



Enforcement Case Summaries Fiscal Year 2007: List of Cases in Alphabetical Order A through E

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Name (A to E)

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- Allied-Ironton Site
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- Cowen, Neil and Mary Lou
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- Crawfordville, Indiana
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- Dana Container, Inc.
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- Degussa Engineered Carbons, LP
- Del's Metal Co.
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- Detrex Corporation
- Detroit Edison Company
- Don Prow and Rochester Topsoil
- Dow Chemical Company
- Dupont de Nemours & Co.
- EBW Electronics, Inc.
- Eco Finishing
- E.I. du Pont de Nemours & Company
- Ekberg, Glen
- Electro-Voice Superfund Site
- Electronic Industries, Inc.
- EMCO Chemical Distributors, Inc.

Region Resolves ECPRA Section 313 Case Against Accu-Tronics Manufacturing, Inc. (St. Paul, Minnesota).

On November 7, 2006, the Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which Accu-Tronics Manufacturing, Inc. (Accu-Tronics) agreed to pay a penalty of \$2,000 for a violation of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, at its facility in St. Paul, Minnesota. Specifically, Region 5 alleged that Accu-Tronics failed to timely file its calendar year 2004 Toxic Chemical Release Inventory Form R, for lead that it processes at its facility, with EPA and the State of Minnesota by July 1, 2005, as required by Section 313 of EPCRA. Respondent filed its calendar year 2004 Form R on November 2, 2005. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on November 9, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Terence Bonace, secondary contact, WPTD, (312) 886-3387

Consent Decree Entered in Cost Recovery Litigation; Stipulation and Settlement Agreement Entered in Related Fraudulent Transfer Litigation.

On July 9, 2007, Judge Rice of the Southern District of Ohio entered a Consent Decree in U.S. v. A-L Processors et al., which resolved the CERCLA liability of Burns Iron & Metal, Inc. at the United Scrap Lead Site in Troy, Ohio. Although the A-L Processors litigation was originally initiated in 1991, it has resulted in an RD/RA consent decree, and four cost recovery decrees, which includes the instant decree. Under the terms of this Consent Decree, Burns Iron & Metal, based upon an ability to pay determination, is to pay \$312,000 to the Hazardous Substance Superfund and an additional \$88,000 to the PRP group which performed the selected remedy at the United Scrap Lead Site. On July 6, 2007, Judge Rice entered a Stipulation, Settlement Agreement, and Order in U.S. v. Larry Katz, et al., litigation which is related to the A-L Processors litigation, and was filed against various parties to that litigation whom the United States alleges fraudulently transferred assets in violation of the Federal Debt Collection Procedures Act (FDCPA) and the Federal Priority Act (FPA), in order to avoid paying the government's claims. The Stipulation and Settlement Agreement resolves the United States claims against various principals related to Burns Iron and Metal, and provides that they will pay \$49,500 to the Hazardous Substance Superfund.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164 & Deborah Garber, (312) 886-6610

Judge Appoints Receiver to Implement Institutional Controls and To Enable Sale of Abandoned NPL Site.

On July 6, 2007, Judge Rice of the Southern District of Ohio in U.S. v. A-L Processors et al., granted the United States' motion to appoint a receiver at the United Scrap Lead NPL Site in Troy, Ohio. In 1998, the United States had entered into a Remedial Design/ Remedial Action (RD/RA) decree which included the owners and operators of the Site, the United Scrap Lead Company and Charles Bailen. Included in their duties under the decree was the implementation of institutional controls. Proprietary controls, however,

proved difficult to implement, because no party wanted to serve as a grantee of an environmental easement or covenant. In December 2004, the Ohio General Assembly enacted the Uniform Environmental Covenants Act (UECA), which enabled EPA to implement controls running with the land without the need of a third party grantee. However, before a UECA covenant could be implemented at the Site, Charles Bailen, the sole surviving principal of the United Scrap Lead Company, Inc., passed away. The United States' motion requested the appointment of a receiver so that the RD/RA decree could be fully carried out; including any needed access on the part of EPA or the Respondent Group to implement five-year review or post-construction completion inspections. Under Judge Rice's Order, the Receiver is also empowered to sell the Site to WACO, a local aviation history museum located adjacent to the Site, to ensure Site security.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164 & Deborah Garber, (312) 886-6610

Judge Grants U.S. Summary Judgment Motion for Costs in Cost Recovery Case.

On 9/20/07, Judge Rice of the Southern District of Ohio in *U.S. v. A-L Processors et al.*, granted the United States' motion for summary judgment for costs at the United Scrap Lead site, finding that the U.S. is entitled to collect over \$5.3 million from the defendants remaining in the lawsuit. The judge had previously found that most of these defendants were jointly and severally liable to the United States. In its summary judgment filing, the United States did not seek the costs of the original, experimental 1988 ROD remedy, which was later abandoned, so there are additional costs which could be sought at trial, unless the defendants' available assets would be exhausted by the judgment. Judge Rice did not grant the United States' claim for pre-judgment interest, holding that the demand letters were not properly authenticated. This portion of our claim was worth almost \$2.5 million. This portion of our claim will be subject to subsequent briefing, and the enforcement team is optimistic about its chances for success here. Efforts are now underway to reach ability-to-pay settlements with the defendants against whom judgment was rendered, to ease collection efforts.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

U.S. EPA Signs a Consent Decree with Agrium U.S. Inc. and Royster-Clark, Inc. Resolving Violations of the Clean Air Act.

On February 5, 2007, the United States simultaneously filed a Complaint and lodged a Consent Decree against Agrium U.S. Inc. and Royster-Clark, Inc. (collectively Defendants), under the Prevention of Significant Deterioration (PSD) provisions of the Clean Air Act (the Act), 42 U.S.C. §§ 7470-92, and the PSD regulations incorporated into the Ohio State Implementation Plan (Ohio SIP); the New Source Performance Standards (NSPS) of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. § 7661, *et seq.*, and Title V's implementing federal (40 C.F.R. Part 70) and Ohio regulations (OAC 3745-77, *et. seq.*); and the Ohio SIP General Permit provisions (OAC Chapter 3745-31) Permit to Install requirements (OAC 3745-31-02(A)).

The Consent Decree is the first settlement as part of the National New Source Review/Prevention of Significant Deterioration (NSR/PSD) Acid Plant Priority. It will require the installation of a selective catalytic reduction (SCR) system capable of

reducing Nitrogen oxides (NO_x) emissions by at least 90%. The Consent Decree will set NO_x limits of 0.6 lbs/ton of 100% nitric acid produced, 365 day rolling average and 1.0 lbs/ton of 100% nitric acid produced 3 hour average. These emission limits are consistent with the lowest permitted emission rate of any nitric acid plant in the nation and meets the definition of Lowest Achievable Emission Rate (LAER). These limits will become effective 2 years after the Consent Decree is entered. Compliance with these emission limits will result in an emission reduction of approximately 200 tons of NO_x per year. The Consent Decree also requires installation of a state-of-the-art NO_x emission monitoring system to monitor compliance with these limits. Additionally, Agrium will pay a cash penalty of \$750,000.

Office of Regional Counsel Primary Contact: Robert Thompson, (312) 353-6700; Joanna Glowacki, ORC, (312) 353-3757; secondary contact: Nathan Frank, ARD, (312) 886-3850

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with Agro-K Corporation.

Region 5 initiated pre-filing discussions on this matter in September, 2006. The proposed penalty was \$54,600. On January 18, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold unregistered pesticides, Vigor-Cal and Vigor-Cal-Phos on twelve separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$39,680.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; secondary contact: Terry Bonace, (312) 886-3387

Region 5 signs a Combined Complaint and Consent Agreement with AgroKey LLC.

Region 5 initiated this enforcement action in August 2006 when the Region sent a pre-filing notice letter to AgroKey LLC (AgroKey) notifying the company of violations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The violations stemmed from vandalism at the AgroKey facility resulting in release of anhydrous ammonia from the facility in May 2005. AgroKey violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report the release to the National Response Center, the state emergency response commission and the local emergency planning committee. On May 9, 2007, Region 5 signed a combined complaint and consent agreement with AgroKey in settlement of the company's violations of CERCLA and EPCRA. Pursuant to the settlement, AgroKey will pay a penalty of \$37,623. Prior to the settlement, the company installed valve locks on 419 tanks at all of its facilities, in addition to the 40 valve locks installed at the facility which was the subject of this enforcement action.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ruth McNamara, Superfund Division, (312) 353-3193

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Albemarle Corporation.

Region 5 initiated pre-filing discussions on this matter in June 2007. On July 9, 2007 Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of two pesticide products. Additionally, the containers of each of these pesticide products did not have any labeling them in accordance with FIFRA and its regulations. During settlement discussions, the Respondent agreed to pay a civil penalty of \$26,000.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, technical contact: (312) 886-6322

Region 5 signs Consent Agreement and Final Order with Aldi, Inc.

