



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

REPLY TO THE ATTENTION OF:

OCT 19 2005

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Terry Dillon, President
Atlas Excavating, Inc.
4740 Swisher Road (Building A)
West Lafayette, Indiana 47906

**Re: Consent Agreement and Final Order, Mr. Larry Fitzgerald, d/b/a Shrum
Manufactured Housing, Indiana Department of Transportation and Atlas
Excavating, Inc. (Docket No. CWA-05-2005-0002)**

Dear Mr. Dillon:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on October 19, 2005, resolving the complaint filed against you. Your civil penalty payment is due within 30 days of October 19, 2005. Please refer to Billing Docket No. 054306001, and the case Docket Number above when remitting payments. Payment obligations and instructions are noted in paragraphs 7 and 8 of the CAFO.

Thank you for resolving this matter. Should you have any questions, please do not hesitate to contact me at (312) 886-0124 or Richard Murawski, Associate Regional Counsel at (312) 886-6721.

Sincerely yours,

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure

cc: Deb Synder (w/ encl.), USACOE, 9799 Billings Rd., Indianapolis, IN 46216-1055
Doug Shelton (w/ encl.), USACOE, Louisville, KY
Andrew Pelloso (w/ encl.), IDEM, Indianapolis, IN
Richard Murawski (w/ encl.), ORC, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Indiana Department of Transportation,)
Atlas Excavating, Inc., Larry Fitzgerald,)
d/b/a Shrum Manufactured Housing,)
)
Respondents.)
_____)

**Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)**
Docket No. CWA-05-2005-0002

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
MAY 19 11 56 AM '05

CONSENT AGREEMENT

Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), and Respondents, Indiana Department of Transportation (INDOT), Atlas Excavating, Inc., and Mr. Larry Fitzgerald, d/b/a Shrum Manufactured Housing, wishing to settle all matters pertaining to their involvement in this case, and having consented to the entry of this Consent Agreement.

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

1. U.S. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), by filing an Administrative Complaint (Complaint) against Respondents on January 21, 2005.

2. The Complaint alleges that in or about the month of August, 1999, Atlas Excavating, Inc., on behalf of INDOT, and with agreement from Mr. Larry Fitzgerald, discharged

approximately 35,555 cubic yards of road construction debris into approximately 1.8 acres of wetlands without a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

3. Respondents filed Answers to the Complaint in which they admitted certain factual allegations, neither admitted nor denied other factual allegations, and requested a hearing.

4. The parties have agreed that this matter should be settled without resort to a hearing or further proceedings, upon the terms set forth in this Consent Agreement.

5. Without trial or litigation of any fact or law, Respondents: (1) admit that the U.S. EPA has jurisdiction over the subject matter set forth in this Consent Agreement; (2) neither admit nor deny the factual allegations alleged in the Complaint; and (3) consent to the stated civil penalty and terms of this Consent Agreement as set forth herein.

6. Upon execution of the final order attached hereto, Respondents waive all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement, as provided by Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), and waive all rights to appeal any term of this Consent Agreement.

Civil Penalty

7. In consideration of the alleged violation, the environmental and compliance significance of the matter, and Respondents' agreement to restore the wetlands subject to this matter, and based upon the nature, circumstances, extent and gravity of the violations alleged herein, as well as Respondents' ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this

action is \$50,000. Each Respondent shall pay an equal share of the \$50,000 civil penalty, or \$16,666, within 30 days after the effective date of this Consent Agreement.

8. The civil penalties payable hereunder shall be made by certified or cashier's check, payable to "Treasurer, United States of America," and shall be sent to the U.S. Environmental Protection Agency, Region 5, P.O. Box 70753, Chicago, Illinois, 60673. A transmittal letter, indicating Respondent's name, complete address, a Billing Docket number to be supplied later, and this case docket number must accompany the payment. Respondent shall send a copy of the transmittal letter, including a copy of the check, to the Regional Hearing Clerk (E-19J); to Greg Carlson, Watersheds and Wetlands Branch (WW-16J); and to counsel for Complainant, Richard Murawski (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

9. Failure to pay any amounts due pursuant to this Consent Agreement may result in the referral of this matter to the United States Department of Justice for collection.

10. Interest shall accrue on any amounts overdue under the terms of this Consent Agreement at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. §3717. A late payment handling charge of \$15.00 will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, a six percent per annum penalty will be assessed on any principal amount not paid within ninety days of its due date as listed in paragraph 7 of the Consent Agreement.

Wetland Restoration

11. As set forth in Administrative Compliance Order, Docket No. V-404-AO-04-02, Respondents are required to restore the wetland property subject to this matter in accordance with

the approved Wetland Restoration Plan, attached to this Consent Agreement as Exhibit 1.

Respondents shall implement the restoration work set forth in Exhibit 1 in accordance with the schedule set forth below:

- a. Excavation Completed By April 1, 2006
- b. Seeding Completed by May 15, 2006
- c. 5-Year Monitoring to Begin in 2006

Respondents shall notify U.S. EPA no less than seven business days beforehand of the exact date on which they will commence work. U.S. EPA may inspect the work as performed.

12. If Respondents fail to complete, or provide for the completion of, the work set forth in Exhibit 1 by the deadlines provided in paragraph 11, above, Respondents shall pay a stipulated penalty of \$16,000 in the manner prescribed in paragraph 8, above. Interest, handling charges, and late payment penalties shall be assessed as set forth in paragraph 10, above. If Respondents pay a stipulated penalty, such payment shall in no way relieve Respondents of their obligation to complete the work set forth in Exhibit 1.

General Provisions

13. This Consent Agreement resolves all claims arising out of the transactions and occurrences alleged in the Complaint. This Consent Agreement does not constitute a permit or a license and does not relieve Respondent of its obligation to comply with all applicable Federal, State or local laws, regulations or requirements.

14. This Consent Agreement constitutes the entire agreement between the Complainant and the Respondent.

15. Each of the undersigned representatives of the parties certifies that he or she is authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to legally bind that party to it.

16. Nothing in this Consent Agreement shall be construed to be a ruling on, or determination of, any issue related to any Federal, State, or local permit.

17. This Consent Agreement shall be binding upon U.S. EPA and upon the officers, directors, employees, successors, and assigns of Respondents.

18. Each party shall bear its own costs, attorney fees and disbursements in this action.

Public Notice

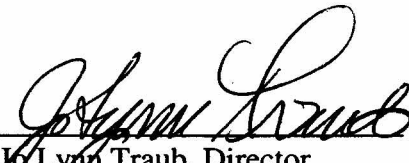
19. In accordance with section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), this agreement will become effective 30 days after the execution of the accompanying Final Order by the Regional Administrator. No person responded to the public notice of the commencement of this action pursuant to 33 U.S.C. § 1319(g)(4)(A), and thus no interested persons need be notified of the issuance of the Final Order in this matter under section 309(g)(9)(c) of the CWA, 33 U.S.C. § 1319(g)(9)(C).

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

United States Environmental Protection Agency, Region 5
Complainant

Dated:

10/13/05


Lynn Traub, Director
Water Division

U.S. Environmental Protection
Agency, Region 5

Consent Agreement and Final Order


In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing

Docket No. CWA-05-2005-0002

Indiana Department of Transportation,
Respondent

Dated:

9/28/05



[name]

Mark G. Ahearn

[title]

Chief Legal Counsel, Dept Comm

Consent Agreement and Final Order
In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing
Docket No. CWA-05-2005-0002

Atlas Excavating, Inc.
Respondent

Dated: 10/11/05



[name] Casey Dillon
[title] ESTIMATOR / MANAGER

Consent Agreement and Final Order

In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing

Docket No. CWA-05-2005-0002

Larry Fitzgerald, d/b/a Shrum Manufactured Housing
Respondent

Dated: 10/5/05


Larry Fitzgerald

Consent Agreement and Final Order

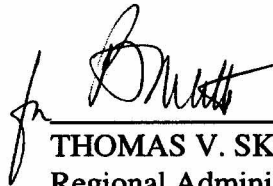
In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing

Docket No. CWA-05-2005-0002

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Respondents are hereby **ORDERED** to comply with all of the terms of the preceding Consent Agreement, effective immediately.

Dated: 10-14-05



THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection Agency Region 5
Chicago, Illinois

EXHIBIT I

RESTORATION PLAN

US 40/SHRUM
INDIANAPOLIS, MARION COUNTY, INDIANA

USEPA DOCKET #V-404-AO-04-02

For:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
SECTION 404 ENFORCEMENT

From:

INDIANA DEPARTMENT OF TRANSPORTATION
SHREWSBERRY & ASSOCIATES
AQUA TERRA

The vegetative species diversity in the impacted wetlands is very low, and, according to the *Alt & Witzig* report, is dominated by Cattails, Reed Canarygrass, with a smattering of young Green Ash, Gray Dogwood, American Elm, and Box Elder trees/shrubs. Functionally, the impacted wetlands provide floodwater attenuation during storm events, provide cover, nesting and forage habitat for amphibians, reptiles, birds, and small mammals, and provide water quality filtering prior to discharge to White Lick Creek.

According to the *Alt & Witzig* report, approximately 1.8 acres of wetland have been filled at the site. Approximately 35,555 cubic yards (figure from Administrative Compliance Order) of roadway debris, including a mixture of concrete, asphalt, gravel, re-bar, and earthen material were placed in the wetland. See attached "Survey Plat" and "Figure 2" from the *Alt & Witzig* report for depictions of the site.

