



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

SEP 28 2009

REPLY TO THE ATTENTION OF:
LR-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Colonel Shawn P. McGinley
U.S. Army Corps of Engineers
Lock & Dam 12
Bellevue Dam Road
Hanover Township, Illinois 61041

Re: U.S. Army Corps of Engineers
EPA ID No.: ILR 000 133 710
Consent Agreement and Final Order
Docket No.: RCRA- RCRA-05-2009-0020

Dear Colonel McGinley,

Enclosed, please find one of two original signed copies of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the referenced case. We filed the originals with the Regional Hearing Clerk on SEP 28 2009.

Please pay the civil penalty of \$22,000.00 in accordance with paragraph 41 of this CAFO, and reference your check with the number BD 2750942R012 and Docket Number RCRA- RCRA-05-2009-0020. Also, enclosed is a *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings*.

Thank you again for your cooperation in resolving this matter.

Sincerely,

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

Enclosure

cc: Todd Marvel, Illinois Environmental Protection Agency (w/ CAFO)

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

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

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

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

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

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

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

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

US Army Corps of Engineers)
Lock & Dam 12)
Bellevue Dam Road)
Hanover Township, Illinois 61041)
EPA ID No.: ILR 000 133 710)

Respondent.)
_____)

DOCKET NO. RCRA-05-2009-0020

RECEIVED

SEP 28 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT OF JURISDICTION

1. The United States Environmental Protection Agency (EPA or Complainant) and the United States Army Corps of Engineers (U.S. ACE or Respondent) located at Lock and Dam 12, Bellevue Dam Road, Hanover Township, Illinois 61041, have agreed to a settlement of this action before filing a complaint and, thus, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* (Consolidated Rules) by the filing of this Consent Agreement and Final Order (CAFO or Order), 40 C.F.R. §§22.13(b), 22.18(b)(2) and (3).

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

appropriate means of resolving this matter.

3. This civil administrative action is instituted pursuant to the authority vested in the Administrator of EPA pursuant to Sections 2002(a)(1), 3006(b), 3008(a) and 6001(a) and (b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §§6912(a)(1), 6926(b), 6928(a) and 6961(a) and (b) and pursuant to the Consolidated Rules against Respondent for administrative penalties and appropriate injunctive relief. The Complainant is by lawful delegation, the Director of the Land and Chemicals Division.

II. STATUTORY AND REGULATORY BACKGROUND

4. Pursuant to sections 3001 through 3017 of RCRA, 42 U.S.C. §§6901 through 6938, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 268, 270 and 273 governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986). The Administrator of EPA subsequently granted Illinois final authorization to administer certain additional RCRA requirements.

6. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides EPA with the authority to enforce State regulations in those States authorized to administer a hazardous waste program. Section 6001(a) and (b) of RCRA, 42 U.S.C. §§ 6961(a) and (b)

provides EPA with authority to take administrative enforcement action against other federal departments or agencies.

7. The EPA has provided notice of commencement of this action to the Illinois Environmental Protection Agency (Illinois EPA) pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. FACTUAL ALLEGATIONS

8. U.S. ACE is an agency or department of the United States Government.

9. Lock and Dam 12 (LD12) is located on the Mississippi River near Bellevue, Iowa. There is a storage yard located between the gates and the spillway to LD12 Facility (LD12 Storage Yard or Storage Yard). The LD12 Storage Yard is located on the Illinois side of the Mississippi River on property owned by U.S. ACE.

10. During 2004, U.S. ACE performed rehabilitation efforts at the dam. These efforts included replacing runway tracks and ballast between July 6 and August 5, 2004.

11. Sandblasting lead based paint and painting of the bulkheads occurred from September 20 to October 13, 2004.

12. Lead was found at 120 mg/L in the soils at LD12 before the sandblasting and painting. Material removed from the site prior to sandblasting was later found to have levels of lead at 840 to 850 parts per million (ppm). Lead was found at 2,000 ppm in the soils at LD 12 after the sandblasting, painting, and significant disturbance of the ground surface.

