UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	**Docket No. CWA-02-2011-3601**
	)	
Dependable Towing & Recovery, Inc. and David A. Whitehill,	)	
	)	
	)	
Respondents.	)	

RESPONDENTS' INITIAL PREHEARING EXCHANGE

Pursuant to an Order of Judge Barbara A. Gunning, dated October 5, 2011, the Respondents, Dependable Towing & Recovery, Inc. and David A. Whitehill, respectfully submit their Initial Prehearing Exchange:

I. The names of any expert or other witnesses they intend to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called.

Respondents intend to call the following experts or witnesses at the hearing:

- Ray Kagel, Jr., M.S.
  Kagel Environmental, LLC
  3879 E. 200 N.
  Rigby, Idaho 83442

Mr. Kagel will testify about his investigation of Respondents' property, and about the extent and quality of the wetland fill. He will testify about the potential damage that may be caused by removal of the old fill. He will testify about his review of the materials submitted by the Complainant, including the exhibits identified in Complainant's Prehearing Exchange.

In particular, Mr. Kagel will testify as to the following points:

a. Areas of alleged wetland violation are mostly leveled, graded, smooth surfaced, and stabilized in place. Forested wetlands appear to immediately abut most of the stabilized fill that has been in place for at least several years. Consequently, it would be impossible to mechanically remove large areas of fill without significant disturbances to heretofore untouched adjacent wetlands.

b. Extant fill material is by definition a pollutant, therefore the excavation, loading, transportation, dumping and re-depositing of this material will result in additional environmental disturbances to existing wetlands by exposing underlying soils and hydrology to additional compaction from heavy mechanized construction equipment.

c. Excavating extant fill cannot be accomplished without significant digging, scratching, scraping, and leveling, and other major physical disturbances to the native wetland ground surfaces. Such extreme earth moving work will expose underlying wetland soil surfaces to substantial adverse impacts such as petroleum leaks from motorized equipment and increases in surface runoff, erosion, and turbidity of freshly exposed soils and surface hydrology.

d. The excavation, removal, loading, transportation, and unloading of thousands of yards of this pollutant (fill material) cannot be accomplished without de minimus and other incidental fall back of pollutants into both wetlands and ecologically valuable uplands despite the incorporation of standard Best Management Practices ("BMPs").

e. Transporting huge truck loads of excavated fill material to designated upland disposal site(s) will likely expose other wetlands, creeks, streams, and/or other ecologically sensitive (i.e. Clean Water Act) protected areas, to the risk of significant or irrevocable degradation in the event of vehicular accidents.

f. Discrepancies in the exhibits submitted by the Complainant. In particular, discrepancies as to the alleged amount of fill placed on Respondents' property, and discrepancies as to the amount of fill located off of Respondents' property, and discrepancies as to photographs used by Complainant, which include the use of an incorrect baseline photograph which pre-dates the alleged violation. Furthermore, Mr. Kagel will testify as to incorrect sampling methods employed by the Complainant, and the flawed Restoration and Removal Plan submitted by Wilson Environmental Technologies, Inc.

Mr. Kagel will further testify about his experience as a federal wetlands regulator with the U.S. Army Corps of Engineers, and about his extensive knowledge of the laws and regulations pertaining to wetlands and Section 404 of the Clean Water Act. He will also testify regarding his experience with wetland delineations and assessments, as well as environmental impact assessments.

- Susan Kagel, M.S., Ph.D.
  Kagel Environmental, LLC
  3879 E. 200 N.
  Rigby, Idaho 83442

Dr. Kagel will testify about her investigation of Respondents' property, and about the extent and quality of the wetland fill. She will testify about the potential damage that may be caused by removal of the old fill. She will testify about her review of the materials submitted by the Complainant, including the exhibits identified in Complainant's Prehearing Exchange.

Dr. Kagel will further testify about her experience working with federal agencies, and about her knowledge of the laws and regulations pertaining to wetlands and Section 404 of the Clean Water Act. She will also testify regarding her experience with wetland delineations and assessments, as well as environmental impact assessments.

Dr. Kagel will also testify about her experience in analyzing historical aerial photography, and Geographic Information System ("GIS") data in determination of landscape changes and location of fill placement. She will also testify concerning the environmental damage in the form of carbon emissions that will result if fill is removed.

In particular, Dr. Kagel will testify as to the following points:

a. Excavating and transporting large amounts of fill to an upland site would result in an unacceptably large carbon footprint (See Respondents' Exhibit No. 11), and cause greater environmental damage than leaving fill in place and mitigating the alleged violation by another method.

b. The work of excavating, loading, transporting, and re-depositing approximately 39,000 cubic yards of fill material will require at least 200-days of men and heavy machinery; the associated human activity and loud noise of motorized equipment would cause significant disturbance, stress, and displacement of resident wildlife and birds.

c. Discrepancies in the exhibits submitted by the Complainant. In particular, discrepancies as to the alleged amount of fill placed on Respondents' property, and discrepancies as to the amount of fill located off of Respondents' property, and discrepancies as to photographs used by Complainant, which include the use of an incorrect baseline photograph which pre-dates the alleged violation. Furthermore, Dr. Kagel will testify as to incorrect sampling methods employed by the Complainant, and the flawed Restoration and Removal Plan submitted by Wilson Environmental Technologies, Inc.

II. Copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include curriculum vitae or resume for each proposed expert witness.

The documents and exhibits Respondents intend to introduce into evidence at the hearing are as follows:

Respondents' Exhibit No.	**Document**
Respondents' Exhibit No. 1	Resume of Ray Kagel, Jr., M.S.
Respondents' Exhibit No. 2	Resume of Susan Kagel, M.S., Ph.D.
Respondents' Exhibit No. 3	Map of Hydric and Non-Hydric Soils
Respondents' Exhibit No. 4	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated April 20, 1994
Respondents' Exhibit No. 5	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated April 29,1994
Respondents' Exhibit No. 6	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated November 24, 2006
Respondents' Exhibit No. 7	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated July 23, 2009
Respondents' Exhibit No. 8	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated September 5, 2009
Respondents' Exhibit No. 9	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated October 6, 2011
Respondents' Exhibit No. 10	Aerial Photograph of 2160 Lafayette Street, Falconer, NY 14733 dated 2009
Respondents' Exhibit No. 11	Carbon Footprint of Fill Excavation Chart

III. Each party shall submit a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

Respondents request that the hearing be held in Buffalo, New York, since this location is convenient for both parties.

Respondents estimate they will need one (1) day to present their direct case.

IV. Why the proposed penalty should be reduced or eliminated.

Respondents' believe that the proposed penalty should be reduced based on the following:

A. Nature, Circumstances, and Extent of the Violation: Aerial photographs and aerial hydric soils maps indicate that many non-hydric soils exist between Respondents' property and the nearest mapped traditionally navigable water ("TNW"), Cassadaga Creek. The creek is more than a one-third mile away from the fill closest to the creek, which fill is actually located on property that is not owned by Respondents. Moreover, such fill is isolated from the creek by a wide swath of non-hydric soils. Accordingly, the area of alleged violation is isolated from surrounding wetlands, and therefore is not likely to have a significant adverse environmental impact on a jurisdictional wetland. See Respondents' Exhibit No. 3. Furthermore, there are discrepancies in the amount of alleged fill on Respondents' property calculated by the Complainant, and that calculated by Respondents' witnesses. Therefore, the extent of the alleged violation is less than that claimed by the Complainant.

B. Inability to pay: The proposed penalty is clearly beyond the financial capability of the violator. The proposed penalty would seriously jeopardize the violator's ability to continue business operations and achieve compliance. Since the issuance of the EPA notice letter, Respondents have paid out approximately $105,000, including legal fees; $12,500.00 to Wilson Environmental; $61,895.00 to environmental contractors and surveyors to perform the removal work completed to date; approximately $10,000.00 in extra or overtime wages to Dependable employees to move cars and other equipment to clear areas for further work; and approximately $5,000.00 to various contractors for materials, fencing, supplies, etc. Further, as a result of the EPA's notice letter, the City of Jamestown has determined to remove Respondent's company from the authorized tow list under City law. The towing portion of Respondent's business accounts for the largest part of the company's income and concomitantly, Mr. Whitehill's personal income. Since the City's removal of Respondent from the approved towing list, the company's income has decreased approximately sixty (60) percent. In addition, the constant rising price of gas and diesel fuel has taken a further toll on Respondent's business.

C. Degree of culpability: At the time of the original fill, Respondents were unaware of the nature and circumstances of their actions. Respondents reasonably believed that they were accommodating a request of local municipalities to put clean fill on the property, which was used in connection with road work. A subsequent investigation revealed that local municipalities and private companies have acknowledged that they used the property to dump fill. Accordingly, there are several other equally responsible parties.

D. Lack of Economic Benefit: Respondents have not obtained an economic benefit by obtaining an illegal competitive advantage, nor as the result of delayed or avoided pollution control expenditures during the period of noncompliance. As indicated in "B" above, Respondents have expended significant funds to perform the removal work

to date.

Furthermore, a majority of the fill materials were placed on the property more than five (5) years prior to the filing of the Complaint. Accordingly, with respect to claims relating to the alleged placement of fill materials on the property occurring more than five (5) years prior to the commencement of this action, the applicable statute of limitations, 28 U.S.C. § 2462, bars such claims.

Dated: December 14, 2011
Buffalo, New York

Deborah J. Chadsey, Esq.
Kavinoky Cook LLP
Attorneys for Respondents
Dependable Towing & Recovery, Inc., and
David A. Whitehill,
726 Exchange Street, Suite 800
Buffalo, New York 14210
Telephone: (716) 845-6000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	**Docket No. CWA-02-2011-3601**
	)	
Dependable Towing & Recovery, Inc.	)	
and David A. Whitehill,	)	
	)	
Respondents	)	

Certificate of Service

I certify that on December 14, 2011, I served the foregoing Respondents' Initial Prehearing Exchange, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original (w/original exhibits) and one copy by Overnight Mail:

Karen Maples
Regional Hearing Clerk
Region 2
U.S. Environmental Protection Agency
290 Broadway – 16th Floor
New York, New York 10007-1866

Copy w/exhibits by Overnight Mail:

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

Administrative Law Judge:
The Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
[Phone: (202) 564-6281 Attn: Mary Angeles, Legal Staff Assistant]

Erin L. Flynn, Paralegal

Kagel Environmental, LLC
Wetlands, Wildlife and Permitting Specialists
ray@kagelenvironmental.com
susan@kagelenvironmental.com

3879 E 200 N
Rigby, Idaho 83442
Phone (208) 745 0076
Cell (208) 313-3890
Fax (208) 441-4382

Ray L. Kagel, Jr., M.S.