On January 29, 2007, a CAFO was signed with Aldi, Inc. (Aldi), Dwight, Illinois, in settlement of an administrative action that EPA filed on July 5, 2006, regarding a release that occurred at Aldi's facility on August 22, 2005. The complaint alleged that Aldi had violated Section 103(a) of CERCLA by failing to immediately notify the National Response Center of the release; Section 304(a) of EPCRA by failing to immediately notify the SERC and the LEPC of the release; Section 304(c) of EPCRA, by failing to provide a written follow-up emergency notice to the Illinois SERC and the LEPC as soon as practicable after the release occurred; and Section 312(a) of EPCRA, by failing to submit to the Illinois SERC, LEPC and local fire department a completed Emergency and Hazardous Chemical Inventory Form for calendar years 2003 and 2004, by the March 1 deadline. The complaint proposed a penalty of \$93,433. Pursuant to the CAFO Aldi will complete a SEP designed to protect the environment or public health by purchasing and donating emergency response turnout equipment to the Dwight Fire Department at a cost of not less than \$23,150. In consideration of Aldi's willingness to perform the SEP, its cooperation, as well as certain litigation considerations, Region 5 agreed to a civil penalty, in addition to the SEP, of \$23,150.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; James Entzminger, (312) 886-4062

Region 5 files Complaint/Consent Agreement and Final Order Settling Domestic Septage Application Recordkeeping Violations.

Region 5 initiated this enforcement action on September 20, 2004. On 05/09/2007, Region 5 filed a Complaint/Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against All Town and Country Septic, Inc. (All Town) of Norton, Ohio for alleged violations of the regulations promulgated at 40 C.F.R. Part 503. Region 5 alleged that All Town did not properly keep records of land application of domestic septage in violation of 40 C.F.R. Section 503.17(b)(4), (b)(5), (b)(7), and (b)(8). All Town will pay a \$35,500 penalty.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Valdis Aistars, (312) 886-0264

Federal District Court enters CERCLA cost recovery Consent Decree.

On May 16, 2007, United States District Court Judge Suzanne B. Conlon entered the consent decree in United States of America v. Allied Waste Industries, Inc., f/k/a/ Browning Ferris Industries, Inc., and Waste Management of Illinois, Inc., Civil Action Docket No. 06-C-5245. This consent decree is for a past cost recovery settlement for the Tri-County/Elgin Landfill Superfund Site in Kane County, Illinois (the "Site"), and resolves the remaining claims of the United States for costs incurred in taking remedial response actions at the Site. The settling defendants are Allied Waste Industries, Inc., (f/k/a/ Browning Ferris Industries of Illinois ("BFI"))("Allied") (owner of part of the Elgin Landfill portion of the Site); and Waste Management of Illinois, Inc. ("WMII") (owner of the Elgin-Wayne Disposal part of the Tri-County Landfill portion of the Site). Allied and WMII are also past owners and operators at the Site.

As of November 30, 2006, the unrecovered Site costs totaled \$1,760,729.14, with prejudgment interest on that amount of \$593,974.57 (accrued since the date of demand made February 27, 1998), for a total of \$2,354,703.71. Under the consent decree, the settling defendants will reimburse \$2,120,000.00 in past response costs and prejudgment interest incurred by the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ"). This represents a recovery of 90% of EPA's and U.S. DOJ's costs with prejudgment interest. Allied and WMII will pay future oversight costs, and will continue to perform remedial action work at the Site, under the terms of the final unilateral administrative orders issued to each on November 3, 1999, under authority of 42 U.S.C. § 9606 ("UAOs"). This settlement concludes EPA's cost recovery efforts for the Site.

U.S. DOJ initiated this litigation by filing a complaint on September 27, 2006, to recover the remaining unreimbursed response costs incurred by EPA in connection with the Site.

Office of Regional Counsel Primary Contact: Contact: Jeffrey A. Cahn, (312) 886-6670; John Fagiolo, additional contact: (312) 886-0800

Region 5's Superfund Division Director signs the Record of Decision (ROD) for the Final Operable Unit (OU) at the Allied-Ironton Superfund Site in Ironton, Ohio.

On September 19, 2007, the Director of the Superfund Division, Region 5, signed the ROD for the cleanup of the former tar plant at the Allied Chemical/Ironton Coke Superfund site in Ironton, Ohio. The tar plant cleanup is the third operable unit at this site. Previously, the Goldcamp Disposal Area (OU1) and the Coke Plant and Lagoon Area (OU2) were cleaned up by the PRP, AlliedSignal, now Honeywell, under separate RODs through Administrative Orders on Consent. This third and final ROD addresses soil, soil vapor, and Ohio River sediment contaminated by the former tar plant. The plan includes covering contaminated soil with a cap that meets the design requirements of Ohio solid waste regulations, legal and administrative institutional controls to ensure the cap remains intact and protects people from the remaining contaminated soil and vapor, and a combination of dredging, off-site disposal and capping of contaminated sediment in the Ohio River adjacent to the tar plant loading dock. Site-wide groundwater contamination is being addressed through the OU2 ROD. The estimated cost of this remedy is \$10,175,000. EPA expects to negotiate a consent decree or administrative order with Honeywell to perform the Remedial Design and Remedial Action for this third OU.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Syed Quadri, RPM, (312) 886-5736

Consent Agreement and Final Order with Alharma, Chicago Heights, Illinois.

U.S. EPA and Alharma, Inc. have entered into a Consent Agreement and Final Order to settle an administrative enforcement action. For failing to immediately notify the National Response Center of a release of a reportable quantity of sulfuric acid from its Chicago Heights facility, Alharma has agreed to perform two supplemental environmental projects valued at \$24,737 and pay a civil penalty of \$5,000.

On October 31, 2005, at 9 am, two employees of Alharma discovered a release of sulfuric acid from a storage tank. The release sprayed out of a “pin hole” leak approximately 6 feet above the base of the tank over the secondary containment wall surrounding the tank to the ground. Approximately 13, 277 pounds of sulfuric acid, more than 13 times the reportable quantity was released. The person in charge of the facility did not notify the National Response Center until 3:58 pm, nearly 7 hours after the release occurred.

After receiving a notice of intent to file an administrative complaint, Alharma engaged in pre-filing settlement discussions with U.S. EPA. Alharma was cooperative and willing to resolve the matter before the agency filed the complaint. Alharma is performing two SEPs which U.S. EPA’s PROJECT program values at \$24,737. The SEPs will replace the facility’s current underground sulfuric acid piping with above ground, acid resistant piping and install a remote monitor and alarm system for the sulfuric acid tank. These SEPs will help prevent a future release in this environmental justice area. In addition, Alharma is updating its Emergency Response Plan per the Agency’s recommendations.

U.S. EPA filed the fully-executed CAFO on December 20, 2006. Alharma submitted payment for the penalty on January 11, 2007 and submitted its updated Emergency Response Plan to the Agency on January 19, 2007.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

Region 5 files Consent Agreement and Final Order with Alasco Inc.

On September 19, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against Alasco Inc., which owned or operated an industrial laundry and linen supply facility located at 2221 West Oakdale Avenue, Chicago, Illinois 60618, for alleged violations of Section 3005(a) of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6925(a). Alasco Inc. is a large quantity generator of hazardous waste who allegedly failed to meet certain conditions for an exemption from obtaining a permit for the storage of hazardous waste. Alasco Inc. allegedly failed to: meet hazardous waste training requirements for its employees; have a contingency plan; familiarize local officials and hospitals with the hazardous waste generation at the facility; meet hazardous waste recordkeeping and data management requirements; minimize the possibility of hazardous waste releases; maintain proper spill control and decontamination equipment; label hazardous waste storage containers with the date of accumulation or with the words “Hazardous Waste”; properly manage such storage containers or to keep them closed; maintain proper aisle space in storage areas; and inspect storage areas weekly or to

maintain an inspection log. By violating its duty to obtain a permit, AlSCO Inc. became subject to civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Region 5 calculated a proposed penalty of \$311,764. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under this CAFO, AlSCO Inc. agrees to pay \$280,587 in civil penalties. This amount represents a substantial sanction against AlSCO Inc., and will deter future violations.

Office of Regional Counsel Primary Contact: Kevin Chow, (312) 353-6181; Additional Contact: Brad Grams, Land & Chemicals Division, (312) 886-7747

EPA enters Consent Agreement and Final Order with American Greetings Corporation resolving Clean Air Act violations.

On September 28, 2006, the Regional Administrator signed a Final Order resolving violations of the Clean Air Act by American Greetings Corporation (AG) which is headquartered in Cleveland, Ohio. Specifically, AG sold and/or distributed a product that contained class I or class II substances in violation of the Stratospheric Ozone Protection requirements of the Clean Air Act. AG withdrew the products from its shelves and has destroyed any of the remaining products. Under the Consent Agreement and Final Order, AG will pay a civil penalty of \$84,854.50 for these violations. The proposed penalty was \$84,854.50.

Office of Regional Counsel Contact: Cynthia King, (312) 886-6831

Northern District of Indiana enters Consent Decree resolving violations of the Clean Air Act by American Iron Oxide Company and Magnetics, International, Inc.