13. From November 1-3, 2004, Respondent arranged for the top four inches of soils at LD 12 Storage Yard to be excavated to create a smoother working surface in the

storage yard. The Respondent's contractor independently arranged for the material to be loaded onto trucks and shipped off-site to Stickle Warehousing, Inc. (now known as Midwestern 3PL) located at 11850 G Loop, Savanna, Illinois. Wendling Quarries, Inc. (Wendling) transported the contaminated soils. The contaminated soils were neither identified nor shipped as hazardous wastes.

14. Approximately 200 tons of excavated soils were shipped to Midwestern 3PL on November 2 and 3, 2004. The soils were deposited on the ground in piles within an area approximately 3200 square feet. They were uncovered.

15. On November 10, 2004, Respondent arranged for a composite soil sample to be collected from the soils transported to Midwestern 3PL. The soil sample was analyzed for total lead concentrations and Toxicity Characteristic Leachate Procedure (TCLP) lead. The TCLP lead concentration was 19 milligrams per liter (mg/L). The test results were received on November 15, 2004.

16. On November 22, 2004, Respondent confirmed that the material at the Midwestern 3PL site had originated from the LD 12 facility.

17. On November 23, 2004, Respondent reported to Illinois EPA that it had arranged for the transportation and disposal of hazardous waste (lead-contaminated soils) to Midwestern 3PL on November 2 and 3, 2004.

18. On December 9, 2004, Respondent arranged for plastic sheeting to be placed over the piles of lead contaminated soils at Midwestern 3PL.

19. On February 4, 2005, Respondent awarded a contract for the removal and off-site disposal of lead contaminated soils and underlying material at Midwestern 3PL.

20. On February 23, 2005, Illinois EPA issued a Notice of Violation to Respondent.

21. On March 30-31, 2005, Respondent's Contractor arranged for the removal and off-site disposal of lead contaminated soils at Midwestern 3PL. It removed the piles of contaminated soils and soils beneath the piles.

22. Respondent collected samples in the areas where it removed the piles of lead contaminated soils. The lead concentrations beneath the excavated piles were above Illinois Tier I clean-up levels. Respondent has not performed any further soil removal since March 30-31, 2005, at the Midwestern 3PL location.

23. On May 17, 2006, Respondent collected soil samples within LD 12 Storage Yard at nine locations. The total lead concentrations varied from 3.9 mg/kg to 1400 mg/kg from 6-12 inches below ground surface (bgs). The total lead concentrations varied from 2.2 mg/kg to 56 mg/kg from 5-6 feet bgs. At one location the lead concentration was 11 mg/L as measured by TCLP.

24. Respondent had not notified Illinois EPA as a hazardous waste generator, transporter or treatment, storage or disposal facility at LD 12 Storage Yard prior to November 4, 2004. At that time, Respondent did not have an EPA identification number on the Illinois side of the river. The Respondent did have an EPA identification number for work on the Iowa side of the storage yard.

25. Midwestern 3PL did not have a permit or interim status to treat, store or dispose of hazardous waste prior to November 4, 2004. At that time Midwestern 3PL did not have an EPA identification number.

26. Wendling did not have a license from Illinois EPA to transport hazardous waste prior to November 4, 2004. At that time Wendling did not have an EPA identification number.

27. Respondent did not have a permit or interim status for the treatment, storage or disposal of hazardous waste at either LD 12 Storage Yard or at Midwestern 3PL on or prior to November 4, 2004.

28. Respondent did not use a uniform hazardous waste manifest when it arranged for the disposal of contaminated soils from LD 12 Storage Yard to Midwestern 3PL on November 2-3, 2004.

IV. ALLEGED VIOLATIONS

COUNT 1

Failure to Conduct a Hazardous Waste Determination

29. Complainant incorporates paragraphs 1 through 28 of this Complaint as though set forth in this paragraph.

30. EPA alleges that Respondent failed to timely determine whether the excavated soils contained a hazardous waste prior to it arranging for the offsite transportation of the solid waste to Midwestern 3PL on November 2 and 3, 2004. Consequently, Respondent failed to meet the requirements of and was in violation of 35 Ill. Adm. Code § 722.111, 40 C.F.R. § 262.11.

