3:06 cr 17 (EBB)
USA v Operations Management Intl, Inc

United States District Court
District of Connecticut
FILED AT NEW HAVEN
2/8 2006
Kevin F. Rowe, Clerk
By B. Rodriguez
Deputy Clerk

Deferred Prosecution Agreement

1. Operations Management International, Inc. ("OMI" or the "Company") by its undersigned attorneys, pursuant to authority granted by its Board of Directors, and the United States Attorney's Office for the District of Connecticut (the "Office"), enter into this Deferred Prosecution Agreement (the "Agreement"). Except as specifically provided below, the Agreement shall be in effect for a period of 24 months from the date it is fully executed.

2. The Office has informed OMI that it will file, on or shortly after the date this Agreement is fully executed, an Information in the United States District Court for the District of Connecticut charging OMI with failure to comply with reporting requirements under the Clean Water Act, 33 U.S.C. § 1319(c)(1)(A).

3. OMI and the Office agree that, upon filing of the Information in accordance with the preceding Paragraph, this Agreement shall be publicly filed in the United States District Court for the District of Connecticut.

4. In light of OMI's efforts to date, as outlined below, and its willingness to: (a) acknowledge responsibility for the conduct at its wastewater treatment facilities located at 345 East Shore Parkway, New Haven, Connecticut and 60 South Street, Norwalk, Connecticut (the New Haven and Norwalk facilities, respectively); (b) continue its cooperation with the Office and other governmental regulatory agencies; (c) conduct operations at the New Haven and Norwalk facilities in compliance with all applicable environmental laws; and (d) consent to the payment of $2 million as set forth in Appendix A, the Office shall recommend to the Court that prosecution of OMI on the Information filed pursuant to Paragraph 2 be deferred for a period of 24 months from the filing date of the Information. If the Court declines to defer prosecution for any reason, this Agreement shall be null and void, and the parties will revert to their pre-Agreement positions.

5. OMI has undertaken significant reforms to ensure and enhance its compliance with environmental laws and regulations in response to the investigation by the Office. Steps taken to date include:

a) OMI reviewed and reevaluated its existing compliance protocol and subsequently developed, adopted and implemented an extensive nationwide compliance and auditing program, including at all of its Connecticut facilities. This new program includes a detailed checklist of compliance and reporting requirements required under the permit at each particular site. Legal and technical teams now provide more careful review and dedicated assistance to each facility. This review and audit program has resulted in several voluntary disclosures to appropriate State agencies across the United States and has been applied to all of OMI's 116 plants nationally. The President of the company telephoned every Project Manager and instructed him or her on the importance of the program and that this protocol was mandatory and would be the subject of compliance audits.

OMI has substantially increased the personnel and resources dedicated to environmental compliance. In December, 2002, OMI appointed a Director of Environmental Compliance to provide national leadership in the design and implementation of environmental compliance training and compliance assurance programs. Six new persons were added to assist with these programs, augmenting OMI's compliance and reporting group. In addition to the plant-specific permit compliance checklists and training support described above, these personnel implement the nationwide compliance audit program. Two major training courses were provided to all OMI personnel. These training courses were conducted in two phases. Phase I entitled "Compliance and Reporting, Values at Work" was initiated in June 2003. Phase II entitled "Roles and Responsibility, Associates Working as a Team to Achieve the Goal" and a Phase II(a) entitled "Compliance and Reporting for Project Managers" was given during September 2003 through February 2004 by Compliance and Reporting Group trainers working with the Manager of Quality and Technology and senior operations personnel. Annual refresher training is provided, supplemented with additional plant-specific training.

The training has included case studies designed to focus employees on real life situations. This culture of compliance as a top priority is reinforced by the furnishing to all employees of a Standard Operating Procedure making clear that full compliance, and reporting of any non-compliance, is every employee's job. The first round of compliance audits at OMI's plants has been completed and followed by corrective action plans to remedy any deficiencies. The program calls for additional audits at three year intervals, or more frequently as needed, as well as focused reviews whenever problems arise.

c) OMI has installed a telephone "helpline" for its employees nationwide to report any perceived or suspected compliance or ethical problems and has established a process by which issues raised can be quickly brought to the attention of upper management. This "helpline" can be accessed by e-mail or fax as well as by telephone. This establishment of the helpline was accompanied by the delivery of enhanced ethics training for all employees. OMI reviewed and strengthened its preexisting ethics program and has since provided annual ethics refresher training to all personnel. To date, the helpline has been used on a number of occasions, resulting in corrective action taken by OMI and in several instances voluntary disclosures to the relevant regulatory authorities.

d) OMI has spent over $6 million to implement the enhanced corporate compliance program described above.

e) OMI increased its periodic project compliance reviews, laboratory reviews and pretreatment program reviews at each of its Connecticut facilities. In particular, the laboratory reviews have been expanded so that the reviewing team not only

provides instructions to remedy any apparent noncompliance or failure to follow best practices, but in addition the reviewing team remains on site to write or revise any new procedures and provides training to make sure that the laboratory personnel have the tools they need to ensure compliance. This enhanced compliance program now continues on a routine basis.

f) OMI removed and replaced its Operations Manager at the New Haven facility, its New Haven Project Manager, and its Regional Business Manager and Regional Vice President. The new leadership has placed the highest priority on compliance assurance and reporting of noncompliance, once identified.

g) OMI replaced the manual feed chlorine disinfection system at the New Haven facility, which was more difficult to monitor, with a state-of-the-art feed system. The new system constantly monitors chlorine levels in the effluent and makes any necessary modifications to accommodate fluctuations in water flow.

h) Starting in November, 2002, OMI has taken a number of steps to improve the operating performance and compliance and reporting procedures at the Norwalk facility. Internal reviews conducted by OMI indicated that there was room for improvement with respect to sampling procedures and compliance reporting. Two days of compliance training was provided to the Norwalk personnel responsible for compliance assurance and reporting, including training on the use of the NPDES permit-specific compliance checklist described above. OMI reviewed the standard operating procedures (SOPs) at the Norwalk plant and revised a number of them and created new ones in order to improve the performance of its operations personnel with respect to plant operations, compliance with regulatory requirements and reporting.

i) To strengthen management, OMI removed and replaced its Project and Maintenance Managers at its Norwalk facility. The compliance performance of the Norwalk plant following implementation of the procedures described above, as reflected in the Monthly Operating Reports submitted to the state and to the U.S. Environmental Protection Agency, has significantly improved.

j) To address a past problem involving occasional exceedences in the Norwalk facility of total suspended solids limits in the effluent, which occasionally caused a discoloration in receiving waters, OMI designed and implemented a Uniform Process Control Procedure which was piloted during the second half of 2003 and completed in the Spring of 2004. As a result, there have been no recurrences of such instances since June, 2003. As a further precaution, OMI installed a supplemental polymer addition system to the final clarifiers at Norwalk.

6. OMI shall maintain and continue to implement the reforms and compliance measures already undertaken.

7. OMI agrees to continue its environmental management system at the New Haven and Norwalk facilities. OMI agrees to conduct quarterly external audits or external reviews of the system during the term of this Agreement. OMI agrees to provide the Office with a copy of each of these reports. To the extent that any nonconformities or deficiencies are discovered, OMI will take appropriate corrective action.

8. OMI admits, accepts and acknowledges responsibility for the facts set forth in the Statement of Facts attached as Appendix B ("Statement of Facts") and incorporated by reference herein by entering into this Agreement.

9. OMI agrees that in the event that future criminal proceedings are brought by the Office in accordance with this Agreement, OMI will not contest the admissibility of the Statement of Facts in any such proceedings. Nothing in this Agreement shall be construed as an acknowledgment by OMI that the Agreement, including the Statement of Facts, is admissible or may be used in any proceeding other than in a proceeding brought by the Office.

10. OMI expressly agrees that it shall not, through its present or future attorneys, Board of Directors, agents, officers or employees, make any public statement contradicting any statement of fact contained in the Statement of Facts or its acknowledgement that failure to comply with reporting requirements under the Clean Water Act is a serious matter, as reflected by the efforts and resources the company has committed and will continue to commit to raise the industry bar for regulatory compliance. Any such contradictory public statement by OMI, its present or future attorneys, Board of Directors, agents, officers or employees, shall constitute a breach of this Agreement and OMI would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any public statement by any such person contradicting a fact contained in the Statement of Facts or the acknowledgement above will be imputed to OMI for the purpose of determining whether OMI has committed a knowing and material breach of this Agreement shall be at the sole discretion of the Office. Should the Office notify OMI of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Statement of Facts or the acknowledgement above, OMI may avoid breach of this Agreement by publicly repudiating such statement within twenty-four (24) hours after such notification. This paragraph is not intended to apply to any statement by any former OMI employee, officer or director, or any OMI employee, officer or director testifying in any proceeding in an individual capacity and not on behalf of OMI.

11. OMI agrees that its continuing cooperation during the term of this Agreement shall include, but shall not be not limited to, the following:

(a) Not engaging in or attempting to engage in any criminal conduct at any of its facilities located in the District of Connecticut.

(b) Delivering to the Office copies of all memoranda of interviews conducted of OMI employees relating to the matters which have been under investigation by the Office regarding the New Haven and Norwalk facilities. By agreeing not to assert any

claim of privilege (including but not limited to the attorney-client and the work product protection privileges) as to any such memoranda in providing them to the Office, it is agreed that OMI does not waive, and shall not be deemed to have waived, any such privilege, and may assert the attorney-client privilege, work product protection privilege, or other privileges with respect to any such memoranda or the subject matter or information contained therein with respect to any third party.

(c) The Office will maintain the confidentiality of the materials disclosed in Paragraph 11(b) and will not disclose them to any third party, except to the extent that the Office determines, in its sole discretion, that disclosure is otherwise required by law or would be in furtherance of the discharge of the duties and responsibilities of the Office.