Professional Expertise

- Execution of wetland determinations and forensic analysis of alleged wetland violations.
- Preparation and implementation of wetland mitigation and restoration work plans.
- Assistance with comprehension of and compliance with federal Clean Water Act laws and regulations.
- Expert witness testimony in litigation involving wetlands or wildlife.
- Preparation of Section 404 permit applications and After-The-Fact (ATF) authorizations for discharges in regulated waters and wetlands.
- Interpretive analysis of aerial photography, soil surveys, topo surveys, and National Wetland Inventory (NWI) mapping.
- Preparation and implementation of wildlife management plans.

Professional Positions

2007-Present	Ray Kagel Jr., M.S., Consulting Wetland and Wildlife Scientist and Principal, Kagel Environmental, LLC, Rigby, Idaho.
1999-2008	Ray Kagel Jr., M.S., Consulting Wetland and Wildlife Scientist and Principal, Lone Goose Environmental, LLC, Rigby, Idaho.
1991-1999	Environmental Resource Specialist (Regulatory Project Manager), U.S. Army Corps of Engineers, Idaho Falls, ID (Walla Walla District).
1989-1991	Environmental Resource Specialist (Regulatory Project Manager), U.S. Army Corps of Engineers, Bismarck, ND (Omaha District).
1987-1989	Environmental Resource Biologist(Regulatory Project Manager), U.S. Army Corps of Engineers, Philadelphia, PA (Philadelphia District).

- Walla Walla District POC (Point- Of-Contact) and Final COE and EPA Authority for contested or complex wetland determinations in the state of Idaho.
- Instructor of wetlands identification and delineation for the COE, EPA, NRCS and USFWS employees in the 1987, 1989, and 1991 (revised) Federal Manuals for Identifying and Delineating Jurisdictional Wetlands.
- Administration and enforcement of Section 404 and Section 10 Permitting Programs, including NEPA compliance.
- Review permit applications for compliance with NEPA and EPA 404 (b)(1) Guidelines, perform routine and comprehensive wetland determinations, review design, assess and approve river and stream bank stabilization and riparian habitat enhancement projects.

- Preparation of biological evaluations and effect determinations for listed plant and animal species & critical habitat(s) pursuant to the Endangered Species Act.

1986 Consulting Wildlife Biologist, Hutchinson Island (7,000 acre coastal island), SC, and Camp Brian Farms (10,000 acre hunting plantation), Moorehead City, NC. Design, development, implementation, and day-to-day management of comprehensive wildlife management plans.

1983-1986 Wildlife Biologist, Montana Department of Fish, Wildlife, and Parks, Bozeman, MT.

1980-1984 Graduate Research Assistant, Mississippi State University, Starkville, MS. Performed cutting-edge research defining previously unknown diurnal whitetail buck movements in MS, AL, LA, GA, and TX. Collection and identification of wetland plants important to wildlife and waterfowl in MS, AL, LA, and TX.

Education

M.S. Wildlife Ecology, 1984, Mississippi State University, Starkville, MS.
B.S. Forest & Recreation Resources, 1975, Clemson University, Clemson, SC

Certifications

2006 River Restoration, Portland, OR
1996 Fluvial Geomorphology, Pagosa Springs, CO
1993 River Restoration, Coeur d'Alene, ID
1992 Hydric Soils, Portland, OR
1989 Environmental Laws & Regulations, Montgomery, AL
1988 Wetlands Delineation, Kalamazoo, MI

Selected Consulting Projects

2011 Rich and Henderson, P.C., Easton MD: Forensic analysis of 80-acre alleged wetland violation, Federalsburg, MD. (Expected to go to Federal Court in 2012.)

2011 Session Law Firm, Kansas City, MO. Defense of a VFW post against wetland violation allegations. KE's forensic analysis indicated that there is no violation.

2010-2011 Amodio Stanley & Reeves LLC, Anchorage, AK. Defense of client against allegations of filling a wetland. Original charge was filling 3.5 acres, KE was successful in reducing charge to less than 0.3 acre of wetland filled. Scheduled to be heard by an Administrative Law Judge in 2012 due to penalty dispute.

2009 – 2010 BHW Law and Jim Seibe Law: Defense witness for federal criminal trial, disputed wetland destruction. Forensic analysis of alleged violation site, data analysis, report and court exhibit preparation. Anaysis of prosecution exhibits, extensive document research into application of wetland regulations and provided direction as to best countermeasures of prosecution's case. Defendant acquitted on all charges, Coeur d'Alene, ID.

