

## NEGOTIATED AGREEMENT

Between

Superior Refining Company LLC

And

Wisconsin Department of Natural Resources

This Negotiated Agreement ("Agreement") is entered into by and between the Wisconsin Department of Natural Resources ("WDNR") and Superior Refining Company LLC ("Superior Refining") pursuant to Wis. Stat. § 292.11(7)(d) with respect to a process for responding to petroleum hazardous substance discharges ("Discharge" or "Discharges") under Wis. Admin. Code § NR 708 at Superior Refining's Superior, Wisconsin facilities including both Superior Refining's "South Tank Farm" property located south of Stinson Avenue and the Superior refinery property (referred to here collectively as "Refinery" or "the Refinery").

### Recitals:

- A. On May 1, 2014 Calumet Superior, LLC ("Calumet"), the former owner and operator of the refinery, submitted to the WDNR a Site Investigation and Remedial Action Plan for the Superior Refinery ("SI/RAP"), and the WDNR approved the SI/RAP in a letter to Calumet dated May 16, 2014 (the "Conditional Approval"). This Site is tracked in the WDNR Bureau for Remediation and Redevelopment Tracking Systems (BRRTS) as site #02-16-559511.
- B. Through such Conditional Approval, the WDNR agrees to enter into this Agreement with Superior Refining to approve a schedule for conducting non-emergency actions under Wis. Stat. § 292.11(3) and Wis. Admin. Code § NR 708, provided the Discharges covered by this Agreement do not endanger public health or the environment.
- C. WDNR and Superior Refining agree that it was desirable to create a Facility Wide Environmental Repair Program (ERP) site ("Site") for Discharges where actions taken under Wis. Admin. § NR 708 are not adequate for protection of groundwater.
- D. Establishing the BRRTS Facility-wide ERP Site, and maintaining the list continuing obligations in the WDNR's Database to document residual contamination will provide for effective public information, adequate tracking of actions, and the efficient use of BRRTS tracking.
- E. WDNR and Superior Refining agree that it is desirable to enter into this Agreement to adopt the approach to investigating and remediating current and future Discharges in order to satisfy the requirements of Wis. Stat. § 292 and Wis. Admin. §§ NR 700-NR 754.

NOW, THEREFORE, the WDNR and Superior Refining hereby agree as follows:

I. BASIC AGREEMENT.

- 1) *Applicability*: The terms of this Agreement apply to Superior Refining's response to Discharges of petroleum products where Superior Refining is responsible for the Discharge under Wis. Stats. § 292 and the Discharges occur at, and are confined to, the Refinery. This Agreement shall not apply to any discharge of hazardous substances to air, sediment or surface water, or other non-petroleum discharges.
- 2) *Process*: The method for determining the extent of impacts, appropriate standards, the immediate and interim actions to be taken pursuant to Wis. Admin. Code § NR 708, and the adequacy of response actions to address the industrial direct contact contaminant pathway for any Discharges covered by this Agreement are set forth in the SI/RAP which is included as Attachment A and incorporated by reference into this Agreement. This SI/RAP is subject to the Conditional Approval, which is attached as Attachment B and incorporated by reference into this Agreement. By entering into this Agreement, the parties agree that the process for WDNR review and approval of Wis. Admin. Code § NR 708 response actions conducted under this Agreement, as set forth in the SI/RAP, is consistent with Wis. Admin. §§ NR 700 - NR 754.
- 3) *Hydrogeology*: As set forth in the conditionally approved SI/RAP, the existing hydrology at the Refinery is an acceptable, interim action soil performance standard for the protection of groundwater in accordance with Wis. Admin. § 720.08 for any Discharges covered by this Agreement, provided Superior Refining verifies the effectiveness of the performance standard through groundwater monitoring, consistent with the SI/RAP.
- 4) *Voluntary Status*. WDNR and Superior Refining acknowledge that each party enters into this Agreement on a voluntary basis.