(d) Making available OMI officers, directors, and employees and using its best efforts to make available former OMI officers, directors, and employees to provide information and/or testimony at all reasonable times as requested by the Office, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities.

(e) Providing testimony, certifications, and other information deemed necessary by the Office or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any criminal proceeding as requested by the Office.

(f) OMI agrees, if requested by the Office during the term of this Agreement, to call a meeting, on a date and place mutually agreed upon by OMI and the Office of management and other OMI persons identified by the Office for the purpose of communicating the goals and expected effect of this Agreement.

12. OMI acknowledges and understands that its prior, ongoing and future cooperation are important factors in the decision of the Office to enter into this Agreement, and OMI agrees to continue to cooperate fully with the Office, and with any other governmental agency designated by the Office, regarding any issue about which OMI has knowledge or information.

13. The Office may continue to investigate current and former OMI employees. Nothing in this Agreement restricts in any way the ability of the Office to investigate and prosecute any OMI employee or former OMI employee.

14. Should the Office determine that, during the term of this Agreement, OMI knowingly and materially breached this Agreement, including committing any criminal conduct as referenced in Paragraph 11(a), OMI shall, in the discretion of the Office, thereafter be subject to prosecution for any federal crimes of which the Office has knowledge, including crimes relating to the matters set forth in the Statement of Facts.

15. Should the Office determine that, during the term of this Agreement, OMI knowingly and materially breached this Agreement, including committing any criminal conduct as referenced in Paragraph 11(a), the Office shall provide written notice to OMI of the alleged breach and provide OMI with a two-week period in which to make a presentation to the Office to demonstrate that no breach occurred, or, to the extent applicable, that the breach was not material or knowingly committed. The parties understand and agree that should OMI fail to make a presentation to the Office within a two-week period after receiving written notice of an alleged breach, it shall be conclusively presumed that OMI is in breach of this Agreement. The parties further understand and agree that the determination whether OMI has breached this Agreement rests solely in the discretion of the Office, and the exercise of discretion by the Office under this Paragraph is not subject to review in any court or tribunal outside the Department of Justice. In the event of a breach of this Agreement that results in a prosecution of OMI, such prosecution may be premised upon any information provided by or on behalf of OMI to the Office at any time, unless otherwise agreed when the information was provided.

16. OMI shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the District of Connecticut, for the period that this Agreement is in effect.

17. OMI agrees to waive the statute of limitations with respect to any crime that would otherwise expire during the term of this Agreement, and this waiver is knowing and voluntary and in express reliance on the advice of counsel.

18. This Agreement expires 24 months after the date of its execution by all parties, except that, in the event that the Office is conducting an ongoing investigation, prosecution or proceeding related to the facts set forth in the Statement of Facts, the provisions of Paragraph 11 regarding the Company's cooperation shall remain in effect until such investigation, prosecution or proceeding is concluded.

19. The Office agrees that if OMI is in full compliance with all of its obligations under this Agreement, the Office, within ten days of the expiration of the Agreement, will seek dismissal with prejudice of the Information filed pursuant to Paragraph 2. Except to the extent Paragraph 14 is implicated, upon the conclusion of the term of this Agreement, the Office agrees that it will not prosecute OMI for matters known to and investigated by this Office at the time of the execution of this Agreement.

20. OMI agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.

21. It is understood that this Agreement is limited to OMI and the Office on behalf of the U.S. Department of Justice and cannot bind other federal, state or local authorities. However, the

Office will bring this Agreement and the cooperation of OMI and its compliance with its other obligations under this Agreement to the attention of other prosecuting offices, if requested to do so.

22. This Agreement constitutes the full and complete agreement between OMI and the Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by the Office, OMI's counsel, and a duly authorized representative of OMI. It is understood that the Office may permit exceptions to or excuse particular requirements set forth in this Agreement at the written request of OMI, but any such permission shall be in writing.

AGREED TO:

MARK LASSWELL
President
Operations Management International, Inc.

Date: 1-17-06

KEVIN J. O'CONNOR
United States Attorney
District of Connecticut

Date: 01/24/06

APPENDIX A

OMI agrees that, following the approval and effective date of this Agreement, it will make a total payment of $2 million as follows:

1. $1 million to the Alumni Association for the United States Coast Guard Academy, New London, Connecticut to fund an Endowed Chair of Environmental Studies, as more fully detailed in the proposal attached hereto.

2. $1 million to the Greater New Haven Water Pollution Control Authority (WPCA), New Haven, Connecticut, to fund one or more of specific facility and environmental improvement projects and to the Long Island Sound Fund and/or Study, if funds remain available. The parties recognize that a preliminary engineering cost estimate is necessary for the parties to make a practical assessment of the scope of the work to be undertaken at the WPCA and will evaluate the appropriate allocation of monies, once that estimate is completed absent undue delay. The parties agree that cost of the preliminary engineering cost estimate will be paid out of the $1 million payment.

ENDOWED CHAIR OF ENVIRONMENTAL STUDIES

Background: As a result of a settlement between the U.S. Attorney's Office for the District of Connecticut and OMI, Inc., a California corporation, OMI has offered to provide, through the Alumni Association, an endowment for the purpose of enhancing the academic program at the United States Coast Guard Academy, located in New London, Connecticut. In particular, the amount in question is one million dollars and these funds will be used to enhance the study of maritime environmental enforcement with a focus on compliance, enforcement and ethics issues.

The endowment is intended to make a positive impact in the world of marine affairs and environmental studies. Because the Academy is responsible for training future officers who will be responsible for environmental compliance and enforcement on behalf of the United States government, it was identified as an ideal recipient of these funds.

Training of Cadets. The U.S. Coast Guard Academy educates over 1000 cadets from the United States and around the world. The endowment will serve to raise the level of opportunity and academic experience for the Corps of Cadets. The U.S. Coast Guard Academy is the principle commissioning source for Coast Guard officers, many of whom go on to serve in the fields of marine safety, pollution prevention, and enforcement of environmental laws. Accordingly, future environmental compliance efforts will be directly enhanced with the expansion of the current environmental studies curriculum at the Academy.

Starting in the fall of 2006, the Academy will hire an adjunct faculty member to teach a course on marine pollution. This course will contain units on various ways humans impact the marine environment (including air, sewage and oil pollution) and environmental legislation aimed at mitigating these sources. A significant portion of the course will be dedicated to examining environmental compliance, enforcement and ethics issues.

Starting in the spring of 2007, the Academy will hire an adjunct faculty member to teach a course in environmental studies. This course will be broader in scope than the 2006 course and will review current environmental issues that relate to compliance, enforcement and ethics.

The Academy will provide this instruction for a period of at least ten years.

Continuing Environmental Enforcement Education: The Academy will use the funds on an annual basis to provide continuing enforcement education at the Academy for cadets, U.S. Coast Guard personnel and other state and federal law enforcement officials responsible for the enforcement of environmental laws. This continuing education will include at least a lecture and/or conference that will focus in on the legal and policy considerations raised by the use of criminal sanctions for violations of environmental laws. Among the topics addressed in these lectures and conferences will be: the role of the United States Coast Guard in criminal enforcement in the regulatory regime; the elements of the major federal environmental crimes, the factors that influence investigators and prosecutors in choosing which cases to investigate and charge, grand jury and other investigative approaches, parallel civil and criminal actions, the criminal liability of corporate officers, sentencing issues for individuals and organizations;

policy issues related to environmental criminal cases and recent developments in the criminal enforcement of environmental law.

Initially, the funds will be provided to the existing Institute for Leadership as an Endowed Chair in Environmental Studies. As more funds becomes available from other sources, the Academy intends to create an Institute for Engineering and Technology, which Chair will reside within this Institute/Center for perpetuity. Once the amount for the endowment at issue rises to the 2.5 million dollar (U.S.) level, the intention will be to hire a full time "Chair of Environmental Studies."

EOUSA 1360

APPENDIX B / STATEMENT OF FACTS

Operations Management International ("OMI") is a corporation duly organized under the laws of the State of California with its office and principal place of business in Englewood, Colorado.

OMI is engaged in the business of providing wastewater treatment services and operates wastewater treatment plants at various locations around the country, typically under contract with the municipalities who own those facilities.

Since on or about January 3, 1999, OMI has operated the wastewater treatment facility which is owned by the City of New Haven (the "City"), managed by the New Haven Water Pollution Control Authority, and located at 345 East Shore Parkway, New Haven, Connecticut ("the Facility"), under contract with the City.

At all relevant times since OMI began performance of this contract there has been in effect a permit issued by the Connecticut Department of Environmental Protection ("DEP") under the Clean Water Act to the New Haven Water Pollution Control Authority which, among other things, imposes certain conditions on the quality of the effluent discharged from the Facility to the receiving waters in New Haven Harbor. As the contract operator of the Facility, OMI was obligated to comply with those effluent limitations imposed by the permit.

Among other things the permit has contained an effluent limitation for residual chlorine, which provides that chlorine in the effluent, as reflected in four "grab" samples to be taken during the day, shall not exceed 1.5 milligrams per liter ("mg/l") nor be lower than 0.2 mg/l. In addition, certain regulations promulgated by the DEP are incorporated by reference into the permit, including 1) R.C.S.A. § 22a-430-3(j)(6), which provides that "[i]f the permitee monitors any discharge more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or specified in the permit, the results shall be included in the calculation and reporting of the data in the monitoring report"; and 2) R.C.S.A. § 22a-430-3(j)(7), which provides that "[t]he permittee ... shall ensure that samples and measurements taken for the purpose of monitoring compliance with permit terms and conditions ... are representative of monitored activity." As the contract operator, OMI knew of these requirements and was responsible for submitting to the Connecticut DEP the Monthly Operating Reports (MORs) and Discharge Monitoring Reports (DMRs) required by the New Haven permit.