I. EXISTING PHYSICAL CONDITIONS

- A. See Attached Survey Site Plan(s)
Exhibit # 1-6

II. PROPOSED PHYSICAL CONDITIONS:

- A. See attached Site Plan
Exhibit # 5 and 6

B. Description of Remedial Work to Occur:

Removal of all un-authorized fill from the 1.8 acres of wetlands is proposed as site restoration. Approximately 35,555 cubic yards of material will be excavated from the impacted wetlands and deposited on non-wetland areas of the Shrum Manufactured Housing property or hauled off-site.

An Erosion Control Plan shall be submitted to the local Soil Water Conservation District and Indiana Department of Natural Resources, Division of Soil Conservation, at least 30 days before the planned construction, in accordance with 327 IAC 15-5 (Rule 5). A Notice Of Intent (NOI) shall be submitted to IDEM at least 30 days before the planned construction commences. All provisions of Rule 5 shall be met. IDEM shall be notified at least forty-eight (48) hours prior to initiating the construction activities.

Temporary erosion control fencing shall be placed around the base of the excavation prior to commencement of earth excavation operations. Temporary erosion control fencing and other measures, as needed, shall be placed at the lower excavation limits each evening after work has stopped for the night.

ensure
silt fence
brought to
toe of
slope
when
fill
removed
complete

Once the vegetation has been established on the slope, the erosion control fence and other erosion control measures shall be removed.

III. AS-BUILT CONDITIONS:

Immediately following completion of the restoration construction activities outlined above, an as-built conditions report will be submitted for review. The report shall contain:

- Narrative description of all work conducted, including any problems encountered and any minor deviation from original specifications.
- Pre and post construction site plan and profile views, showing restored soil profile.
- Discussion of restored wetland hydrology.
- Photographs taken during construction activities and post construction inspection.
- Discussion of installed erosion control measures and planned maintenance.
- Schedule for monitoring activities and report submittal. _____ Now

IV. MONITORING/SUCCESS CRITERIA:

A. Monitoring Plan:

Annual monitoring of the restored wetland area will be conducted for a period of five years, beginning the first full growing season following the completion of construction activities. A report shall be prepared and submitted to USEPA within 4-6 weeks after each monitoring event. Monitoring activities will occur annually during a period from approximately June 15 – July 15, to maintain consistency. A request for release from further monitoring may be submitted for USEPA approval if the restoration area demonstrates the attainment of the specified success criteria following the third year of monitoring.

B. Assess Flora, Fauna, and Soils:

A minimum of five permanent 30 foot diameter plots, representative of on-site conditions, will be established in the first year of monitoring in the Restoration Area. The location of the sampling plots will be selected by using the *Simple Random Coordinate Method*¹. GPS coordinates and photo stations for each sampling point will be established and mapped. Data forms (eg. Corps of Engineers Wetland Delineation Manual) will be completed for each sample point.

¹ Elzinga, Caryl, et al.. July, 1998. Measuring and Monitoring Plant Populations. US Dept. of Interior, Bureau of Land Management.

area has achieved all of the specified success criteria, a request for release from monitoring will be submitted to USEPA.

C. Success Criteria:

The following measurable success criteria shall be established for the Restoration Area:

- Approximately 1.8 acres of restored wetlands shall meet the criteria of the US Army Corps of Engineers 1987 Wetland Delineation Manual.
- The vegetation in the wetland mitigation area shall be an emergent to scrub-shrub cover type (PEM- PSS) wetland.
- Within two years following completion of restoration, the restored area shall achieve an 80% vegetative cover; and 90% vegetative cover within three years.
- The plant community shall be free of *Lythrum salicaria*, *Phragmites australis*, and *Myriophyllum spicatum*.

D. Report

A report will be prepared and submitted following each browning season inspection. Report shall include photographic representations from the investigation stations.

V. INSPECTION:

Inspection of the Restoration Area shall be conducted at the discretion of USEPA and/or their authorized representative, prior to, during or after the completion of earth moving activity and prior to seeding/planting, after installation of all sedimentation and erosion control structures, after completion of grading activities, and after monitoring indicates that the criteria for success have been attained.

VI. SCHEDULE:

ACTIVITY	DATE
Commencement of restoration construction (See <i>Construction Sequence</i> for order of events)	Immediately following receipt of written final approval of Restoration Plan by USEPA.
Completion of restoration construction	Approx. 6-12 weeks following commencement.
As-Built inspection/report submittal	Within 6 weeks of construction completion.
Year 1 monitoring activity	1 st full growing season following construction.
Monitoring report submittal.	Within 4-6 weeks of monitoring activity.
Year 2-5 monitoring activity	2 nd -5 th full growing season following construction.

SURVEY PLAT

SHRUM MANUFACTURED HOUSING
MARION COUNTY, INDIANA

DRAWING NOT TO BE SCALED - DIMENSIONS PREVALENT

LEGAL DESCRIPTION

TRACT "A"


A PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 15 NORTH, RANGE 2 EAST IN MARION COUNTY INDIANA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT;

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER SECTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 412.24 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 185.41 FEET TO THE NORTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD; THENCE NORTH 72 DEGREES 52 MINUTES 49 SECONDS EAST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 1053.62 FEET TO THE CENTERLINE OF THE EAST FORK OF WHITE LICK CREEK; THENCE SOUTH 18 DEGREES 35 MINUTES 20 SECONDS EAST, ALONG SAID CENTERLINE OF THE EAST FORK OF WHITE LICK CREEK, 180.14 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD; THENCE SOUTH 72 DEGREES 52 MINUTES 49 SECONDS WEST, ALONG THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD, 331.34 FEET AND THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 4.45 ACRES MORE OR LESS AND SUBJECT TO ALL COVENANTS, EASEMENTS, HIGHWAYS, AND RESTRICTIONS OF RECORD.

WETLAND AREA

A PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 15 NORTH, RANGE 2 EAST IN MARION COUNTY INDIANA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT;

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER SECTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 412.24 FEET, THENCE NORTH 72 DEGREES 52 MINUTES 49 SECONDS EAST, 808.61 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 05 DEGREES 24 MINUTES 08 SECONDS WEST; 3.71 FEET; THENCE NORTH 25 DEGREES 53 MINUTES 52 SECONDS EAST, 2.86 FEET; THENCE NORTH 57 DEGREES 24 MINUTES 03 SECONDS EAST, 2.37 FEET; THENCE NORTH 83 DEGREES 57 MINUTES 04 SECONDS EAST, 12.37 FEET; THENCE NORTH 66 DEGREES 58 MINUTES 25 SECONDS EAST, 25.18 FEET; THENCE NORTH 75 DEGREES 09 MINUTES 31 SECONDS EAST, 82.29 FEET; THENCE NORTH 69 DEGREES 59 MINUTES 29 SECONDS EAST, 29.78 FEET; THENCE NORTH 67 DEGREES 17 MINUTES 43 SECONDS EAST, 72.64 FEET; THENCE NORTH 70 DEGREES 51 MINUTES 44 SECONDS EAST, 68.63 FEET; THENCE NORTH 79 DEGREES 18 MINUTES 54 SECONDS EAST, 51.25 FEET; THENCE SOUTH 59 DEGREES 15 MINUTES 18 SECONDS EAST, 10.39 FEET; THENCE SOUTH 08 DEGREES 52 MINUTES 00 SECONDS EAST, 8.13 FEET; THENCE SOUTH 72 DEGREES 52 MINUTES 49 SECONDS WEST, 331.34 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 0.12 ACRES MORE OR LESS AND SUBJECT TO ALL COVENANTS, EASEMENTS, HIGHWAYS, AND RESTRICTIONS OF RECORD.


LARRY A. CRAMER,
REG. LAND SURVEYOR NO. S0279
STATE OF INDIANA



JBW 02/05/02 02-035

SHT: 2 OF 2

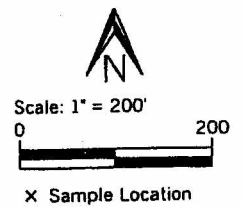
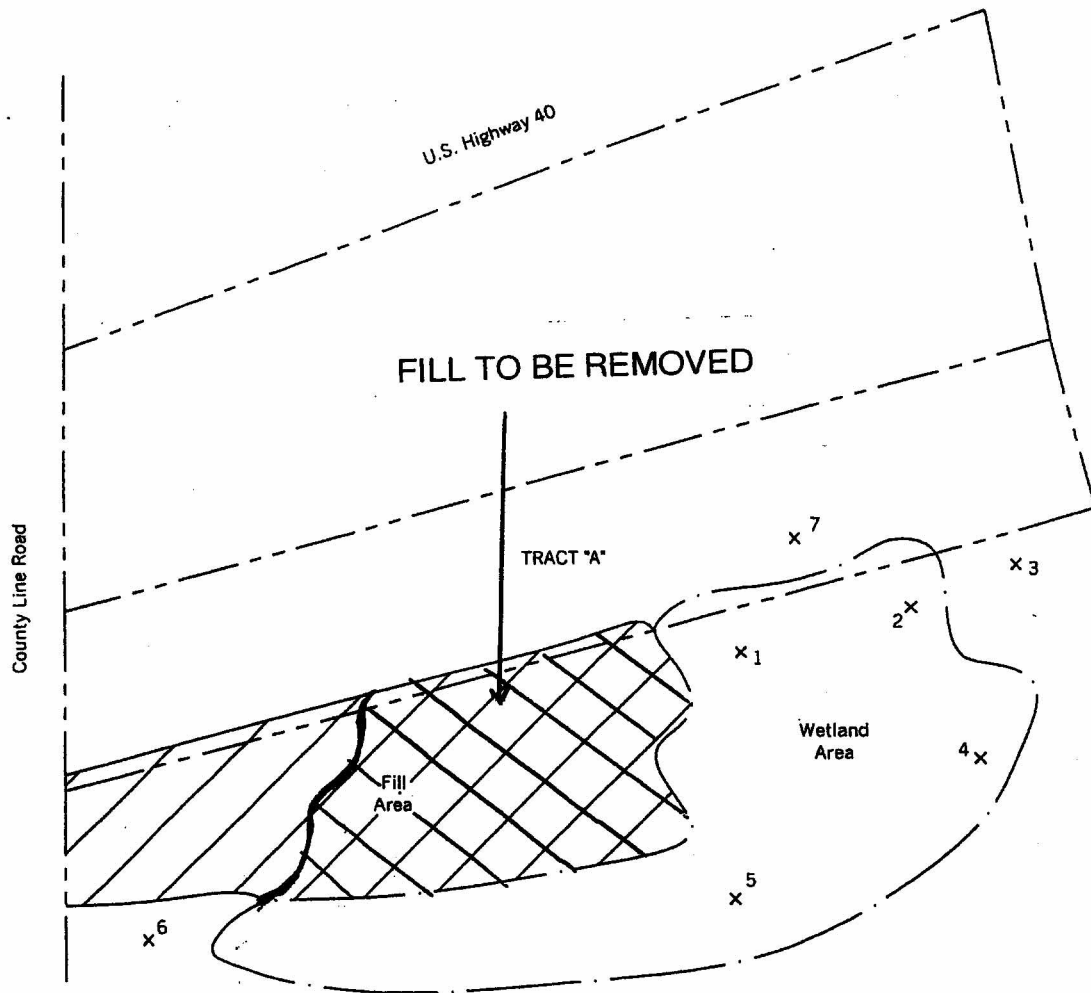