On November 28, 2006, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by American Iron Oxide Company (Amrox) and Magnetics International, Inc. (Magnetics) at three facilities in Indiana. Specifically, the Complaint in the matter alleged that Amrox and Magnetics had failed to comply with the hydrochloric acid and chlorine emission requirements, as well as the recordkeeping and reporting requirements of the Steel Pickling National Emission Standards for Hazardous Air Pollutants (Steel Pickling NESHAP), Subpart CCC. The settlement addresses violations at Amrox's Portage and Rockport, Indiana facilities, and Magnetics facility in Burns Harbor, Indiana. Under the settlement, Amrox and Magnetics will implement changes at the facilities to come into compliance with the Steel Pickling NESHAP. In addition, Amrox will perform two Supplemental Environmental Projects at the Portage facility. Amrox and Magnetics will pay a penalty of \$100,000 which is based on a finding that the companies had an inability to pay a greater penalty.

Office of Regional Counsel Primary Contact: Cynthia A. King, (312) 886-6831, Sara Dauk, secondary contact: (312) 886-0243

EPA receives adverse ruling in Bankruptcy Matter.

On February 21, 2007, the U.S. Bankruptcy Court for the Middle District of Florida, Tampa Division, in an oral ruling from the Bench, ruled that the United States' claim in the Anchor Glass Container Corporation bankruptcy case will be disallowed. The Judge ruled in response to an objection filed by the debtor's trustee in which the trustee requested that the court disallow EPA's claim because it is a claim for penalties. The

United States had responded that the objection was without merit in that it misstated the pertinent provisions of the debtor's reorganization plan and applicable case law. Current case law holds that bankruptcy courts may not categorically disallow penalty claims. EPA asserted a general unsecured claim based on a \$96,901 penalty agreed to by EPA and Anchor Glass Container Corp. in an Administrative Consent Agreement and Final Order (CAFO) which was submitted as part of the proof of claim submitted by the U.S. in the bankruptcy case. In the CAFO, the parties specifically agreed that the penalty would be deemed an allowed claim in the bankruptcy case. The Department of Justice plans to appeal this adverse ruling by filing a Notice of Appeal with the United States District Court.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121

Region 5 signs a Consent Agreement and Final Order with AP Management, Inc., resolving Lead-Based Paint violations.

On March 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commences and concludes, under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, alleged violations of the regulations at 40 C.F.R. Part 745, Subpart F, related to leasing transactions at a residential building located in Chicago, Illinois. Under the terms of the CAFO, AP Management, Inc., formerly known as Banner Property Management, Inc., agrees to pay \$1,350 as a penalty, and to perform a supplemental environmental project to conduct lead-based paint abatement and/or mitigation at one or more Chicago area residential properties where a child resides, through the not for profit organization Neighborhood Housing Services of Chicago, at a cost of \$12,125.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Pamela Grace, Waste Pesticides and Toxics Division, (312) 353-2833

Court Denies United States Motion for Summary Judgment Against Apex Oil Company.

On March 15, 2007, the United States District Court for the Southern District of Illinois denied the United States motion for summary judgment on count one of a two count complaint against the Apex Oil Company. In count one of the complaint, the United States alleges that Apex Oil released gasoline which has contributed to a large plume of petroleum-based substances located under the Village of Hartford, Illinois. Among other things, the United States alleges that vapors from the plume present an imminent and substantial endangerment to human health and the environment. The court held that "[g]iven the nature of this case and the specialized knowledge that the facts entail, the Court is not in a position to make factual findings at this stage." As a result, this case will likely proceed to trial this year.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620

Court Sets Trial Date in United States v. Apex Oil Company.

On May 24, 2007, the United States District Court for the Southern District of Illinois set aside up to five weeks starting on January 7, 2008, for trial in United States v. Apex Oil Company. In its April 2005 Complaint under Section 7003 of RCRA, the United States alleges that Apex Oil released gasoline that has commingled with other responsible

parties releases and resulted in a large plume of refined petroleum substances beneath the Village of Hartford, Illinois. Among other things, vapors from the plume have migrated into homes in Hartford causing fires, explosions, and evacuations and, therefore, present an imminent and substantial endangerment to human health and the environment.

EPA entered into an Administrative Order on Consent with four of the other responsible parties requiring interim measures, an investigation of the plume, and development of a cleanup plan. The United States' complaint seeks injunctive relief requiring Apex Oil to cooperate and participate with other responsible parties in the cleanup of the plume.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620

Region 5 signs a Consent Agreement and Final Order with APSCO, Inc.

On May 31, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against APSCO, Incorporated, of Perry, Ohio. Region 5 alleges that APSCO violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) it processed during calendar year 2003. In settlement, APSCO will spend at least \$200,000 on a supplemental environmental project designed to substantially reduce the amount of lead used in APSCO's printed circuit board operations. In addition, APSCO will pay a civil penalty of \$5,483.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Tom Crosetto, Waste, Pesticides, and Toxics Division, (312) 886-6294

EPA issues a Unilateral Administrative Order to ARG Corporation and Norbert Toubes pursuant to Section 106 of CERCLA (Docket No. V-W-07-C-873).

On July 5, 2007, Region 5 issued a Unilateral Administrative Order ("UAO") to ARG Corporation and Norbert Toubes for the South Bend Lathe Superfund Site in South Bend, Indiana. Region 5's Site Assessment identified a number of hazardous substances in drums, pails, underground storage tanks, a pit, and electrical transformer reservoirs at the former lathe manufacturing facility. The UAO requires the Respondents, among other things, to properly dispose of the hazardous substances, properly dispose of friable asbestos that pose a threat to the health and safety of cleanup workers, and conduct post-removal sampling to verify completion of the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Ken Theisen, OSC, (312) 886-1959

United States Lodges Consent Decree for CERCLA Cost Recovery for the Rockwell International Site, Allegan, MI.

On July 30, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Western District of Michigan a civil Consent Decree regarding the Rockwell International Superfund Site in Allegan, Michigan. Under the decree, ArvinMeritor, Inc, corporate successor to Rockwell International's Automotive Division, will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs.

The Rockwell International Superfund Site is a former automotive manufacturing facility occupying approximately 30 acres along the Kalamazoo River in Allegan, Michigan. A consulting report generated by a corporate predecessor to ArvinMeritor concluded that the manufacturer has generated oily wastewater on-Site which was discharged to the Kalamazoo River, burned off waste oils that were held in an on-Site retention pond, and used transformers and capacitors with oils containing PCBs. The Site was listed on the National Priorities List in 1987. U.S. EPA issued an Administrative Order on Consent to Rockwell calling for Rockwell to conduct a Remedial Investigation and Feasibility Study (RI/FS) in 1988; U.S. EPA subsequently took over RI/FS development in 1998. In 2001, U.S. EPA issued a Record of Decision (ROD) and a Unilateral Administrative Order (UAO) directing ArvinMeritor to design and implement the remedy contained in the ROD. ArvinMeritor complied with the UAO. The Consent Decree calls for the payment of \$3,475,000 in past costs and payment of U.S. EPA's future costs.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912; Superfund Division Contact: Mazin Enwyia, (312) 353-8414

Region 5 signs Administrative Order on Consent with Ashland, Inc. requiring corrective action under RCRA in Willow Springs, Illinois.

On August 9, 2007, Region 5 signed an Administrative Order on Consent (AOC) pursuant to Section 3008(h) of RCRA, requiring Ashland Inc. (Ashland) to perform correction action at its chemical distribution center. Ashland's 32-acre facility was formerly owned and operated by the Department of Defense (DOD) and General Motors as a jet-engine testing facility in the 1950s. The property changed ownership several times before Ashland acquired it in 1971 for use as a chemical distribution facility and for use as an oil distribution facility for Valvoline, a division of Ashland. Although DOD closed in place its USTs, used for fuel storage at its 18 test cells, in 1996, it may have left underground piping associated with each tank. VOCs were found in the groundwater at the facility and, subsequently, Ashland Inc. entered into a Notice of Agreement with the Illinois EPA, which required groundwater monitoring and operation of a groundwater collection and treatment system. The AOC requires Ashland to investigate and remediate all hazardous wastes or constituents at or from the facility. Ashland is pursuing a separate settlement with DOD.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; John Nordine, ARD, (312) 353-1243

Region 5 signs a Consent Agreement and Final Order with Ashland Inc., Calumet City, IL.

On September 29, 2006, Region 5 signed a Consent Agreement and Final Order (CAFO) with FONA International, Incorporated (Respondent) that both initiates and fully resolves both Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CAA) violations. On September 22, 2005, Region 5 issued a Notice of Violation (NOV) under the CAA to Respondent for failing to obtain construction and operating permits, in violation of the Illinois State Implementation Plan (SIP) and Section 110 of the CAA, 42 U.S.C. § 7410. On February 2, 2006, Region 5 issued a NOV to Respondent for various RCRA violations including failure to retain copies of manifests for hazardous waste generated.

