

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. CWA-05-2007-0004</b>
	)	<b>Judge William B. Moran</b>
	)	
<b>Logan County Water Pollution Control,</b>	)	<b>Proceeding to Assess a</b>
<b>Indian Lake District</b>	)	<b>Class II Civil Penalty</b>
<b>1015 Orchard Island Road, South,</b>	)	<b>Pursuant to Section 309(g)</b>
<b>Russells Point, Ohio</b>	)	<b>of the Clean Water Act,</b>
	)	<b>33 U.S.C. § 1319(g).</b>
	)	
	)	

---

**JOINT MOTION TO REQUEST POSTPONEMENT OF  
HEARING PURSUANT TO SECTIONS 22.16 and 22.21 (c) OF  
THE CONSOLIDATED RULES**

2008 AUG -4 PM 4: 00

RECEIVED  
REGIONAL HEARING CLERK  
US EPA REGION V

1. Complainant, the Director of the Water Division, United States Environmental Protection Agency Region 5 (EPA), and Respondent, Logan County Water Pollution Control, Indian Lake District (Indian Lake) jointly file this Motion to Request Postponement of Hearing pursuant to Sections 22.16 and 22.21(c) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. §§ 22.16 and 22.21(c).

2. As requested by the Court during a scheduling conference call, the Parties immediately and without delay promised to notify the Court of settlement in this matter.

3. On August 1, 2008, during the afternoon, the Parties reached agreement concerning settlement of this matter. (Exhibit 1)

4. The Parties' settlement agreement has been memorialized in a draft consent agreement and final order (CAFO), which is undergoing review prior to the Parties' signature and execution. (Exhibit 2)

5. The Parties expect that the CAFO will be fully executed and filed with the Regional Hearing Clerk in less than 30 days.

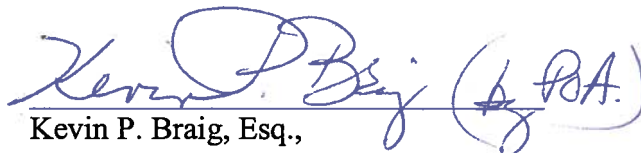
6. This matter currently is scheduled for hearing August 19-22, 2008, in Cincinnati, Ohio.

7. The Parties believe that it is in the interests of all concerned, given the current economic climate, to take steps to avoid expenditure of additional costs, resources and energies in preparing for and traveling to hearing of this matter in Cincinnati, Ohio.

8. A postponement of the hearing for 35 days from August 19-22, 2008, to the week of September 23-26, 2008, will allow more than sufficient time for the CAFO to be executed and filed with the Regional Hearing Clerk and would help avoid expenditure of additional costs, resources and energies by the Court and the Parties.

**WHEREFORE**, the Parties respectfully request that the Court grant this Joint Motion for Postponement of Hearing, and postpone hearing in this matter for 35 days from August 19-22, 2008, to the week of September 22-26, 2008.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kevin P. Braig (by P.A.)". The signature is written over a horizontal line.

Kevin P. Braig, Esq.,  
Dinsmore & Shohl, LLP  
One Dayton Centre  
One South Main Street, Suite 1300  
Dayton, Ohio 45402

Counsel for Respondent

**In the Matter of  
Logan County Water Pollution Control  
Indian Lake District,  
Docket No, CWA-05-2007-0004**

**CERTIFICATE OF SERVICE**

I certify that the foregoing **MOTION TO REQUEST POSTPONEMENT OF HEARING**, dated 8/4/08, was sent this day in the following manner to the addressees listed below.



Elizabeth Rosado  
Administrative Assistant, Section III, MMB I  
U.S. EPA, Region 5, Office of Regional Counsel

Dated: August 4, 2008

Original and One Copy by Hand Delivery to:

Sonja Brooks-Woodard  
Regional Hearing Clerk  
U.S. EPA, Region 5  
77 W. Jackson Boulevard, C-14J  
Chicago, Illinois 60604-3590

Copy by Federal Express Delivery to:

The Honorable William B. Moran  
U.S. Environmental Protection Agency  
Office of the Administrative Law Judges  
Franklin Court, Suite 350  
1099 14<sup>th</sup> St. NW  
Washington, DC 20005

Copy by Federal Express Delivery to:

Kevin P. Braig, Esq.,  
Dinsmore & Shohl, LLP  
One Dayton Centre  
One South Main Street, Suite 1300  
Dayton, Ohio 45402

Counsel for Respondent

RECEIVED  
REGIONAL HEARING CLERK  
US EPA REGION V  
2008 AUG -4 PM 4:00

**In the Matter of  
Logan County Water Pollution Control,  
Indian Lake District, Russells Point, Ohio  
Docket No. CWA-05-2007-0004**

Respectfully submitted,



Diana L. Embil  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604 – 3590

## EXHIBIT 1





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

AUG 04 2008

REPLY TO THE ATTENTION OF:  
(C-14J)

**VIA FACSIMILE TRANSMITTAL  
AND REGULAR U.S. MAIL DELIVERY**

Kevin P. Braig, Esq.  
Dinsmore & Shohl LLP  
One Dayton Centre  
One South Main Street – Suite 1300  
Dayton, OH 45402

Re: Logan County Water Pollution Control, Indian Lake District, Russells  
Point, Ohio - Docket No.: CWA-05-2007-0004

Dear Kevin:

This letter confirms that the Director of the Water Division, United States Environmental Protection Agency Region 5 (EPA), and Respondent, Logan County Water Pollution Control, Indian Lake District (Indian Lake) have reached a settlement agreement concerning this case. In settlement of the case, EPA will accept payment by Indian Lake of a total civil penalty in the amount of \$40,000. I am drafting a joint motion to advise Judge Moran and request postponement of the hearing.