COUNT 2

Failure to Comply with the Manifest and Pre-Transport Requirements

31. Complainant incorporates paragraphs 1 through 28 of this Complaint as though set forth in this paragraph.

32. EPA alleges that Respondent generated hazardous waste (i.e., lead contaminated soils) at Midwestern 3PL on November 2 and 3, 2004. Respondent, at that time, did not have an EPA identification number. At that time, neither Midwestern 3PL nor Wendling had an EPA identification number. Consequently, Respondent did not meet and, therefore, was in violation of the requirements of 35 Ill. Adm. Code § 722.112(a), 40 C.F.R. § 262.12(a).

33. EPA alleges that Respondent's Contractor arranged for the off-site transportation and disposal of lead contaminated hazardous waste on November 2-3, 2004, without the use of a manifest; and using a transporter (Wendling) and a facility (Midwestern 3PL) which were not permitted or licensed to accept hazardous waste. Further, for the shipments of hazardous waste to Midwestern 3PL, EPA alleges that Respondent did not arrange for the return of the hazardous waste or arrange for shipment of all of the hazardous waste to another facility which was designated to accept such hazardous waste until March 30 and 31, 2005. While the soil piles and four inches of underlying material was excavated from the site, 2005 soil samples indicated that residual hazardous waste remains at the Midwestern 3PL location. EPA alleges that as a result of these actions or inactions, Respondent did not meet and, therefore, was in violation of 35 Ill. Adm. Code §§ 722.120(a), (b) and (d) and 722.123, 40 C.F.R. §§ 262.20(a), (b) and (d) and 262.23.

34. EPA alleges that the shipments of lead contaminated soils on November 2 and 3, 2004, to Midwestern 3PL were not labeled, marked or placarded as hazardous waste nor in accordance with Department of Transportation regulations. Consequently,

EPA alleges that Respondent did not meet and, therefore was in violation of 35 Ill. Adm. Code §§ 722.130-133, 40 C.F.R. §§ 262.30-33.

COUNT 3

Failure to properly dispose of hazardous waste

35. Complainant incorporates paragraphs 1 through 28 of this Complaint as though set forth in this paragraph.

36. EPA alleges that Respondent disposed of hazardous waste (e.g., lead contaminated soils) at Midwestern 3PL. Midwestern 3PL did not and does not have a RCRA permit for the treatment, storage or disposal of hazardous waste. Consequently, EPA alleges that Respondent did not meet and, therefore, was in violation of 415 ILCS § 5/21(a) and (e), 42 U.S.C. § 6925, 35 Ill. Adm. Code §§ 703.100(a), 101(a) and 121(a), 40 C.F.R. §270.1(c).

37. EPA alleges that Respondent's actions at LD 12 Storage Yard resulted in the disposal of hazardous waste at that location. Respondent did not and does not have a RCRA permit for the treatment, storage or disposal of hazardous waste at LD 12 Storage Yard. Consequently, EPA alleges that Respondent did not meet and therefore, was in violation of 415 ILCS § 5/21(f), 42 U.S.C. § 6925, 35 Ill. Adm. Code §§ 703.100(a), 101(a) and 121(a), 40 C.F.R. §270.1(c).

38. EPA alleges that Respondent failed to determine that the lead contaminated soils at Midwestern 3PL and at LD 12 Storage Yard had to be treated before being land disposed. The concentration of lead in the contaminated soils at Midwestern 3PL was 19 mg/L TCLP. It was 11 mg/L TCLP at LD 12 Storage Yard. Consequently, EPA alleges that Respondent, by its actions and inaction, did not meet,

and therefore, was in violation of, 35 Ill. Adm. Code § § 728.107(a)(1),140(a) 40 C.F.R. § 268.7(a)(1) and 140(a).

V. CIVIL PENALTY

39. Complainant incorporates paragraphs 1 through 38 of this Complaint as though set forth in this paragraph.

40. Based upon consideration of the statutory factors contained in RCRA, Complainant proposes and the Respondent consents to the assessment and payment of a civil penalty in the amount of \$22,000.