Representatives from EPA and Respondent met in October of 2005 to discuss the CAA NOV. In May of 2006, the RCRA Division issued a pre-filing notice of opportunity to confer to Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$59,440.00. The Air Division also issued a notice of intent to file a civil administrative complaint against Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$104,759.00. In July of 2006, the parties meet to discuss both the RCRA and Air violations.

In consideration of the Respondent's cooperation, attitude, and other factors as justice may require, Region 5 agreed to reduce the civil penalty to \$70,000 in settlement of the case.

Office of Regional Counsel Primary Contact: Cathleen Martwick, (312) 886-7166;
Secondary Contacts: Diane Sharrow, (312) 886-6199 and Donald Law, (312) 886-6024

Former Michigan Business Operator Charged With Illegal Storage and Disposal of Hazardous Waste.

On June 14, 2007, a federal grand jury charged Michael Lee Babbitt, age 58, with illegal storage and disposal of hazardous waste under RCRA. According to the Indictment, Babbitt operated a furniture and metal parts stripping business in Grand Rapids, MI, from 1987 until 2004. The business regularly generated hazardous spent solvents, including toluene and methylene chloride, and wastes which were contaminated with lead. Little if any of the wastes were shipped off-site for proper disposal, and when the business closed its doors in 2004, numerous drums and tanks of hazardous waste were left behind. The wastes were eventually safely disposed of at a landfill under the supervision of the Michigan DEQ. The charge against Babbitt carries a maximum punishment of up to five years imprisonment and a fine of up to \$50,000 per day of violation. An indictment is only an accusation and all defendants are presumed innocent until and unless proven guilty in a court of law. The case was investigated by EPA CID, in a joint investigation with the Michigan DEQ's Office of Criminal Investigations.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Judge Issues Favorable Decision in Clean Water Act Case Involving Wrongful Disposal of Sewage.

On May 11, 2007, Administrative Law Judge (ALJ) Gunning issued an 81-page Initial Decision finding Respondent, Roger Barber d/b/a/ Barber Trucking, liable for all counts alleged in the Complaint, and ordered Respondent to pay the full penalty of \$60,000 sought in the Complaint. Region 5 filed the Complaint in this matter in April 2005 alleging Respondent, over a two year period, land-disposed of sewage in violation of the Clean Water Act and its implementing regulations. A three-day hearing was held on this matter on April 25-27, 2006. ALJ Gunning found Respondent egregiously failed to comply with the regulations designed to protect human health and the environment from pathogens contained in sewage, and designed to protect the ground and surface waters from the nitrogen contained in sewage. The penalty sought was limited to Respondent's ability to pay. This was the first case nationally that adjudicated alleged violations of the Clean Water Act's sewage disposal regulations regarding the land application of sewage collected from residential septic tanks.

Office of Regional Counsel Primary Contact: Eaton Weiler, (312) 886-6041; Secondary Water Division contact: Valdis Aistars, (312) 886-0264

Region 5 files a Consent Agreement and Final Order to commence and conclude case against BASF Construction Chemicals, LLC, Cleveland, Ohio.

On July 3, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against BASF Construction Chemicals, LLC, formerly known as BASF Admixtures, Inc., formerly known as Degussa Admixtures, Inc., for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires BASF Construction Chemicals to pay a penalty of \$43,591. On October 31, 2006, Region 5 issued a Finding of Violation to BASF Admixtures for allegedly exceeding the VOC content limits for certain architectural coatings from 1999 until 2004. On February 28, 2006, prior to the issuance of the FOV, BASF Admixtures submitted past due exceedance fee and tonnage exemption reports along with \$137,381 in past due exceedance fees. These efforts remedied the violations. Also, in mid-2005, BASF Admixtures began describing, labeling, and marketing the coatings at issue in this case as recommended solely for shop application. As a result, BASF Admixtures was no longer subject to the Architectural Coatings regulations at 40 CFR Part 59, Subpart D. BASF Admixtures merged with BASF Construction Chemicals on December 31, 2006. As a result of BASF Construction Chemicals' cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$76,284 to a settlement penalty of \$43,591.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with BASF Corporation.

Region 5 initiated pre-filing discussions on this matter in June 2007. On August 9, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. §§136j(a)(1)(E). Specifically, the Respondent sold or distributed a misbranded pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; additional contact: Joseph Lukascyk, (312) 886-6322

Region 5 signs Consent Agreement and Final Order with Thomas Battison.

On September 24, 2007, Region 5 signed a consent agreement and final order with Thomas Battison of Girard, Ohio, commencing and resolving an administrative penalty action for alleged violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Mr. Battison owns a number of residential rental properties in and around Youngstown, Ohio. Region 5 initiated this enforcement action due to Mr. Battison's alleged failure to comply with lead paint disclosure requirements in several lease

transactions, including a lease where children lived in the unit. Mr. Battison will pay a cash penalty of \$1,264 and perform a window replacement project costing at least \$11,371 at one of his properties to settle the violations.

Office of Regional Counsel Primary Contact: Erik Olson, (312) 886-6829; primary technical contact: Estrella Calvo, (312) 353-8931

Region 5 approves TMDL for Berry Drain, Michigan.

On September 27, 2006, Region 5 approved a Total Maximum Daily Load (TMDL) for total suspended solids for Berry Drain, which is located in Sanilac County, Michigan. Excessive levels of Total Suspended Solids Concentration (TSS) from point and nonpoint source discharges near the Sandusky wastewater treatment plant (WWTP) have resulted in levels of dissolved oxygen below the applicable water quality standard. Michigan has committed to imposing wasteload allocations on the point and nonpoint sources, and has entered into a consent order under which the Sandusky WWTP is upgrading its facilities to eliminate DO effluent discharge violations by October 2007. Additionally, the Sanilac County Conservation District is applying for a CWA 319 watershed planning grant to develop best management practices and control measures that will minimize excessive TSS runoff in the Berry Drain watershed.

Office of Regional Counsel Primary Contact: Jane Woolums, (312) 886-6720; Secondary Contact: Erin Newman, (312) 886-4587

Environmental contractor receives 5 year prison term.

Timothy A. Boisture, 47, a former partner in an environmental clean-up firm, was sentenced March 6, 2007 to serve five years of imprisonment on each of the two counts of mail fraud on which he was convicted by a jury. The sentences will run concurrently. Boisture's sentence was the longest sentence to date for any crime investigated by the Indiana Inter-Agency Environmental Crimes Task Force.

Boisture's firm was hired in 1999 by the Indiana Department of Environmental Management (IDEM) to properly close 51 abandoned and leaking oil and injection wells in Vanderburgh County, IN. Leakage from the wells and associated equipment had contaminated a pond and a tributary of the Ohio River. Boisture was convicted of fraudulently charging the State of Indiana \$44,824.80 for nonexistent equipment and services and for obtaining more than \$150,000 in kickbacks from subcontractors Boisture hired. Boisture was also ordered to serve three years of supervised release following his prison term and to pay \$492,571 in restitution, of which more than \$330,000 will be made payable to the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

In related cases, former Indiana Department of Natural Resources Oil and Gas Division inspector Donald G. Veatch, age 58, of Francisco, IN, Carl F. Hanisch, age 72, of Mt. Carmel, IL, and Bi-State Pipe Co., Inc. were also sentenced following their earlier guilty pleas to making false statements. Veatch additionally pleaded guilty to bank fraud. Veatch was the state inspector assigned to the Vanderburgh County well closing project, and Hanisch and Bi-State Pipe Co., Inc. were sub-contractors. All three admitted knowingly making false statements about the equipment used to plug the wells. In addition, Veatch admitted that a company he owned received over \$110,000 from

Boisture's firm purportedly for wastewater disposal. Veatch then paid Boisture kickbacks of over \$100,000 out of the funds his company received.

Veatch received one day in jail and three years of supervised release, of which 12 months must be served on home detention. Veatch was also ordered to pay restitution of more than \$385,000. Hanisch was placed on probation for 12 months and also ordered to pay restitution. Bi-State Pipe Co., Inc. (Bi-State Pipe) was placed on probation for one year. IDEM was reimbursed for the well plugging project from federal Oil Spill Liability Trust Fund, established under the Clean Water Act.

The case was prosecuted by Assistant U.S. Attorney Steven DeBrotta and Special Assistant U.S. Attorney David Taliaferro. The case was investigated by EPA CID Special Agent Jeff Denny, in a joint investigation with the Indiana Department of Natural Resources, Law Enforcement Division, the Internal Revenue Service CID and the Federal Bureau of Investigation.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Jury convicts former environmental cleanup contractor of mail fraud.