The OMI operators typically collected the chlorine grab samples at 9:00 a.m., 11:00 a.m., 1:00 p.m., and 3:00 p.m. each day. Before bringing each sample to OMI's laboratory for analysis, the operators conducted a chlorine field test using a Hach test kit. These field tests were not required by the permit but enabled the operators to make adjustments to the plant's manual chlorine feed system. After completing the field test and adjusting the chlorine addition, the operator brought the sample to OMI's on-site laboratory. There, OMI laboratory technicians analyzed the sample and recorded the results in a chlorine

bench book. Each day, the bench book data was summarized on a laboratory data sheet. Those sheets, along with the bench books, were reviewed by the laboratory manager who entered the data into the "Ops 10" computerized data system. Other OMI managers used the data in the Ops 10 system to prepare MORs and DMRs.

Because of the variability of the wastewater and the limitations of the manual chlorine feed system, the New Haven plant did not always operate within the residual chlorine limits. As a consequence, sometimes, when the operators collected the four daily samples identified above and undertook a process check of chlorine level, potential chlorine exceedences were detected by the operators. On these occasions, the operators discarded the sample, adjusted the chlorine, and then collected a new sample. At least one person in OMI management at the New Haven plant was aware of this practice.

Chlorine samplings that were outside the permit range that were not detected by the operators' field tests were caught by the more sensitive analyses performed in OMI's on-site laboratory. On fifteen occasions between July 26, 2000 and September 18, 2002, OMI's laboratory technicians identified a sample outside permit range. The laboratory technicians recorded the results of the sample in the laboratory chlorine bench book, but not on the laboratory data sheet, and instructed the OMI operators to collect an additional sample. At least one member of OMI management at the New Haven facility was aware of this practice, including that the samples outside the permit range were ultimately not entered in the Ops 10 system and not reported on the relevant MORs and DMRs.

The Clean Water Act permit which was in effect for the New Haven facility in December, 2001, and until it was replaced with a new permit effective March 28, 2002, provided that final effluent samples for Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") be taken on at least 12 days per month using a "composite" daily sample. Between January 1999 and March 28, 2002, Section 3.D(5) of the permit defined a "composite" sample as follows:

> For the purpose of this section the term "composite" shall mean a "Daily Composite" as defined in Section 22a-430-3(a)(3) of The Regulations of Connecticut State Agencies or a sample consisting of a minimum of eight aliquot samples collected at equal intervals of no less than 30 minutes and no more than 60 minutes and combined proportionally to flow over the sampling period provided that during the sampling period the peak hourly flow is experienced.

The new permit, issued on March 28, 2002, modified that definition as follows:

> "Daily composite" or "(DC)" means a composite sample taken oven a full operating day consisting of grab samples collected at equal intervals of no more than sixty (60) minutes and combined proportionally to flow; or, a composite sample continuously collected over a full operating day proportionally to flow.

Prior to December 13, 2001, OMI personnel at the New Haven facility used an automatic sampling device known as an "autosampler" to gather final effluent composite samples for analyses to ascertain compliance with the relevant effluent limitations. In September of 2001, the equipment began not to function properly. As a result the operators frequently augmented the sample with additional effluent before bringing it to the laboratory for analysis, a practice known by at least one member of OMI management at the New Haven facility.

By December 13, 2001, OMI took the autosampler off-line and replaced it with manual grab sampling. This grab sampling program called for taking eight flow-proportional samples per day. OMI management at the New Haven facility were aware of the permit requirements, including that manual sampling was permitted, but did not follow the permit requirement that the samples be taken at intervals no more than 60 minutes apart. The manual grab sampling program continued until approximately June 6, 2002, when the autosampler was repaired at a cost of $750 and put back on-line.

Pursuant to its 2000 contract with the City of Norwalk, OMI has been responsible for operating the Norwalk wastewater treatment plant located at 60 South Smith Street since June of 2000. At all relevant times, OMI operated the plant to maximize nitrogen removal by maintaining a higher than normal level of sludge in the plant clarifiers. The clarifiers are large settling tanks in which solids sink to the bottom and are collected for disposal while effluent is designed to flow over the top of the clarifiers through the process for disinfection and discharge. However, higher than normal levels of sludge can cause disruptions in the clarifiers, interfere with settling and cause solids to wash into the discharge. Between June 2000 and October 2002, higher than normal levels of sludge caused the clarifiers to overflow and resulted in several solid washouts. OMI was aware of the washouts but did not report them to DEP in the manner required by the DEP discharge permit issued to the City of Norwalk.

There is no evidence that the reporting violations described above resulted in harm to human health or the environment.

OMI agrees to accept responsibility for the conduct at the New Haven and Norwalk facilities. OMI does not ratify or condone this noncompliance with its reporting obligations under the permit and has taken substantial measures to prevent such conduct from occurring in the future.

U.S. Department of Justice

United States Attorney
District of Idaho

Mailing Address:

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Boise, ID 83712

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DTF Div Fax: 208/334-1038

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U.S. PROBATION OFFICE
DISTRICT OF IDAHO

September 22, 2011

Jeffrey S. Thomason, Chief
United States Probation & Pretrial Services
Federal Building, MSC 032
550 West Fort Street
Boise, Idaho 83724

Re: United States v. Diamond D. Incorporated
U.S. Attorney No. 2009R000445

Dear Mr. Thomason:

I am recommending pretrial diversion for the above-named corporation which has been reported to have violated Title 33, United States Code, Section 1311(a).

Enclosed are copies of the Application for Pretrial Diversion and investigative reports (which will be provided by Denise out of our Boise office) which should assist you in determining whether or not the defendant is suitable for placement in the Pretrial Diversion Program. You may contact Divertee's Counsel, Jeffrey Fereday, at (208)388-1200, to arrange an interview with the corporation management.

As special conditions of the pretrial diversion, the United States is recommending a number specifically designed to remedy the environmental violations found at Diamond D Ranch. Those conditions are outlined in detail in the pretrial diversion agreement.

Should you have any questions, please contact me.

Sincerely,

WENDY J. OLSON
United States Attorney

Michelle Mallard
Assistant United States Attorney

MRM
Enclosure

UNITED STATES OF AMERICA

vs.

U.S. Attorney No. 2009R000445

DIAMOND D, INCORPORATED, DIVERTEE
c/o John Short
4799 Balsam Drive
Park City, UT 84098
801-706-3154
jhshort@carenexus-consulting.com

AGREEMENT FOR PRETRIAL DIVERSION

It appears that you, Diamond D, Incorporated (the "Corporation," "you," or "your"), are reported to have committed an offense against the United States of America, in violation of Section 1311(a), Title 33, United States Code, in that the corporation did unlawfully discharge pollutants into waters of the United States. The United States and the Corporation (the "Parties") make this Agreement as a full settlement and resolution, according to the terms, conditions, and limitations set forth herein, of any and all charges or allegations the United States has brought or may have brought against the Corporation stemming from such offense.

Upon accepting responsibility for the Corporation's actions and by the signature of the Corporation's management committee on this Agreement, it appears, after an investigation of the offense that the interests of the United States and the Corporation's own interests, and the interests of justice will be served by the following procedure.

On the authority of the Attorney General of the United States, by Wendy J. Olson, United States Attorney for the District of Idaho, prosecution in this District for this offense shall be deferred for the period of 60 months from this date, provided the Corporation abides by the conditions and the requirements of the program set out below.

Should the Corporation violate the conditions of this supervision, the United States Attorney may revoke or modify any conditions of this pretrial diversion program or change the period of supervision, which shall in no case exceed 60 months. The United States Attorney may release the Corporation from supervision at any time. The United States may at any time within the period of your supervision initiate prosecution for this offense should you violate the conditions of this supervision and will furnish you with notice specifying the conditions of your program which you have violated.

If, upon completion of the Corporation's period of supervision, a pretrial diversion report is received to the effect that the Corporation complied with all the rules, regulations and conditions above mentioned, no prosecution for the offense set out above will be instituted in this District, and any indictment or information will be discharged.

Conditions of Pretrial Diversion

1. The Corporation shall not violate any law (federal, state and local), and shall immediately contact the pretrial diversion supervisor if any action attributed to the Corporation is the subject of an arrest and/or interrogation by any law enforcement officer.

2. The Corporation shall report to its program supervisor as directed and keep him or her informed of any changes in the Corporation's address, or in any changes to its articles of incorporation or bylaws that may have any bearing on the subject matter of this Agreement or on the Corporation's ability to carry out its terms.

3. The Corporation shall strive to achieve the desired goals of the program, which are set forth in the following paragraphs of this Agreement.

4. The temporary fish screen at the pond inlet from Loon Creek and the temporary fish screens on the one irrigation diversion on Mayfield Creek and the two irrigation diversions on Trail Creek will remain in place and be regularly monitored, cleaned, and maintained until permanent screens are installed.

5. The Corporation will install effective water flow measuring devices at Loon Creek and the irrigation diversions on Mayfield Creek and Trail Creek.

6. The Corporation will work with Idaho Department of Fish and Game to design, construct and install permanent screens at all diversions by October 1, 2013, or as soon thereafter as the Corporation reasonably can install them after obtaining any necessary permits or approvals from any state or federal agency or officer.

7. The Corporation will obtain all necessary permits for the installation of permanent fish screens and water measurement devices. The Parties recognize that obtaining these permits and approvals, including any necessary environmental review, may involve several governmental agencies and may take a significant amount of time. However, the temporary screen described above shall remain in place until permanent structures have been permitted and installed.

8. The corporation will make no changes to the Loon Creek diversion structure other than the placement of cobbles and rocks to restore the existing diversion that was authorized under the 1979 SUP issued to Diamond D Ranch by the US Forest Service and contemplated in License No. 77-7080 (1979) and Permit No. 77-7192 (1983) (the "Hydropower Rights") issued by the Idaho Department of Water Resources for hydropower and pond storage.