41. No later than 30 days after the effective date of the Order, the Respondent shall pay the amount of \$22,000 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Treasurer, the United States of America" and addressed to:

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

The check shall reference the name of the Respondent, the Docket Number of this CAFO and BD number: 2750942R012. Interest and late charges shall be paid as specified below. If paying by EFT Respondent must pay the penalty to the "Treasurer, the United States of America" and send it to:

Federal Reserve Bank of New York
ABA No.021030004
Account No.68010727
SWIFT Address No.FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message is "D68010727 Environmental Protection Agency"

42. Upon payment of the civil penalty, Respondent shall send to each of the persons listed below a copy of the check and a transmittal letter referencing the name of Respondent, the docket number of this CAFO and BD number 2750942R012 :

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

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

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

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

- (A) **Interest.** Any unpaid portion of a civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717(a)(1). Interest will therefore begin to accrue on a civil penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. §102.13(c).
- (B) **Monthly Handling Charge.** Respondent shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
- (C) **Non-Payment Penalty.** On any portion of a civil penalty more than 90 calendar days past due, Respondent shall pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges

which accrue or may accrue under subparagraphs (a) and (b) above.

VI. COMPLIANCE ORDER

44. Based on the foregoing, and pursuant to the authority in Sections 3008(a) and 6001 of RCRA, 42 U.S.C. §§ 6928(a) 6961, and § 22.37(b) of the Consolidated Rules, Respondent shall comply with the Illinois hazardous waste regulations and it shall complete the sampling, removal and proper off-site disposal of contaminated soils at LD 12 Storage Yard and Midwestern 3PL in accordance with 35 Ill. Adm. Code §§ 725 and 742 and the directions of Illinois EPA, including, but not limited to, Illinois EPA's letters dated September 3 and September 9, 2009 (*See Attachments A and B*) and EPA's September 16, 2009 e-mail (*See Attachment C*).

45. Midwestern 3PL location – By November 30, 2009, Respondent shall complete and submit to Illinois EPA and EPA the results of its sampling of contaminated soils from LD 12 which were disposed at Midwestern 3PL by Respondent, in accordance with the direction of Illinois EPA and EPA, (*See Attachments B and C*). Respondent shall conduct the soil sampling in accordance with all applicable laws and regulations and the Scope of Work (*See Attachment D*), as approved or modified by the Illinois EPA. By June 30, 2010, Respondent shall remove and properly dispose Respondent's lead with lead concentrations above the Tier I clean-up levels under 35 Ill. Adm. Code § 742,. Respondent shall also grade any excavated areas such that the surface contours are restored. Respondent shall submit to Illinois EPA and EPA a report of its removal activities by July 31, 2010.

46. LD 12 Storage Yard – By October 31, 2010, Respondent shall remove soils at LD 12 Storage Yard such that the concentration of lead is below the Tier I clean-

up levels under 35 Ill. Adm. Code § 742. Respondent shall take samples in accordance with the direction of Illinois EPA, including, but not limited to Illinois EPA's letter dated September 3, 2009 (*See Attachment A*). Respondent shall test, store, transport and dispose of any lead-contaminated excavated soils in accordance with all applicable laws and regulations. By November 30, 2010, Respondent shall submit to EPA a copy of the report required by Illinois EPA (*See Attachment A*).

VII. STIPULATED PENALTIES

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

- (A) For failure to timely and accurately complete the work required in paragraphs 42 and 43: \$750 per day for the first 14 days and \$1,500 per day thereafter.
- (B) For failure to timely submit any information, notices or reports required by this Order: \$250 per day for the first 14 days and \$500 per day thereafter.

48. Respondent's submissions shall be considered timely if they are post-marked and mailed, faxed or electronically signed and submitted on or before the due dates identified in this Order, unless otherwise specified. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next business day.

49. Whether or not Respondent has received notice of a violation, stipulated penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue

until Respondent completes the task or submits the required deliverable. Separate stipulated penalties for separate violations of this Order shall accrue simultaneously.