On October 17, 2006, a federal jury convicted Timothy A. Boisture of two counts of mail fraud arising from an oil well plugging project in Southern Indiana, following a two-week trial. Boisture was a partner in Environmental Consulting and Engineering Co., Inc., an environmental clean-up firm, which was hired by Indiana Department of Environmental Management (IDEM) to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants and threatened a local pond and the Ohio River. Boisture was convicted on Counts One and Two of a five-count Indictment. Count One alleged that he defrauded IDEM by submitting false invoices charging over \$44,000 for equipment that was never installed and services that were not billed by his subcontractor. Count Two alleged that Boisture defrauded his partner by inducing three other subcontractors to pay him over \$140,000 in kickbacks. At Boisture's direction, the subcontractors submitted inflated invoices to Environmental Consulting, which Boisture approved. Once the inflated bills were paid by Environmental Consulting, the subcontractors then paid Boisture the bulk of the inflated amounts. The maximum sentence for mail fraud is 20 years on each count, although the judge is required to take into account federal sentencing guidelines which will likely call for less than the maximum sentence. Boisture may also be fined up to \$250,000 on each count. Boisture was acquitted of one other mail fraud charge, a count of money laundering and one count of making a false statement to investigators. Sentencing was set for January 23, 2007. The case was prosecuted by Assistant United States Attorney (AUSA) Steve DeBrotta and Special AUSA David Taliaferro.

Office of Regional Counsel/CID Contact: David M. Taliaferro, (312) 886-9872

Region 5 Executes CAFO with Bonnie Owen Realty, Inc., of Carbondale, Illinois, Resolving TSCA Lead-Based Paint Disclosure Rule Violations.

On September 25, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Bonnie Owen Realty, Inc., for 7 violations of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, and section 409 of TSCA, 15 U.S.C § 2689, for failure to make disclosures regarding lead-based paint as required by regulations under those statutes. Given the residence of a child with elevated

blood lead levels in the target housing, the Agency initially calculated a penalty of \$38,080 for those 7 violations. Taking account of Respondent's cooperation in resolving the matter, its subsequent analysis that the target housing was indeed free of lead-based paint and its expenditure of in excess of \$6,000 to replace 16 windows at two additional properties in Carbondale, the CAFO requires Respondent to pay civil penalty of \$533.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; alternate technical contact: Joana Bezerra, (312) 886-6004

Region 5 files FIFRA Consent Order concerning BP Products North America, Inc.

On December 6, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under 40 C.F.R. Part 22 concerning BP Products North America, Inc., (BP). In the CAFO, EPA alleges that BP violated Section 103 of CERCLA by failing to immediately notify the National Response Center (NRC) of a 660 pound leak of ammonia at BP's facility in Whiting Indiana. BP reported the release, which occurred on December 8, 2004, to the NRC almost nine and one half hours after it occurred. In the CAFO, BP agrees to pay a penalty of \$13,203.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; Ruth McNamara, secondary contact: (312) 353-3193

Region 5 filed a Consent Agreement and Final Order to commence and conclude case against BTW, Inc., Coon Rapids, Minnesota.

On April 16, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against BTW, Inc. (BTW) for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Coon Rapids, Minnesota. The CAFO required BTW to pay a penalty of \$13,763. BTW made its payment on May 15, 2007. BTW failed to submit to U.S. EPA and to the State of Minnesota a Form R for lead for the calendar year 2004 by July 1, 2005. After an inspection of the facility by U.S. EPA, BTW came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$22,939. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 immediately after the site inspection, its cooperation, and its significant subsequent investments in reducing its lead solder usage (to the point where it wasn't required to file a Form R for 2006).

Office of Regional Counsel Contact: Thomas Krueger, (312) 886-6837; program contact: Terence Bonace, (312) 886-3387

Court Enters Consent Decree Between United States, Eight States, and Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On January 16, 2007, the United States District Court for the Central District of Illinois entered a Consent Decree between the United States, eight States, and Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, "Bunge") that resolves violations of the Clean Air Act, certain State violations and reporting violations. Each of the eight States

(Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a Plaintiff-Intervenor and a signatory to the Consent Decree.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States in which Bunge operates a plant filed their Complaints and Motions-in-Intervention simultaneously. We received no comments during the public comment period. Upon entry of the Consent Decree, both State and Federal violations related to Bunge's eleven oilseed processing plants and one corn germ extraction plant are resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge's plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge's Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge's oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$12 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. The civil penalties will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Region 5 Signs a Consent Decree with Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, "Bunge") that resolves violations of the Clean Air Act. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a signatory to the Consent Decree, and filed their Complaints and Motions-in-Intervention simultaneously.

Upon entry, both State and Federal violations related to Bunge's eleven oilseed processing plants and one corn germ extraction plant will be resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge's plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement sweeping environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge's Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge's oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$14 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. This amount will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates, as follows:

Louisiana: \$83,335.00 to the Louisiana Department of Environmental Quality to fund the Mercury Removal/Education Program at LDEQ, spending no less than \$15,000.00, in St. Charles Parish. Based on the needs of the schools, the funds will be used to defray the costs of

(a) removing and disposing of present mercury, lead and/or asbestos contamination, and/or,

(b) eliminating the use of mercury instruments in local educational institutions.

Illinois:

1. Alexander County Hazardous Materials Equipment and Training SEP: \$54,000.00 to the Alexander County Emergency Services and Disaster Agency for hazardous materials response equipment and training

2. Vermilion County Hazardous Materials Equipment and Training SEP: \$90,000.00 to the Vermilion County Emergency Management Agency for hazardous materials response equipment and training

3. Pulaski County Hazardous Materials Equipment and Training SEP: \$62,000.00 to the Pulaski County Emergency Services and Disaster Agency for hazardous materials response equipment and training

4. Lead Abatement SEP: \$294,000.00 to the City of Danville, Illinois, Department of Public Development, Division of Community Development for lead abatement projects at residential locations in Danville, Illinois

Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles

Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program

Kansas:

1. Emporia School District Diesel Retrofit: \$22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253.

2. Southern Lyon County School District Diesel Retrofit: \$16,065.00 for a project retrofitting diesel vehicles owned and operated by the Southern Lyon County Unified School District No. 252.

3. KACEE Fund Contribution: \$44,630.00 to the Kansas Association for Conservation and Environmental Education to provide for environmental education within the State of Kansas.

Mississippi:

1. Hancock County Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Hancock County Fire Department for hazardous materials response equipment and training

2. Long Beach Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Long Beach Fire Department for hazardous materials response equipment and training

3. Biloxi Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Biloxi Fire Department for hazardous materials response equipment and training

4. Pass Christian Fire Department Hazardous Materials Equipment and Training SEP. \$20,843.75 to the Pass Christian Fire Department for hazardous materials response equipment and training

Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa

Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Administrative Order on Consent with C&D Technologies, Inc., Attica, Indiana.

U.S. EPA and C&D Technologies, Inc. (C&D) have entered into a "streamlined" Resource Conservation and Recovery Act (RCRA) Section 3008(h) Administrative Order on Consent (AOC) that requires C&D to identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from its facility.

C&D owns and operates a 12.5 acre battery manufacturing plant bordering the Wabash River Attica, Indiana. Residential and commercial properties surround the remaining sides of the facility. Constituents of concern include volatile organic compounds and lead. In addition to an active battery manufacturing area, the facility contains a former landfill and riverbank property. The city of Attica's municipal drinking water well field is located approximately 0.25 miles south of the facility.

U.S. EPA filed the AOC with the Regional Hearing Clerk on January 18, 2007. C&D must submit a Current Conditions Report to U.S. EPA by March 2, 2007. C&D also must submit an Environmental Indicators Report by July 30, 2008, demonstrating that all current human exposures to contamination at or from the facility are under control and migration of contaminated groundwater at or from the facility is stabilized. C&D must propose to U.S. EPA by August 1, 2009, the final corrective measures necessary to protect human health and the environment from all current and reasonably expected future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

U.S. EPA Region 5 Issues CERCLA Administrative Cashout Settlement.

On November 18, 2006, U.S. EPA issued a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) administrative cashout agreement concerning the [Calumet Containers Superfund Site](#) located in Hammond, Indiana. The settlement requires 51 former customers of the Calumet Containers facility to make cash payments totaling \$1,664,967 to resolve potential civil liability under Sections 106 and 107 of CERCLA and under Section 7003 of (the Resource Conservation and Recovery Act) RCRA. In exchange, the settling parties will receive a full covenant not to sue from U.S. EPA concerning the Site. The Site formerly housed a factory where drums containing various chemicals, paints and inks were emptied, cleaned and repainted. The Agency investigated the Site and determined that a cleanup was necessary due to widespread soil contamination. Following the cleanup of the Site, the land was turned into a conservation area.

Office of Regional Counsel Contact: Rich Murawski, (312) 886-6721; Verneta Simon, Superfund Division, (312) 886-3601

U.S. District Court dismisses 106 Pattern and Practice Counterclaim in National Lacquer and Paint CERCLA cost recovery case.