LEWIS ENGINEERING

ENGINEERING - SURVEYING - PLANNING
3315 EAST MAIN STREET, SUITE D, PLAINFIELD, IN 46166
PHONE: (317) 889-8412 - FAX: (317) 889-8457

EXHIBIT 2

FIGURE 2
SAMPLE LOCATION MAP




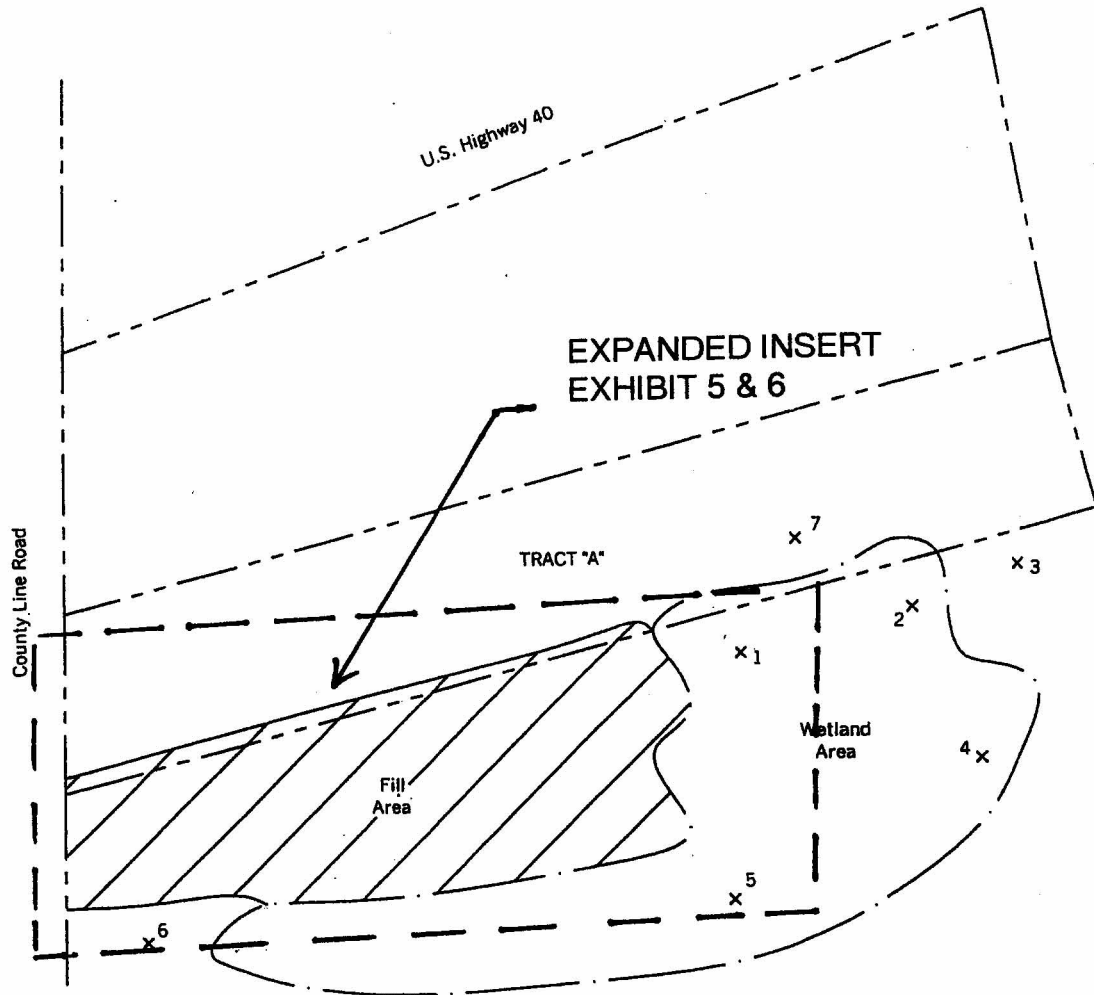
Prepared For: Shrum		Prepared By: Alt & Witzig Engineering, Inc.
Project Name: Shrum Manufactured Housing		Project No: 02IN0017

FIGURE 2
SAMPLE LOCATION MAP



Scale: 1" = 200'

 x Sample Location

Prepared For: Shrum		Prepared By: Alt & Witzig Engineering, Inc.
Project Name: Shrum Manufactured Housing		Project No: 02IN0017

PLANTING PLAN

For Restored Wetland Area:

Temporary Nurse Species		Rate	Indicator Status
Scientific Name	Common Name		
<i>Avena sativa</i>	Spring Oats (annual)	35 lbs/acre	UPL
<i>Lolium multiflorum</i>	Annual Rye (annual)	15 lbs/acre	UPL
<i>Triticum aestivum</i>	Common Wheat (annual)	50 lbs/acre	UPL

For Seed:

(Recommended Planting Dates: March 1 – May 1 or September 15 – October 30)

- Apply seed at specified rate per acre.
- Stabilize surrounding slopes with seed, erosion control fabric, mulch, silt fence, etc. to prevent sedimentation of wetland areas. Planting in temporarily dry conditions is preferred.
- **Seedbed preparation** (dry conditions)- Rough grade only to provide pockets of micro-topography within the wetland matrix. Remove or kill existing vegetation. If applying herbicide, use only a systemic chemical (such as *Roundup*); do not use broadleaf herbicides (2-4-D), or any chemical with residual effects. Roto-till or lightly till to a depth of no greater than 2 inches.
- **Sowing seed** (dry conditions)- Sow wet-packaged seed in lower elevations of wetland by broadcasting evenly by hand. Sow dry-packaged seed in higher elevations by broadcasting evenly by hand. Press seed into soil by roller, cultipacker or similar implement. Light raking is also acceptable provided the seed is not covered by more than ¼ inch of soil.
- **Sowing Seed** (wet conditions)- Sow wet-packaged seed in 0" – 6" of saturated soils to standing water. Mix seed with damp clay balls to aid with distribution and anchoring of seed. Do not place seed in areas greater than 4" of standing water.
- **Maintenance:** Apply spot treatment of appropriately labeled herbicide to un-desired nuisance/invasive species 2-3 times per year until community is fully established, usually 3 years.



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

FEB 08 2005

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Mr. Larry Fitzgerald
Shrum Manufactured Housing
9201 West Washington Street
Indianapolis, Indiana 46231

Mr. Casey Dillon
Atlas Excavating, Inc.
4740 Swisher Road (Building A)
West Lafayette, Indiana 47906

Thomas L. Duncan, PE
Indiana Department of Transportation
100 North Senate Street (Room N755)
Indianapolis, Indiana 46204-2249

