



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

JAN 12 2012

REPLY TO THE ATTENTION OF:
WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald J. Stuckey, Esq.
Attorney at Law
112 South Cedar Street
P.O. Box 523
Auburn, Indiana 46706

Re: Consent Agreement and Final Order
Docket No. CWA-05-2012-0002

BD# 2751243W004

Dear Mr. Stuckey:

Enclosed is a copy of your client's signed and filed Consent Agreement and Final Order (CAFO) resolving the Terry Lake matter. The CAFO's effective date is January 12, 2012. Please refer to Billing Docket No. CWA-05-2012-0002, and the case Docket Number above when remitting payment. Payment obligations and instructions for the \$13,750 civil penalty are noted in paragraphs 32-33 and 35 of the CAFO. The civil penalty payment is due within 60 days of the effective date or March 12, 2012.

In addition, the requirements of the Supplemental Environmental Project are outlined in CAFO paragraphs 39-55 and 58. Please contact me at 312/886-0124 if any questions arise regarding the Supplemental Environmental Project.

Sincerely yours,

Gregory T. Carlson, Enforcement Officer
U.S. EPA - Region 5

Enclosure

cc: Larry Gilbert, Steuben County Surveyor, 317 S. Wayne St., Angola, IN 46703
Don Reinke, U.S. Army Corps of Engineers - Detroit District, Detroit, MI
Ryan Cassidy, U.S. Army Corps of Engineers - South Bend Field Office,
2422 Viridian Dr. (Suite 200), South Bend, IN 46628
Randy Braun, IDEM, Indianapolis, IN

5. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

STATUTORY AND REGULATORY BACKGROUND

6. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

7. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term "pollutant" to mean, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.

11. 40 C.F.R. § 230.3(s) defines “waters of the United States” to include all waters which are, were or may be used in interstate or foreign commerce, tributaries thereof, and wetlands adjacent to such waters.

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to mean any discernible, confined and discrete conveyance from which pollutants are or may be discharged.

13. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311.

ALLEGATIONS

14. Respondent is Steuben County, a county of the State of Indiana. As such, Respondent is a "person" within the definition set forth at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. This matter concerns a property located on the bank of Terry Lake, a 17-acre water body located in Steuben and Dekalb Counties, Indiana. This property is hereafter referred to as the “Site.”

16. Terry Lake drains through an unnamed subsurface drainage feature which is operated and maintained by Respondent or departments of Respondent. In turn, that drainage feature drains to Hiram Sweet Ditch, Fish Creek, the St. Joseph River, and the Maumee River.

17. The water bodies identified in Paragraph 16 are each “waters of the United States” and “navigable waters” as those terms are defined by 40 C.F.R. § 230.3(s) and 33 U.S.C. § 1362(7), respectively.

18. Located on the Site is an area which is inundated or saturated by groundwater at a frequency and duration sufficient to support, and that under normal circumstances can support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

19. The area described in Paragraph 18 is a “wetland” as that term is defined by 40 C.F.R. § 230.3(t).

20. The wetland described in Paragraph 18 abuts Terry Lake.

21. The wetland described in Paragraph 18 is a “water of the United States” and a “navigable water” as those terms are defined by 40 C.F.R. § 230.3(s) and 33 U.S.C. § 1362(7), respectively.

22. In July and August 2008, Respondent employed LaOtto Farm Supplies, Inc., an earthmoving contractor, to conduct excavation work at the Site. During this work, bulldozers and other earth moving machines were used to deposit soil and organic debris into the wetlands located on the Site.

23. The bulldozers and other earth moving machines referred to in Paragraph 22 are “point sources,” as that term is defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The soil and organic debris referred to in Paragraph 22 are “pollutants,” as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

25. The deposition of material into wetlands at the Site as referred to in Paragraph 22 constitutes a "discharge of pollutants," as that term is defined by Section 502(12), 33 U.S.C. § 1362(12), to the waters of the United States.

26. At no time relevant to the violations alleged herein did Respondent possess a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of pollutants at the Site.

27. Each day Respondent discharged pollutants at the Site without a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

28. Each day the pollutants discharged by Respondent remain within navigable waters without a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

TERMS OF SETTLEMENT

Assessment and Payment of Penalty

29. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Respondent's agreement to perform the Supplemental Environmental Project (SEP) outlined below, EPA and Respondent agree to settle this matter for a civil penalty of \$13,750.00.