On February 8, 2007 the U.S. District Court for the Northern District of Illinois dismissed Defendant Capital Tax Corporation's 106 patterns and practice counterclaim at the National Lacquer and Paint site in Chicago Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004, EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) penalties for noncompliance with unilateral administrative orders (UAOs) under Section 106 of CERCLA, punitive damages under Section 107 of CERCLA, and penalties against the operator for failure to answer EPA's information request. One of the Defendant's, Capital Tax Corporation filed a 3 count counterclaim against the EPA alleging that Section 106 was unconstitutional on its face, as applied by EPA, and that the CERCLA 107 lien provision is unconstitutional. All counterclaims alleged the unconstitutionality was based upon the fact that no judicial hearing is available prior to receiving a UAO and prior to having a lien placed on a person's property. The court earlier dismissed Defendant's counterclaim that Section 106 is unconstitutional on its face. In this decision, the court found that given the fact that Section 106 allows a party to comply with a UAO and then seek reimbursement, and that the EPA must go to court to collect its penalties and treble damages, that as applied Section 106 of CERCLA is not unconstitutional.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

Department of Justice files cost recovery action against parties that arranged for the disposal of tires or transported tires to Carl's Tire Retreading Fire Site in Grawn, Michigan.

On November 14, 2006, the U.S. Department of Justice filed a cost recovery action against 15 Potentially Responsible Parties for response costs incurred at the Carl's Tire Retreading Site in Grawn, Grand Traverse County, Michigan. The Department of Justice also obtained tolling agreements from 10 additional Potentially Responsible Parties (PRPs).

On December 29, 1995, shredded tire material at the Carl's Retreading site caught fire and burned for 23 days. The burning tires and shredded tire material released a large quantity of pyrolytic oil containing benzene, ethylbenzene, styrene, toluene, xylenes, zinc and other hazardous substances. At the time of the fire, Carl's Retreading was owned by 3 partners, Mr. Steven D. Hubert, Mr. David A. Hubert, and Mr. Michael B. Grant. The facility was located at 5175 Sawyer Wood Drive in Grawn, Michigan from 1993 until sometime around 1997. U.S. EPA's initial response at the site was limited as the State of Michigan took the lead both in extinguishing the fire and in conducting a subsequent removal action. The State later, however, requested U.S. EPA's assistance in mitigating the releases of hazardous substance to soils and groundwater at the Site. U.S. EPA's response costs at the Site are approximately \$3 million.

Each of the 3 partners of Carl's Retreading, as well as a corporation formed in 1997 by Mr. Steven Hubert to own and operate the Site, filed for and was discharged from bankruptcy between 1999 and 2001.

This action seeks to recover costs from parties that either transported or arranged for the disposal of tires at the Site prior to the fire. The tires that the generators sent to Carl's were typically whole scrap tires that generators paid Carl's to pick up. Often Carl's dropped off trailers at a generator's site and later picked up those trailers after the

generators filled them with whole scrap tires.

Office of Regional Counsel Primary Contact: Crissy L. Pellegrin, (312) 353-5263

EPA Settles C.B.D. Inc. EPCRA Reporting Matter.

On June 5, 2007, EPA issued a Consent Agreement and Final Order (CAFO) under EPCRA Section 325 resolving claims for civil penalties for violations of EPCRA Section 313 reporting requirements by the C.B.D. Inc. facility located at 1185 Jansen Farm Court, Elgin, Illinois. The CAFO simultaneously commences and concludes EPA's action for EPCRA Section 313 violations regarding the Form R reporting of lead not contained in stainless steel, brass or bronze alloy for calendar year 2004. Under the CAFO, Respondent will pay a penalty of \$3,500. EPA conducted an inspection at the facility on June 22, 2006, and the forms were submitted on June 28, 2006. The CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630

U.S. District Court issues Order on EPA's Motion to Dismiss Citizen Suit Claims Challenging Bloomington, Indiana, CERCLA PCB Cleanups.

On September 29, 2006, the U.S. District Court for the Southern District of Indiana issued its "Entry on Defendants' Motions To Dismiss," dismissing all of Plaintiffs' non-Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) based claims. Plaintiffs (Sarah Frey, Kevin Enright, and Protect Our Woods) filed a first amended complaint against U.S. EPA and CBS Corporation (CBS)(successor to Westinghouse Electric Corporation) in 2003 alleging that CERCLA "source control" Polychlorinated Biphenyls (PCB) cleanups selected by U.S. EPA and implemented by CBS at three National Priorities List (NPL) sites were inadequate. These three cleanups are part of the CERCLA PCB remedial actions undertaken in Bloomington, Indiana, and were selected and implemented as alternatives to the incinerator remedy memorialized in a 1985 federal Consent Decree.

Specifically, Plaintiff's alleged that the cleanups were inadequate under Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), and the Clean Water Act (CWA); and that EPA had failed to follow the requirements of National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS). Plaintiff's also alleged that U.S. EPA failed to follow the requirements of CERCLA by failing to prepare a Remedial Investigation/Feasibility Study (RI/FS), by failing to comply with CERCLA public participation requirements, and by failing to memorialize the alternative cleanups in a new, or modified federal consent decree. In dismissing the claims under RCRA, TSCA, the CWA, and NEPA, the district court held that CERCLA Section 113(h) provided the sole basis for review of a CERCLA remedial action, and that CERCLA superseded or made inapplicable the requirements of NEPA as regards the cleanup at issue.

As background, in 1985, U.S. EPA, the Indiana Department of Environmental Management (IDEM), Monroe County, and the City of Bloomington (as plaintiffs) entered into a Consent Decree with Westinghouse Electric Corporation (Westinghouse) for the clean-up of six PCB contaminated sites located in, and around, Bloomington, Indiana. The remedial actions were selected in an enforcement decision document (EDD) issued by U.S. EPA on August 3, 1984. The Consent Decree (and EDD) called for the

excavation of nearly 650,000 cubic yards of PCB-contaminated material and the incineration of those materials in a dedicated, two-train, garbage-fired, TSCA-permitted incinerator to be built and operated by Westinghouse - the sole potentially responsible party (PRP) responsible as a generator for the PCB contamination. Four of the sites covered by the Consent Decree are NPL sites.

After entry of the Consent Decree public opposition to the incinerator rose. Applications of the necessary permits to design and build the incinerator were submitted by Westinghouse in 1991. Legislation enacted by the State of Indiana, however, prevented IDEM from processing the permit applications. Accordingly, in February of 1994, the Consent Decree parties agreed to explore potential alternative to incineration.

Alternative source control cleanups (to be followed with groundwater/spring water cleanups and stream sediment cleanup) were selected and implemented at Lemon Lane Landfill, Neal's Landfill, and Bennett's Dump in 1999 and 2000.

Plaintiff's filed their original complaint in this matter, challenging these source control cleanups on April 20, 2000. On August 27, 2003, the District Court entered summary judgment on behalf of U.S. EPA holding that, because cleanup work remained (despite completion of source control operable units at the three sites) the fact that work remained precluded review under CERCLA's Section 113 (h)(4) citizen suit provision which allows judicial review where the remedial action "taken" was allegedly in violation of CERCLA.

Plaintiff's appealed this dismissal to the 7th Circuit, which reversed and remanded the matter stating that there must be an "objective indicator that allows for an external evaluation, with reasonable target completion dates, of the required work for the site." Thus, in light of the long period of time since the start of the cleanup (1985), and the long period of study still ahead, Plaintiffs were "finally entitled to their day in court."

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670;
Secondary Contact: Tom Alcamo, (312) 886-7278

Western District of Michigan enters Consent Decree resolving violations of the Clean Air Act by CEMEX, Inc., St. Mary's Cement, Inc. and St. Barbara Cement, Inc.

On December 12, 2006, the Western District of Michigan entered a Consent Decree resolving Clean Air Act violations alleged to have been committed by CEMEX, Inc., St. Mary's Cement, Inc., and St. Barbara Cement, Inc. Specifically, the Complaint in the matter alleges violations of the following requirements of the Act: Standards of Performance for New Stationary Sources, Section 111 of the Act, and regulations promulgated there under, at 40 CFR Part 60, Subpart F; and Hazardous Air Pollutants, Section 112 of the Act, and regulations promulgated there under, at 40 CFR Part 63, Subpart LLL, for the Portland Cement Manufacturing Industry. The Complaint also alleged violations of the Michigan CAA implementation plan, approved by the Administrator under Section 110 of the Act. The violations occurred at a Portland cement manufacturing facility located in Charelvoix, Michigan, which was owned and operated by CEMEX prior to March 31, 2005, and owned by St. Barbara and operated by St. Mary's on and after March 31, 2005. Under the settlement CEMEX is to pay a civil penalty of \$1,359,422, and St. Mary's has committed to undertaking remedial action at the facility which will cause it to come into compliance with the CAA requirements cited

in the Complaint. In addition, St. Mary's is subject to reporting requirements, and is to perform Supplemental Environmental Projects at the facility.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947; Farro Assadi, secondary contact: (312) 886-1424

Region 5 Settles Clean Air Act Matter with CertainTeed Corporation.

