

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5

<b>In the Matter of:</b>	)	<b>Docket No. RCRA-05-2020-0013</b>
	)	
	)	<b>Proceeding to Commence and Conclude</b>
<b>Illinois Central Railroad Company</b>	)	<b>an Action to Assess a Civil Penalty</b>
<b>17550 South Ashland Avenue</b>	)	<b>Under Section 3008(a) of the Resource</b>
<b>Homewood, IL 60430</b>	)	<b>Conservation and Recovery Act,</b>
	)	<b>42 U.S.C. § 6928(a)</b>
	)	
<b>Respondent.</b>	)	
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.
3. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2) on February 8, 2019.
4. Respondent is Illinois Central Railroad Company, a corporation doing business in the State of Illinois.
5. Where the parties agree to settle one or more causes of action before the filing of a

complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO) per 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

8. Jurisdiction for this action is conferred upon EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits only the jurisdictional allegations in this CAFO and neither admits nor denies the Factual Allegations and Alleged Violations in this CAFO, including any implication whatsoever that it treated, stored or disposed of a hazardous waste as defined by RCRA and its regulations.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO (other than the Factual Allegations and Alleged Violations, if asserted in an enforcement action unrelated to the surface impoundments, which are hereby reserved), and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

11. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste and used oil, pursuant to Sections 3001 – 3007, 3013 and 3014, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934, and 6935.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S.

EPA (“Administrator”) may authorize a state to administer the RCRA hazardous waste program (including the regulation of used oil) in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C, Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939(e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator granted the State of Illinois final authorization to administer a state hazardous waste program (including the regulation of used oil) in lieu of the federal government’s base RCRA program effective on January 31, 1986. 51 Fed. Reg. 3778 (January 31, 1986), with amendments adopted and authorized subsequently.

15. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator may assess a civil penalty of up to \$99,681 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

16. Pursuant to 35 Ill. Adm. Code § 739.122(a), [40 CFR § 279.22(a)], used oil must be managed in containers, tanks, or units subject to regulation under 35 Ill. Adm. Code §§ 724 or 725, [40 CFR §§ 264 or 265.]

17. Pursuant to 35 Ill. Adm. Code § 739.100, (40 CFR § 279.1), "used oil" means any oil that has been refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities.

18. Pursuant to 35 Ill. Adm. Code §§ 739.112(a) and 122(a), [40 CFR §§ 279.12(a) and 22(a)], used oil is prohibited from being managed in a surface impoundment or waste pile.

19. Pursuant to 35 Ill. Adm. Code § 720.110, (40 CFR § 260.10), a surface impoundment means "...a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials that is designed to hold an accumulation of liquids ..."

### **Factual Allegations and Alleged Violations**

20. Respondent Illinois Central Railroad Company is a corporation registered and doing business in the State of Illinois (ICRC).

21. Respondent was and is a "person" as defined by 35 Ill. Adm. Code § 720.110, [40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15)].

22. At all times relevant to this CAFO, ICRC owned and or operated a rail yard at 17550 South Ashland Avenue, Homewood, Illinois ("Rail Yard") where its operations included fueling, washing, servicing, maintenance and repair of locomotives and railcars.

23. At all times relevant to this CAFO, Respondent generated used oil from its operations and therefore is a "used oil" generator as that term is defined under 35 Ill. Adm. Code §739.101 and 120, (40 C.F.R. §279.1 and 120).

24. ICRC operates a wastewater treatment plant (WWTP) at its Rail Yard which pre-treats industrial wastewaters before discharging them to the Metropolitan Water Reclamation District of Greater Chicago.

25. Until the summer of 2017 two surface impoundments or ponds were part of the WWTP process at the Rail Yard.

26. The ponds were a topical depression dug approximately 12 feet into the earth and were underlaid by a 60-millimeter (60-mil) thick geosynthetic liner and three feet of clay.

27. The ponds were surface impoundments as defined in 35 Ill. Adm. Code § 720.110, (40 C.F.R. § 260.10).

28. Floor drains at the Rail Yard collected liquids from various operations including spills from loading and unloading operations, maintenance and repair, fueling and washing of locomotive exteriors and engine components. These liquids were directed to the WWTP and contained water, oil, sand, dirt and other contaminants.

29. Respondent collected and sent off-site used oil, oil and water and waste oil from various steps in the WWTP system upstream of the ponds, (e.g., grit chambers and Equalization Tank).

30. Sludges from the bottom of the Equalization Tank and API Oil/Water Separator and skimmed oil from the top of the API Oil/Water Separator and the Induced Air Flotation (IAF) unit were transferred to the ponds.

31. On August 27, 2013, and June 2, 2016, EPA inspected the Facility. EPA observed dark liquids similar to used oil at various locations connected to the WWTP systems, including at the floor drains, the top of the API Oil/Water Separator and the IAF and the surface of the ponds.