30. For the purposes of this proceeding, and pursuant to 40 C.F.R. §§ 22.18(b) and (c), Respondent: (1) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (2) neither admits nor denies the facts set forth in this CAFO.

31. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

32. Respondent shall pay the \$13,750.00 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after both parties have executed this CAFO and it becomes effective.

33. Respondent must send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

34. This civil penalty is not deductible for federal tax purposes.

35. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

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

Gregory Carlson
Water Division (WW-16J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

36. Respondent's failure to pay the assessed civil penalty, or any stipulated penalties due under Paragraph 56 below, in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorneys' fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

37. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

Supplemental Environmental Project

38. In accordance with this CAFO, Respondent must complete a SEP at the real property described in Attachment A (Property Description) to this CAFO (hereinafter, Restoration Property). The purpose of the SEP is to restore wetlands at the Restoration Property, thereby protecting and enhancing water quality in the Fish Creek Watershed.

Purchase of Restoration Property

39. Not later than 30 days after the effective date of this CAFO, Respondent shall complete the purchase of the Restoration Property. Respondent shall, within five days of the completion of such purchase, record a copy of its deed to the Restoration Property with the County Recorder for Steuben County, Indiana, and shall provide a copy of the recorded deed to EPA.

40. After purchase of the Restoration Property, Respondent shall not convey any interest in the Restoration Property until Respondent has fully complied with all provisions of Paragraphs 41 through 47 of this CAFO.

Restoration Workplan

41. Not later than 45 days after the effective date of this CAFO, Respondent shall submit to EPA for review and approval a work plan to restore wetlands at the Restoration Property (Restoration Workplan). At a minimum, the Restoration Workplan shall:

a. identify all tasks that Respondent will perform to restore the wetlands at the Restoration Property, including but not limited to: design work; the breaking of subsurface tiles; the excavation, redistribution and removal of soil; seeding; planting; monitoring and adaptive management actions to correct any problems in reestablishing native vegetation; and any other tasks necessary to successfully complete the SEP;

b. provide a scaled map identifying:

- i. the lateral extent of the area(s) in which Respondent will perform the tasks identified in the Restoration Workplan;
- ii. distances from those areas to property boundaries;

- iii. current drainage features and elevation contours in one foot increments on the Restoration Property;
 - iv. each water body which may receive surface or groundwater flow from the Restoration Property; and
 - v. anticipated as-built diagrams showing all drainage features, elevations and any outfall structure on the Restoration Property after completion of activities under the Restoration Workplan;
- c. identify all contractors responsible for the design and implementation of the SEP and the tasks to be performed by each contractor under the Restoration Workplan;
 - d. provide an estimate of the costs of the tasks identified in the Restoration Workplan; and
 - e. provide a schedule under which Respondent shall perform the tasks identified in the Restoration Workplan. The schedule shall require completion of all activities under the Restoration Workplan not later than November 30, 2011.

42. Upon EPA approval of the Restoration Workplan, Respondent shall perform all activities under the approved Restoration Workplan in accordance with the details and schedule provided therein.

43. Within 15 days of completion of all activities required under the approved Restoration Workplan, Respondent shall provide notification and documentation of such completion to EPA. Such documentation shall include photographs (from the four corners of the site) and an as-built drawing documenting that Respondent has completed all activities under the approved Restoration Workplan. The as-built drawings shall illustrate elevation contours of the post-completion Restoration Property at one foot increments and all Restoration Property features.

44. After completion of all activities required under the approved Restoration Workplan, Respondent shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any portion of the Restoration Property unless approved in advance by EPA in writing or otherwise in compliance with the approved Restoration Workplan's adaptive management provisions.

Conservation Easement

45. Respondent shall legally protect the Restoration Property by creating a conservation easement or equivalent legal instrument (Conservation Easement) in accordance with Indiana law. The Conservation Easement shall:

- a. incorporate a complete copy of this CAFO;
- b. provide that any owner of an interest in the Restoration Property shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any portion of the Restoration Property unless approved in advance by EPA in writing;
- c. be binding upon and inure to the benefit of the grantor and grantee and their respective representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restoration Property; and
- d. provide a right of access to EPA to inspect the Restoration Property at any time to monitor compliance with the Conservation Easement.

46. In the Conservation Easement, Respondent must grant a qualified party a third party right of enforcement, under which that party may enforce the provisions of the Conservation Easement.

47. Within 15 days of completion of all activities required under the approved Restoration Workplan, and prior to the transfer of any interest in the Restoration Property,

Respondent shall file the Conservation Easement with the Steuben County's Recorder's Office and shall provide a copy of the filed Conservation Easement to EPA.