On May 23, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) settling Clean Air Act (CAA) violations by CertainTeed Corporation. The violations were voluntarily disclosed by CertainTeed to EPA in letters dated March 25, 2004 and December 14, 2004. In July 2005, EPA determined that CertainTeed had not met several of the criteria in EPA's [Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations](#) (EPA Audit Policy), so no penalty reduction was warranted. At that time, EPA also informed CertainTeed that the Agency intended to file an enforcement action. In a complaint filed on August 29, 2006, EPA alleged that CertainTeed was operating two pieces of equipment without a permit and was operating a third piece of equipment in violation of the facility's CAA Title V permit. Two of the violations lasted for a period of several years. After the complaint was filed, CertainTeed submitted written and verbal information to EPA which allowed the Agency to revisit and reverse its earlier determination regarding the application of the EPA Audit Policy.

Ultimately, EPA determined that CertainTeed satisfied eight of the nine Audit Policy criteria, resulting in a 75% reduction in the proposed penalty. EPA also reduced the penalty based on the seriousness of the violation, and CertainTeed's good faith efforts to comply. The CAFO settles the matter for a total of \$13,750, plus the performance of a supplemental environmental project costing at least \$41,250 (the complaint proposed a penalty of \$272,140). The supplemental environmental project consists of CertainTeed permanently retiring SO₂ or NO_x emission credits.

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Charmagne Ackerman, Environmental Engineer: (312) 886-0448

Region 5 signs a Combined Complaint and Consent Agreement with C.G. & S. Provision Company.

Region 5 began pre-filing discussions in this matter in April, 2006. On July 19, 2007, Region 5 filed a complaint and consent agreement and final order that initiates and concludes proceedings with C.G. & S. Provision Company to settle violations of both Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and violations of Sections 304(a) and 312(a) of the Emergency Planning and Community Right to Know Act (EPCRA). The specific violations were failure to immediately notify the National Response Center and the State Emergency Response Commission (SERC) of an August 11, 2005 release of anhydrous ammonia from this facility and failing to submit completed Emergency and Hazardous Chemical Inventory forms to the SERC and the local fire department for the 2002-2005 calendar years by March 1 of the relevant year. C.G. & S. Provision Company is currently in compliance with Section 312 of EPCRA; the settlement will require C.G. & S. Provision Company to pay a penalty of \$27,000 broken into eighteen monthly payments with interest. This penalty includes a reduction for inability to pay, a reduction for cooperation and a reduction for quick settlement.

Office of Regional Counsel Contact: Padmavati Bending, (312) 353-8917

Region 5 files FIFRA Consent Order concerning Diversified Chemical Technologies, Inc.

On November 30, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Diversified Chemical Technologies, Inc., (Diversified). In the CAFO, EPA alleges that Diversified produced pesticides in a Detroit, Michigan, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Diversified distributed those pesticides using labels that did not bear a valid establishment registration number. Diversified has now returned to compliance with the requirements of FIFRA. In the CAFO, Diversified agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact: (312) 886-6009

U.S. EPA signs Third and Final Consent Agreement for remediation of Chevron's Cincinnati Refinery. Chevron to clean groundwater, extract petroleum soil vapors under Hooven, Ohio, and protect the Great Miami River from refinery-related releases of petroleum hydrocarbons. Work to be performed by Chevron under all three agreements estimated to be worth \$100 million.

On November 1, 2006, U.S. EPA finalized a RCRA Section 3008(h) Corrective Measures Implementation Administrative Order on Consent (AOC) with Chevron U.S.A., Inc., for clean up of groundwater, prevention of releases of petroleum to the Great Miami River, and soil vapor extraction of petroleum hydrocarbon vapors in the Town of Hooven, Ohio. The petroleum released to the environment is from Chevron's refinery in neighboring Cleves, Ohio. The AOC, In the Matter of: Chevron U.S.A. Inc., Cleves, Ohio, U.S. EPA Docket No. RCRA-05-2007-0001, embodies Chevron's commitment to continue to conduct soil vapor extraction to remove volatile petroleum constituents from the Light Non-Aqueous Phase Liquids (LNAPL) smear zone under the Town of Hooven, which lies directly to the west of the former refinery; to remediate a contaminated plume of groundwater underlying its former refinery and part of the Town of Hooven to U.S. Safe Drinking Water Act Maximum Contaminant Levels (MCLs); and to monitor the banks of the Great Miami River at the refinery and down-stream for releases of petroleum to the river or from the river bank, as well as to undertake engineered controls, as necessary, to stabilize the river bank to prevent further releases of petroleum. Chevron will conduct periodic high-grade pumping to remove LNAPL from the groundwater plume for up to 12 years. Monitored Natural Attenuation of the dissolved contaminant plume and LNAPL plume will go on for an additional 30 years, in order to achieve MCLs in the plume. If it appears the performance levels will not be met on a timely basis, U.S. EPA's August 2006 Final Decision, which Chevron will implement pursuant to this AOC, provides that Chevron must employ any number of technologies to remediate the plume within that timeframe.

The Chevron Cincinnati refinery covers approximately 250 acres, and is situated on the banks of the Great Miami River approximately 20 miles west of Cincinnati and 3 miles north of the Ohio River. The refinery produced various petroleum based fuels from before World War II until approximately 1987. The facility also includes a 5-acre landfarm situated on a hill above Hooven, Ohio, two islands in the Great Miami River,

and five pipelines formerly used to convey petroleum products three miles south to Chevron's loading dock on the Ohio River. The Final Decisions and Agreements anticipate that adequate institutional controls will be put in place to allow for mixed used industrial and recreational development in the future. Oil had been released from the groundwater into the Great Miami River, precipitating the need to start the clean up of oil in groundwater. Chevron has removed via pump and treats over 3 million of a total estimated 5 million gallons of floating petroleum from the plume in the groundwater. Chevron's own modelling also showed that the well field for the Town of Cleves, on the bank of the river opposite the refinery, would be contaminated by migration of the Chevron oil plume under the river if Chevron ceased its pump and treat. This well field has since been moved from Cleves.

This Chevron case was precedential in that the 1993 AOC was believed to be the first time in the country where RCRA corrective action was used to obtain pump and treat of petroleum hydrocarbons from the groundwater. U.S. EPA asserted that the petroleum released during facility operations was not "product" as asserted by Chevron, but a "waste" subject to corrective action. This third and final AOC not only requires Chevron to implement U.S. EPA's August 2006 Final Decision, but to evaluate and implement additional measures if any further plume migration occurs. It is also unique in that this AOC requires Chevron to investigate and remediate any releases of petroleum or hazardous constituents that may be discovered in the future. The value of the work performed by Chevron pursuant to all three Agreements (1993, 2004, and 2006) is estimated to be worth \$100 million.

Office of Regional Counsel Contact: Jerome P. Kujawa, (312)-886-6731

Region 5 signs Consent Agreement and Final Order with Respondent CHS, Inc. Grand Meadow, MN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced four pesticides in an unregistered establishment located at 73057 State Highway 16, Grand Meadow, Minnesota, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. The Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact: (312) 886-6009

S.D. Indiana Court in U.S. et al. v. Cinergy Corp. et al. Rules in Favor of the Plaintiffs on Summary Judgment for RMRR and Fair Notice.

On June 18, 2007, Judge McKinney of the S.D. of Indiana lifted the stay on the U.S. v. Cinergy PSD/New Source Review case and ruled on several pending motions, including

deciding in favor of the Plaintiffs on the Plaintiffs' motions for summary judgment on routine maintenance, repair and replacement (RMRR) and fair notice. Each decision is discussed separately.

The U.S. initiated a lawsuit against Cinergy Corp. alleging that Cinergy violated new source review (NSR) provisions of the CAA when it made physical changes to units at various power plants that constitute modifications as that term is defined by 42 U.S.C. 7411(a)(4). The Plaintiffs moved for partial summary judgment that certain projects were not within the narrow range of activities that qualify for an exclusion from NSR as routine maintenance, repair or replacement under the CAA Section 111(a)(4) and 40 CFR 52.21(b)(2)(iii). In a 71 page decision, Judge McKinney ruled in favor of the Plaintiffs on each of the projects.

At the outset, the Court noted that Cinergy failed to comply with Local Rule 56.1 which required Cinergy to specifically indicate which of Plaintiffs' designated facts it disputes. Instead of doing this, Cinergy set out its own material facts in dispute. Accordingly, for purposes of this order, the Court accepted as true Plaintiffs' assertions.

The Court stated that the proper standard to apply to determine whether a project was routine and therefore within the RMRR exclusion is the standard it noted in *U.S. v. SIEGO*, 245 F. Supp. 994, 1008 (S.D. Ind. 2003). The Court went on to state:

The RMRR analysis is a common sense approach that involves a fact intensive inquiry, on a case-by-case basis, of several factors such as a project's nature and extent, its purpose, the frequency of the repair or replacement, and the project's cost. . . . The frequency factor includes a consideration of how frequently a type of repair or replacement is done at a particular unit as well as how frequently it is done within the industry.

The Court noted the fact that a project was a capital expenditure is an important consideration, as is the fact that outside contractors were used for a project. Also, significant to the Court is the fact that the projects were costly when compared to annual maintenance costs for the unit at issue and the fact that the costs were high enough to require high-level management approval.