9. The corporation will not allow any heavy equipment to enter Loon Creek for any of the aforementioned replacement of rocks and cobbles, and it will refrain from creating a "push-up" dam. There will be no disturbance of the creek bottom in a way that would transport sediment.

10. The Loon Creek diversion structure will remain only as a "wing wall" type structure that shall extend no further into the creek than necessary to divert the combined 19 cfs entitlement under the Hydropower Rights. Regardless of the Corporation's needs or

entitlements under the Hydropower Rights, in no event shall the diversion completely block the stream or extend closer to the east bank than five feet, dewater the stream downstream from the wing wall, or block upstream or downstream fish migration.

11. Nothing in paragraphs 8-10, above, shall prevent the Corporation from relocating the Loon Creek diversion if the Corporation first applies for and receives all necessary federal and state permits and approvals for doing so and then carries out such relocation in accordance with such permits and approvals.

12. The corporation will not discharge sediment or other fill material into the Diamond D pond or inlet ditch when necessary to remove sediment from the pond or inlet. Any sediment excavated will be disposed of on uplands on private property in a manner that will not cause sedimentation to waters of the United States.

13. The Corporation will not allow Tom Demorest to serve in any management or officer position within the Corporation. During the term of this of this diversion, Dana Demorest will not be allowed to serve as an officer of the Corporation.

Waiver of Rights

14. The undersigned authorized representative of the Corporation and of the Management Committee of the Corporation's Board of Directors hereby asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, and that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the grand jury, filing an information, or in bringing a defendant to trial. On behalf of the Corporation, the undersigned hereby requests that the United States Attorney for the District of Idaho defer any prosecution of the Corporation for violation of Title 33, United States Code, Section 1311(a), for the period of 60 months and, to induce the Government to defer such prosecution, agrees and consents that any delay from the date of this Agreement to the date of the initiation of the prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at the Corporation's request, and waives any defense to such prosecution the Corporation might have on the grounds that such delay operated to deny its rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial, or to bar the prosecution by reason of the running of the statute of limitations for a period of 60 months which is the period of this Agreement.

I hereby state that I have read the above, I understand the conditions of Diamond D, Incorporated's pretrial diversion, and agree that the Corporation will comply with them.

John Short, President and member of Management Committee of Diamond D, Incorporated, Divertee

9-1-11
Date

Jeffrey C. Fereday
Attorney for Divertee

9/1/11
Date

WENDY J. OLSON
United States Attorney

By:
Michelle Mallard
Assistant United States Attorney

9/21/11
Date

Jeffrey S. Thomason, Chief
U.S. Probation & Pretrial Services

11/12/11
Date

NON-PROSECUTION AGREEMENT

AMEC Civil, LLC ("Civil LLC"), by its undersigned attorneys, pursuant to authority granted by its management committee, and the United States Attorney's Office for the Eastern District of Virginia ("USAO"), hereby enter into this Agreement (the "Agreement"). Except as specifically provided below, the Agreement shall be in effect for a period of eighteen (18) months from the date it is fully signed and executed.

Introduction

1. The USAO is conducting a criminal investigation (the "Investigation") into matters relating to unauthorized discharges in the Kerr Reservoir during a road and bridge construction project in Clarksville, Virginia ("Clarksville Project") including, without limitation, the unauthorized discharge of concrete slurry into the Kerr Reservoir on August 1, 2001. During the course of the Investigation, the USAO notified Civil LLC that, in the USAO's view, Civil LLC personnel had violated federal law. In particular, the USAO notified Civil LLC that two former Civil LLC employees had committed criminal violations of the Clean Water Act (Title 42, United States Code, Section 1311(c)(2)(A)), and the Rivers and Harbors Act (Title 42, United States Code, Sections 407, 411).

2. Civil LLC acknowledges that the USAO has developed evidence during its investigation that one or more Civil LLC employees may have violated federal criminal law. Civil LLC acknowledges that its employees may have engaged in conduct giving rise to criminal violations in connection with the unauthorized discharge of concrete slurry into the Kerr Reservoir on August 1, 2001, but denies that any violations of federal law that may have been

committed by its former employees were authorized by Civil LLC. Civil LLC does not endorse, ratify, or condone criminal conduct or any violations of law and has taken steps to prevent such conduct from occurring in the future including, without limitation, removing the two former employees referred to in paragraph 1 from their positions on the Clarksville Project.

Agreement

3. Based upon Civil LLC's acknowledgment in the preceding paragraph, Civil LLC's cooperation with the USAO in the USAO's ongoing Investigation, and Civil LLC's agreement to comply with the understandings listed below, the USAO agrees that (a) it will not prosecute, nor authorize the prosecution of, Civil LLC or any member of the AMEC family of companies for any crimes committed by Civil LLC's employees relating to unauthorized discharges in the Kerr Reservoir during the Clarksville Project, and (b) it will not commence any proceeding or otherwise seek to impose any further administrative or civil liability (including, without limitation, debarment) against Civil LLC or any member of the AMEC family of companies beyond the obligations and undertakings agreed to herein. Civil LLC understands and agrees that if it violates this Agreement, the USAO can prosecute Civil LLC for crimes committed by its employees relating to unauthorized discharges in the Kerr Reservoir during the Clarksville Project and/or seek additional civil penalties as may be available under applicable law. This Agreement does not provide any protection to any individual or any entity other than as set forth above.

The understandings on which this Agreement is premised are:

Continuing Cooperation

4. Civil LLC shall truthfully disclose all information with respect to the activities of Civil LLC and its present and former officers and employees concerning all matters relating to the unauthorized discharges in the Kerr Reservoir during the Clarksville Project about which the USAO shall inquire, and shall continue to fully cooperate with the USAO.

5. Civil LLC agrees that its cooperation shall include providing reasonable access to Civil LLC's documents relating to the Investigation, and that it shall apply its best efforts to make available all Civil LLC employees as requested by the USAO. The USAO acknowledges that Civil LLC has already made a full production of documents pursuant to a grand jury subpoena and that Civil LLC shall not be required to produce documents previously provided to the grand jury pursuant to that subpoena.

6. Civil LLC further agrees that it shall not assert claims of attorney-client or work-product privilege as to any factual portions of memoranda of witness interviews (including exhibits) created during Civil LLC's internal investigation into discharges in the Kerr Reservoir during the Clarksville Project. Civil LLC retains the authority to redact portions of such memoranda of witness interviews relating to the advice of counsel provided to Civil LLC during the internal investigation. In making production of any such documents, Civil LLC neither expressly nor implicitly waives its right to assert any privilege that is available under law against persons or entities other than the USAO concerning the produced documents or the subject matters thereof.

Environmental Compliance Program

7. Because Civil LLC has ceased construction activities and is in the process of winding up its business, the USAO has requested that another entity in the AMEC family of companies involved in construction activities institute an environmental compliance program (the "Compliance Program"). AMEC Construction Management, Inc. ("ACMI") will undertake such a program. Civil LLC shall pay for the development and implementation of the Compliance Program. The Compliance Program shall be implemented in accordance with the detailed requirements memorialized in Attachment A to this Agreement.

Environmental Audit

8. Because Civil LLC has ceased construction activities and is in the process of winding up its business, the USAO has requested that another entity in the AMEC family of companies involved in construction activities institute an independent environmental compliance assessment audit of an ongoing construction project. Civil LLC shall bear the entire cost of an environmental compliance assessment audit of ACMI's only ongoing construction project in the United States, which is the construction of the New York Times Building Project, in New York City, New York. The audit shall be performed in accordance with the detailed requirements memorialized in Attachment B.

Periodic Reports

9. Civil LLC agrees to provide the USAO with brief written reports detailing the status of its compliance with its Environmental Compliance Program and Environmental Audit obligations under this Agreement. Civil LLC will provide three (3) such periodic reports. The

first such report will be due one-hundred and eighty (180) days from the date of the execution of this Agreement. The second such report will be due three-hundred and sixty (360) days from the date of the execution of this Agreement. The final report will be due thirty (30) days prior to the expiration of the Agreement.

Charitable Payment

10. Within thirty (30) days of the date on which this Agreement is fully signed and executed, Civil LLC shall make a payment in the amount of $250,000 to the Southern Environmental Enforcement Training Fund ("SEETF") – which is a 501(c)(3) charitable, non-profit training organization dedicated to providing funding for environmental enforcement training activities – in accordance with written instructions that the USAO shall provide to Civil LLC.

Monetary Penalty

11. Within thirty (30) days of the date on which this Agreement is fully signed and executed, Civil LLC shall make a payment in the amount of $100,000 to the United States Treasury, in accordance with written instructions that the USAO shall provide to Civil LLC.

Breach of the Agreement

12. For a period of eighteen (18) months from the date on which this Agreement is fully signed and executed, should the USAO, in its sole reasonable discretion, determine that Civil LLC has knowingly and willfully given false, incomplete, or misleading information under this Agreement, or has committed any federal crimes subsequent to the date of this Agreement, or that Civil LLC otherwise has knowingly, willfully and materially breached any provision of

this Agreement (including, as determined in the sole, reasonable discretion of the USAO, whether Civil LLC, by and through its agent ACMI, has knowingly and willfully failed to perform the duties imposed upon it regarding the Environmental Compliance Program and/or Environmental Audit as specified in Attachment A and B to this Agreement), the USAO may, at its sole reasonable discretion, terminate this Agreement. In the event of termination, Civil LLC shall thereafter be subject to prosecution for any federal criminal violation, including prosecution for acts subject to the release of liability in paragraph 3 above.