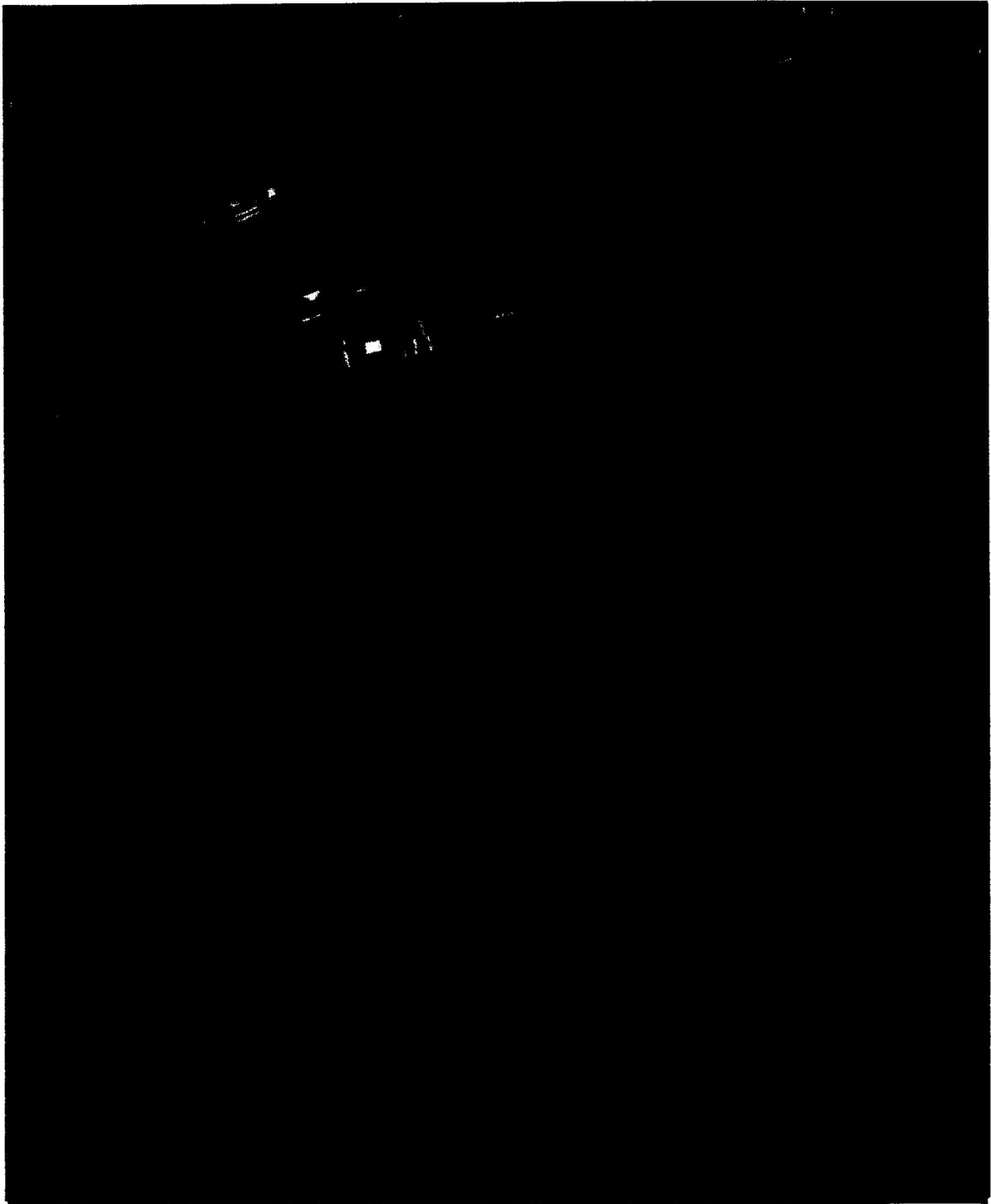
Re: Administrative Compliance Order (Docket No. V-404-AO-04-02)

Dear Messrs. Fitzgerald, Dillon and Duncan:

The U.S. Environmental Protection Agency (EPA) received your February 2, 2005, Restoration Plan for the US 40/Shrum Manufactured Housing site. The Restoration Plan is approved contingent upon the following two modifications:

1. Under II. B. and C., upon completion of excavation, the temporary erosion control fence shall be placed at the toe of slope and at the top of remaining fill area; and
2. Under IV. B., the Braun-Blanquet Cover Abundance Scale is not appropriate. Rather, use the midpoints of the cover classes defined in the 1989 Interagency Wetland Delineation Manual - Intermediate-Level Onsite Determination Method as < 1% (0), 1-5% (3.0), 6-15% (10.5), 16-25% (20.5), 26-50% (38.0), 51-75% (63.0), 76-95% (85.5) and 96-100% (98.0).

Regarding the success criteria assessment, it is understood that the sampling data will be aggregated and averaged annually across the 15 quadrats used to determine per cent cover.



1999 AERIAL



NORTH



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

REPLY TO THE ATTENTION OF:

'05 OCT 19 11:56

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Consent Agreement and Final Order (Docket No. CWA-05-2005-0002) was filed with the Regional Hearing Clerk on October 19, 2005, and that an original was served by United States Mail, Certified and Postage Prepaid, on the 19th day of October 2005, upon the following:

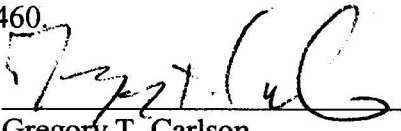
Mr. Larry Fitzgerald
Shrum Manufactured Housing
9201 West Washington Street
Indianapolis, Indiana 46231

Terry Dillon, President
Atlas Excavating, Inc.
4740 Swisher Road (Building A)
West Lafayette, Indiana 47906

J. Bryan Nicol, Commissioner
Indiana Department of Transportation
100 North Senate Street (Room N755)
Indianapolis, Indiana 46204-2249

A Consent Agreement and Final Order copy (Docket No. CWA-05-2005-0002) was served by United States Mail, Certified and Postage Prepaid, on the 19th day of October 19, 2005, 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



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

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Thank you for resolving this matter. Should you have any questions, please do not hesitate to contact me at (312) 886-0124 or Richard Murawski, Associate Regional Counsel at (312) 886-6721.

Sincerely yours,

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure

cc: Deb Synder (w/ encl.), USACOE, 9799 Billings Rd., Indianapolis, IN 46216-1055
Doug Shelton (w/ encl.), USACOE, Louisville, KY
Andrew Pelloso (w/ encl.), IDEM, Indianapolis, IN
Richard Murawski (w/ encl.), ORC, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Indiana Department of Transportation,)
Atlas Excavating, Inc., Larry Fitzgerald,)
d/b/a Shrum Manufactured Housing,)
)
Respondents.)
_____)

**Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)**
Docket No. CWA-05-2005-0002

RECEIVED
MAY 19 2005
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CONSENT AGREEMENT

Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), and Respondents, Indiana Department of Transportation (INDOT), Atlas Excavating, Inc., and Mr. Larry Fitzgerald, d/b/a Shrum Manufactured Housing, wishing to settle all matters pertaining to their involvement in this case, and having consented to the entry of this Consent Agreement.

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

1. U.S. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), by filing an Administrative Complaint (Complaint) against Respondents on January 21, 2005.

2. The Complaint alleges that in or about the month of August, 1999, Atlas Excavating, Inc., on behalf of INDOT, and with agreement from Mr. Larry Fitzgerald, discharged

approximately 35,555 cubic yards of road construction debris into approximately 1.8 acres of wetlands without a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

3. Respondents filed Answers to the Complaint in which they admitted certain factual allegations, neither admitted nor denied other factual allegations, and requested a hearing.

4. The parties have agreed that this matter should be settled without resort to a hearing or further proceedings, upon the terms set forth in this Consent Agreement.

5. Without trial or litigation of any fact or law, Respondents: (1) admit that the U.S. EPA has jurisdiction over the subject matter set forth in this Consent Agreement; (2) neither admit nor deny the factual allegations alleged in the Complaint; and (3) consent to the stated civil penalty and terms of this Consent Agreement as set forth herein.

6. Upon execution of the final order attached hereto, Respondents waive all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement, as provided by Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), and waive all rights to appeal any term of this Consent Agreement.

Civil Penalty

7. In consideration of the alleged violation, the environmental and compliance significance of the matter, and Respondents' agreement to restore the wetlands subject to this matter, and based upon the nature, circumstances, extent and gravity of the violations alleged herein, as well as Respondents' ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this

action is \$50,000. Each Respondent shall pay an equal share of the \$50,000 civil penalty, or \$16,666, within 30 days after the effective date of this Consent Agreement.

8. The civil penalties payable hereunder shall be made by certified or cashier's check, payable to "Treasurer, United States of America," and shall be sent to the U.S. Environmental Protection Agency, Region 5, P.O. Box 70753, Chicago, Illinois, 60673. A transmittal letter, indicating Respondent's name, complete address, a Billing Docket number to be supplied later, and this case docket number must accompany the payment. Respondent shall send a copy of the transmittal letter, including a copy of the check, to the Regional Hearing Clerk (E-19J); to Greg Carlson, Watersheds and Wetlands Branch (WW-16J); and to counsel for Complainant, Richard Murawski (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

9. Failure to pay any amounts due pursuant to this Consent Agreement may result in the referral of this matter to the United States Department of Justice for collection.

10. Interest shall accrue on any amounts overdue under the terms of this Consent Agreement at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. §3717. A late payment handling charge of \$15.00 will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, a six percent per annum penalty will be assessed on any principal amount not paid within ninety days of its due date as listed in paragraph 7 of the Consent Agreement.

Wetland Restoration

11. As set forth in Administrative Compliance Order, Docket No. V-404-AO-04-02, Respondents are required to restore the wetland property subject to this matter in accordance with

the approved Wetland Restoration Plan, attached to this Consent Agreement as Exhibit 1.

Respondents shall implement the restoration work set forth in Exhibit 1 in accordance with the schedule set forth below:

- a. Excavation Completed By April 1, 2006
- b. Seeding Completed by May 15, 2006
- c. 5-Year Monitoring to Begin in 2006

Respondents shall notify U.S. EPA no less than seven business days beforehand of the exact date on which they will commence work. U.S. EPA may inspect the work as performed.

12. If Respondents fail to complete, or provide for the completion of, the work set forth in Exhibit 1 by the deadlines provided in paragraph 11, above, Respondents shall pay a stipulated penalty of \$16,000 in the manner prescribed in paragraph 8, above. Interest, handling charges, and late payment penalties shall be assessed as set forth in paragraph 10, above. If Respondents pay a stipulated penalty, such payment shall in no way relieve Respondents of their obligation to complete the work set forth in Exhibit 1.