2009-2011	Chantelle and Mike Sackett (Pacific Legal Foundation), Priest Lake, ID. Forensic analysis in disputed wetland violation. Case will be argued in the U.S. Supreme Court in the first quarter of 2012.
2008-2009	Snell & Wilmer, Salt Lake City, UT. Represent developer of a Park City, Utah project in bid to have property's wetlands determined isolated.
2008 – 2009	Thomsen-Stephens Law Offices, PLLC (J. Michael Wheiler). Unpermitted bank protection project. Client was convicted of misdemeanor wetland violation instead of felony, as originally threatened by U.S. Attorney.
2006 – 2009	Thomsen-Stephens Law Offices, PLLC (J. Michael Wheiler). Violation of wetland permitting conditions in a manner that could affect Endangered Chinook Salmon. Forensic analysis of alleged violation and prepared expert report detailing that effects of violation on wetlands were minimal. Anaysis of prosecution exhibits and provided opinion as to validity and best countermeasures. Sentence was reduced from 3 years in a federal penitentiary to 6 months house arrest and restoration of the site. Negotiated terms of restoration with federal agencies including USACOE, EPA, NOAA, USFWS and Idaho DNR, then developed restoration plan satisfying all agency requirements.
2005-2006	Atkin Law Offices, P.C., Salt Lake City. Unpermitted work in intermittent stream. Expert Witness for sentencing phase of federal conviction in U.S. District Court, Pocatello, ID. Sentence was reduced from 8 years in a federal penitentiary to 3 years when Mr. Kagel testified that the presence of wetlands and the time of the violation could not be determined, and that minimal, if any, environmental damage resulted from the client's work.
2006	Idaho Bar Association. Development and presentation of 3 hour CE course to the Real Property Section on Wetlands Issues and Regulations pertaining to the Federal Clean Water Act, July, 2006, Sun Valley, Idaho.
2007-present	Forensic analysis other alleged wetland violations in Iowa, Illinois, South Carolina, New York, Arkansas, Missouri, Wyoming, Utah, Alaska and Idaho.

Professional Organizations and Memberships

Society of Wetland Scientists
The Wildlife Society
North American Moose Foundation
National Wildlife Federation
Foundation for North American Wild Sheep
Rocky Mountain Elk Foundation
Ducks Unlimited
Pheasants Forever
Quality Deer Management Association
Pope & Young Club
Associated General Contractors of Iowa, Associate Member

Extensive References Available Upon Request

Kagel Environmental, LLC
Wetlands, Wildlife and Permitting Specialists
ray@kagelenvironmental.com
susan@kagelenvironmental.com

3879 E 200 N
Rigby, Idaho 83442
Phone (208) 745-0076
Cell (208) 313-3890
Fax (208) 441-4382

Susan Kagel, M.S., Ph.D.

Professional Expertise

- Execution of wetland determinations and forensic analysis of alleged wetland violations.
- Preparation and implementation of wetland mitigation and restoration work plans.
- Assistance with comprehension of and compliance with federal Clean Water Act laws and regulations.
- Expert witness testimony in litigation involving wetlands.
- Preparation of Section 404 permit applications and After-The-Fact (ATF) authorizations for discharges in regulated waters and wetlands.
- Literature and web research related to environmental and legal matters.
- Interpretive analysis of aerial photography, soil surveys, topo surveys, and National Wetland Inventory (NWI) mapping.
- Preparation of graphics for reports and court exhibits.

Professional Positions

2007-Present — Susan Kagel, M.S., Ph.D., Consulting Wetland Scientist Case Manager, Kagel Environmental, LLC, Rigby, Idaho.

2009-Present — Susan Kagel, Ph.D., M.S., Principal, Alpenglow Environmental Solutions, LLC, Rigby, Idaho. Providing NPDES and NEPA Compliance assistance and market research for environmental matters.

2007 — Wetland Scientist Trainee, Lone Goose Environmental, LLC, Rigby, Idaho.

- 300+ hours of field training in wetland delineation, including vegetation, soils and hydrology, regulations, permit application preparation, and report preparation.

2001-2007 — Susan Wimer-Mackin, M.S., Ph.D. Director of Pre-Clinical Immunology – LigoCyte Pharmaceuticals, Inc., Bozeman, MT.

- Directed and supervised a team of scientists in performing pre-clinical research on biodefense vaccines.
- Principal investigator on contracts with U.S. Department of Defense, 2001-2007.
- Secured 5 year, $5M National Institute of Health for Preclinical Development of Non-Invasive Anthrax Vaccine and served as Principal Investigator.
- Developed comprehensive program (including record keeping, safety protocols, training and security) and secured CDC approval for possession and utilization of the registered agent *Bacillus anthracis* (anthrax).

1996-2001 — Post-doctoral Fellowship, Cellular Biology, Children's Hospital and Harvard University Medical School, Boston, MA.

- Secured and succesfully completed competetive National Institute of

Health Post-Doctoral Fellowship for research on toxin trafficking in mamalian cells.

1991-1996 Graduate Research Assistant, Veterinary Molecular Biology, Montana State University, Bozeman.

- Dissertation project concerned cellular protein trafficking.

1989-1991 Susan Wimer, M.S., Research Associate in Animal and Range Science, Montana State University, Bozeman. Trials tested the effects of various forage/nutritional regimens on bovine production and fertility.

- Responsible for ruminant nutrition trials, including experimental design, data collection, laboratory and statistical analysis.

1984-1986 Susan Wimer, M.S., Agricultural Products Specialist, Agricultural Products, 3M, Lincoln, NE. Lincoln, Nebraska.

- National Expert for cool season pasture management with plant growth regulators.
- Responsible for identification of suitable candidate pastures, application of plant growth regulators and monitoring of cool season grass pastures.
- Collected all data including vegetative quality, animal performance and plant response throughout Missouri, Nebraska, Kansas, Iowa and Colorado in support of EPA label submission for use of Embark™ (mefluidide) on cool season grass pastures.
- Chief Consultant for cattle producers on chemical application, weed control and management of grazing.

1982-1986 Susan Wimer, Graduate Research Assistant, University of Nebraska, Lincoln.

- Thesis research concerned pasture application of mefluidide and effects on nutritive value of cool season grasses for beef cattle grazing.
- Conducted research into various pasture management and forage usage regimens.
- Inducted into Gamma Sigma Delta, Honor society of Agriculture.

1980-1982 Undergraduate Research Assistant, Department of Animal Science, University of Missouri, Columbia. Received various College of Agriculture scholarships, including the Kansas Bluestem Company Research Scholarship, 1981.

- Responsible for complete management of nutritional metabolism trials in sheep and cattle, including chemical analysis of animal and forage analysis, and statistical analysis of data.
- Received various College of Agriculture scholarships, including the Kansas Bluestem Company Research Scholarship, 1981 for forage research.

Education

Ph.D. Veterinary Molecular Biology, 1996, Montana State University.

M.S. Animal Science, 1986, University of Nebraska, Lincoln.

B.S. Agriculture, 1982, University of Missouri, Columbia.

Selected Consulting Projects

2011	Rich and Henderson, P.C., Easton MD: Forensic analysis of 80-acre alleged wetland violation, Federalsburg, MD. (Scheduled to go to Federal Court in 2012.)
2011	Session Law Firm, Kansas City, MO. Defense of a VFW post against wetland violation allegations. KE's forensic analysis indicated that there is no violation.
2011	Snell & Wilmer, Salt Lake City, UT. Represent developer of a Park City, Utah project in bid to have property's wetlands determined isolated.
2010-2011	Amodio Stanley & Reeves LLC, Anchorage, AK. Defense of client against allegations of filling a wetland. Forensic analysis of alleged violation site, including analysis of historical aerial photography. Original charge was filling 3.5 acres, KE was successful in reducing charge to less than 0.3 acre of wetland filled. Scheduled to be heard by an Administrative Law Judge in 2012 due to penalty dispute.
2009 – 2010	BHW Law and Jim Seibe Law: Defense witness for federal criminal trial, disputed wetland destruction. Forensic analysis of alleged violation site, data analysis, report and court exhibit preparation. Anaysis of prosecution exhibits, extensive document research into application of wetland regulations and provided direction as to best countermeasures of prosecution's case. Defendant acquitted on all charges, Coeur d'Alene, ID.
2009-2011	Chantelle and Mike Sackett (Pacific Legal Foundation), Priest Lake, ID. Forensic analysis in disputed wetland violation. Case will be argued in the U.S. Supreme Court in the first quarter of 2012.
2008 – 2009	Thomsen-Stephens Law Offices, PLLC (J. Michael Wheiler). Forensic analysis of unpermitted bank protection project and negotiated for defendant with EPA. Prepared restoration/mitigation plan. Client was convicted of misdemeanor wetland violation instead of felony, as originally threatened by U.S. Attorney. Site was succesfully restored.
2006 – 2009	Thomsen-Stephens Law Offices, PLLC (J. Michael Wheiler). Violation of wetland permitting conditions in a manner that could affect Endangered Chinook Salmon. Forensic analysis of alleged violation and prepared expert report detailing that effects of violation on wetlands were minimal. Anaysis of prosecution exhibits and provided opinion as to validity and best countermeasures. Sentence was reduced from 3 years in a federal penitentiary to 6 months house arrest and restoration of the site. Negotiated terms of restoration with federal agencies including USACOE, EPA, NOAA, USFWS and Idaho DNR, then developed restoration plan satisfying all agency requirements.
2007-present	Forensic analysis other alleged wetland violations in Iowa, Illinois, South Carolina, New York, Arkansas, Missouri, Wyoming, Utah, Alaska and Idaho.

Professional Organizations and Memberships

American Society of Wetland Scientists

Associated General Contractors of Iowa, Associate Member

North American Moose Foundation

Publications & Presentations

Note: Susan Kagel was formerly known as Susan Wimer and Susan Wimer-Mackin.