II. WDNR RESPONSIBILITIES

The WDNR will be responsible for the following:

1. Creating the BRRS ERP Site for the Refinery. Currently open and future petroleum Discharges occurring at the Refinery meeting the criteria set forth in the SI/RAP and this Agreement will be included in the Facility-Wide ERP site on the BRRS database.
2. Maintaining one Continuing Obligation Package for the Site in the WDNR BRRS database. The WDNR will add Site information documenting continuing obligations associated with new petroleum Discharges as provided by Superior Refining to reflect the Discharges being combined into the Site.
3. Maintaining and tracking information in BRRS database and Continuing Obligations associated with petroleum Discharges for the Site.

### III. SUPERIOR REFINING RESPONSIBILITIES

Superior Refining will be responsible for the following:

1. Reporting hazardous substance Discharges as required under Wis. Stat. § 292.11(2)(a) and Wis. Admin. Code § NR 706.
2. Taking appropriate investigation and interim and immediate actions under Wis. Admin. § NR 708 and/or § NR716 for petroleum Discharges to address direct contact contaminant pathway.
3. Submitting an initial Continuing Obligation Package and information associated with Discharges that will be for inclusion on the WDNR's Database.
4. Providing documentation to the WDNR for inclusion on the WDNR's Database at the time a Discharge is added to the Site.
5. Assuming responsibility for additional investigation and remediation in accordance with Wis. Admin. Code § NR 700 rule series on areas at the Refinery property where the Wis. Admin. § NR 708 actions specified in the SI/RAP are not possible due to structural impediments at the time of the Wis. Admin. § NR 708 action, at such a time when the areas becomes accessible.
6. Verifying the effectiveness of the soil hydrogeology as a Wis. Admin. Code § NR 708 performance standard by maintaining and monitoring the groundwater well network in accordance with the SI/RAP.
7. Monitoring the performance standard as necessary to ensure the Wis. Admin. Code § NR 708 immediate or interim actions are protective of human health and the environment and to maintain compliance with Wis. Admin. §§ NR 700-NR 754.
8. Notifying the WDNR in advance if land use at the Refinery is proposed to be changed from industrial to non-industrial or if the Refinery ceases operations. Additional site investigation and/or remedial action will likely be necessary if land use or uses change(s).

### IV. PAYMENT OF FEES

Superior Refining agrees to pay WDNR all appropriate fees associated with the preparation and execution of this Agreement, as well as applicable fees for technical assistance and site closure and database information processing, as specified in applicable sections of Wis. Admin. Code § NR 749. Payments shall be made to the Department of Natural Resources and submitted to the Remediation and Redevelopment Program office responsible for the review and approval.

### V. EFFECTIVE DATE

This Agreement shall be executed by Superior Refining prior to being executed by WDNR. The effective date of the Agreement shall be the date on which WDNR executes the Agreement.

VI. SUBSEQUENT AMENDMENTS

This Agreement may be amended by mutual agreement between WDNR and Superior Refining. Such amendments will be based upon periodic review meetings between WDNR and Superior Refining to assess the implementation of the processes set forth in this Agreement. Any such amendments shall be in writing, signed by WDNR and Superior Refining, and shall have the effective date being the date such amendment(s) is signed by WDNR.

VII. TERMINATION OF THE AGREEMENT

Either party can terminate this Agreement 60 days after providing written notice to the other party.

At the time of termination of this Agreement Discharge activities entered into the Facility-wide ERP Site on BRRTS will be separated by the WDNR into individual ERP sites and each site will be investigated and remediated pursuant to Wis. Stat. § 292, and Wis. Admin. Code §§ NR 700-754.