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

51. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives EPA's demand letter. Interest shall accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. §3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue (e.g., more than 90 days after Respondent receives EPA's demand letter) and shall pay a monthly handling charge as specified in paragraph 43(b).

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

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

A transmittal letter stating the name of the Facility, Respondent's name and address, and the EPA docket number of this action must accompany the payment. Respondent must simultaneously send a copy of the check and transmittal letters to the EPA employees identified in paragraph 42.

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

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

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

VIII. DISPUTE RESOLUTION

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

57. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Technical Contact of the dispute. The Technical Contact for EPA is Graciela Scambiaterra. The Technical Contact for the Respondent is Kara Mitvalsky, (309) 794-5623. Technical Contacts will attempt to resolve the dispute informally.

58. If the Technical Contacts cannot resolve the dispute informally, either party may pursue the matter informally by placing its objections in writing. A written

objection must state the specific points in dispute, the basis for that party's opposition, and any matters which it considers necessary for determination.

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

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

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

IX. FORCE MAJEURE AND EXCUSABLE DELAY

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

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

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

X. GENERAL TERMS OF SETTLEMENT

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

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

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

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

69. Respondent waives the right to a hearing under Section 3008 of RCRA, 42 U.S.C. §6928, 40 C.F.R. §22.15(c); to contest the jurisdiction of this CAFO; to appeal any Final Order in this matter; and consents to the issuance of a Final Order without further adjudication.

70. If Respondent fails to comply with any provision contained in this CAFO,

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

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

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

73. Notwithstanding any other provision of this CAFO, EPA may bring an enforcement action pursuant to Section 7003 of RCRA, or other statutory authority, if any handling, storage, treatment, transportation, or disposal of solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment. EPA also expressly reserves the right: (a) for any matters other than violations alleged in the Complaint, to take any action authorized under RCRA; (b) to enforce compliance with the applicable provisions of the Illinois administrative code;

and (c) to enforce compliance with this CAFO, including through a referral to the Department of Justice.

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

75. Respondent shall submit all reports, submissions, and notifications required by this Order to:

Graciela Scambiaterra
Land and Chemicals Division
77 West Jackson Boulevard (LR-8J)
Chicago, Illinois 60604-3590.

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

77. Respondent waives any right it may have pursuant to 40 C.F.R. §22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication with an EPA official identified in 40 C.F.R §22.08 where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue the CAFO. Respondent also waives any opportunity to confer provided in Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2) on this CAFO prior to it becoming a final order.

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

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

80. The Final Order does not constitute a waiver, suspension or modification of the requirements of the RCRA or any regulations promulgated there under, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

81. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

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


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

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

85. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. • 1341.

Agreed to this 22nd day of September, 2009.

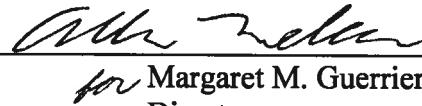
By Respondent:



Colonel Shawn P. McGinley
Colonel, U.S. Army
Commander and District Engineer

Agreed to this 24th day of September, 2009

By Complainant:



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


**IN THE MATTER OF:
U.S. Army Corps of Engineers
Docket No.: RCRA-05-2009-0020**

FINAL ORDER

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

Ordered this 29th day of September 2009.

By:


Bharat Mathur
Acting Regional Administrator
EPA Region 5

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REGION 5

CASE NAME: U.S. Army Corps of Engineers, ILR 000 133 710
DOCKET NO: RCRA-05-2009-0020

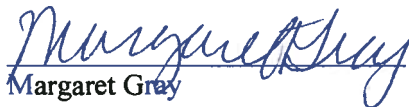
CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Consent Agreement and Final Order** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590. I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Colonel Shawn P. McGinley
Commander and District Engineer
U.S. Army Corps of Engineers
Lock & Dam 12
Bellevue Dam Road
Hanover Township, Illinois 61041

Certified Mail # 7001 0320 0005 8915 5381

Dated: Sept 28 2009⁷



Margaret Gray
Administrative Assistant
Land and Chemicals Division
United States Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-5028

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