I will send the draft joint motion to you by noon CST, today, for your comments and/or approval. If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana L. Embil".

Diana L. Embil  
Associate Regional Counsel  
(312) 886-7889  
(312) 886-0747 (fax)  
embil.diana@epa.gov





Valdis Aistars /R5/USEPA/US To  
08/01/2008 03:26 PM

Subject ILWPCD

History:

✉ This message has been replied to.

Diana, this is to confirm our earlier conversation regarding acceptance of the \$40,000 offer by ILWPCD to settle the Complaint against them. Please let me know if you need anything else. Thanks.





"Braig, Kevin"  
<kevin.braig@dinslaw.com>

08/03/2008 07:25 AM

To

Subject FW: Reserved Courtroom found for the Logan Hrg scheduled  
for August 19-22, 2008 in Cincinnati, OH.

Diana:

If we have a settlement as we discussed last week, we should let the Court know on Monday as they have now scheduled a room in Cincinnati. Please confirm to me on Monday that we have a settlement. Thank you for your attention to this matter.

Kevin

-----Original Message-----

From: Brooks-Woodard.Sonja@epamail.epa.gov  
[mailto:Brooks-Woodard.Sonja@epamail.epa.gov]  
Sent: Friday, August 01, 2008 11:57 PM  
To: Moran.William@epamail.epa.gov; Jones.Knolyn@epamail.epa.gov; Braig, Kevin; Embil.Diana@epamail.epa.gov  
Cc: Greene.Tywanna@epamail.epa.gov; Walts.Alan@epamail.epa.gov; Swanson-Wilson.Jodi@epamail.epa.gov; Harris.Francene@epamail.epa.gov  
Subject: Reserved Courtroom found for the Logan Hrg scheduled for August 19-22, 2008 in Cincinnati, OH.

---- Forwarded by Sonja Brooks-Woodard/R5/USEPA/US on 08/01/2008 10:51 PM ----

#### Hearing Information

Case Number: CWA-05-2007-0004

Case Name: Logan County Water Pollution Control, Indian Lake  
District (Russells Point, OH)

Title Notice of Hearing Location

Copy of Order (See attached file:  
Scheduling Hearing: CWA-05-2007-0004 ALJ N O  
(attach .PDF) Hrg.pdf)

Date of Order 04/25/2008

Begins: Tue 08/19/2008 09:30 AM

Ends: Fri 08/22/2008 04:30 PM

Location Hamilton County  
Courthouse, 1000 Main  
Street, Ctrm 566,  
Cincinnati, OH 45202.

Contact Bill Schoenfeld or  
Person Barbara McCoucha

Contact (513) 946-5901 or  
Phone (513) 946-5959

Comments: My apologies for not being able to do or mail out a Notice of  
Hearing Location.....

Sonja Brooks-Woodard  
RHC/FOIA Coord./Admn. Law Ct. Rec. Mgr.  
Office Enforcement Compliance Assurance



"Braig, Kevin"  
<kevin.braig@dinslaw.com>

08/04/2008 03:03 PM

To

Subject Logan County Water Pollution Control District

Dear Ms. Embil:

This e-mail confirms that U.S. EPA and the Logan County Water Pollution Control District have reached a settlement agreement in this case in which the District will pay a civil penalty in the amount of \$40,000 subject to approval of a mutually agreeable consent agreement as you stated in your letter to me dated August 4, 2008.

As always, if you have any questions relating to this matter, please do not hesitate to contact me.

Kevin P. Braig  
Dinsmore & Shohl, LLP  
937-449-6456

**NOTICE** : This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.



## EXHIBIT 2





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Logan County Water Pollution Control,  
Indian Lake District  
1015 Orchard Island Road, South  
Russells Point, Ohio 43348,**

**Respondent.**

**Docket No. CWA-05-2007-0004**

**Proceeding to Assess a  
Class II Civil Penalty  
Pursuant to § 309(g)  
of the Clean Water Act,  
33 U.S.C. § 1319(g).**

**CONSENT AGREEMENT AND FINAL ORDER**

**CONSENT AGREEMENT**

Complainant, the Director of the Water Division, United States Environmental Protection Agency Region 5 (EPA), having filed the Complaint herein on April 17, 2007, against Respondent Logan County Water Pollution Control, Indian Lake District (Indian Lake); and Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

**I. Preliminary Statement**

1. EPA initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and Sections 22.1(a) (6) and 22.38 of the *Consolidated Rules of Practice Governing the Administrative*

*Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40*

C.F.R. §§ 22.1(a) (6) and 22.38 (the Consolidated Rules).