48. Any subsequent transfer of any interest in the Restoration Property through deed, title or other instrument shall be conditioned on compliance by the transferee with the Conservation Easement.

SEP General Provisions

49. Respondent must spend at least \$82,500.00 to purchase the Restoration Property and to design and perform activities required under the Restoration Workplan.

50. Certifications

a. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

b. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant,

cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

51. EPA may inspect the Restoration Property at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

SEP Completion Report

52. Within 30 days after completion of the SEP, including filing of the Conservation Easement, Respondent must submit a SEP Completion Report to EPA. The SEP Completion Report must contain the following information:

- a. a detailed description of the SEP as completed;
- b. an itemized list of costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; and
- c. a certification that Respondent has completed the SEP in compliance with this CAFO.

53. Respondent must submit all notices and reports required by this CAFO by first class mail to Gregory Carlson at the address specified in Paragraph 35 above.

54. In the SEP Completion Report, Respondent must certify that the report is true and complete by including the following statement signed by the Steuben County Surveyor:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

55. Following receipt of the SEP Completion Report, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP;
- b. there are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent 30 days to correct the deficiencies. The parties may agree in writing to extend this 30 day period; or
- c. Respondent has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties under Paragraph 56.

Stipulated Penalties

56. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph (b) immediately below, if the SEP has not been completed satisfactorily pursuant Paragraphs 38-47, Respondent shall pay a stipulated penalty to the United States in the amount of \$ 41,250.00;
- b. If the SEP is not completed in accordance with Paragraphs 38-47, but EPA determines that Respondent: i) made good faith and timely efforts to complete the project; and ii) certifies, with supporting documentation, that Respondent spent at least 90 percent of the amount of money required to be expended on the SEP by Paragraph 49, Respondent shall not be liable for any stipulated penalty;
- c. If the SEP is completed in accordance with Paragraphs 38-47, but Respondent spent less than 90 percent of the amount of money required to be expended on the SEP by Paragraph 49, Respondent shall pay a stipulated penalty to the United States in the amount of \$ 5,000.00;
- d. If the SEP is completed in accordance with Paragraphs 38-47, and Respondent spent at least 90 percent of the amount of money required to be expended for the SEP by Paragraph 49, Respondent shall not be liable for any stipulated penalty; and
- e. For failure to timely submit the SEP Completion Report, Respondent shall pay a stipulated penalty as follows.

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$ 100	1st through 14th day
\$ 250	15th through 30th day
\$ 500	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each deadline until it achieves compliance with the deadline.

57. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraphs 32-35 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

58. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of the Clean Water Act."

59. Dispute Resolution

- a. Unless otherwise expressly provided for in this CAFO, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism for resolving disputes arising under this CAFO. The parties shall attempt to resolve any disagreements concerning this CAFO expeditiously and informally.
- b. If Respondent objects to any EPA action taken pursuant to this CAFO, Respondent shall notify EPA in writing of its objection(s) within 10 business days following Respondent's receipt of written notice from EPA of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 14 business days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing to be effective.

- c. Any agreement reached by the parties pursuant to this Paragraph shall be in writing and shall, upon signature by the parties, be incorporated into and become an enforceable part of this CAFO. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this CAFO. Respondent's obligations under this CAFO shall not be tolled by submission of any objection for dispute resolution under this Paragraph.
- d. Following resolution of the dispute, as provided by this Paragraph, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to fulfill the requirement in accordance with EPA's final decision, EPA reserves the right in its sole discretion to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

60. Force Majeure

If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 business days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this Paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA

will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph (b), above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

61. Nothing in this CAFO is intended to nor will be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

62. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

OTHER MATTERS

63. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

64. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws, statutes or regulations.

65. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right to

take any action authorized under Section 309 of the CWA, 33 U.S.C. § 1319 for any matters other than the violations alleged in this CAFO and to enforce compliance with this CAFO.

66. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

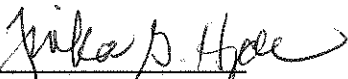
67. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

68. Pursuant to 40 C.F.R. § 22.38, the State of Indiana was notified of this proceeding and the other terms of this settlement.

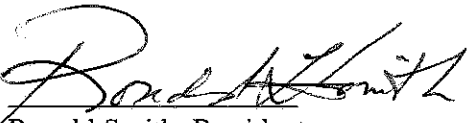
69. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

70. This CAFO constitutes the entire agreement between the parties.

71. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.