13. Prior to termination of the Agreement, the USAO will provide Civil LLC with written notice of the alleged breach, and Civil LLC shall have thirty (30) days from the date of the written notice to cure the alleged breach to the satisfaction of the USAO.

Statute of Limitations

14. The running of the statute of limitations with respect to any prosecution by the USAO regarding unauthorized discharges into the Kerr Reservoir during the Clarksville Project that is not time-barred by the applicable statute of limitations on the date that this Agreement is fully signed and executed shall be tolled for a period of eighteen (18) months from the date of the execution of the Agreement. Civil LLC's tolling of the statute of limitations is knowing and voluntary and in express reliance on the advice of counsel.

Scope of Agreement

15. It is understood that this Agreement is binding on Civil LLC, on the one hand, and the USAO on the other. It is understood that this Agreement does not bind any other federal agencies or any state or local law enforcement or licensing authorities, although the USAO will

bring the cooperation of Civil LLC and its compliance with its other obligations under this Agreement to the attention of other federal agencies, state and local law enforcement, or licensing authorities, if requested by Civil LLC or its attorneys. This Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement.

Notices

16. Any party may change the address for providing notices and reports required by this Agreement by serving written change of address notifications to all addressees identified below. Modification of this Agreement is not required in order to effectuate a change of address. Notices, reports, and other written communications related to this Agreement shall be given by first class, postage prepaid mail and by facsimile transmission, effective in each case upon the later of the date of mailing and of facsimile transmission, addressed as follows:

For the USAO:

Michael S. Dry
Assistant United States Attorney
Eastern District of Virginia
1800 Main Street Centre
600 E. Main Street
Richmond, Virginia 23219
(804) 819-5400
(804) 771-2316 (facsimile)

For Civil LLC:

James D. Warcham, Esq.
Paul, Hastings, Janofsky & Walker LLP
875 15th Street NW
Washington, D.C. 20005
(202) 551-1728
(212) 551-0128 (facsimile)

Merger Clause and Modification Provision

17. This Agreement and Attachments A and B constitute the entire Agreement and supercede all other prior agreements or understandings, both oral and written, among the parties with respect to the subject matter hereof. This Agreement may not be modified except in writing signed by all parties.

Authority to Enter Agreement

18. Civil LLC hereby warrants and represents that its management committee has duly authorized the execution and delivery of this Agreement by Civil LLC, and that the person signing the Agreement has the authority to bind Civil LLC. The USAO hereby warrants and represents that the United States Attorney for the Eastern District of Virginia has duly authorized the execution and delivery of this Agreement by the USAO, and that the persons signing the Agreement have the authority to bind the USAO.

Entered into on behalf of AMEC Civil, LLC:

James D. Wareham, Esq.
Paul, Hastings, Janofsky & Walker LLP

Date: 11/21/06

Entered into on behalf of the United States Attorney's Office for the Eastern District of Virginia:

Michael S. Dry
Assistant United States Attorney
Eastern District of Virginia

Date: _____

Brian L. Whisler
Assistant United States Attorney
Eastern District of Virginia

Date: _____

Entered into on behalf of AMEC Civil, LLC:

Date: _____

_____
James D. Wareham, Esq.
Paul, Hastings, Janofsky & Walker LLP

Entered into on behalf of the United States Attorney's Office for the Eastern District of Virginia:

Date: 21 NOV 06

Michael S. Dry
Assistant United States Attorney
Eastern District of Virginia

Date: 11-21-06

Brian L. Whisler
Assistant United States Attorney
Eastern District of Virginia

ATTACHMENT A

AMEC
ENVIRONMENTAL MANAGEMENT SYSTEM PROTOCOL

1 GENERAL

1.1 Purpose

The purpose of this Protocol is to establish parameters for an environmental management system that AMEC shall adopt and implement for Covered Operations upon the occurrence of a Triggering Event.

1.2 Definitions

1.2.1 "AMEC" or "Company" shall mean AMEC Civil LLC, AMEC Construction Management, Inc., and/or any corporation or business entity (a) a majority of whose ownership interests are owned by AMEC plc or any of its affiliates, and (b) is engaged in Covered Operations. For purposes of this Protocol, AMEC shall not include AMEC Earth & Environmental, Inc.

1.2.2 "Covered Operations" shall mean building or civil engineering projects in the United States that AMEC undertakes on behalf of a third party in accordance with a contract or other agreement during the term of this Protocol.

1.2.3 "ISO 14001" shall mean the Standard ISO 14001:2004(E) entitled "Environmental Management Systems – Requirements With Guidance for Use" and published by the International Standards Organization.

1.2.4 "Triggering Event" shall mean AMEC's entry into a legally-binding agreement to engage in Covered Operations.

1.2.5 Unless otherwise provided herein, the terms used in this Protocol shall, to the fullest extent practicable, have the meanings provided in Section 3 ("Terms and Definitions") of ISO 14001.

1.2.6 "Settlement Agreement" shall mean an agreement between AMEC Civil, LLC (or any affiliate with authority to act on its behalf) and the United States Attorney's Office for the Eastern District of Virginia (the "Government") which resolves the Government's investigation of alleged violations of federal and/or state environmental laws on or after August 1, 2001 in connection with AMEC Civil LLC's construction of the Route 58 Bypass project in and around Clarksville, Virginia.

1.3 Term

AMEC's obligation to adopt and implement the environmental management system described in this Protocol shall continue for a period of eighteen months from the effective date of any Settlement Agreement pursuant to which this Protocol is adopted.

2 GENERAL OBLIGATION

2.1 Adoption of Environmental Management System

Within one hundred-eighty (180) days of a Triggering Event, AMEC shall adopt an environmental management system for its Covered Operations that shall cover the following elements:

- an Environmental Policy and Procedures as described in Section 3 of this Protocol,

- such planning steps as are described in Section 4 of this Protocol,
- implementation and operation of the system as described in Section 5 of this Protocol, and
- checking of the system as described in Section 6 of the Protocol.

2.2 Notification, Review, and Consent by the Government

2.2.1 Within thirty (30) days of adoption of the environmental management system described in Section 2.1, AMEC shall send Notice to the Government with a description of the Triggering Event, nature and extent of Covered Operations, and the documentation required under Section 5.4.1 of this Protocol.

2.2.2 Within ninety (90) days of receipt of the Notice described in Section 2.2.1, the Government shall have the right to issue a Notice of Objection with respect to any of the documents submitted under Section 2.2.1. Such Notice of Objection shall set forth, in reasonable detail, the reasons for the Government's objection(s). In the event the Government fails to serve a Notice of Objection as provided herein, the Government shall be deemed to have approved such documents.

2.2.3 Within one hundred-twenty (120) days of its receipt of any Notice described in Section 2.2.1, AMEC shall, as needed, submit a reply setting forth AMEC's response to such Notice.

3 ENVIRONMENTAL POLICY, PROCEDURES, AND PERFORMANCE INDICATORS

3.1 Adoption and Communication of Policy

3.1.1 AMEC shall adopt an Environmental Policy which, at a minimum, provides that AMEC:

- considers effective environmental management to be of prime importance to its business and is committed to continual improvement in environmental performance;
- shall comply with all applicable legal requirements pertaining to the environment;
- shall pursue high standards of environmental management as an integral part of efficient management of its business and ensure that all business decisions take proper account of environmental aspects, impacts, and objectives; and
- shall implement and maintain an environmental management system consistent with this Policy.

3.1.2 AMEC shall communicate this Policy to all persons working for or on behalf of the Company and make such Policy available to the public.

3.2 Implementing Procedures

As further provided in this Protocol, AMEC shall adopt procedures to implement the Environmental Policy described in Section 3.1, which, at a minimum, provide for:

- inspection and maintenance of equipment and operation to ensure that such equipment is safe and minimizes risk to the environment;
- guidelines for the selection, use, handling, storage and transport of substances, equipment and other materials used in business operations;
- adequate information, instruction, training, and supervision to enable work to be carried out by persons with the necessary competence;

- leadership and support to suppliers to enable them to contribute to improvements in overall environmental performance;
- conducting operations in a manner that minimizes polluting emissions to air, land or water;
- conducting operations in a manner that makes the most efficient use of natural resources;
- controlling noise, dust, odor, vibration, traffic movement or other nuisance or environmental impacts which may cause offense to the local community or environment;
- minimizing waste; and
- management of waste disposal including recycling where appropriate.

4 PLANNING

4.1 Environmental Impact Assessment

4.1.1 AMEC shall assess the environmental impacts of its planned operations to determine those aspects of its operations that have or can have significant impact(s) on the environment.

4.1.2 AMEC shall prioritize identified environmental impacts and put in place the necessary controls to reduce the impact(s) to acceptable or tolerable levels.

4.1.3 AMEC shall ensure that the person who is assigned the responsibility for the environmental impacts assessment has been trained and is competent to conduct the analysis.

4.1.4 AMEC shall document the environmental impact assessment and review it periodically or when there has been a significant change in its operations.

4.2 Legal and Regulatory Requirements

4.2.1 AMEC shall assign an individual or individuals who will be responsible for determining which legislation, regulations, codes of practice, permit requirements, and industry standards apply to the environmental aspects of AMEC's Covered Operations.

4.2.2 AMEC shall ensure that the requirements identified pursuant to Section 4.2.1 are taken into account in establishing, implementing, and maintaining its environmental management system.

4.2.3 AMEC shall implement a procedure for ensuring that management and key personnel remain current on legal and other requirements in order to track changes that may affect its Covered Operations.

4.2.4 AMEC shall implement a procedure to ensure that its employees are aware of their specific compliance responsibilities.

4.3 Objectives and Targets

4.3.1 AMEC shall establish environmental Objectives and Targets for its Covered Operations on an annual basis before year-end.

4.3.2 The environmental Objectives and Targets shall be measurable, where practicable, and consistent with the Environmental Policy as established pursuant to Section 3.1 of this Protocol.