2. On May 10, 2007, Complainant moved to amend the Complaint and filed an Amended Complaint.

3. The Amended Complaint alleged that, for calendar years 2002 and 2003, Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e) and 40 C.F.R. Part 503 regulations by failing to: (Count I) submit annual sludge reports to EPA as required by 40 C.F.R. § 503.18; (Count II) meet the Class B pathogen requirement in 40 C.F.R. § 503.32(b)(3) and comply with the pathogen requirements of 40 C.F.R. § 503.15(a)(1); (Count III) meet any of the vector attraction reduction requirements in 40 C.F.R. §§ 503.33(b)(1) through (b)(10) as required by 40 C.F.R. § 503.15(c)(1); and (Count IV) land apply its sewage sludge at an agronomic rate and comply with the agronomic rate land application requirements of 40 C.F.R. § 503.14(d). The Complaint proposed a civil penalty of one hundred thirty-seven thousand five hundred dollars (\$137,500).

4. On May 30, 2008, Respondent filed its Answer to the Amended Complaint and requested a hearing on the matter pursuant to 40 C.F.R. § 22.15 (c).

5. This Consent Agreement and Final Order (CAFO) shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.

6. Respondent stipulates that the EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of

this CAFO.

7. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. Terms of Settlement**

8. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and considering the nature, circumstances, extent and gravity of the alleged violations and, with respect to the alleged violator, the degree of culpability, economic benefit or savings resulting from the alleged violation, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is forty thousand dollars (\$40,000).

9. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited above.

10. Respondent shall pay the civil penalty described in Paragraph 8, above, within thirty (30) calendar days of the date of Respondent's receipt of a fully executed copy of this CAFO.

Payment shall be made by cashiers or certified check, paid to the order of the "Treasurer, United States of America," and sent to:

Region 5  
U.S. Environmental Protection Agency  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall provide a copy of the check to:

Regional Hearing Clerk  
Mail Code R-19J  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

And

Valdis Aistars  
Environmental Engineer  
Water Division  
Mail Code WC-15J  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

And

Diana Embil  
Associate Regional Counsel  
Office of the Regional Counsel  
Mail Code C-14J  
EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Respondent shall designate on the face of the check the name and docket number of this action.

11. The penalty specified in Paragraph 8, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

12. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Therefore, interest will begin to accrue on the civil penalty sixty days after the date of Respondent's receipt of a fully executed copy of this CAFO. 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). In the event payment is not made within said sixty days, a charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees incurred by the EPA in enforcing this Agreement. In addition, a non-payment penalty charge of six percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

4 C.F.R. §§ 102.13(d) and (e).

### **III. General Provisions**

13. This CAFO constitutes a settlement by Complainant of all claims for civil penalties made pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint and Amended Complaint against Respondent, its officers, directors, employees, successors and/or assigns. Nothing in this CAFO is intended, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, nor shall anything in this CAFO be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

14. Respondent certifies also that, to the best of its knowledge and belief, it is in compliance with the regulations at 40 C.F.R. § 503 and Section 405 of the Act, 33 U.S.C. § 1345.

15. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of anything installed by Respondent in connection with the SEP under the terms of this CAFO.

16. The penalty specified in Paragraph 8, above, shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

17. Complainant and Respondent agree that this CAFO does not constitute any admission of act or legal claim, wrongdoing or liability by Respondent for the violations alleged in this CAFO.

18. This CAFO shall apply to and be binding upon Respondent and its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, any subsequent purchaser of any ownership interest in Respondent.

19. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized by the Party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

20. Each Party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

21. This CAFO constitutes the entire agreement between the Parties.

22. This CAFO constitutes a Final Order pursuant to § 309(g) (5) of the Act, 33 U.S.C. § 1319(g) (5).

23. The effective date of this CAFO shall be the day that it is filed with the Regional Hearing Clerk.

24. This CAFO shall terminate when Respondent has satisfied all of the terms and conditions of this CAFO as set forth above.

**In the Matter of  
Logan County Water Pollution Control,  
Indian Lake District, Russells Point, Ohio  
Docket No. CWA-05-2007-0004**

**For Complainant:**

\_\_\_\_\_  
Tinka Hyde, Acting Director  
Water Division  
Region 5  
U.S. Environmental Protection  
Agency

Date: \_\_\_\_\_

**For Respondent:**

**Logan County Water Pollution  
Control, Indian Lake District**

By \_\_\_\_\_  
Name  
Position  
Logan County Water Pollution  
Control, Indian Lake District

Date: \_\_\_\_\_

**In the Matter of  
Logan County Water Pollution Control,  
Indian Lake District, Russells Point, Ohio  
Docket No. CWA-05-2007-0004**

**ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with all of the terms and conditions of the Consent Agreement, effective immediately.

Date: \_\_\_\_\_ 2008

---

Bharat Mathur  
Acting Regional Administrator  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590