



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

JAN 12 2011

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Larry Kane, Esq.
Bingham and McHale, LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204

**Re: Consent Agreement and Final Order, Batesville Water & Gas Utility
Docket No. CWA-05-2010-0013**

Dear Mr. Kane:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on January 12, 2011, resolving the matters alleged therein. Your client's \$42,300 civil penalty payment is due 30 days from the effective date of this CAFO, i.e., the filing date of January 12, 2011, or February 11, 2011. Please refer to Billing Docket No. 2751143W004, and the case Docket Number above when remitting payment. Payment obligations and instructions are noted in paragraphs 8 – 9 and 11 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 Jeffrey Cahn, Associate Regional Counsel at (312) 886-6670.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory T. Carlson".

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

Enclosure

cc: Jeffrey Cahn (w/ encl.), ORC, C-14J
Andrew Roberts, U.S. ACOe – Louisville District, Louisville, KY
David Carr, IDEM, Indianapolis, IN



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WW-16J

Kathryn Watson, Esq.
Spalding & Hilmes, PC
330 S. Downey Avenue
Indianapolis, Indiana 46219-7047

Re: Consent Agreement and Final Order, Gunter Excavating, LLC
Docket No. CWA-05-2010-0013

Dear Ms. Watson:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on January 12, 2011, resolving the matters alleged therein. Your client's \$9,069 civil penalty payment is due 30 days from the effective date of this CAFO, i.e., the filing date of January 12, 2011, or February 11, 2011. Please refer to Billing Docket No. 2751143W004, and the case Docket Number above when remitting payment. Payment obligations and instructions are noted in paragraphs 8 – 9 and 11 of the CAFO.

Thank you for resolving this matter. Should you have any questions, please do not hesitate to me at (312) 886-0124 or Jeffrey Cahn, Associate Regional Counsel at (312) 886-6729.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory T. Carlson".

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

Enclosure

cc: Jeffrey Cahn (w/ encl.), ORC, C-14J
Andrew Roberts, U.S. ACOe – Louisville District, Louisville, KY
David Carr, IDEM, Indianapolis, IN

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Proceeding to Assess a Class II Civil
)	Penalty Under Section 309(g) of the
BATESVILLE WATER & GAS UTILITY)	Clean Water Act, 33 U.S.C. § 1319(g)
and)	
DON GUNTER EXCAVATING, LLC,)	
)	Docket No. CWA-05-2010-0013
Respondents.)	
<hr/>		Chief Judge Susan L. Bird

RECEIVED
JAN 12 2011

CONSENT AGREEMENT

Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (EPA), and Respondents, Batesville Water & Gas Utility (“Batesville Utility”) and Don Gunter Excavating, LLC (“Gunter Excavating”) (together, “Respondents”), wish to settle all matters pertaining to their involvement in this case, and have consented to the entry of this Consent Agreement and Final Order.

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. EPA initiated this proceeding against Respondent for the assessment of a class II civil penalty pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), by filing an administrative complaint on June 10, 2010 (“the Complaint”).

2. EPA’s Complaint alleges that between October 9, 2008, and November 5, 2008, Respondent Gunter Excavating, acting on behalf of Respondent Batesville Utility, discharged approximately 21,100 cubic yards of fill and dredged material and organic debris from excavators and bulldozers into the Mollenkramer Reservoir, within the city of Batesville, Ripley

County, Indiana, a water of the United States, without first obtaining a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

3. On or about July 12, 2010, Respondent Batesville Utility transmitted its Answer for filing. On or about August 11, 2010, Gunter Excavating transmitted its Answer for filing.

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.

Terms of Settlement

5. Respondents admit the jurisdictional allegations in the Complaint, and neither admit nor deny the factual allegations in the Complaint.

6. Upon execution of the Final Order, Respondents waive, solely for purposes of any further proceedings under or pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), all rights to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, or in this Consent Agreement, including, but not limited to, their right each to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and their right each to appellate review of the Final Order found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

7. Each Respondent consents to the assessment of the civil penalty specified in this Consent Agreement for such Respondent, and to the terms of this Consent Agreement.