32. On July 1, 2014, EPA sent Respondent a request for information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

33. On August 29, 2014, Respondent submitted its response to the EPA information request.

34. On February 5, 2016, EPA issued to Respondent a Notice of Violation (NOV).

35. On March 11, 2016, Respondent replied to the NOV denying the legal conclusions and all violations.

36. On May 25, 2018, EPA issued a pre-filing notice (PFN) letter to Respondent.

37. On August 30, 2018, Respondent met with EPA to discuss the PFN letter.

### **Count I**

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as its allegations 1-37 of this Count I.

39. Complainant alleges that used oil as defined in 35 Ill. Adm. Code § 739.101, (40 C.F.R. § 279.1), was managed in the ponds because wastewaters and sludges contaminated with used oil from the WWTP system, including from the API Oil/Water Separator, the Equalization Tank and the IAF Unit, were directed to the ponds.

40. Complainant alleges that Respondent violated 35 Ill. Adm. Code §§ 739.112(a) and 122(a), [40 C.F.R. §§ 279.12(a) and 22(a)], by storing or managing used oil and used oil contaminated wastewaters and sludges in the ponds.

### **Compliance Requirements**

41. Performance Objectives – Pursuant to 35 Ill. Adm. Code §§ 739.112(a) and 122(a), [40 C.F.R. §§ 279.12(a) and 22(a)], Respondent shall not store used oil in the ponds; shall properly decommission the ponds; shall respond to releases of used oil and related chemical of concern underneath the ponds in accordance with 35 Ill. Adm. Code §§ 739.122(d), [40 C.F.R. § 279.22(d)]; and shall implement institutional controls in the form of environmental land use controls consistent with 35 Ill. Adm. Code §§ 742.1000(a) and (c) and 1010(b)-(d).

42. Respondent will implement the *IC Woodcrest Wastewater Treatment Pond Decommissioning Work Plan (Work Plan)*, included and incorporated as Attachment 1.

43. The Work Plan identifies the chemicals of concern (COC) for releases from the ponds. If the concentration of any of the COCs exceeds the baseline remediation objective in 35 Ill. Adm. Code § 742, Appendix B, Table B, Tier 1 *Soil Remediation Objective for Industrial*

*Commercial Properties* (Tier 1) then the Work Plan allows for the Respondent to propose alternatives for addressing the residual contamination. If there are any COCs greater than the Tier 1 concentrations in Table B, then Respondent will submit for review and approval a written recommendation for addressing the residual contamination above the Tier 1 concentrations. The recommendation may include a request to apply Tier 2 and/or Tier 3 objectives or other actions consistent with 35 Ill. Adm. Code § 742 and will address the need for environmental land use controls consistent with the requirements of 35 Ill. Adm Code §§ 742. 1000(a) and (c) and 1010(b)-(d). The Respondent shall include a schedule with its written recommendation for completion of its recommendation, including completion of any necessary environmental land use controls. EPA will review Respondent's proposal in consultation with Illinois EPA and provide the Respondent with the results of its review in writing. Respondent will implement the recommendation approved by EPA, after consultation with Illinois EPA, in accordance with EPA's approved schedule.

44. Respondent represents that the current estimated cost to complete the work required by the Work Plan is \$516,700 and that it has sufficient financial resources to complete the work required by the Work Plan. If at any time Respondent becomes aware of information indicating that its financial resources are insufficient then Respondent shall notify Illinois EPA and EPA in writing within seven (7) calendar days of the steps it will take to ensure performance and completion of the work required by this CAFO and, if necessary, it shall provide a financial assurance mechanism that is in compliance with the RCRA regulations.

45. Respondent shall provide Illinois EPA and EPA seven (7) days prior notice of initiation of on-site activities involving removal of the 60-mil liner, collection of samples and placement of clean fill in the topical depression left by the ponds.

46. Respondent shall provide Illinois EPA and EPA with a draft copy of its proposed environmental land use controls by no later than 60 days after it completes backfilling of the excavated ponds with clean fill. EPA, in consultation with Illinois EPA, will provide the Respondent with a written response. Respondent shall record the environmental land use control within 90 days after receipt of EPA's written response and shall provide a copy to both Illinois EPA and EPA at that time.

47. Within 90 days after Respondent completes field work or records the environmental land use control, whichever is later, the Respondent shall submit a decommissioning report as identified in the Work Plan with a signed certification by a responsible corporate official familiar with the work completed by the Respondent. Respondent's certification must state:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

48. All documents submitted pursuant to this Section shall be sent to the following persons as Project Managers:

Spiros Bourgikos  
US EPA, Region 5  
Enforcement and Compliance Assurance Division  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
Bourgikos.spiros@epa.gov

Katherine Andring  
Illinois EPA  
Bureau of Land  
1021 N. Grand Avenue East  
Springfield, Illinois 62702  
[Andring.Katherine@iep.ogov](mailto:Andring.Katherine@iep.ogov)

Nicole De Rose  
IC Environmental Specialist  
17641 S. Ashland Ave.  
Homewood, Illinois 60430  
[Nicole.derose@cn.ca](mailto:Nicole.derose@cn.ca)

Mark Bergeon  
Golder Associates, Inc.  
2247 Fox Heights Lane  
Suite A  
Green Bay, Wisconsin 54304  
[Mark\\_Bergeon@golder.com](mailto:Mark_Bergeon@golder.com)

### **Dispute Resolution**

49. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes related to the implementation and completion of the work required by the Compliance Requirements section of this CAFO. The parties shall attempt to resolve any disagreements expeditiously and informally.