VIII. AUTHORITY OF STATE OF WISCONSIN

Nothing in this Agreement shall be deemed to limit any authority of the State of Wisconsin under applicable law to: (i) take all appropriate action to protect human health and the environment or to prevent, abate, respond to or minimize an actual or threatened discharge of hazardous substances on, at or from the Site or (ii) direct or order such action or seek an order from the court to protect human health and the environmental or to prevent, abate, respond to or minimize an actual or threatened discharge of hazardous substances on, at or from the Refinery.

IX. LIABILITY

The State of Wisconsin does not assume any liability by entering into this Agreement. Superior Refining shall indemnify, save and hold harmless the State of Wisconsin and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Superior Refining, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Agreement.

X. NOTIFICATION

Nothing within this Agreement should be construed as limiting or eliminating Superior Refining's responsibility to comply with Wis. Stat. § 292, Wis. Admin. Code § NR 700 to 754, and specifically Wis. Admin. Code § NR 706 as it pertains to notification of a hazardous substance discharges.

XI. RESPONSIBILITY

Nothing within this Agreement should be construed as limiting or eliminating Superior Refinings responsibility to comply with Wis. Stat. § 292 and Wis. Admin. §§ NR 700 to NR754. In no

event may the provisions of the SI/RAP be construed to modify the requirement of any Wisconsin statute or administrative code provisions.

## XII. ACCESS TO INFORMATION

Superior Refining shall provide to WDNR, upon request, copies of all records, final reports, final documents (including such records, final reports and documents in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to the implementation of this Agreement, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding hazardous Substance discharges at the Refinery.

## XIII. PROJECT COORDINATORS

WDNR and Superior Refining shall each designate a project coordinator. Any party may change its designated project coordinator by notifying the other parties, in writing, at least ten (10) business days prior to the change. To the extent possible, communications between Superior Refinery and WDNR concerning the Site shall be directed through the appropriate project coordinator. Each project coordinator shall be responsible for assuring that communications are properly disseminated and processed among the respective parties.

Documents and correspondence to be submitted to WDNR shall be sent to the DNR Project Coordinator:

NAME: John Sager, Hydrogeologist Program Coordinator

Documents to be submitted to Superior Refining shall be sent to:

NAME: Matt Turner, Environmental Engineer

## XIV. ACCESS AND OTHER AUTHORITY

In addition to the authority WDNR has under state and federal statutes and regulations, the WDNR project coordinator or a designee shall have the authority, pursuant to this Negotiated Agreement, to (i) take samples or direct that samples be taken, (ii) direct that response actions stop whenever the WDNR project coordinator determines that activities at the Property may create danger to public health or welfare or the environment, (iii) observe, take photographs and make such other reports on the progress of the Response Actions as deemed appropriate, (iv) review records, files and documents relevant to this Negotiated Agreement and (v) make or authorize minor field modifications to the Response Action covered by this Negotiated Agreement with respect to techniques, procedures or design utilized in carrying out this Negotiated Agreement. Within seventy-two (72) hours following the modification, the project coordinator who requested the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide and mail a copy of the memorandum to the other project coordinator.

Thursday, March 15, 2018

XV. SUBMISSION OF DOCUMENTS AND CORRESPONDENCE

All reports, plans, notices and other documents required to be submitted under this Negotiated Agreement shall be deemed to be submitted on the date they are date-stamped at WDNR, if mailed, or sent by messenger, or on the date they are received, if delivered by telefacsimile or email. Superior Refining shall provide to WDNR electronic versions of any reports, plans, notices or other documentation in addition to a paper version, consistent with the Wis. Admin. Code ch. NR 700 rule series and WDNR publication RR-690.

NOW, THEREFORE, IN WITNESS WHEREOF, the parties, by their signatures, shall cause this Agreement to be executed on the date(s) specified.

Signed for and on behalf of:

Superior Refining Company LLC

By: Kollin Schade

Date: 3/15/18

Kollin Schade  
VP, Superior Refinery

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By: [Signature]

Effective Date: 4/4/18

for Daniel L. Meyer  
Name  
Secretary