4.3.3 AMEC shall assign development, measurement of progress toward, and reporting on achievement of environmental Objectives and Targets to an individual who shall assure that achievement plans are in place and who shall track and report on progress towards achieving the Objectives and Targets.

5 IMPLEMENTATION AND OPERATION

5.1 Roles and Responsibility

5.1.1 AMEC shall identify an individual with overall responsibility for implementing the Environmental Policy set forth in Section 3.1 of this Protocol.

5.1.2 AMEC shall develop and maintain a responsibility chart for the implementation of each element of the environmental management system and shall document environmental management roles and responsibilities for employees.

5.2 Training, Awareness, and Competence

5.2.1 AMEC shall provide basic environmental training to employees involved in Covered Operations to include an explanation of (a) the importance of conformity with the Company's Environmental Policy; (b) the results of the Environmental Impact Assessment (Section 4.1) and inventory of the Legal and Regulatory Requirements (Section 4.2) that apply to the Covered Operations; (c) their roles and responsibilities under the environmental management system; and (d) the potential consequences of departure from specified procedures.

5.2.2 AMEC shall conduct a training analysis of all jobs in the Covered Operations to determine the skills and knowledge required by employees to work with proper regard for the environment.

5.2.3 AMEC shall provide employees working on Covered Operations environmental training appropriate to their roles and responsibilities. No employee shall be permitted to work without having received such training. AMEC shall put in place a process to identify employees who have completed the required training, including issuing an identification badge or sticker affixed to the individual's hard hat (for project sites).

5.2.4 AMEC shall provide refresher training as legally required or when deemed necessary and shall review its training needs assessment and training courses annually to assure their relevance.

5.2.5 AMEC shall keep records of all environmental training provided to employees.

5.3 Communication and Consultation

AMEC shall develop, maintain, and implement a procedure for communicating environmental performance information between management, employees, and interested parties, including contractors, government officials, and the general public. AMEC shall document internal and external communication arrangements.

5.4 Documentation and Data Control

5.4.1 AMEC shall establish a system for maintaining the environmental documentation required by this Protocol, which shall include:

- the Environmental Policy as provided in Section 3.1.1,
- the implementing procedures as provided in Section 3.2,

- the Environmental Impact Assessment as provided in Section 4.1,
- the Legal and Regulatory Requirements as provided in Section 4.2,
- the responsibility chart as provided in Section 5.1.2,
- the training analysis as provided in Section 5.2.2,
- the communication procedure provided in Section 5.3,
- the document control procedure provided in Section 5.4.2,
- the procedures to address non-routine situations arising as provided in Section 5.5,
- the emergency response and preparedness plan(s) as provided in Section 5.6,
- the performance measurement procedures provided in Section 6.1.1,
- the operation compliance assessment program as provided in Section 6.1.3, and
- procedures for internal reporting of nonconformities as provided in Section 6.2.2.

5.4.2 AMEC shall establish and maintain a procedure for controlling all documents and data required for this environmental management system. Environmental management records shall be legible, identifiable, and traceable to the aspect of the Covered Operations to which they relate. Records shall be stored and maintained in such a way that they are retrievable and protected against damage, deterioration or loss. Their retention time shall be established and recorded.

5.5 Operational Control

5.5.1 AMEC shall establish and maintain documented procedures to address situations where the absence of procedural controls could lead to deviations from its Environmental Policy. The goal of such procedures shall be to eliminate or reduce environmental impacts of non-routine occurrences at their source.

5.5.2 AMEC shall establish and maintain a procedure for managing environmental aspects related to changes in Covered Operations. The procedure must address how such changes will be brought within the ambit of this environmental management system.

5.6 Emergency Preparedness and Response

5.6.1 AMEC shall adopt a documented emergency response and preparedness plan or plans for its Covered Operations that is/are appropriate to their scope, complexity, and risk based on an assessment of the foreseeable environmental emergency situations that may result from Covered Operations. The emergency response and preparedness plan(s) shall provide for the protection of employees, the community, and the environment in the case of serious accident, medical emergency, fire or explosion, chemical release or spill, loss of utilities, natural disaster or other potential incidents that could affect Covered Operations.

5.6.2 The emergency preparedness and response plan(s) shall include procedures and make use of equipment for emergency evacuation, including: emergency lighting systems, emergency communication measures, and shut down procedures for critical equipment. Evacuation routes must be clearly marked and kept clear to allow for an efficient evacuation.

5.6.3 AMEC shall install and maintain emergency equipment appropriate to the identified risks (e.g., sprinkler systems, foam suppression systems, area gas monitors, pollution prevention equipment, etc.) at its Covered Operations.

5.6.4 AMEC shall periodically review its emergency response and preparedness plan(s) to assure that it remains effective and addresses the current environmental risk profile of its Covered Operations.

5.6.5 AMEC shall communicate the emergency response and preparedness plan(s) to employees and other groups as appropriate.

5.6.6 AMEC shall test its emergency response and preparedness plan(s) at appropriate intervals.

6 CHECKING

6.1 Evaluation of Compliance, Monitoring, and Measurement

6.1.1 AMEC shall establish and maintain procedures to monitor compliance with the Legal and Regulatory Requirements identified pursuant to Section 4.2 of this Protocol and measure (qualitatively and quantitatively) achievement of Objectives and Targets established pursuant to Section 4.3 of this Protocol.

6.1.2 AMEC shall conduct physical measurements of environmental parameters as necessary to demonstrate compliance with Legal and Regulatory Requirements identified pursuant to Section 4.2 according to an established procedure using appropriate methods and techniques. Measuring equipment shall be appropriate to the test being conducted and shall be properly calibrated and maintained. Records of testing, maintenance, and calibration shall be retained for the Term of this Protocol.

6.1.3 AMEC shall establish a program of regular operational compliance assessments to assure fulfillment of the Environmental Policy established pursuant to Section 3.1.

6.2 Nonconformity, Corrective, and Preventive Action

6.2.1 AMEC shall implement and maintain procedures for dealing with actual and potential nonconformities and for taking corrective and preventive actions. The procedures shall define requirements for:

- identifying and correcting nonconformities and taking actions to mitigate their environmental impacts;
- investigating nonconformities, determining their cause(s) and taking actions in order to avoid their recurrence;
- evaluating the need for action(s) to prevent nonconformities and implementing appropriate actions designed to avoid their occurrence;
- recording the results of corrective and preventive actions taken; and
- reviewing the effectiveness of corrective and preventive actions taken.

6.2.2 AMEC shall have written procedures that describe the internal reporting process for identified nonconformities. AMEC shall use a "First Alert" system to ensure that serious nonconformities are reported quickly to appropriate Company officials. The following are considered serious nonconformities for purposes of the "First Alert" system:

- a nonconformity which results in serious injury/death or environmental impacts,
- a nonconformity which requires reporting to a regulatory body,
- a nonconformity which could lead to enforcement action or issuance of an enforcement notice, and
- a nonconformity which results in injury to a member of the public/visitor.

6.2.3 AMEC shall investigate all nonconformities resulting in significant impacts to the environment. A written report of the investigation shall be prepared which details the finding of the investigation, identifies the root and contributing causes, lists recommendations for corrective action as necessary, and includes a follow-up meeting date to assess progress on implementation of recommendations.

6.2.4 AMEC shall adopt corrective or preventive actions to eliminate the causes of actual and potential nonconformities appropriate to the magnitude of problems and commensurate with the environmental impact encountered. AMEC shall evaluate the effectiveness of corrective and preventive actions on a regular basis and after discovery of any nonconformity.

6.3 Management Review

6.3.1 AMEC shall conduct, at appropriate intervals, a full review of the environmental management system to ensure its continuing suitability, adequacy, and effectiveness. Each review shall include an assessment of opportunities for improvement and the need for changes to the environmental management system, including the Environmental Policy and Objectives and Targets.

6.3.2 The input to management reviews shall include:

- the extent to which Objectives and Targets, under Section 4.3, have been met;
- results of compliance assessments conducted pursuant to Section 6.1.3;
- finding of investigations into nonconformities undertaken pursuant to Section 6.2.3; and
- the status of corrective and preventive actions made pursuant to Section 6.2.4.

6.3.3 The outputs from management reviews shall include any decisions and actions related to possible changes to the Environmental Policy, Objectives and Targets, and other elements of the environmental management system, consistent with commitment to continual improvement.

6.3.4 AMEC's senior management shall regularly review environmental performance. Review of environmental performance should be a standard agenda item for management meetings and should be high on the agenda.

6.3.5 Records of the issues addressed and decisions made at all management review meetings shall be made, retained, and distributed as appropriate.

7 NOTICE

Notices provided under this shall be provided in writing to each party as follows:

As to the United States: Michael S. Dry, Esq.
Assistant United States Attorney

Office of the U.S. Attorney for the E.D. of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219-2447

As to AMEC:

James D. Wareham, Esq.
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, D.C. 20005

ATTACHMENT B

ACMI NEW YORK TIMES BUILDING
ENVIRONMENTAL COMPLIANCE ASSESSMENT PROTOCOL

1 GENERAL

1.1 Purpose

The purpose of this Protocol is to establish parameters for an environmental compliance assessment program for ACMI to undertake for the Project.

1.2 Definitions

1.2.1 ACMI shall mean AMEC Construction Management, Inc.

1.2.2 "Project" shall mean ACMI's construction of the New York Times building at 620 Eighth Avenue, New York, NY 10018.

1.2.3 "Qualified Consultant" shall mean the Independent consultant engaged by ACMI pursuant to Section 2 of this Agreement.