General Provisions

13. This Consent Agreement resolves all claims arising out of the transactions and occurrences alleged in the Complaint. This Consent Agreement does not constitute a permit or a license and does not relieve Respondent of its obligation to comply with all applicable Federal, State or local laws, regulations or requirements.

14. This Consent Agreement constitutes the entire agreement between the Complainant and the Respondent.

15. Each of the undersigned representatives of the parties certifies that he or she is authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to legally bind that party to it.

16. Nothing in this Consent Agreement shall be construed to be a ruling on, or determination of, any issue related to any Federal, State, or local permit.

17. This Consent Agreement shall be binding upon U.S. EPA and upon the officers, directors, employees, successors, and assigns of Respondents.

18. Each party shall bear its own costs, attorney fees and disbursements in this action.

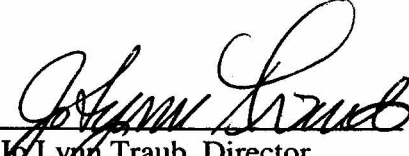
Public Notice

19. In accordance with section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), this agreement will become effective 30 days after the execution of the accompanying Final Order by the Regional Administrator. No person responded to the public notice of the commencement of this action pursuant to 33 U.S.C. § 1319(g)(4)(A), and thus no interested persons need be notified of the issuance of the Final Order in this matter under section 309(g)(9)(c) of the CWA, 33 U.S.C. § 1319(g)(9)(C).

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

United States Environmental Protection Agency, Region 5
Complainant

Dated: 10/13/05


Lynn Traub, Director
Water Division

U.S. Environmental Protection
Agency, Region 5

Consent Agreement and Final Order

In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing

Docket No. CWA-05-2005-0002

Indiana Department of Transportation,
Respondent

Dated:

9/28/08



[name]

Mark G. Ahearn


[title]

Chief Legal Counsel, Dept Corrum

Consent Agreement and Final Order
In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing
Docket No. CWA-05-2005-0002

Atlas Excavating, Inc.
Respondent

Dated: 10/11/05

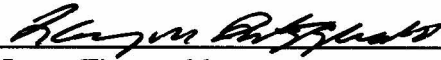


[name] Casey Dillon
[title] ESTIMATOR / MEMBER

Consent Agreement and Final Order
In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing
Docket No. CWA-05-2005-0002

Larry Fitzgerald, d/b/a Shrum Manufactured Housing
Respondent

Dated: 10/15/05

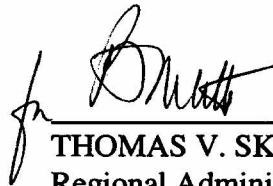

Larry Fitzgerald

Consent Agreement and Final Order
In the Matter of Indiana Department of Transportation, Atlas Excavating, Inc., Larry Fitzgerald,
d/b/a Shrum Manufactured Housing
Docket No. CWA-05-2005-0002

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Respondents are hereby **ORDERED** to comply with all of the terms of the preceding Consent Agreement, effective immediately.

Dated: 10-14-05



THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection Agency Region 5
Chicago, Illinois

EXHIBIT I

RESTORATION PLAN

US 40/SHRUM
INDIANAPOLIS, MARION COUNTY, INDIANA

USEPA DOCKET #V-404-AO-04-02

For:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
SECTION 404 ENFORCEMENT

From:

INDIANA DEPARTMENT OF TRANSPORTATION
SHREWSBERRY & ASSOCIATES
AQUA TERRA

RESTORATION PLAN

This Restoration Plan was developed in accordance with the United States Environmental Protection Agency Region 5 Section 404 Enforcement: General guidelines for removal and restoration plans, Exhibit No. 2 of Administrative Compliance Order (Docket No. 4-404-AO-04-02)

Location:

State: Indiana **County:** Marion
Civil Township: Wayne **Quarter:** NW **Section:** 21
Township: 15N **Range:** 2E **Quad:** Bridgeport, IN

Directions: Southeast of US 40 and the Marion/Hendricks County Line.

Site Description:

The wetlands impacted by the placement of fill are located on the south side of US 40 just east of the Marion/Hendricks County line. According to the Wetland Delineation Report, prepared by *Alt & Witzig Engineering, Inc.*, on March 28, 2002:

“The site consists of approximately 4.45 acres of vacant land, located south of the Shrum Manufactured Housing sales office. The Site was a former railroad easement. Several ground cover piles were observed on the western portion of the Site. Ground cover consists of trees, scrub-shrub, and bare earth.

The surface of the immediate Site is flat, with a relief of 10 feet. The approximate mean sea level (msl) elevation of the Site is 750 feet. Drainage on the Site is presently along the ground surface toward the drainage ditch located on the north side of the Site.

The wetland is located on the southern portion of the Site and extends off-site to the south as shown in Figure 2. The wetland is an emergent wetland/forested wetland and is 0.12 acres in size on the Site. The total wetland is greater than 3 acres and was not delineated to the south due to no approved off-site access. A stream located on the eastern property boundary is a regulated “waters of the United States” due to the defined banks and rocky bottom.

Based on the aerials reviewed and the survey, it appears that approximately 80,000 ft² (1.8 acres) of wetland impact has occurred due to fill.”

The wetlands are situated in an area of mapped *Shoals* silt loam adjacent to the East Fork of White Lick Creek. These wetlands appear to be hydrologically supported by flooding from the creek as well as from a seasonally high water table.

The vegetative species diversity in the impacted wetlands is very low, and, according to the *Alt & Witzig* report, is dominated by Cattails, Reed Canarygrass, with a smattering of young Green Ash, Gray Dogwood, American Elm, and Box Elder trees/shrubs. Functionally, the impacted wetlands provide floodwater attenuation during storm events, provide cover, nesting and forage habitat for amphibians, reptiles, birds, and small mammals, and provide water quality filtering prior to discharge to White Lick Creek.

According to the *Alt & Witzig* report, approximately 1.8 acres of wetland have been filled at the site. Approximately 35,555 cubic yards (figure from Administrative Compliance Order) of roadway debris, including a mixture of concrete, asphalt, gravel, re-bar, and earthen material were placed in the wetland. See attached "Survey Plat" and "Figure 2" from the *Alt & Witzig* report for depictions of the site.

I. EXISTING PHYSICAL CONDITIONS

- A. See Attached Survey Site Plan(s)
Exhibit # 1-6

II. PROPOSED PHYSICAL CONDITIONS:

- A. See attached Site Plan
Exhibit # 5 and 6

B. Description of Remedial Work to Occur:

Removal of all un-authorized fill from the 1.8 acres of wetlands is proposed as site restoration. Approximately 35,555 cubic yards of material will be excavated from the impacted wetlands and deposited on non-wetland areas of the Shrum Manufactured Housing property or hauled off-site.

An Erosion Control Plan shall be submitted to the local Soil Water Conservation District and Indiana Department of Natural Resources, Division of Soil Conservation, at least 30 days before the planned construction, in accordance with 327 IAC 15-5 (Rule 5). A Notice Of Intent (NOI) shall be submitted to IDEM at least 30 days before the planned construction commences. All provisions of Rule 5 shall be met. IDEM shall be notified at least forty-eight (48) hours prior to initiating the construction activities.

Temporary erosion control fencing shall be placed around the base of the excavation prior to commencement of earth excavation operations. Temporary erosion control fencing and other measures, as needed, shall be placed at the lower excavation limits each evening after work has stopped for the night.

ensure
silt fence
brought to
toe of
slope

when
fill
removed
completes

Excavation activities shall begin on top of the fill pile. A large track excavator will remove soil downward toward original undisturbed topsoil. Removed soil will be placed upland or removed from site by dump trucks. All work will be completed from atop fill pile.

Excavation will commence from the top of the spoil pile and will continue until un-disturbed topsoil layers of the impacted wetlands are encountered. Once the original undisturbed top soil layers have been reached, the wetland will be restored to original, pre-impact grade.

The original top soil layer shall be "fluffed-up" using the excavator to dig approximately 12 inches deep, pick-up the soil and then drop it in-place not more than from a 3 foot height. This should re-create the unconsolidated condition of the pre-impacted top soil layer.

As such, original hydrologic conditions in the area will be restored. Seasonal flooding, inundation, and surface saturation is anticipated, similar to the existing non-impacted wetlands. The primary sources of wetland hydrology will be from seasonally high groundwater table and from periodic flooding of White Lick Creek.

Following the return of wetland hydrologic conditions, wetland plant community re-establishment is expected. Due to the large populations of cattails and Reed Canarygrass in the existing, un-disturbed wetlands, a rapid colonization of the restored wetland areas by these aggressive species is anticipated. Over the next several subsequent growing seasons, additional colonization by locally present pioneer tree/shrub species, such as Green Ash, American Elm, Gray Dogwood, and Box Elder, will also occur. Within 3-5 years following restoration, the plant community is expected to fully revert to pre-impact conditions.

Due to the anticipated rapid dominance by the locally present aggressive species, re-planting of the restored wetland area will only include the seeding of a cover/nurse crop for erosion control purposes. See attached *Planting Plan* for details.

C. Construction Work Area must be Defined:

Prior to initiating construction activities, the site will be clearly marked to denote areas of existing, un-disturbed wetlands. Entry into these marked areas by construction equipment will be avoided. The project plans clearly show these areas and note that access to these areas shall be avoided. The project plans also show equipment access points and routes.

Upon completion of excavation temporary erosion control fence shall be placed at the top the excavation. Temporary and semi-permanent erosion control seeding will be hydro-seed along the slope and restored wetland.