One of the affirmative defenses Cinergy raised to the Plaintiffs' lawsuit was that it did not have fair notice of (1) the legal standards to apply to determine whether the RMRR provisions of the CAA is applicable to a given project and (2) the legal standards for determining whether a given project will cause a significant net emissions increase for purposes of NSR.

A. Fair Notice of legal standards concerning RMRR

For projects Cinergy undertook after September 1988, the Court reiterated its position from *SIGECO* that the 1988 Don Clay memorandum "explicitly notified the regulated community that the EPA considered routine maintenance to be a narrow exemption." The Court went on to say that the Clay memorandum and the 7th Circuit decision in *WEPCO* put the regulated community on notice that the routine maintenance exemption was a multifactor test and that no single factor was dispositive. So, Cinergy had fair notice of EPA's interpretation of the standards for the RMRR exclusion for all of its projects that began after the Clay memo.

For the projects begun prior to 1988, the Court found that the plain language of the CAA and its regulations, the EPA's official statements and prior interpretations, and Cinergy's failure to make any inquiry prior to construction (such as an applicability determination), reveal that Cinergy did have fair notice of the interpretation of the RMRR exclusion even prior to the 1988 Clay memo. An additional factor supporting the court's conclusion was evidence showing that Cinergy had actual knowledge of EPA's interpretation.

B. Fair Notice of the Standard for Determining Emissions

The Court first dismissed Cinergy argument that it did not have fair notice of the precise calculation methodology. The Court concluded that as long as Cinergy was aware of the regulatory standards for determining whether a project may result in significant increases in emissions, its understanding of the exact mathematical formula is irrelevant. The Court then found that Cinergy "certainly had fair notice of the standards after the WEPCO decision and for projects it began thereafter."

For projects begun prior to WEPCO, the Court concluded that Cinergy had fair notice of the standards for determining significant emission increases based on the plain language of the regulations. In addition, the Court found that Cinergy either had actual knowledge or should have been aware of the standards based on deposition testimony and the 1987 Casa Grande copper mining and processing applicability determination. The Court noted that the Casa Grande determination applied the wrong standard; actual to potential, but that this was harmless error. Cinergy's own witness acknowledged that the actual to potential test was more likely to result in a finding that a PSD permit was required, than the correct actual to future actual test.

Office of Regional Counsel Contacts: Gaylene Vasaturo (312) 886-1811, Ignacio Arrazola (312) 886-7152, Tom Williams (312) 886-0814, Charles Mikalian (312) 886-2242 and Timothy Thurlow (312) 886-6623

U.S. District Court Denies Leave to File Additional Summary Judgment Motions and Re-schedules *United States v. Cinergy, Inc. et al*, (Clean Air Act) for Trial.

The United States District Court for the Southern District of Indiana, Magistrate Judge Magnus-Stinson presiding, convened a status conference in the *United States v. Cinergy* new source review case on July 11, 2008. The conference followed the court's order lifting a stay of proceedings that had been in place pending appellate resolution of a dispute over the applicable emissions test. At the conference, the plaintiffs moved for leave to file additional motions for partial summary judgment on Cinergy's "routine maintenance" defense on nine contested projects, the court having granted an earlier motion on all the other projects on June 18th, and on a legal issue involving the baseline to apply for calculating emissions resulting from several of the projects. Cinergy did not object to the request for leave to file an additional RMRR motion, but objected to the request related to emissions calculation baseline. The court took the matter under advisement, and scheduled trial to begin on May 5, 2008, with a final pretrial conference on April 11, 2008. According to the Magistrate, the Judge has set aside the month of May for the trial. On July 17, 2007, the Court issued a written order confirming the dates and denying plaintiffs' motion for leave to file additional summary judgment motions.

Office of Regional Counsel Primary Contacts: Gaylene Vasaturo (312) 886-1811, Ignacio Arrazola (312) 886-7152, Tom Williams (312) 886-0814, Chuck Mikalian (312) 886-2242 and Timothy Thurlow (312) 886-6623

Region 5 filed a Consent Agreement and Final Order to commence and conclude case against Circom, Inc., Bensenville, Illinois.

On May 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against Circom, Inc. (Circom), for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Bensenville, Illinois. The CAFO requires Circom to pay a penalty of \$1397. Circom failed to submit to the Administrator of U.S. EPA and to Illinois a Form R for lead for the calendar year 2005 by July 1, 2006. After an inspection of the facility by U.S. EPA, Circom came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$6,500. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 within 51 days of its due date, its cooperation and, and the fact the company is a small business.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Region 5 signs a Combined Complaint and Consent Agreement with the City of Cincinnati, Ohio.

Region 5 initiated this enforcement action in July 2006 when the Region sent a pre-filing notice letter to the City of Cincinnati notifying the city of violations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The notice stated that Cincinnati violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report a release of 11,276 pounds of aluminum sulfate to the National Response Center, the state emergency response commission and the local emergency planning committee and failing to send written follow-up notification within seven days to the state emergency response commission and local emergency planning committee. Cincinnati subsequently demonstrated that the release did not leave the facility and was therefore not in violation of EPCRA. On June 27, 2007, Region 5 filed a combined complaint and consent agreement with Cincinnati in settlement of the company's violations of CERCLA. Pursuant to the settlement, Cincinnati will pay a penalty of \$17,550.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ginger Jager, Superfund Division, (312) 886-0767

Region 5 signs a Consent Agreement and Final Order with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company.

On April 11, 2007, Region 5 signed a CAFO with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company (Respondent) that both initiates and fully resolves the FIFRA Section 14, 7 U.S.C. 136l(a), administrative action. In July 2006, Region 5 sent Respondent a pre-filing notice letter informing Respondent that it violated Sections 12(a)(1)(C) of FIFRA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$4,400 for violations which originated when Respondent's supplemental distributor, Murphy Supply Company, sold and distributed one pesticide product whose composition differed from its composition as described in the statement required in connection with the pesticide's registration. In consideration of the Respondent's attitude and good faith efforts to

comply with FIFRA, Region 5 agreed to reduce the civil penalty to \$3960.00 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joseph Lukascyk, (312) 886-6233

U.S. EPA reaches administrative settlement under TSCA for released substances.

Respondent, Clean Harbors, operates a facility that is permitted under TSCA to store, disassemble and decontaminate PCB items by solvent washing. Storm water from the facility discharges into a sewer line which leads into Strong Brook. Strong Brook is about 0.6 miles long and empties into the Ashtabula River at a point called Jack's Marine Slip. On March 20, 2007, U.S. EPA was notified that the Respondent may have improperly stored and/or disposed of polychlorinated biphenyls (PCBs) and those PCBs may have migrated off the facility into Strong Brook and the Ashtabula River. Based on this information, the U.S. EPA conducted an inspection of the facility on March 28, 2007, which included the taking of several soil samples on the facility. The samples showed levels of PCBs from 2.82 parts per million (ppm) to 926 ppm on the facility.

While U.S. EPA was inspecting the facility, the Respondent stopped the discharge and run-off of water into the sewer system which empties into Strong Brook. The Respondent has and is collecting this water for treatment off-site. In addition, the Respondent installed a boom and silt curtain in Jack's Marine Slip to contain the spread of any PCBs and/or oil that could be migrating down Strong Brook into Jack's Marine Slip. U.S. EPA and Respondent have entered into a Consent Agreement and Final Order (CAFO) which requires the Respondent to conduct an investigation of the extent of PCBs on its facility and remediate the PCBs pursuant to EPA's Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA), commonly referred to as EPA's PCB Spill Policy. In addition, the Respondent will conduct an assessment of the sewer system and Strong Brook to determine the extent of PCB contamination and will maintain, inspect and repair as necessary the oil boom and silt curtain that Respondent has placed in the Marine Slip area to control the release of PCBs in the River. The CAFO reserves the right of U.S. EPA to seek penalties for violations of TSCA at a later date.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Cognis Corporation Sentenced For Making Illegal Discharges to Mill Creek Causing The Death Of Migratory Birds; United States v. Cognis Corporation.

On March 14, 2007, Cognis Corporation ("Cognis") was sentenced for illegal discharges into Mill Creek and causing the death of 12 migratory birds. Cognis was sentenced to three years of probation. During the term of probation Cognis will implement an environmental compliance plan. In addition, Cognis was fined \$215,000 and ordered to pay \$219,994.67 in restitution, for a total of \$434,994.67. Cognis, an Ohio corporation, operates a specialty chemical manufacturing facility located on the Mill Creek in Cincinnati, Ohio. This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources – Division of Wildlife, the Cincinnati Fire Department, the Cincinnati Metropolitan Sewer District, the U.S. Fish and Wildlife Service, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Colors, Inc., Indianapolis, Indiana.

On October 2, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Colors, Inc. for allegedly violating Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center eight days after a release of approximately 45,906 pounds of sulfuric acid, which has a reportable quantity of 1,000 pounds, took place. The CAFO requires Colors to pay a penalty of \$19,214. Region 5 calculated a proposed penalty in this matter of \$29,707. As part of a streamlined enforcement action, