintenance program to develop a plan that identifies an inspection schedule, procedures, and corrective actions to inspect and repaint required acid-detecting paint items to maintain the integrity of this mitigation system.

15. Acid-Detecting Paint Program Implementation Schedule. Superior Refining shall complete implementation of the acid-detecting paint program by no later than 30 days prior to restart of the HF Unit.

H. Passive Mitigation

16. Passive Mitigation. Superior Refining shall conduct a study that evaluates potential containment, enclosures, or physical barriers, as well as other barriers and other passive mitigation measures around HF acid-containing vessels and piping, including in the HF loading/unloading area, to dissipate the momentum and coalesce the droplets of liquid jet releases, and collect the HF liquids resulting from releases, to include:

- a. Catch pans installed under acid-containing vessels;
- b. Enclosures installed around pumps with seals;
- c. Flange shrouds installed at flanges in HF acid service; and
- d. Blast walls or other barriers installed at high-risk HF-containing vessels, piping, or other process areas to protect against impact damage resulting from explosions or other impact hazards as identified through the Process Hazard Analysis (“PHA”) process, facility siting studies, or other risk assessments, where feasible.

Based on the results of the study, Superior Refining shall install such physical barriers and/or other passive mitigation measures that are practicable.

17. Passive Mitigation Implementation Schedule. Superior Refining shall complete the study required by Paragraph 16 by no later than one year from the date of entry of this Third Amendment. Within 60 days of completion of the study, Superior Refining shall submit to EPA, with a copy to WDNR, the following: (a) a description of the containment, enclosures, physical and/or other barriers, and any other passive mitigation measures to be implemented based on the study, to include a map, diagram, or other visual illustration of the location of such passive mitigation measures; (b) Superior Refining’s planned schedule for implementation of such passive mitigation measures; and (c) a copy of the study. Superior Refining shall report any

changes to the passive mitigation measures to be implemented and/or to the implementation schedule in the semi-annual progress reports required by Paragraph 157 of the Consent Decree.

I. Power Supply

18. Power Supply Enhancements. Superior Refining shall evaluate enhancements to the existing power supply system and backup power supply for the HF Unit, including the HF loading/unloading area, to ensure all critical operational and safety systems remain functioning during the operation of the HF Unit sufficient to prevent an accidental release of HF resulting from the loss of power. Such evaluation shall include assessment of the following:

- a. Backup power supply for all safety-critical systems requiring power (in accordance with API RP 751, Section 2.3.6);
- b. Electric reliability improvements to the HF Unit.

Based on the results of the evaluation, Superior Refining shall install such power reliability enhancements to HF unit where practicable.

19. Power Supply Enhancements Implementation Schedule. Superior Refining shall complete the study required by Paragraph 18 by no later than one year from the date of entry of this Third Amendment. Within 60 days of completion of the study, Superior Refining shall submit to EPA, with a copy to WDNR, the following: (a) a description of the power supply system enhancements (including any backup power changes) to be implemented based on the study, to include a map, diagram, or other visual illustration of the location of such enhancements; (b) Superior Refining's planned schedule for implementation of such enhancements; and (c) a copy of the study. Superior Refining shall report any changes to the power supply system enhancements to be implemented and/or to the implementation schedule in the semi-annual progress reports required by Paragraph 157 of the Consent Decree.

J. Program Revisions

20. Revisions to Refinery Programs. Superior Refining shall update and revise its programs, procedures, analyses, and other relevant operating plans to reflect the upgrades and modifications to the HF Unit, to include the following:

a. Mechanical Integrity Program. Superior Refining shall incorporate each of the recommended and feasible mitigation systems identified in Paragraphs 1 through 19 into the Superior Refinery's mechanical integrity program in adherence to the requirements under 40 C.F.R. Part 68, OSHA, state, local, and other applicable regulations.

b. HF Unit Process Hazard Analysis. Superior Refining shall conduct a PHA for the HF Unit taking into account the mitigation system requirements of Paragraphs 1 through 19 of this Appendix C. The PHA should consider findings and recommendations from other studies evaluating the hazards in the HF Unit.

c. Emergency Response Program. Superior Refining shall review and revise its existing emergency response program, policies, and procedures to incorporate, at a minimum, each of the recommended and feasible mitigation systems identified in Paragraphs 1 through 19 of this Appendix C and to provide information to refinery personnel, emergency responders, and government personnel for responding to releases of HF, including the following:

- i. Procedures for responding to detections of HF;
- ii. Procedures for contacting emergency responders and other local responders;

- iii. Procedures for activation and use of each of the mitigation systems identified in Paragraphs 1 through 19 used to contain HF releases and reduce HF exposure;
- iv. Updated training materials for first responders and emergency medical technicians (EMTs);
- v. Schedule for annual, if not more frequent, HF Unit release drills with refinery personnel and other local responders that may be involved in responding to a release;
- vi. Assistance to government personnel responsible for the local emergency community alert system that may include text messaging, e-mail notifications, community radio and television notifications, and other communication media, as applicable;
- vii. Assistance to government personnel responsible for the local Community Evacuation Plan;
- viii. Superior Refining shall consult with the Douglas County Local Emergency Planning Committee (which includes, pursuant to 42 U.S.C. § 11001(c) and 40 C.F.R. Part 355, appropriate local government representatives, emergency responders, and other local responders) for input on Superior Refining's review of and revisions to its existing emergency response program, policies, and procedures, in order to enhance overall emergency response and coordination with government and other response officials.

d. Emergency Response Program Implementation Schedule. Superior Refining shall complete revisions to the emergency response program and implementation of the revised plans prior to restart of the HF Unit.

K. Project Completion and Reporting

21. Progress Reporting. Commencing with its first progress report pursuant to Section VIII [Reporting and Recordkeeping] of the Consent Decree that is due following the Date of Entry of this Third Amendment, and continuing semi-annually thereafter until completion of the HF Project, Superior Refining shall include in the progress report information describing:

- a. For the period covered by the report, a summary of the actions taken to implement each of the HF Project's components (Sections A through J of this Appendix C);
- b. A description of any problems anticipated with respect to meeting the deadline for completion of any of the HF Project's components; and
- c. Any additional matters Superior Refining believes should be brought to the attention of EPA and WDNR.

22. Completion of Project. Within 120 days following the completion of the HF Project, Superior Refining shall submit to EPA and WDNR for approval a Project completion report that documents:

- a. The date the HF Project was completed, including each of the HF Project's components (Sections A through J of this Appendix C);
- b. A description of the measures implemented to comply with the requirements for the HF Project; and

c. The expenses incurred by Superior Refining in implementing the HF Project.

23. EPA and/or WDNR may request additional information on the project after Superior Refining submits the completion report, if the information provided is not adequate to conclude that the HF Project has been performed and completed in accordance with this Third Amendment.

24. Approval or Disapproval of HF Project's Completion. The following procedure shall be followed for determining whether the HF Project is completed:

a. Approval. If EPA, in consultation with WDNR, concludes based on the HF Project completion report or subsequent information provided by Superior Refining that the HF Project has been performed and completed as required by this Third Amendment, then EPA will approve completion of the HF Project.

b. Disapproval. If EPA, in consultation with WDNR, concludes based on the Project completion report or subsequent information provided by Superior Refining that the Project has not been performed and completed in accordance with this Third Amendment, then EPA will disapprove completion of the HF Project. EPA, in consultation with WDNR, shall provide written comments explaining the basis for declining approval of the HF Project's completion and the action(s) needed to complete the mitigation project as soon as reasonably practicable. Within 60 days of receiving written comments from EPA, Superior Refining shall either:

i. Implement the action(s) needed to complete the HF Project; or

ii. Submit the matter for dispute resolution, including the period of informal negotiations, under Section XIV [Retention of Jurisdiction/Dispute Resolution] of the Consent Decree.

25. Relationship to April 26, 2018 Incident. The requirements of this Appendix C provide for certain upgrades to some of the equipment and/or operational elements relating to the Superior Refinery's HF Unit, as an overall improvement to those currently in place. The requirements of this Appendix C are separate from and independent of either the investigation of the Incident by the U.S. Chemical Safety and Hazard Investigation Board ("CSB") or by EPA under Section 112(r) of the Clean Air Act. However, nothing in any provision of this Appendix C would prohibit changes to the HF Unit's equipment or operations resulting from the CSB's or EPA's investigations; such modifications to this Third Amendment shall be made as provided in Paragraph 284 of the Consent Decree (Modification).

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706,

Plaintiff,

v.

Money Judgments: 30301

THOMAS G. SONNLEITNER
2944 Pine Ridge Road
Oshkosh, WI 54904-8482,

RICHARD H. WELLS
820 Magellan Drive
Sarasota, FL 34243-1011,

Defendants.

SUMMONS

THE STATE OF WISCONSIN, to those named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court,

whose address is Clerk of Circuit Court, Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin 53703, and to plaintiff's attorney, Assistant Attorney General F. Mark Bromley, whose address is Wisconsin Department of Justice, 17 West Main Street, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 18th day of January, 2017.

BRAD D. SCHIMEL
Wisconsin Attorney General
Electronically signed by,

F. Mark Bromley
F. MARK BROMLEY
Assistant Attorney General
State Bar #1018353

Attorneys for Attorneys for Plaintiff

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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706,

Plaintiff,

v.

Money Judgments: 30301

THOMAS G. SONNLEITNER
2944 Pine Ridge Road
Oshkosh, WI 54904-8482,

RICHARD H. WELLS
820 Magellan Drive
Sarasota, FL 34243-1011,

Defendants.

COMPLAINT

Plaintiff, by Attorney General Brad D. Schimel and Assistant Attorney General F. Mark Bromley, for a complaint against the defendants shows:

1. This Court has jurisdiction over this matter pursuant to Wis. Stat. § 753.03.
2. Venue lies in this county pursuant to Wis. Stat. § 801.50, because the claim arose in Dane County.
3. Plaintiff is an agency of the sovereign State of Wisconsin created by

Wis. Stat. § 15.91. Its powers and duties are specified in Wis. Stat. § 36.11, and its responsibilities in Wis. Stat. § 36.09. Those powers and responsibilities include governance of the University of Wisconsin System.

4. Thomas G. Sonnleitner (“Sonnleitner”) is an adult resident of the State of Wisconsin residing at the captioned address. On information and belief, he is retired.
5. Richard H. Wells (“Wells”) is an adult resident of the State of Florida, residing at the captioned address. On information and belief, he is retired.
6. At the time of the transactions at issue in this case, Sonnleitner (and Wells, as to transfers before August 31, 2014) were employees of the University of Wisconsin System, working at the University of Wisconsin Oshkosh (“the University”).
7. Wells served as Chancellor of the University from October 1, 2010 until August 31, 2014.
8. Sonnleitner served as Vice Chancellor of Administrative Services at the University from 2000 to February 28, 2016.
9. Wells was Sonnleitner’s immediate supervisor during Wells’ tenure at the University.
10. The University of Wisconsin Oshkosh Foundation, Inc. (“the Foundation”) is a non-stock non-profit corporation, in which the University has no ownership interest.
11. The Foundation created and is the sole member of the following

entities, registered with the Wisconsin Department of Financial Institutions:

- a. UW-Oshkosh Foundation-Witzel, LLC, (“Witzel”), registered August 19, 2009;
 - b. UW Oshkosh Foundation Alumni Welcome and Conference Center, LLC, (“AWCC”) registered November 2, 2010;
 - c. UW-Oshkosh Foundation Hotel Project, LLC, (“Hotel Project”), registered November 17, 2011;
 - d. UW-Oshkosh Foundation Rosendale Biodigester, LLC, (“Rosendale”), registered September 1, 2011.
12. Sonnleitner and Wells encouraged and assisted the Foundation in establishing the listed limited liability companies for the purpose of engaging in ventures the University could not own or operate.
 13. The Foundation established Witzel to construct, own, and operate a biodigester at the University.
 14. The Foundation established AWCC to design and construct the Welcome Center at 625 Pearl Avenue, Oshkosh.
 15. The Foundation established the Hotel Project to participate and invest in the renovation of a hotel and its operation as a Best Western Hotel in Oshkosh.
 16. The Foundation established Rosendale to construct a biodigester that serves an 8,000 cow dairy at Rosendale, Wisconsin.
 17. Sonnleitner and Wells caused multiple transfers of funds from the University to the Foundation or its LLCs more than 6 years before the

date of this complaint. No claim is made with respect to those transfers.

Witzel Biodigester

18. Sonnleitner (and Wells, as to transfers before August 31, 2014) caused the transfer of University funds to the Foundation or Witzel for the Witzel project in the following amounts on the following dates:

- | | |
|--------------|-------------------|
| a. \$179,760 | June 15, 2012 |
| b. \$173,062 | June 15, 2012 |
| c. \$500,000 | June 20, 2012 |
| d. \$150,000 | June 20, 2012 |
| e. \$ 19,104 | December 31, 2012 |
| f. \$150,000 | April 10, 2013 |
| g. \$500,000 | April 15, 2013 |
| h. \$144,104 | June 25, 2013 |
| i. \$228,000 | March 31, 2014 |
| j. \$ 88,500 | October 31, 2014 |
| k. \$110,000 | April 6, 2015 |
| l. \$ 4,000 | October 31, 2015 |
| m. \$ 88,500 | October 2013 |

19. On June 6, 2012, Sonnleitner forgave a loan of \$289,362 that had been made on September 10, 2010.

20. The Foundation or Witzel has repaid part of the transferred funds, leaving a balance of \$1,811,925 that has not been recovered.

Rosendale Biodigester

21. Sonnleitner (and Wells, as to transfers before August 31, 2014) caused the transfer of University funds to the Foundation or Rosendale for the Rosendale project in the following amounts on the following dates:
- | | |
|----------------|-------------------|
| a. \$ 750,000 | February 8, 2012 |
| b. \$ 650,000 | December 17, 2012 |
| c. \$ 319,418 | January 7, 2013 |
| d. \$ 322,000 | June 27, 2013 |
| e. \$ 635,000 | May 28, 2014 |
| f. \$ 62,132 | June 24, 2014 |
| g. \$ 350,000 | December 31, 2014 |
| h. \$1,060,000 | June 22, 2015 |
22. The Foundation or Rosendale has repaid part of the transferred funds, leaving a balance of \$1,440,371 that has not been recovered.
23. BIOFerm USA, Inc. contracted to build the Rosendale facility for \$6,700,00.
24. On December 20, 2012, Sonnleitner agreed that the University would permit BIOFerm to charge an additional \$1,000,000 for operation of the Rosendale facility, to enable BIOFerm to approximate a 15% profit on the project. The sum of \$322,000 identified at Paragraph 21.d. was treated as an initial payment on that sum.
25. On October 13, 2014, Sonnleitner caused the University to enter into a lease agreement with the Foundation obligating the University to pay

\$700,000 per year for the use of Rosendale.

- 26. The Foundation granted First Business Bank a security interest in the University lease of Rosendale as collateral for the Foundation's debt to the Bank.
- 27. University payments required by the lease were prohibited by the Wisconsin Constitution, Article VIII, § 7 (2) (d).

Alumni Welcome and Conference Center

- 28. Sonnleitner (and Wells, as to transfers before August 31, 2014) caused the transfer of University funds to the Foundation or AWCC for the AWCC project in the following amounts on the following dates:
 - a. \$ 440,738 June 15, 2012
 - b. \$1,000,000 June 15, 2012
 - c. 21,500 June 15, 2012
- 29. The Foundation or AWCC repaid \$1,000,000 of the foregoing amounts, leaving \$462,238 unpaid.
- 30. The University contributed an additional \$4,600,000 to the cost of the Welcome Center, with proper authorization. No claim is made herein with respect to that sum.

The Hotel Project

- 31. Sonnleitner and Wells caused the transfer of University funds to the Foundation or the Hotel in the following amounts on the following dates:
 - a. \$750,000 May 29, 2012
 - b. \$250,000 August 1, 2012

- c. \$750,000 November 5, 2012
 - d. \$165,277 February 15, 2013
 - e. \$263,000 August 20, 2013
32. These sums were subsequently repaid, leaving no balance due.

Oshkosh Sports Complex

33. Sonnleitner and Wells caused the transfer of funds to the Foundation for renovation of the Oshkosh Sports Complex in the following amounts on the following dates:

- a. \$108,540 June 29, 2011
- b. \$ 68,015 January 5, 2012
- c. \$ 70,519 January 11, 2012
- d. \$484,487 June 15, 2012
- e. \$ 75,000 April 10, 2013

34. Of these sums, \$806,561 has not been repaid. The Foundation has transferred the Sports Center to the University.

Other Funds Transfers

35. Sonnleitner caused the transfer of additional funds to the Foundation in the following amounts on the following dates:

- a. \$ 99,410 June 22, 2015
- b. \$ 51,320 June 22, 2015
- c. \$193,711 May 18,2016

University Guarantees of Foundation Debt

36. On September 22, 2010, Sonnleitner and Wells caused the University to issue a guarantee to Wells Fargo Securities, LLC, of all Foundation

obligations related to Witzel.

37. On June 21 and June 28, 2012, Sonnleitner and Wells caused the University to issue to the Foundation a guarantee of all the Foundation's obligations related to Foundation projects and initiatives.
38. On June 21 and June 28, 2012, Sonnleitner and Wells caused the University to issue to the Foundation:
 - a. a guarantee of all Foundation debt service with respect to Witzel;
 - b. a guarantee of all Foundation obligations with respect to the AWCC;
 - c. a guarantee of all Foundation obligations with respect to the Hotel; and
 - d. a guarantee of all Foundation obligations with respect to the Oshkosh Sports Complex;
39. On August 21, 2012, Sonnleitner caused the University to issue to First Business Bank a guarantee of all Bank obligations of the Foundation related to the Hotel, then in the amount of \$7,500,000.
40. On December 27, 2012, Sonnleitner caused the University to issue to Wells Fargo Bank, N.A. a guarantee of all Bank obligations of the Foundation related to Rosendale, then in the amount of \$10,000,000.
41. On January 18, 2013, Sonnleitner caused the University to issue to Bank First National a guarantee of all Foundation obligations with respect to the AWCC.
42. On July 31, 2013, Sonnleitner caused the University to guarantee all

Foundation obligations to Citizens First Credit Union.

43. On October 10, 2014, Sonnleitner caused the University to issue to Wells Fargo Bank, N.A. a guarantee of all Bank obligations of the Foundation related to Rosendale.
44. On December 1, 2015, Sonnleitner caused the University to issue to First Business Bank a guarantee of all Bank obligations of the Foundation related to Rosendale, originally in the amount of \$6,771,096.
45. All of the purported guarantees were prohibited by the Wisconsin Constitution, Article VIII, § 3.
46. On information and belief, Sonnleitner and Wells knew that they were not authorized or empowered to issue the guarantees.
47. By the acts alleged, Sonnleitner and Wells converted property of the Plaintiff, including its money and its credit, by intentionally transferring Plaintiff's money and credit to the Foundation and its LLCs and to the Foundation's creditors without Plaintiff's consent, resulting in serious interference with Plaintiff's right to possess its money and credit.
48. On information and belief, Wells aided and approved Sonnleitner's conversion of Plaintiff's money and credit, and thereby conspired in Sonnleitner's conversion.
49. The acts of Sonnleitner and Wells violated Wis. Stat. §895.446 and Wis. Stat. § 943.20 (1) (a) and (b), subjecting Sonnleitner and Wells to liability for Plaintiff's actual damages, treble damages, and all costs of

investigation and prosecution, pursuant to Wis. Stat. § 895.446(3).

Wherefore, Plaintiff asks that the court enter judgment against Sonnleitner and Wells for all damages Plaintiff suffered by reason of the acts of Sonnleitner and Wells, plus treble damages and all costs of investigation and prosecution of this case and such further relief as the evidence may warrant.

Dated this 18th day of January, 2017.

BRAD D. SCHIMEL
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Electronically signed by,

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