Publications:

1. **Wimer-Mackin, S.**, M. Hinchcliffe, C.R. Petrie, S.J. Warwood, W.T. Tino, M.S. Williams, J.P. Stenz, A. Cheff, C. Richardson. 2006. An intranasal vaccine targeting both the *Bacillus anthracis* toxin and bacterium induces robust protection against aerosol anthrax challenge in rabbits. Vaccine 24: 3953-3963.
2. **Wimer-Mackin, S.**, R. K. Holmes, A. A. Wolf, W. I. Lencer, and M. G. Jobling. 2001. Characterization of Receptor-Mediated Signal Transduction by *Escherichia coli* Type IIa Heat-Labile Enterotoxin in the Polarized Human Intestinal Cell Line T84. Infect. Immun. 69:7205-7212.
3. Mel, S. F., K.J. Fullner, **S. Wimer-Mackin**, W.I. Lencer, J.J.Mekalanos. 2000. Association of protease activity in *Vibrio cholerae* vaccine strains with decreases in transcellular epithelial resistance of polarized T84 intestinal epithelial cells. Infect. Immun. 68:6487-6492.
4. Beauregard, K.E., **S. Wimer-Mackin**, R.J. Collier, W.I. Lencer. 1999. Anthrax toxin entry into polarized epithelial cells. Infect. Immun. 67:3026-3030.
5. Mills, J.S., H.M. Miettinen, D. Barnidge, M.J. Vlases, **S. Wimer-Mackin**, E.A. Dratz and A.J. Jesaitis. 1998. Identification of a ligand binding site in the human neutrophil formyl peptide receptor using a site-specific fluorescent photoaffinity label and mass spectrometry. J. Biol. Chem. 273: 10428-10435.
6. Wolf, A.A., M.G. Jobling, **S. Wimer-Mackin**, M. Ferguson-Maltzman, J.L. Madara, R.K. Holmes and W.I. Lencer. 1998. Ganglioside structure dictates signal transduction by cholera toxin and association with caveolae-like membrane domains in polarized epithelia. J. Cell Biol. 141:917-927.
7. **Wimer-Mackin, S.** and B.L. Granger. 1996. Transmembrane domain effects on the intracellular distribution of lysosomal membrane glycoprotein A (LAMP-1). Biochem. Biophys. Res. 229:472-478

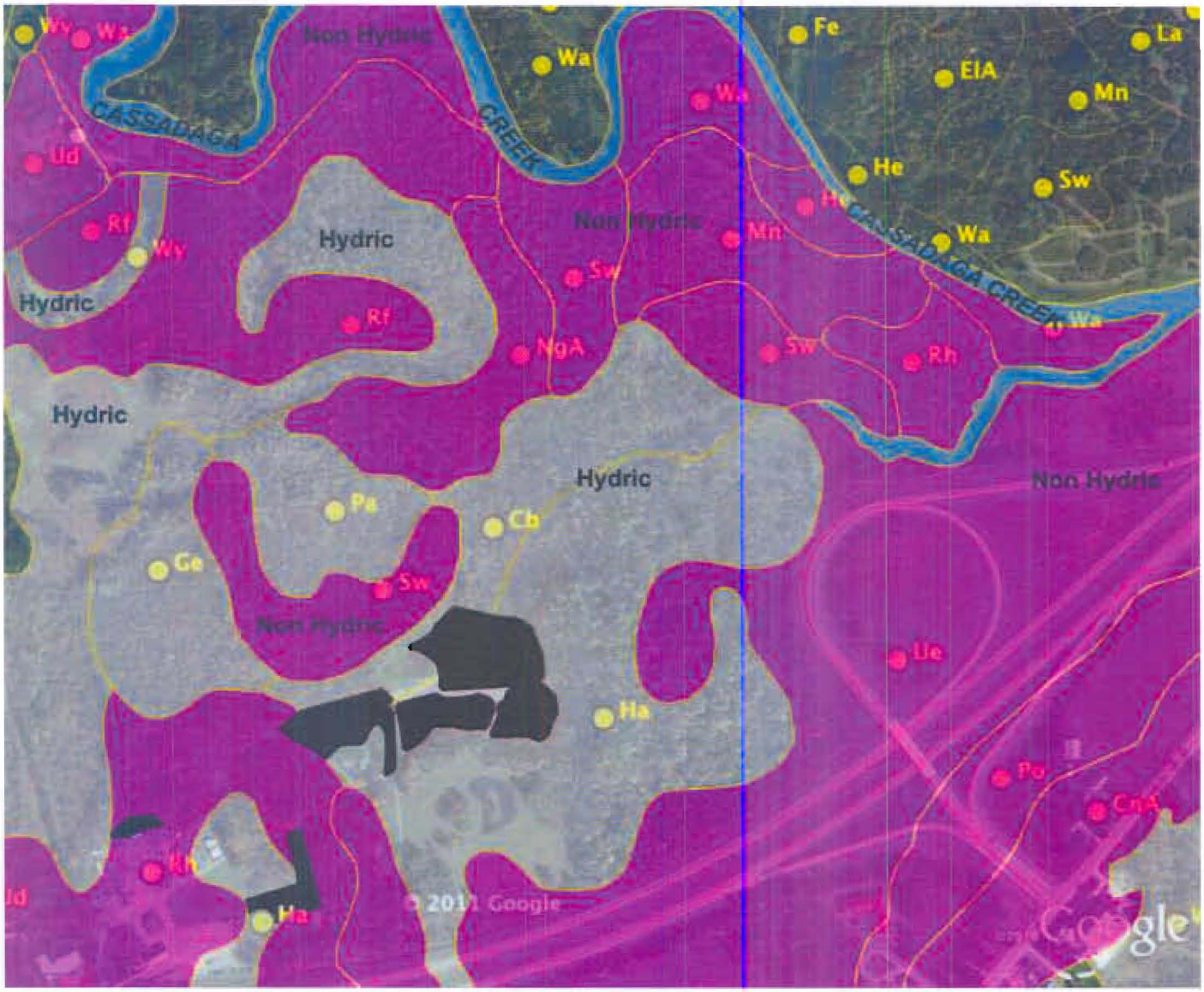
Abstracts and Presentations (in chronological order):