Once the vegetation has been established on the slope, the erosion control fence and other erosion control measures shall be removed.

III. AS-BUILT CONDITIONS:

Immediately following completion of the restoration construction activities outlined above, an as-built conditions report will be submitted for review. The report shall contain:

- Narrative description of all work conducted, including any problems encountered and any minor deviation from original specifications.
- Pre and post construction site plan and profile views, showing restored soil profile.
- Discussion of restored wetland hydrology.
- Photographs taken during construction activities and post construction inspection.
- Discussion of installed erosion control measures and planned maintenance.
- Schedule for monitoring activities and report submittal. _____ Now

IV. MONITORING/SUCCESS CRITERIA:

A. Monitoring Plan:

Annual monitoring of the restored wetland area will be conducted for a period of five years, beginning the first full growing season following the completion of construction activities. A report shall be prepared and submitted to USEPA within 4-6 weeks after each monitoring event. Monitoring activities will occur annually during a period from approximately June 15 – July 15, to maintain consistency. A request for release from further monitoring may be submitted for USEPA approval if the restoration area demonstrates the attainment of the specified success criteria following the third year of monitoring.

B. Assess Flora, Fauna, and Soils:

A minimum of five permanent 30 foot diameter plots, representative of on-site conditions, will be established in the first year of monitoring in the Restoration Area. The location of the sampling plots will be selected by using the *Simple Random Coordinate Method*¹. GPS coordinates and photo stations for each sampling point will be established and mapped. Data forms (eg. Corps of Engineers Wetland Delineation Manual) will be completed for each sample point.

¹ Elzinga, Caryl, et al.. July, 1998. Measuring and Monitoring Plant Populations. US Dept. of Interior, Bureau of Land Management.

Documentation:

Soils- A test pit will be dug at each sample point to evaluate soil conditions of the mitigation wetland. Soil texture, color (chroma/hue), and hydric indicators will be evaluated and recorded.

Vegetation- Three one-square meter quadrants will be randomly sampled each year in the plots to determine percent cover of the vegetative community according to the "Braun-Blanquet" classification system, which will be used to evaluate success criteria for the Restoration Area.

3x5=15
quadrats

*The *Braun-Blanquet* Cover Abundance Scale

Rating	Number of Plants	Area Occupied by Species
+	Sparsely or very sparsely present	Very Small
1	Plentiful	Small
2	Very Numerous	10-25%
3	Any Number	25-50%
4	Any Number	50-75%
5	Any Number	>75%

to
large
to
discern
success

From J. Braun-Blanquet. 1964. *Pflanzensoziologie*. Reprint- Bonham, Charles D, 1937. Measurements for Terrestrial Vegetation.

All woody individuals (species and number) will be recorded in these plots and used to extrapolate the number of living trees/shrub stems per acre. All individuals greater than 12 inches in height will be counted.

All vegetation will be noted and classified according to wetness and native/non-native. Coefficient of Conservatism ("C") for the species will be recorded. Mean "C" will be noted for each sample plot.

Hydrology- Test pits will be dug in the plots in the Restoration Area to determine the presence of hydrology based on the Corps 1987 Manual criteria. Secondary indicators of hydrology will also be noted.

Remediation- Adaptive management techniques (such as supplemental plantings, weed control, erosion control, hydrology control, predation control etc.) will be recommended each year to ensure attainment of success criteria. Corrective action will be taken, at the direction of USEPA, should monitoring show that the criteria for success are not being met.

Release from Monitoring- A wetland delineation of the mitigation area will be conducted and included with the final monitoring report. If the mitigation

area has achieved all of the specified success criteria, a request for release from monitoring will be submitted to USEPA.

C. Success Criteria:

The following measurable success criteria shall be established for the Restoration Area:

- Approximately 1.8 acres of restored wetlands shall meet the criteria of the US Army Corps of Engineers 1987 Wetland Delineation Manual.
- The vegetation in the wetland mitigation area shall be an emergent to scrub-shrub cover type (PEM- PSS) wetland.
- Within two years following completion of restoration, the restored area shall achieve an 80% vegetative cover; and 90% vegetative cover within three years.
- The plant community shall be free of *Lythrum salicaria*, *Phragmites australis*, and *Myriophyllum spicatum*.

D. Report

A report will be prepared and submitted following each browning season inspection. Report shall include photographic representations from the investigation stations.

V. INSPECTION:

Inspection of the Restoration Area shall be conducted at the discretion of USEPA and/or their authorized representative, prior to, during or after the completion of earth moving activity and prior to seeding/planting, after installation of all sedimentation and erosion control structures, after completion of grading activities, and after monitoring indicates that the criteria for success have been attained.

VI. SCHEDULE:

ACTIVITY	DATE
Commencement of restoration construction (See <i>Construction Sequence</i> for order of events)	Immediately following receipt of written final approval of Restoration Plan by USEPA.
Completion of restoration construction	Approx. 6-12 weeks following commencement.
As-Built inspection/report submittal	Within 6 weeks of construction completion.
Year 1 monitoring activity	1 st full growing season following construction.
Monitoring report submittal.	Within 4-6 weeks of monitoring activity.
Year 2-5 monitoring activity	2 nd -5 th full growing season following construction.

Monitoring report submittal.	Within 4-6 weeks of monitoring activity.
Final delineation and request for release from further monitoring.	During Year 5 monitoring event, or following Year 3 monitoring event, if success criteria have been met.

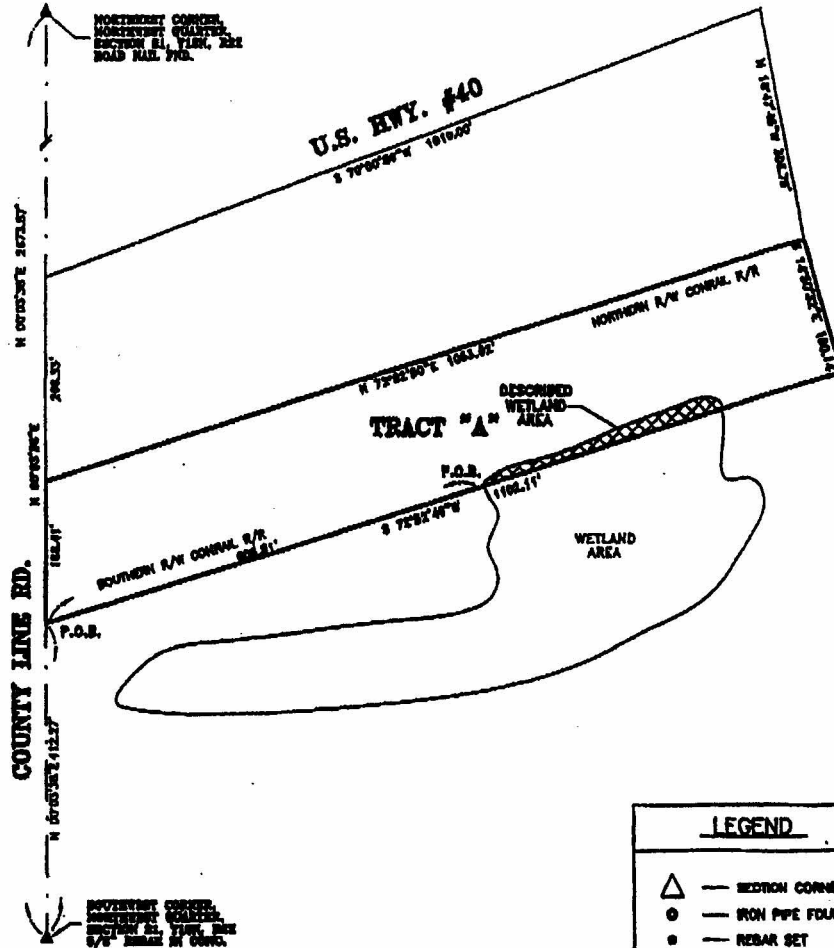
APPENDICES:

- **Survey Plat** (from Lewis Engineering report, Exhibit 1 and 2)
- **Sample Location Map** (from Alt & Witzig report, Exhibit 3)
- **Fill Removal Drawing** (Exhibit 4-6)
- **Planting Plan**

SURVEY PLAT

SHRUM MANUFACTURED HOUSING
MARION COUNTY, INDIANA

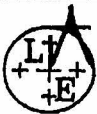
DRAWING NOT TO BE SCALED - DIMENSIONS PREVALENT



LEGEND	
	SECTION CORNER
	IRON PIPE FOUND
	REBAR SET
	PK NAIL SET
	EXISTING FENCE

JBW 02/05/02 02-035

SHT: 1 OF 2



LEWIS ENGINEERING

ENGINEERING - SURVEYING - PLANNING
3316 EAST MAIN STREET, SUITE D, PLAINFIELD, IN 46168
PHONE (317) 839-2412 - FAX (317) 839-2487

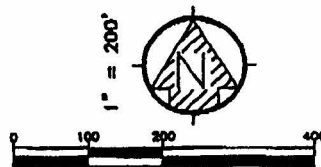


EXHIBIT 1

SURVEY PLAT

SHRUM MANUFACTURED HOUSING
MARION COUNTY, INDIANA

DRAWING NOT TO BE SCALED - DIMENSIONS PREVALENT

LEGAL DESCRIPTION

TRACT "A"


A PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 15 NORTH, RANGE 2 EAST IN MARION COUNTY INDIANA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT;

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER SECTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 412.24 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 185.41 FEET TO THE NORTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD; THENCE NORTH 72 DEGREES 52 MINUTES 49 SECONDS EAST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 1053.62 FEET TO THE CENTERLINE OF THE EAST FORK OF WHITE LICK CREEK; THENCE SOUTH 16 DEGREES 35 MINUTES 20 SECONDS EAST, ALONG SAID CENTERLINE OF THE EAST FORK OF WHITE LICK CREEK, 180.14 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD; THENCE SOUTH 72 DEGREES 52 MINUTES 49 SECONDS WEST, ALONG THE SOUTHERLY RIGHT-OF-WAY OF CONRAIL RAILROAD, 331.34 FEET AND THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 4.45 ACRES MORE OR LESS AND SUBJECT TO ALL COVENANTS, EASEMENTS, HIGHWAYS, AND RESTRICTIONS OF RECORD.

