UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

January 14, 2011

VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

David C. Keith
Anchor QEA, LLC
614 Magnolia Avenue
Ocean Springs, MS 39564

RE: Noncompliance with Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 06-12-10
Time Critical Removal Action Work Plan Schedule
San Jacinto River Waste Pits Superfund Site near Pasadena, Harris County, Texas

Dear Mr. Keith:

The Environmental Protection Agency has received your client's January 4, 2011 and January 5, 2011 letters from McGinnes Industrial Maintenance Corporation and International Paper Company (hereinafter referred to as Respondents) seeking force majeure for failing to start work under the Administrative Order on Consent (AOC) for the Time Critical Removal Action (TCRA). The Respondents claim force majeure due to access issues for the San Jacinto River Waste Pits Superfund Site (San Jacinto Site). The EPA has carefully considered your claims and does not believe they have merit. The EPA will respond to those claims in a subsequent letter, but the EPA is hereby notifying you that MIMC and IPC are in violation of the Administrative Settlement Agreement and Order on Consent for Removal Action (AOC), CERCLA Docket No. 06-02-10 and are subject to stipulated penalties.

Paragraph 45(c) of the AOC states that Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved the Work Plan and the schedule are incorporated into and become fully enforceable under this Settlement Agreement. The Work Plan was approved with modifications on November 8, 2010. The Work Plan called for building an armor cap over the both the eastern waste pit submerged in the San Jacinto River and the land based western pit. The original Work Schedule is included in Appendix D of the AOC, the Statement of Work which was signed by May 11, 2010. The EPA approved in writing the amended work schedule on December 15, 2010.

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On January 5, 2011, the EPA performed a site inspection (see enclosure). It was observed that all Work activities had stopped. The AOC schedule requires:

(1) Delivery of materials and natural stone, processed concrete, filter fabric (rock underlay) to the Site on December 16, 2010.
(2) Completion of property improvements for laydown area (either Big Star property or alternative property) on December 27, 2010.
(3) Commencement of Environmental Protection Activities such as water and air quality monitoring on December 27, 2010.
(4) Commencement of geotextile placement over the submerged eastern waste pit on January 5, 2011.
(5) Commencement of construction of Section C2 of the armor cap within the submerged eastern waste pit on January 5, 2011.
(6) Ongoing Site management activities including Health and Safety, Quality Control, and Survey control to commence on December 8, 2010 and continue until August 8, 2011.

None of the above listed required activities were implemented in accordance with the work schedule.

According to Paragraph 75 of the AOC, Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 76 and 77 for failure to comply with the requirements of the AOC unless excused under Section XVII (Force Majeure). Furthermore, Paragraph 75 defines compliance by Respondents to include completion of the activities under this AOC or any work plan or other plan approved under this AOC within the specified time schedules established by and approved under this AOC. Because EPA has not excused Respondents' cessation of all Work activities, Respondents are liable to EPA for stipulated penalties for failure to perform the above listed work items in compliance with the Work Schedule as approved by EPA on December 15, 2011.

According to Paragraph 76 of the AOC, stipulated penalties for nonperformance of Work shall accrue per violation per day for noncompliance identified under 76(b)(6) Compliance Milestone TCRA Implementation. For the above listed six items, $1,000 penalty per violation per day is occurring for the first through fourteenth day of noncompliance. Stipulated penalties increase to $2,500 per violation per day for the 15th through 30th day of noncompliance, and penalties further increase to $5,000 per violation per day for the 31st day and beyond of noncompliance. Per paragraph 79, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or the completion of the activity. Enclosed is a chart outlining the stipulated penalties that Respondents are incurring and will continue to incur until correction of noncompliance for stopping all work activities. The EPA will send Respondents a written demand for payment of the penalties.

I urge Respondents to resume Work immediately in accordance with the EPA approved Work Schedule and as promised by Respondents when they signed the AOC. Stipulated penalties are accruing and will continue to accrue until correction of the noncompliance. In

addition, Respondents will further incur stipulated penalties for additional work activities that are not conducted in accordance with the schedule as long as they refuse to conduct work at the Site. If you have any questions concerning this matter, please contact Valmichael Leos at 214-665-2283.

Sincerely yours,

for Valmichael Leos
Remedial Project Manager

Enclosures

FAILURE TO COMPLY AND STIPULATED PENALTIES

Noncompliance Violation	Start Date of Violation	$1,000 Stipulated Penalty per day	$2,500 Stipulated Penalty per day	$5,000 Stipulated Penalty per day
Failure to deliver Materials including natural stone, processed concrete, filter fabric (rock underlay) to the Site	12/16/10	12/16/10-12/29/10	12/30/10-1/16/11	1/17/11 until correction of Noncompliance
Failure to complete of property improvements for laydown area (either Big Star property or alternative property)	12/28/10	12/28/10-1/10/11	1/11/11-1/26/11	1/27/11 until correction of Noncompliance
Failure to commence environmental protection activities such as water and air quality monitoring	12/27/10	12/27/10-1/10/11	1/1/11/11-1/26/11	1/27/11 until correction of Noncompliance
Failure to place geotextile over submerged eastern waste pit	1/5/11	1/5/11-1/18/11	1/19/11-2/3/11	2/4/11 until correction of Noncompliance
Failure to commence construction of Section C2 of the Armor Cap within the submerged eastern waste pit	1/5/11	1/5/11-1/18/11	1/19/11-2/3/11	2/4/11 until correction of Noncompliance
Cessation of ongoing Site management activities including Health and Safety, Quality Control, and Survey Control. Work plan schedule requires Site management to occur beginning 12/8/10 until 8/8/11.	1/5/11	1/5/11-1/18/11	1/19/11-2/3/11	2/4/11 until correction of Noncompliance

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January 11, 2011

MEMORANDUM

SUBJECT: January 5, 2011 EPA Site Inspection
San Jacinto River Waste Pits Superfund Site near Pasadena,
Harris County, Texas

FROM: Valmichael Leos, Remedial Project Manager CAS 1/14/11
Remedial Branch LA, NM, OK Team (6SF-RL)

TO: Site File

This memorandum to the file serves as documentation of my observations and lack of activity pursuant to the May 11, 2010 Administrative Settlement Agreement and Order on Consent for Removal Action (AOC), Docket No. 06-12-10, for the Site.

On January 5, 2011, the Environmental Protection Agency (EPA) performed a Site inspection for San Jacinto River Waste Pits Superfund Site (Site). During the Site visit, I observed that all removal work activities had stopped. A conversation with the Respondents' On Scene Project Manager, Randy Brown, indicated that no further work activities are planned at the Site until further notice.

The following activities were not complete per the Time Critical Removal Action (TCRA) Work Plan Schedule:

(1) On December 16, 2010, Respondents did not deliver materials including natural stone, processed concrete, filter fabric (rock underlay) to the Site.
(2) On December 27, 2010, Respondents did not complete property improvements for a laydown area (either Big Star property or alternative property).
(3) On December 27, 2010, Respondents did not commence environmental activities such as water and air quality monitoring.
(4) On December 30, 2011, access road construction did not commence.
(5) On January 5, 2011, Respondents did not begin placement of the armor cap on the submerged eastern pit located in the San Jacinto River. Specifically, Respondents did not begin construction of section C2 of the armor cap within the submerged eastern waste pit. In addition, Respondents did not begin placement of geotextile membrane over the submerged eastern pit.
(6) On January 5, 2011, Respondents ceased implementation of Site management activities including Health and Safety, Quality Control, Survey Control.