1. **Wimer-Mackin, S.**, M. Hinchcliffe, C. Petrie, S. Warwood, A. Cheff, J. Stenz, and C. Richardson. 2005. Robust protection against inhalation anthrax by intranasal immunization with a vaccine targeting both the toxin and bacterium of *Bacillus anthracis*. Platform talk, *Bacillus* ACT05 Conference, Santa Fe, NM.
2. Tino, W.T., P. Mascolo, D. Campbell, M. Williams, C. Richardson, A. Palacanda, **S. Wimer-Mackin**. 2005. Stimulation of innate immune responses by capsule extract

antigen of *B. anthracis*. Poster #109, Bacillus ACT05 Conference, Santa Fe, NM.

3. Tino, W.T., M. Williams, C. Petrie, D. Campbell, **S. Wimer-Mackin**. 2005. Characterization of murine T-Cell responses to anthrax antigens. Poster #43, *Bacillus* ACT05 Conference, Santa Fe, NM.
4. **S. Wimer-Mackin**, M. Hinchcliffe, C. Petrie, S. Warwood, A. Cheff, J. Stenz and C. Richardson. 2005. Intranasal immunization of rabbits with a powder vaccine containing both toxin and capsule antigens: superior protection against aerosol anthrax challenge. Poster #47, 2005 ASM Biodefense Research Meeting, Baltimore, MD.
5. Olds, Cara, P. Mascolo, C. Petrie, S. Wimer-Mackin and T. Vedvick. Expression and purification of recombinant BclA, a potential anti-terrorism protein. Poster #220, PepTalk 2005, San Diego, CA.
6. **Wimer-Mackin, S.**, S. Warwood, E.V. Oaks. 2004. Intranasal immunization with *B. anthracis* protective antigen and mucosal adjuvants protects BALB/c mice against lethal toxin challenge. Abstract #176, 2004 ASM Biodefense Research Meeting, Baltimore, MD.
7. **Wimer-Mackin, S.** Mucosal Anthrax Vaccines. 2003. Invited Article, Vaccine Technology & Development News 2:6.
8. **Wimer-Mackin, S.**, S. Warwood, R. Bargatze. Novel vaccines against anthrax. Invited talk, Detection of Pathogens and Chemical Weapons Special Symposia, Northwest Regional Meeting of the American Chemical Society July 12-14, 2003.
9. **Wimer-Mackin, S.**, A.A. Wolf, M.G. Jobling, M. Ferguson-Maltzman, J.L. Madara, R.K. Holmes and W.I. Lencer. 1998. Ganglioside structure dictates signal transduction by cholera toxin and association with caveolae-like membrane domains in polarized epithelia. Plenary session talk, Lipid Modification of Proteins Summer FASEB Conference.
10. **Wimer-Mackin, S.**, J.D. Coffin and B.L. Granger. 1995. Expression of a hamster lysosomal membrane glycoprotein transgene in mice. Mol. Biol. Cell 6:S, p. (abstract).
11. **Wimer-Mackin, S.** and B.L. Granger. 1994. Transmembrane domain mutations increase the surface appearance of a lysosomal membrane glycoprotein. Mol. Biol. Cell 5:S, p. 115a (abstract).
12. Granger, B.L., S.J. Warwood, S. Uthayakumar and **S.K. Wimer**. 1992. Transport of a lysosomal membrane glycoprotein. Mol. Biol. Cell 3(Suppl.):312a (abstract).

Extensive References Available Upon Request


Non Hydric
Wa
CASSADAGA
CREEK
Fe
La
ElA
Mn
He
Sw
Ud
Rf
Wy
Hydric
Non Hydric
Mn
Sw
Wa
CASSADAGA CREEK
Wa
NgA
Sw
Rh
Hydric
Hydric
Non Hydric
Pa
Cb
Ge
Sw
Non Hydric
Ue
Ha
Po
CmA
Rh
Ha
© 2011 Google
Google