WETLAND AREA

A PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 15 NORTH, RANGE 2 EAST IN MARION COUNTY INDIANA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT;

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER SECTION, THENCE NORTH 00 DEGREES 03 MINUTES 38 SECONDS EAST, (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NORTHWEST QUARTER SECTION, 412.24 FEET, THENCE NORTH 72 DEGREES 52 MINUTES 49 SECONDS EAST, 608.61 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 05 DEGREES 24 MINUTES 08 SECONDS WEST; 3.71 FEET; THENCE NORTH 25 DEGREES 53 MINUTES 52 SECONDS EAST, 2.86 FEET; THENCE NORTH 57 DEGREES 24 MINUTES 03 SECONDS EAST, 2.37 FEET; THENCE NORTH 63 DEGREES 57 MINUTES 04 SECONDS EAST, 12.37 FEET; THENCE NORTH 66 DEGREES 58 MINUTES 25 SECONDS EAST, 25.16 FEET; THENCE NORTH 75 DEGREES 09 MINUTES 31 SECONDS EAST, 62.29 FEET; THENCE NORTH 69 DEGREES 59 MINUTES 29 SECONDS EAST, 29.78 FEET; THENCE NORTH 67 DEGREES 17 MINUTES 43 SECONDS EAST, 72.64 FEET; THENCE NORTH 70 DEGREES 51 MINUTES 44 SECONDS EAST, 68.63 FEET; THENCE NORTH 79 DEGREES 16 MINUTES 54 SECONDS EAST, 51.25 FEET; THENCE SOUTH 59 DEGREES 15 MINUTES 18 SECONDS EAST, 10.39 FEET; THENCE SOUTH 08 DEGREES 52 MINUTES 00 SECONDS EAST, 8.13 FEET; THENCE SOUTH 72 DEGREES 52 MINUTES 49 SECONDS WEST, 331.34 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 0.12 ACRES MORE OR LESS AND SUBJECT TO ALL COVENANTS, EASEMENTS, HIGHWAYS, AND RESTRICTIONS OF RECORD.


LARRY A. CRAMER,
REG. LAND SURVEYOR NO. S0279
STATE OF INDIANA



JBW 02/05/02 02-035

SHT: 2 OF 2

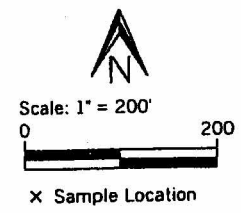
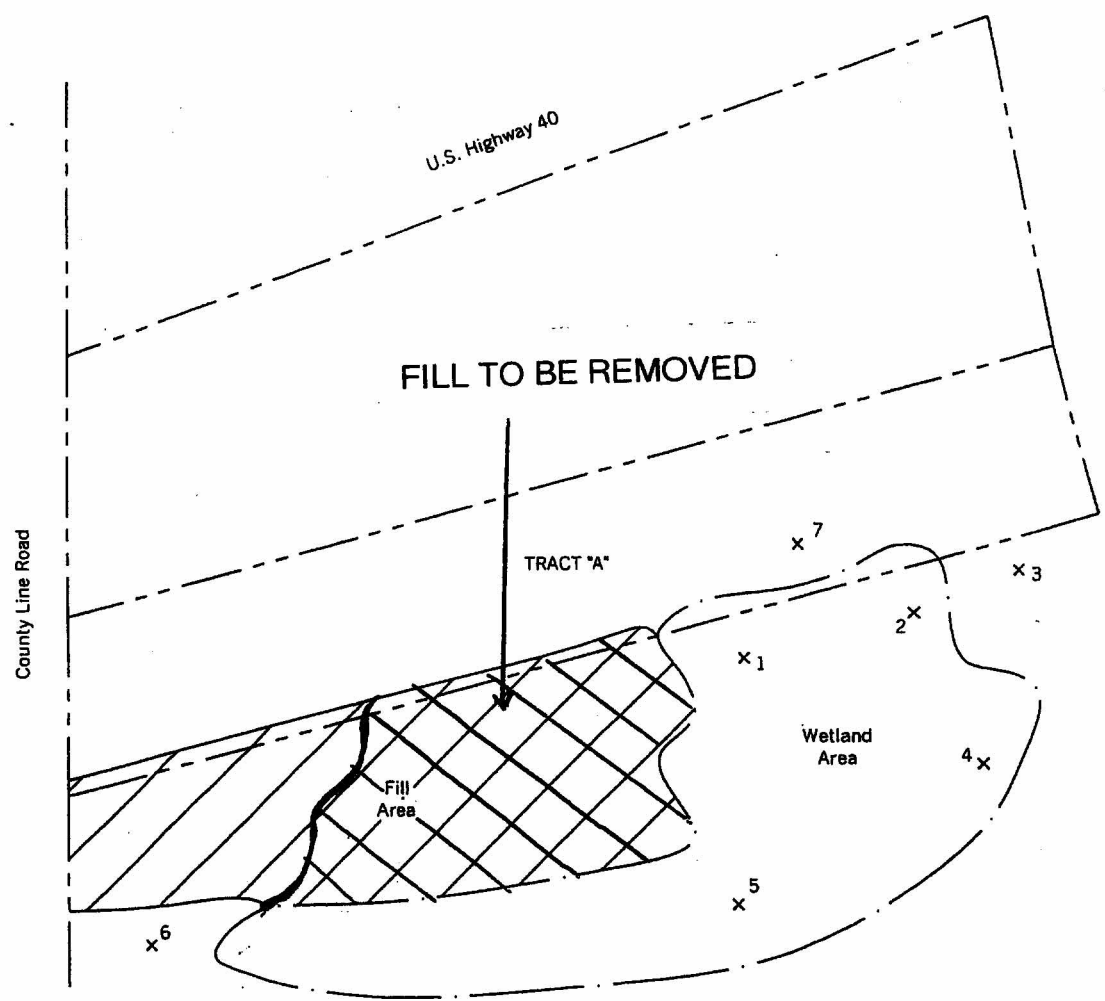


LEWIS ENGINEERING

ENGINEERING - SURVEYING - PLANNING
8315 EAST MAIN STREET, SUITE D, PLAINFIELD, IN 46168
PHONE: (317) 889-8412 - FAX: (317) 889-8437

EXHIBIT 2

FIGURE 2
SAMPLE LOCATION MAP




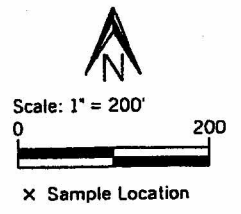
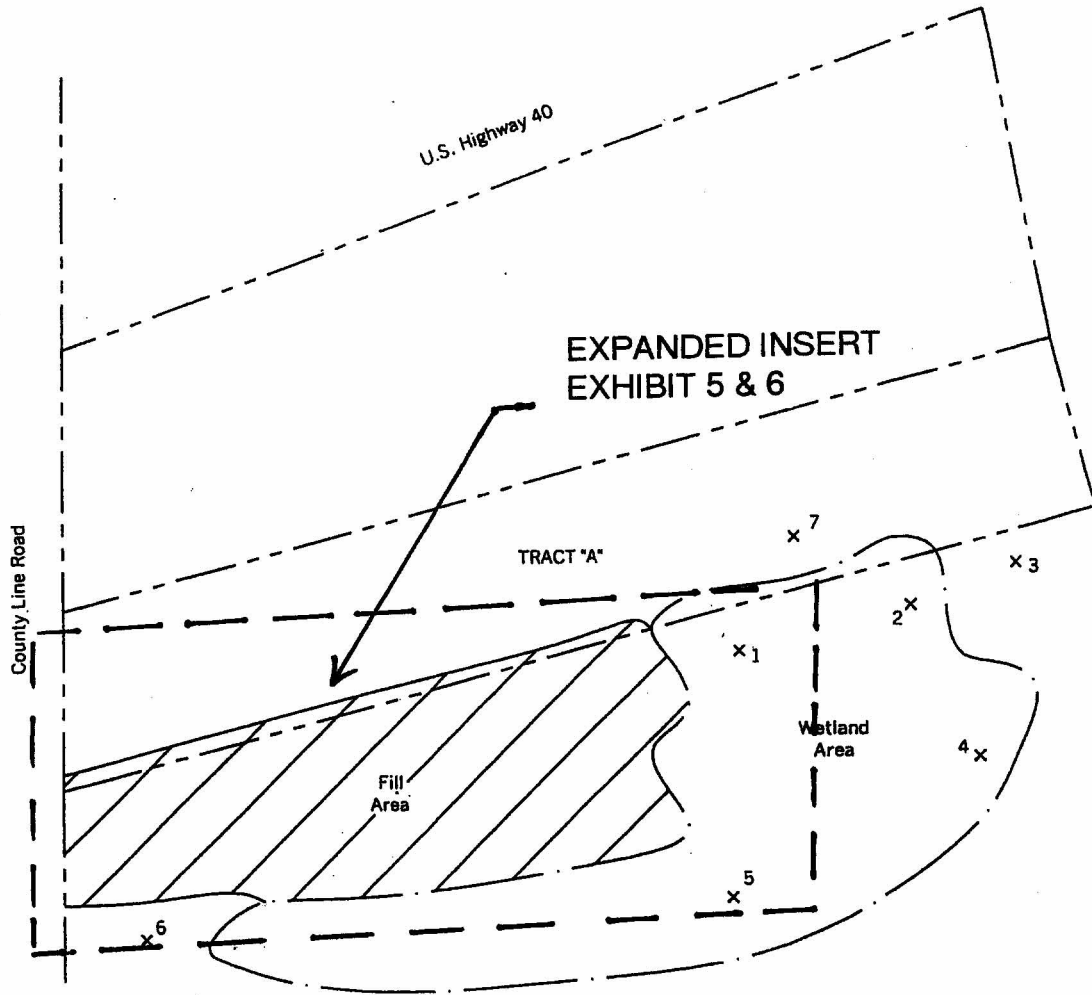
Prepared For: Shrum		Prepared By: Alt & Witzig Engineering, Inc.
Project Name: Shrum Manufactured Housing		Project No: 02IN0017