50. Respondent and EPA agree to confer informally and in good faith to resolve disputes related to the implementation and completion of work required by the Compliance Requirements section of this CAFO. If after such informal attempts, Respondent still disagrees, in whole or in part, with any EPA position, Respondent must notify EPA in writing within seven (7) calendar days of EPA's written statement of its position (Formal Notice of Dispute). Respondent must include in its Formal Notice of Dispute the rationale for its position. The appropriate EPA Branch

Chief will respond in writing to the Formal Notice of Dispute setting forth EPA's decision and its rationale.

51. The existence of a dispute, pursuant to this section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this CAFO during the pendency of the dispute resolution process.

52. No action or decision of EPA pursuant to this dispute resolution process, shall constitute final agency action giving rise to any right of judicial review.

### **Delay in Performance**

53. If an event occurs which causes or may cause a delay in meeting a condition specified in this CAFO then Respondent must notify EPA in writing within seven (7) calendar days after learning of the event which caused or may cause a delay. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take reasonable actions to avoid or minimize any delay and has the burden of proving that circumstances beyond its control caused or may cause a delay in meeting the conditions in the CAFO. The parties agree to work in good faith to address any delays, including, but not limited to, those caused by the COVID 19 pandemic. Consistent with paragraphs 53-55, EPA shall entertain Respondent's reasonable requests for an extension of time to comply with conditions of this CAFO, except for the payment of the penalty as set forth in paragraph 56-61 below.

54. If EPA agrees that the delay or anticipated delay was beyond the control of the Respondent then EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected. An extension of the time for performance of the

obligations affected shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree to an extension of the deadline then EPA will notify Respondent in writing of its decision.

55. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in meeting the conditions in the CAFO.

### **Civil Penalty**

56. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$110,000.00. In determining the penalty amount, Complainant considered the seriousness of the violation and Respondent's good faith efforts to comply with the applicable requirements. Complainant also considered EPA's *RCRA Civil Penalty Policy*, dated June 23, 2003.

57. Within 30 days after the effective date of this CAFO, Respondent must pay the civil penalty by sending a corporate, cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank  
Government Lockbox 979077  
EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

58. A transmittal letter stating Respondent's name, the case title and the case docket

number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Spiros Bourgikos (ECR-17J)  
Enforcement and Compliance Assurance Division  
Land and Chemicals Enforcement and Compliance Assurance Branch  
RCRA Compliance Section 1  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Richard Clarizio (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

60. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

61. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

## **Effective Date and Satisfaction of CAFO Obligations**

62. The Effective Date of this CAFO is the date that the signed Final Order is filed with the Regional Hearing Clerk.

63. This CAFO will be deemed satisfied upon EPA's written determination that the all conditions of this CAFO have been met. The Respondent may request EPA for such a written determination after EPA has approved of the decommissioning report required by the Work Plan. EPA will provide a written response to Respondent indicating whether EPA concurs that the CAFO obligations have been satisfied.

## **General Provisions**

64. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [Clarizio.richard@epa.gov](mailto:Clarizio.richard@epa.gov) (for Complainant), and [bbaratta@freeborn.com](mailto:bbaratta@freeborn.com) (for Respondent).

37. Respondent's full compliance with this CAFO shall resolve Respondent's liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO. Failure to implement or complete the requirements of this CAFO may subject Respondent to penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

65. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, other than the violations alleged in the CAFO.

66. Respondent agrees not to contest this CAFO or any EPA action or decision taken pursuant to this CAFO, prior to EPA's initiation of a judicial action to enforce this CAFO. Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and

not in accordance with law.

67. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

68. By issuing this CAFO, EPA assumes no liability for injuries or damages to persons or property resulting from any acts, errors, or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this CAFO.

69. Notwithstanding any other provisions of this CAFO, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect human health or the environment.

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

71. The terms of this CAFO bind Respondent, its successors, and assigns.

72. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

73. Each party agrees to bear its own costs and attorney's fees in this action.

74. This CAFO and its Appendix constitutes the entire agreement between the parties. Appendix 1, Work Plan, is incorporated by reference into this CAFO.

In the Matter of:  
ICRC, Inc.  
Docket No. RCRA-05-2020-0013

**United States Environmental Protection Agency, Complainant**

MICHAEL  
HARRIS

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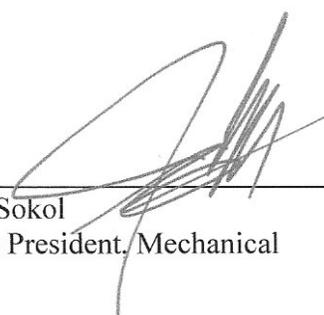
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Date

\_\_\_\_\_  
Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

**Illinois Central Railroad Company, Respondent**

8/12/2020

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jim Sokol  
Vice President, Mechanical

**In the Matter of:**  
**ICRC, Inc.**  
**Docket No. RCRA-05-2020-0013**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN  
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Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5