April 20, 1994

EXHIBIT
B5

April 29, 1994

EXHIBIT
tabbies
B1.0

November 24, 2006

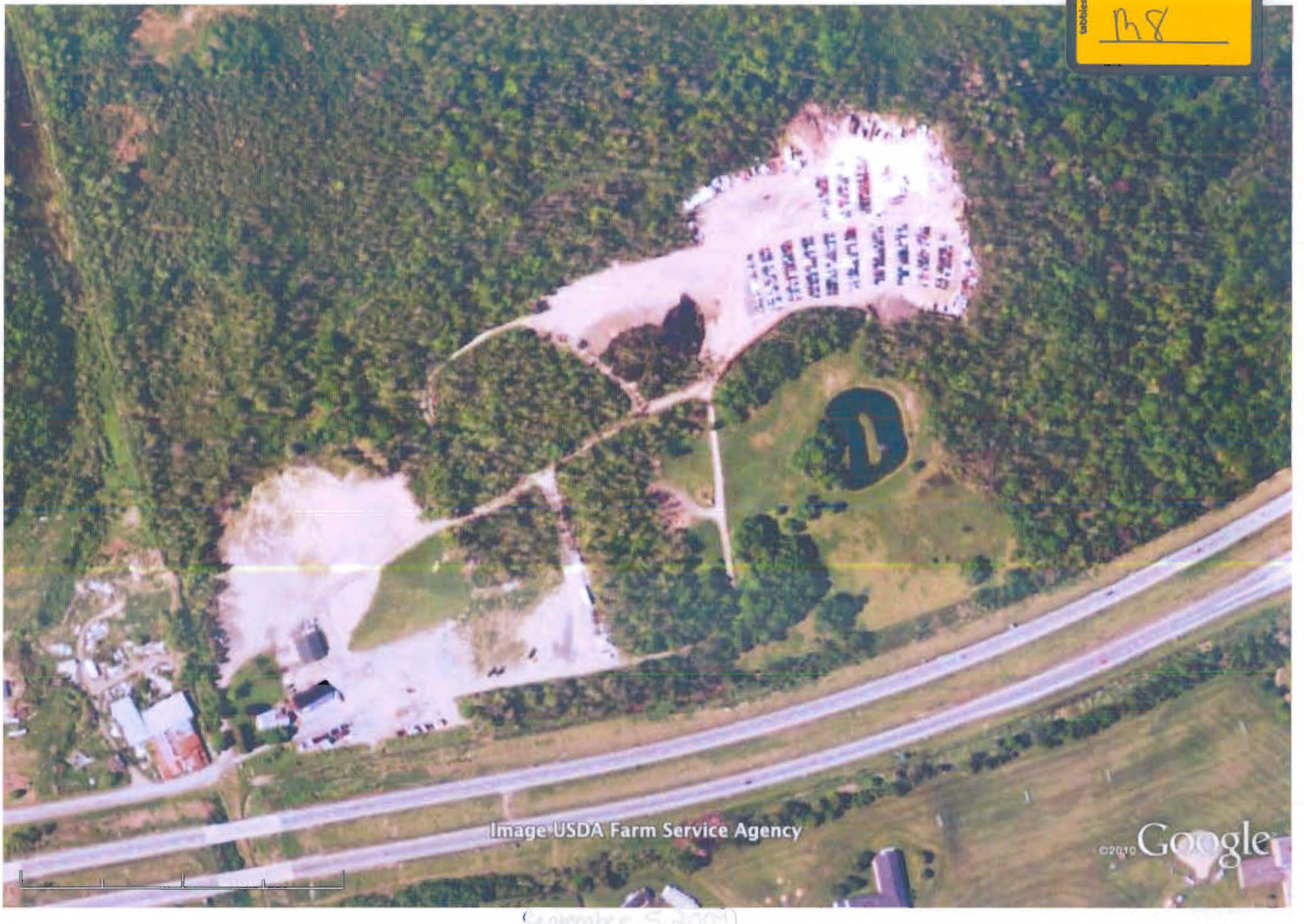
EXHIBIT
B7
tabbies

July 23, 2009

EXHIBIT

tabbies

18



September 5, 2009

EXHIBIT
tabbies
R9

October 6, 2011

Historical Aerial Photo
2009
2160 LAFAYETTE ST
FALCONER, NY 14733

Target Site: 42.127328 -79.20256; Job Number: 1

EXHIBIT
tabbies
R10

N
W E
S

1 inch equals 750 feet

CARBON FOOTPRINT OF FILL EXCAVATION

Assumptions: Fill is an average of 3' (1 yard) deep.
8.2 acres of fill to be removed

1 acre = 43,560 ft^2 = 4,840 yd^2

4,840 yd^2/acre x 8.2 acres x 1 yd deep = 39,688 cy (cubic yards) fill in 8.2 acres

Assumptions: 12 cy dump truck, fuel efficiency is 5-8 mpg
10 mile round trip for dump truck to deposit excavation spoils, uses 2.5 gal gasoline per load

39,688 cy fill/12 = 3,307 dump truck loads

3,307 loads x 2.5 gal gasoline = 8,250 gal gas required for dump trucks

Assumption: 1 gal gasoline produces 19.643 lbs CO_2

8,250 gal gasoline x 19.643 lbs CO_2/gal gasoline = 64,966 lbs CO_2 produced by dump trucks for trucking excavation spoils

Assumptions: 1 yard excavator, uses ~50 gal/diesel per 8 hour day, moderately difficult digging
Loading 12 cy onto dump truck takes 30 minutes, or 2 loads/hr

3,307 dump truck loads = 1,654 hours loading = 207 eight hour days of excavation

207 days x 50/gal diesel/day = 10,335 gal diesel

Assumption: 1 gal diesel produces 22.377 lbs CO_2

10,335 gal diesel x 22.377 lbs CO_2/gal = 231,602 lbs CO_2 from excavator operation

64,966 + 231,602 = 296,568 lbs CO_2 produced
= >148 tons CO_2 produced
= >18 tons CO_2 produced per acre of fill removed

References:
http://www.carbonfund.org/site/pages/carbon_calculators/category/Assumptions

EXHIBIT
tabbies
B11