8. In consideration of the alleged violation, the environmental and compliance significance of the matter, and based upon the nature, circumstances, extent and gravity of the violations alleged herein, culpability, economic benefit or savings resulting from the alleged violations, and such other matters as justice may require, EPA has determined that an appropriate civil penalty to settle this action with respect to Respondent Batesville Utility is \$42,300.00, and

with respect to Respondent Gunter Excavating is \$9,069.00.

9. Respondents agree each to pay their respective civil penalty amount set out in Paragraph 8 for the alleged violations set forth in the Complaint by mailing certified or cashier checks made payable to “Treasurer, United States of America” to the following address:

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

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The effective date of this Consent Agreement is the date the signed Final Order is filed with the Regional Hearing Clerk, subject to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C). Payment of the civil penalty is due within 30 calendar days from the effective date. Respondents each shall provide docket number CWA-05-2010-0013 on their check.

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

11. When Respondents pay the civil penalties in accordance with Paragraph 9 above, Respondents shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three parties at the address indicated:

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

and

Jeffrey A. Cahn
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

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

12. A Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 9, above, will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest of this penalty, a Respondent that is the subject of a collection action shall also be required to pay attorney's fees and costs for collection.

13. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue under the terms of this Consent Agreement, at the rate established by the Secretary of the Treasury. 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 90 days of its due date as listed in Paragraph 9 of the Consent Agreement.

Public Notice

14. Pursuant to 33 U.S.C. § 1319(g)(4)(A), on or about June 10, 2010, EPA provided public notice of, and a reasonable opportunity to comment on, its proposed assessment against Respondents of a class II civil penalty pursuant to 33 U.S.C. § 1319(g). No person responded to the public notice of the commencement of this proceeding, and thus pursuant to section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), no interested persons need be notified of the Consent Agreement, or of the issuance of the Final Order in this matter.

General Provisions

15. This Consent Agreement resolves only each Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

16. This Consent Agreement does not affect the right of EPA, or the United States, to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

17. This Consent Agreement does not affect each Respondent's obligation to comply with all applicable federal, state or local laws, regulations, requirements and permits.

18. 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.

19. The Consent Agreement shall be binding upon EPA, and upon the officers, directors, employees, successors, and assigns of each Respondent.

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

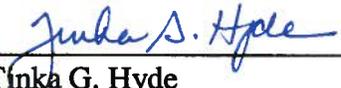
21. EPA and Respondents agree to the issuance and entry of the accompanying Final

Order.

22. This Consent Agreement constitutes the entire agreement between EPA and Respondents.

United States Environmental Protection Agency, Complainant:

Agreed to the 5th day of January, 2011



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

*In the Matter of Batesville Water & Gas Utility
and
Don Gunter Excavating, LLC
Docket No.: CWA-05-2010-0013*

Don Gunter Excavating, LLC, Respondent:

Agreed to the 18th day of December, 2010

By: Don Gunter
Name:
Title: MANAGING MEMBER

*In the Matter of Batesville Water & Gas Utility
and
Don Gunter Excavating, LLC
Docket No.: CWA-05-2010-0013*

FINAL ORDER

This Consent Agreement and this Final Order shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31

IT IS SO ORDERED

Dated: 1-6-2011



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency Region 5
Chicago, Illinois

RECEIVED
JAN 12 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Consent Agreement and Final Order (Docket No. CWA-05-2010-0013) was filed with the Regional Hearing Clerk on January 12, 2011, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the 12th day of January 2011, upon the following:

Larry Kane, Esq. (for Batesville Water & Gas Utility)
Bingham McHale, LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204;

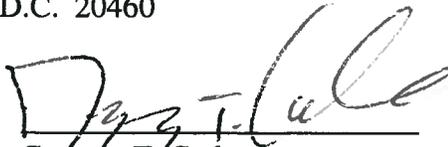
and

Kathryn Watson, Esq. (for Gunter Excavating, LLC)
Spalding & Hilmes, PC
330 S. Downey Ave.
Indianapolis, Indiana 46219-7047.

A Consent Agreement and Final Order copy (Docket No. CWA-05-2010-0013) was served by United States Mail, Certified and Postage Prepaid, on the 12th day of January 2011, 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

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JAN 12 2011
REGIONAL HEARING CLERK
USEPA
REGION 5


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