FIGURE 2
SAMPLE LOCATION MAP



Prepared For: Shrum		Prepared By: Alt & Witzig Engineering, Inc.
Project Name: Shrum Manufactured Housing		Project No: 02IN0017

PLANTING PLAN

For Restored Wetland Area:

Temporary Nurse Species		Rate	Indicator Status
Scientific Name	Common Name		
<i>Avena sativa</i>	Spring Oats (annual)	35 lbs/acre	UPL
<i>Lolium multiflorum</i>	Annual Rye (annual)	15 lbs/acre	UPL
<i>Triticum aestivum</i>	Common Wheat (annual)	50 lbs/acre	UPL

For Seed:

(Recommended Planting Dates: March 1 – May 1 or September 15 – October 30)

- Apply seed at specified rate per acre.
- Stabilize surrounding slopes with seed, erosion control fabric, mulch, silt fence, etc. to prevent sedimentation of wetland areas. Planting in temporarily dry conditions is preferred.
- **Seedbed preparation** (dry conditions)- Rough grade only to provide pockets of micro-topography within the wetland matrix. Remove or kill existing vegetation. If applying herbicide, use only a systemic chemical (such as *Roundup*); do not use broadleaf herbicides (2-4-D), or any chemical with residual effects. Roto-till or lightly till to a depth of no greater than 2 inches.
- **Sowing seed** (dry conditions)- Sow wet-packaged seed in lower elevations of wetland by broadcasting evenly by hand. Sow dry-packaged seed in higher elevations by broadcasting evenly by hand. Press seed into soil by roller, cultipacker or similar implement. Light raking is also acceptable provided the seed is not covered by more than ¼ inch of soil.
- **Sowing Seed** (wet conditions)- Sow wet-packaged seed in 0" – 6" of saturated soils to standing water. Mix seed with damp clay balls to aid with distribution and anchoring of seed. Do not place seed in areas greater than 4" of standing water.
- **Maintenance:** Apply spot treatment of appropriately labeled herbicide to un-desired nuisance/invasive species 2-3 times per year until community is fully established, usually 3 years.



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

FEB 08 2005

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Mr. Larry Fitzgerald
Shrum Manufactured Housing
9201 West Washington Street
Indianapolis, Indiana 46231

Mr. Casey Dillon
Atlas Excavating, Inc.
4740 Swisher Road (Building A)
West Lafayette, Indiana 47906

Thomas L. Duncan, PE
Indiana Department of Transportation
100 North Senate Street (Room N755)
Indianapolis, Indiana 46204-2249

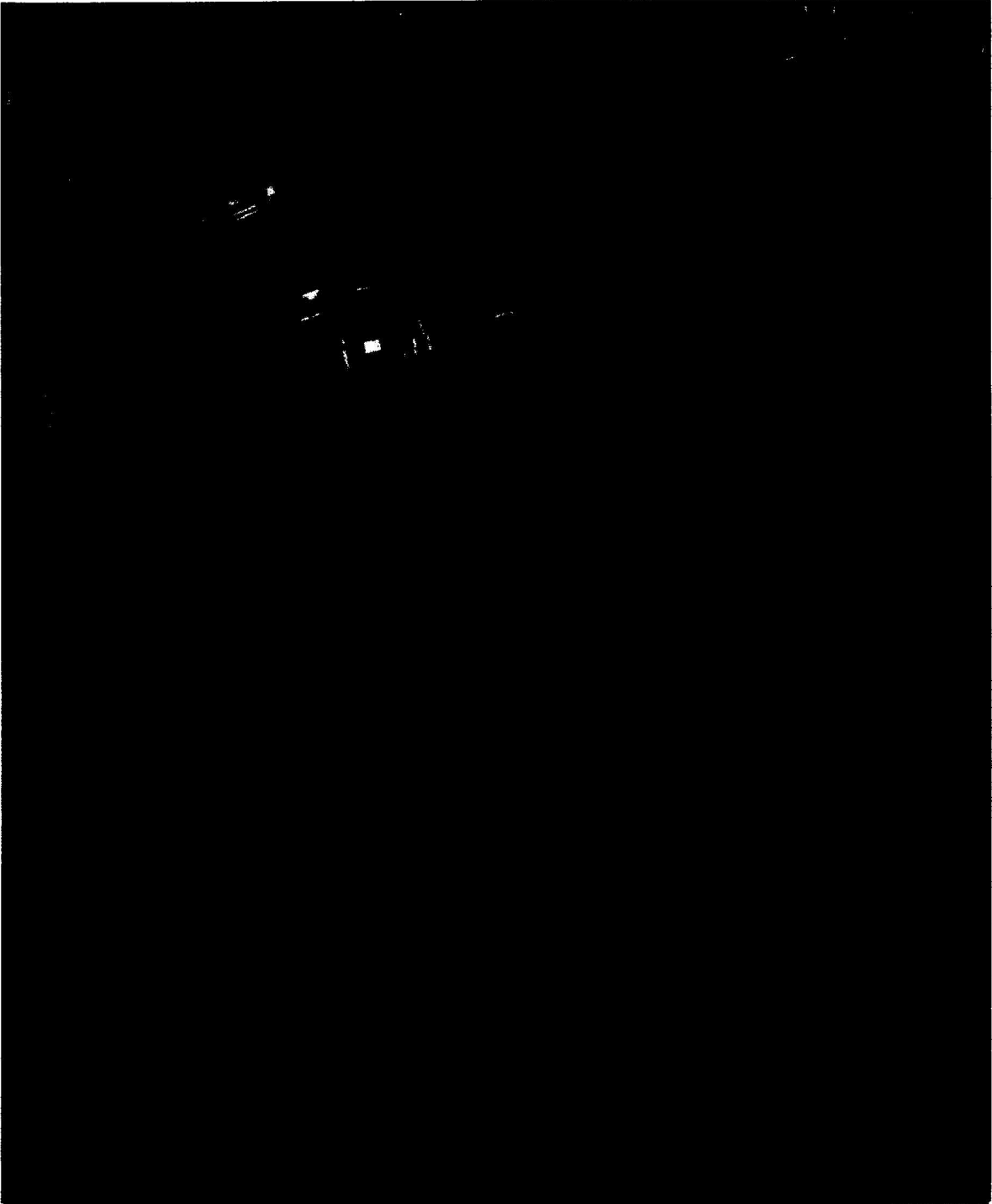
Re: Administrative Compliance Order (Docket No. V-404-AO-04-02)

Dear Messrs. Fitzgerald, Dillon and Duncan:

The U.S. Environmental Protection Agency (EPA) received your February 2, 2005, Restoration Plan for the US 40/Shrum Manufactured Housing site. The Restoration Plan is approved contingent upon the following two modifications:

1. Under II. B. and C., upon completion of excavation, the temporary erosion control fence shall be placed at the toe of slope and at the top of remaining fill area; and
2. Under IV. B., the Braun-Blanquet Cover Abundance Scale is not appropriate. Rather, use the midpoints of the cover classes defined in the 1989 Interagency Wetland Delineation Manual - Intermediate-Level Onsite Determination Method as < 1% (0), 1-5% (3.0), 6-15% (10.5), 16-25% (20.5), 26-50% (38.0), 51-75% (63.0), 76-95% (85.5) and 96-100% (98.0).

Regarding the success criteria assessment, it is understood that the sampling data will be aggregated and averaged annually across the 15 quadrats used to determine per cent cover.



1999 AERIAL





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

REPLY TO THE ATTENTION OF:

05 OCT 19 11:56

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Consent Agreement and Final Order (Docket No. CWA-05-2005-0002) was filed with the Regional Hearing Clerk on October 19, 2005, and that an original was served by United States Mail, Certified and Postage Prepaid, on the 19th day of October 2005, upon the following:

Mr. Larry Fitzgerald
Shrum Manufactured Housing
9201 West Washington Street
Indianapolis, Indiana 46231

Terry Dillon, President
Atlas Excavating, Inc.
4740 Swisher Road (Building A)
West Lafayette, Indiana 47906

J. Bryan Nicol, Commissioner
Indiana Department of Transportation
100 North Senate Street (Room N755)
Indianapolis, Indiana 46204-2249

A Consent Agreement and Final Order copy (Docket No. CWA-05-2005-0002) was served by United States Mail, Certified and Postage Prepaid, on the 19th day of October 19, 2005, 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