Tinka G. Hyde, Director
Water Division
U.S. Environmental Protection Agency
Region 5

11-15-11
Date


Ronald Smith, President
Steuben County Commissioners

9-19-2011
Date

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of: Steuben County, Indiana
Terry Lake Matter**

Docket No. CWA-05-2012-0002

RECEIVED

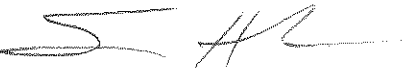
JAN 12 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

FINAL ORDER

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: _____



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: _____

1-5-12

ATTACHMENT A
PROPERTY DESCRIPTION

Part of the Southwest quarter of Section 33, Township 36 North, Range 14 East, Steuben County, Indiana, and being part of land previously conveyed by Deed Record 132, page 184, said portion described as follows:

COMMENCING at the West quarter corner of said Section 33, marked with a corner stone; thence South 01 degree 52 minutes 06 seconds West, along the West line of said Southwest quarter, a distance of 1272.70 feet to a #4 rebar stake marking the Southwest corner of lands previously conveyed by Deed Record 230, page 161, said rebar also marking the Northwest corner of lands previously conveyed by Document #10100312; thence South 79 degrees 36 minutes 30 seconds East (deed bearing from Parcel II of Document #10100312 and basis for bearings), along the North line of Parcel II as described in Document #10100312 and South line of Deed Record 230, page 161, a distance of 433.10 feet (recorded as 432.85 feet and 434.46 feet in deeds) to the Southeast corner of Deed Record 230, page 161, and being the point of beginning; thence North 50 degrees 26 minutes 20 seconds East, along the easterly line of Deed Record 230, page 161, a distance of 393.92 feet (recorded 394.51 feet) to a #5 rebar stake marking the westerly most corner of land previously conveyed by Document #04010041; thence South 65 degrees 19 minutes 00 seconds East, along a southerly boundary of Document # 04010041, a distance of 826.41 feet to a #5 rebar stake; thence North 65 degrees 14 minutes 40 seconds East, continuing along said southerly boundary, 422.61 feet to a #5 rebar stake; thence departing said southerly boundary of Document #04010041 and through the lands of Howard as conveyed by Deed Record 132, page 184, with the following three (3) courses: South 10 degrees 23 minutes 07 seconds West 148.11 feet to a #5 rebar stake; thence South 52 degrees 21 minutes 12 seconds West 411.54 feet to a #5 rebar stake; thence North 79 degrees 36 minutes 53 seconds West 552.95 feet to a #5 rebar stake on the East line of Parcel I of lands previously conveyed by Document #10100312; thence North 00 degrees 02 minutes 18 seconds West, along said East line and the East line of Parcel II of said Document #10100312, a distance of 115.27 feet to a #4 rebar stake marking the Northeast corner of said Parcel II, thence North 79 degrees 36 minutes 30 seconds West, along the North line of said Parcel II, a distance of 550.87 feet to the point of beginning, containing 7.50 acres, more or less.

TOGETHER with an easement as contained in a certain Warranty Deed from Charles Gilbert Howard and Karen Lucille Howard, husband and wife to The Town of Hamilton, dated October 22, 1991, recorded October 22, 1991 in Deed Record 230, page 161 in the Office of the Recorder of Steuben County, Indiana.

Subject to all easements, rights of way, rights, duties, obligations, covenants, conditions, restrictions, limitations, and agreements of record; all legal highways and public rights-of-way, all matters which would be disclosed by an accurate survey or inspection of said real estate and the provisions of all applicable zoning laws.

RECORDED
STEUBEN COUNTY, INDIANA
OCT 22 1991
12:00 PM



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

RECEIVED
JAN 11 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

REPLY TO THE ATTENTION OF:

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Complaint/Consent Agreement and Final Order (Docket No. CWA-05-2012-0002) was filed with the Regional Hearing Clerk on January 12, 2012, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the 12th day of January 2012, upon the following:

Donald J. Stuckey, Esq.
Attorney at Law
112 South Cedar Street, P.O. Box 523
Auburn, Indiana 46706.

A Complaint/Consent Agreement and Final Order copy (Docket No. CWA-05-2012-0002) was served by United States Mail, Certified and Postage Prepaid, on the 12th day of January 2012, upon the following:

Honorable Chief Judge Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Gregory T. Carlson
U.S. Environmental Protection
Agency - Region 5 (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604