1.2.4 "Settlement Agreement" shall mean an agreement between AMEC Civil, LLC (or any affiliate with authority to act on its behalf) and the United States Attorney's Office for the Eastern District of Virginia (the "Government") which resolves the Government's investigation of alleged violations of federal and/or state environmental laws on or after August 1, 2001 in connection with AMEC Civil LLC's construction of the Route 58 Bypass project in and around Clarksville, Virginia.

1.3 Term

ACMI's obligation to conduct the environmental compliance assessment as provided in this Protocol shall continue until the earlier of (a) eighteen months after the effective date of a Settlement Agreement (as defined above), or (b) Project close-out, which shall mean the point in time when all work is completed, claims settled, and payments processed in connection with the Project. For purposes of this provision, the eighteen-month period described in clause (a) shall not recommence or otherwise be revived by any amendment of a Settlement Agreement.

2 NOMINATION AND ENGAGEMENT OF QUALIFIED INDEPENDENT CONSULTANT

2.1 Nomination

Within sixty (60) days of the effective date of the Settlement Agreement pursuant to which this Protocol is adopted, ACMI shall provide written Notice to the Government nominating three unaffiliated consulting firms with qualifications as set forth in Section 2.2 (each such firm, a "Nominee"). In such Notice, ACMI shall identify the names of such firms, statements of their qualifications, and provide the names and C.V.s of the project manager and key personnel who will be providing services should ACMI engage any of the three Nominees.

2.2 Project Manager Qualifications

2.2.1 The Nominee's project manager shall have a baccalaureate or higher degree in a discipline of engineering or science from an accredited institution of higher education and ten (10) years of full-time experience participating in the performance of facility environmental compliance assessments.

2.2.2 Within thirty (30) days of the Government's receipt of ACMI's Notice pursuant to Section 2.1 of this Protocol, the Government shall have the right to issue a Notice of Objection with respect to any Nominee that it believes to be unqualified. Such Notice of Objection shall set forth, in reasonable detail, the reasons for the Government's objection. In the event the Government shall fail to serve a Notice of Objection as provided herein, the Government shall be deemed to have consented to AMEC's engagement of any of the Nominees.

2.3 Engagement

Within sixty (60) days of its nomination pursuant to Section 2.1, ACMI shall engage any of those Nominees as to which the Government has not served a Notice of Objection. Such Nominee shall, upon the effective date of its engagement by ACMI, become the Qualified Consultant. ACMI shall bear all costs of the Qualified Consultant's performance.

2.4 Replacement

If, at any time, the Qualified Consultant is unable to carry out its functions as described in this Protocol, ACMI shall nominate a replacement consultant generally as described in Section 2 hereof.

3 COMPLIANCE ASSESSMENTS

3.1 Scope

The Qualified Consultant's assessment of the environmental compliance of the Project shall address the following environmental conditions:

3.1.1 Air Emissions
3.1.2 Noise
3.1.3 Waste Water Discharge
3.1.4 Storm Water Management
3.1.5 Solid and Hazardous Waste Management
3.1.6 Hazardous Material Storage
3.1.7 Hazard Communication
3.1.8 Spill Prevention, Control, and Counter Measures
3.1.9 Storage Tanks

3.2 Initial Assessment

Within thirty (30) days of ACMI's engagement of the Qualified Consultant pursuant to Section 2.3 of this Protocol, the Qualified Consultant shall perform an initial compliance environmental assessment of the Project.

3.3 Subsequent Assessments

The Qualified Consultant shall perform environmental compliance assessments at six-month intervals following completion of its initial assessment pursuant to Section 3.2 through the Term defined in Section 1.3.

4 REPORTS

4.1 Preparation and Submission

The Qualified Consultant shall prepare written reports detailing its compliance assessments, pursuant to Sections 3.2 and 3.3, of the Project's environmental compliance in accordance with the scope set out in Section 3.1. The Qualified Consultant shall submit its reports simultaneously to ACMI and the Government as provided in Section 7.1 of this Protocol.

4.2 Form of Findings

With respect to each environmental condition within the scope of its assessment as defined in Section 3.1, the Qualified Consultant's report shall make a finding of compliance, partial compliance, or non-compliance and explain the basis for its findings. The Qualified Consultant may make recommendations for improved practices that go beyond mere legal compliance.

5 CORRECTIVE MEASURES

Within thirty (30) days of its receipt of any report pursuant to Section 4.1 containing a finding of non-compliance or recommendation(s) for improved practices, ACMI shall submit a written Notice to the Government (a "Compliance Notice") of the corrective measures it has implemented, or will implement, to address the finding. If the Qualified Consultant's report contains no such findings or recommendations, ACMI shall have no obligation to submit a Compliance Notice.

6 GOVERNMENTAL REVIEW

At any time after receipt of the Qualified Consultant's report pursuant to Section 4.1 or ACMI's Compliance Notice pursuant to Section 5, the Government may take whatever action it deems appropriate in its sole discretion under governing laws, regulations, and practices, and policies. Nothing in this Protocol is intended to, nor shall have the effect of, limiting the Government's enforcement discretion with respect to environmental laws.

7 MISCELLANEOUS

7.1 Notice

Notices provided under this Protocol shall be provided to each party as follows:

As to the United States:

Michael S. Dry, Esq.
Assistant United States Attorney
Office of the U.S. Attorney for the E.D. of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219-2447

As to ACMI:

James D. Wareham, Esq.
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, D.C. 20005

7.2 Access

ACMI shall provide the Government with reasonable access to the Project for purposes of assessing ACMI's fulfillment of its obligations under this Protocol.

7.3 Modification

This Protocol may only be revised with the express written consent of the Government as provided in paragraph 17 of the Settlement Agreement.

0504-0040 12 month Probation

DIVERSION AGREEMENT BY AND BETWEEN PEABODY COAL COMPANY, LLC AND THE UNITED STATES

IN RE: SEPTEMBER 10, 2001 LYNNVILLE, INDIANA DISCHARGE

1. Peabody Coal Company, LLC ("Peabody") is reported to have committed an offense against the United States on or about September 10, 2001 in violation of Title 33, United States Code, Section(s) 1251, *et seq.*, ("Clean Water Act") in that Peabody did discharge a pollutant (i.e., acidic or "low pH water") into Big Creek from an abandoned coal refuse area at the Lynnville, Indiana Site.

2. Having accepted responsibility for this discharge, including its willingness to enter into this Agreement, Peabody is an appropriate candidate for pretrial diversion. Accordingly, the United States hereby agrees that it will not bring any criminal charges against Peabody or any of its officers, directors, employees or agents based upon the discharge on the following conditions.

3. Conditions of Pretrial Diversion:

   a. The term of this Agreement is for a twelve month period beginning on September 29, 2006.

   b. Peabody shall comply with all requirements of the Agreed Order between Peabody and IDEM applicable to that twelve month period (see attached Order).

   c. Peabody shall conduct a one-hour training session for its Indiana employees responsible for compliance with environmental laws for sites within the Southern District of Indiana. Peabody will certify to the United States Attorney that the training was completed.

d. Peabody shall not violate any federal criminal environmental laws within the Southern District of Indiana.

4. The United States Attorney may release Peabody from this Agreement at any time.

5. Should Peabody violate any of the above conditions of this Agreement, the United States Attorney may revoke or modify any conditions of this pretrial diversion program. The United States Attorney may at any time within the period of Peabody's supervision initiate prosecution for the Lynnville discharge should Peabody violate the conditions of this Agreement. In that case the United States Attorney will furnish Peabody with notice specifying the conditions of the Agreement which Peabody is alleged to have violated.

6. Peabody is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Peabody is also aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Peabody hereby requests the United States Attorney for the Southern District of Indiana to defer such prosecution. Peabody agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at Peabody's request, and Peabody waives any defense to such prosecution on the ground that such delay operated to deny its rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period of this agreement.

UNITED STATES OF AMERICA:

Christina McKee
Criminal Chief

Steven DeBrota
Assistant United States Attorney

Dated: 2/26/07

FOR PEABODY COAL COMPANY, LLC

Larry A. Mackey
Barnes & Thornburg LLP
Attorney for Peabody Coal Company, LLC

Dated: 2/26/07

0504-0040 $25,000 Restitution

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204-2251
(317) 232-8603
(800) 451-6027
www.IN.gov/idem

STATE OF INDIANA)	SS:	BEFORE THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
COUNTY OF MARION)		
COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
Complainant,	)	
v.	)	CASE No. 2001-10842-S
PEABODY COAL COMPANY,	)	
Respondent.	)	

AGREED ORDER

The Complainant and the Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any fact or violation contained herein. The Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this Order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (hereinafter referred to as "Complainant") of the Indiana Department of Environmental Management, a department of the State of Indiana created by IC 13-13-1-1.

2. The Respondent is Peabody Coal Company ("Respondent"). Midwest Coal Resources of Indiana, LLC, owns the Lynnville Mine near State Road 68, Lynnville, Warrick County, Indiana ("Lynnville Site"). American Land Holdings, LLC, owns the Minnehaha Mine near Dugger in Sullivan County, Indiana ("Minnehaha Site"). Midwest Coal Resources and American Land Holdings are affiliates of the Respondent.

3. The Indiana Department of Environmental Management ("IDEM") has jurisdiction over the parties and subject matter of this Agreed Order.

4. Pursuant to IC 13-30-3-3, on November 29, 2001, IDEM issued a Notice of Violation via Certified Mail to:

H.D. Dahl, President
Peabody Coal Company
800 Laidley Tower
Charleston, WV 25301

CT Corporation System, Registered Agent
36 S. Pennsylvania Street Suite 700
Indianapolis, IN 46204

5. Representatives of IDEM conducted investigations at the Lynnville Site as a result of a release of acid/low pH water to Big Creek that occurred on or around September 10, 2001. IDEM observed the following violations at the time of these investigations:

A. Pursuant to 327 IAC 2-1-6(a)(1), all waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that will settle to form putrescent or otherwise objectionable deposits, that are in amounts sufficient to be unsightly or deleterious, that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance, which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans, and which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance. Acidic or "low pH water," a pollutant, was discharged into Big Creek, a water of the state, in an amount sufficient to be deleterious and/or in an amount sufficient to be acutely toxic to, or otherwise severely injure or kill, aquatic life, in violation of 327 IAC 2-1-6(a)(1).

B. Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the state as a point source discharge, except for exclusions made in 327 IAC 5-2-4, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge. Low pH water, a pollutant was discharged into Big Creek, a water of the state, without a valid NPDES permit, and without meeting any exclusions, in violation of 327 IAC 5-2-2.

C. Pursuant to 327 IAC 2-6.1-7, any person who operates, controls or maintains any mode of transportation or facility from which a spill occurs shall, upon discovery of a reportable spill to the soil or surface waters of the state contain the spill, if possible, to prevent additional spilled material from entering the waters of the state; undertake or cause others to undertake activities needed to accomplish a spill response; and as soon as possible, but within two (2) hours of discovery, communicate a spill report to the Department of Environmental Management, Office of Environmental Response. Low pH water was discharged into Big Creek,

a water of the state. Such discharge, which constituted a reportable spill, was not properly contained, responded to, or reported, in violation of 327 IAC 2-6.1-7.

D. Pursuant to IC 13-30-2-1(1), a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste into the environment or any publicly owned treatment works in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws. Pollutants were discharged into Big Creek, a water of the state, causing pollution that violated 327 IAC 2-1-6(a)(1) and/or 327 IAC 5-2-2, which are rules adopted by the Indiana Water Pollution Control Board, and thus violated IC 13-30-2-1(1).

E. Pursuant to IC 13-18-4-5, it is unlawful for any person to throw, run, drain, or otherwise dispose into any of the streams or waters of this state, or to cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters, any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under Sections 1 and 3 of this chapter. Low pH water was discharged into Big Creek, a water of the state, resulting in a polluted condition of waters in violation of 327 IAC 2-1-6(a)(1), which is a rule adopted by the Indiana Water Pollution Control Board, and thus violated IC 13-18-4-5.

6. During settlement discussions concerning the Lynnville Site, Respondent informed IDEM of its acquisition of the Minnehaha Site by American Land Holdings, and of the low pH water discharge from coal refuse at the Minnehaha Site by a prior owner. IDEM staff visited the Minnehaha Site and observed the unpermitted discharge of pollutants from coal refuse into waters of the state on April 6, 2006.

7. During settlement discussions Respondent informed IDEM that it expected the Indiana Department of Natural Resources ("IDNR"), Division of Reclamation, to begin drilling and surveying at the Minnehaha site by June 1, 2006, preparatory to having work performed at the refuse pile under IDNR's Abandoned Mine Land ("AML") program.

8. IDEM reserves, and this Agreed Order is without prejudice to, all rights against Respondent with respect to any violations not expressly included within the Findings of Fact of this Agreed Order.

Notwithstanding any other provision of this Agreed Order, the Indiana Natural Resource Co-Trustees reserve the right to institute proceedings in a new action seeking recovery of Natural Resource Damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. § 9601 et. seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., or the Oil Pollution Act, § 2701 et seq. based on the matters addressed herein.

9. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by Complainant or his delegate, and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.

2. Respondent shall comply with 327 IAC 2-1-6, 327 IAC 5-2-2, 327 IAC 2-6.1-7, IC 13-30-2-1(1), and IC 13-18-4-5.

3. Upon the Effective Date, Respondent shall sample the effluent from the final outfall point at the Lynnville Site (Outfall 001) on a twice-monthly basis, during discharge. One sample shall be taken of Dry Weather Base Flow and the other of Wet Weather Flow. For purposes of this Agreed Order, Wet Weather Flow shall mean the flow occurring within 72 hours following a precipitation event consisting of one inch or more of precipitation, as determined at the Evansville, Indiana airport (EVV) rain gauge. Sampling shall be conducted for Rate of Flow, pH, Total Suspended Solids, Iron, Manganese, and Total Settleable Solids, with the results being submitted to IDEM on a quarterly basis. Samples shall be analyzed using methods approved in 40 CFR Part 136. IDEM and Respondent shall meet within sixty (60) days after twelve (12) months of sample results are available to determine if the results show that additional action by Respondent is needed to assure protection of water quality and, to determine whether and to what extent future sampling is necessary.

   Pending such a determination, Respondent shall continue to comply with the sampling and reporting requirements established in this paragraph for up to six (6) months following the end of the twelve-month period. Complainant and Respondent reserve their rights under IC 4-21.5 in the event that agreement on this determination is not reached.

4. The IDNR Division of Reclamation is scheduled to implement and complete the reclamation of the refuse pile at the Minnehaha Site under the AML program. Respondent shall provide access to and cooperate with IDNR in connection with this work. Respondent understands that IDNR plans to relocate and/or grade/cover the refuse pile by November 1, 2007, and that reclamation and revegetation are to be completed by June 30, 2008.

5. Within sixty (60) days of the Effective Date, Respondent shall devise, install, and place into operation a means of capture and treatment of the discharge from the Minnehaha Site refuse pile for the purpose of eliminating the low pH water discharge from that site into waters of the state.

6. Upon the Effective Date, Respondent shall sample the effluent discharge from the coal refuse at the Minnehaha Site (hereby designated as "Outfall 001") on a twice-monthly

basis, during discharge. At least one sample shall be taken of Wet Weather Flow during each month, with the remaining samples being of Dry Weather Base Flow. For purposes of this Agreed Order, Wet Weather Flow will constitute the flow occurring within 72 hours following a precipitation event consisting of one inch or more of precipitation, as determined by the Hulman Regional Airport (HUF) in Terre Haute, Indiana rain gauge. Sampling shall be conducted for rate of Flow, pH, Total Suspended Solids, Iron, Manganese, and Total Settleable Solids, with the results being submitted to IDEM on a quarterly basis. Samples shall be analyzed using methods approved in 40 CFR Part 136. IDEM and Respondent shall meet within sixty (60) days after twelve (12) months of sample results are available to determine if the results show that additional action by Respondent is needed to assure protection of water quality and to determine whether future sampling is necessary.

Pending such a determination, Respondent shall continue to comply with the sampling and reporting requirements established in this paragraph for up to six (6) months following the end of this twelve-month period. Complainant and Respondent reserve their rights under IC 4-21.5 in the event that agreement on this determination is not reached.

7. If Respondent chooses, as its means of complying with Order Paragraph Nos. 5 and 6, to capture all flow from the Minnehaha Site refuse pile and divert it to another outfall location that is covered by an existing NPDES permit, then the monitoring and other requirements of Order Paragraph Nos. 5 and 6, and the requirement for the two parties to meet, will cease to apply. The sampling and reporting requirements of the NPDES permit shall then apply. If Respondent chooses this option, it shall, within sixty (60) days of such a diversion, seek modification of its existing NPDES permit for the Minnehaha Site to include redesignation of the outfall from alkaline to acid.

8. Respondent's obligations under Order Paragraph Nos. 5, 6, and 7 shall cease once IDNR's AML reclamation work commences and a "Rule 7" stormwater permit (pursuant to 327 IAC 15-7) becomes effective.

9. If Respondent becomes aware of property owned, operated, or controlled by Respondent or its wholly-owned subsidiaries within Indiana with unpermitted point source discharges of pollutants to surface waters of the state (similar to the Lynnville and Minnehaha Sites) associated with operations of Respondent or its wholly-owned subsidiary at that property, Respondent shall within forty five (45) days contact IDEM's Offices of Enforcement and Water Quality as well as the IDNR Division of Reclamation to establish a plan to bring that discharge/site into compliance with the applicable Clean Water Act requirements using the approaches being taken at the Lynnville and Minnehaha Sites under this Agreed Order as non-binding models.

10. All submittals required by this Agreed Order, unless notified otherwise in writing, shall be sent to:

Steven Carmer, Environmental Manager

Indiana Department of Environmental Management
Office of Enforcement – Mail Code 60-02
100 North Senate Avenue
Indianapolis, IN 46204-2251

Respondent is assessed a civil penalty of Twenty Five Thousand Dollars ($25,000). Said penalty amount shall be due and payable to the Environmental Management Special Fund within thirty (30) days of the Effective Date of this Agreed Order

n the event the terms and conditions of the following Order paragraphs are violated, the Complainant may assess and Respondent shall pay a stipulated penalty in the following amount:

Paragraph	Violation	Stipulated penalty
3	Failure to sample and report results in a timely basis.	$300 per week late, or part thereof.
4	Failure to enter into an agreement with IDNR.	$200 per week late, or part thereof.
4	Failure to implement and complete the project in a timely basis.	$300 per week late, or part thereof.
5	Failure to capture and treat discharge from the gob pile.	$700 per week late, or part thereof.
5	Failure to sample and report results in a timely basis.	$300 per week late, or part thereof.

ipulated penalties shall be due and payable within thirty days after Respondent receives ritten notice that Complainant has determined a stipulated penalty is due. Assessment d payment of stipulated penalties shall not preclude Complainant from seeking any ditional relief against Respondent for violation of the Agreed Order. In lieu of any of e stipulated penalties given above, Complainant may seek any other remedies or actions available by virtue of Respondent's violation of this Agreed Order, or Indiana w, including but not limited to civil penalties pursuant to IC 13-30-4.

vil and stipulated penalties are payable by check to the Environmental Management ecial Fund. Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management
Cashiers Office – Mail Code 50-10C
100 North Senate Avenue
Indianapolis, IN 46204-2251

he event that the civil penalty required by Order Paragraph No. 11 is not paid within ty (30) days of the Effective Date of this Agreed Order, Respondent shall pay interest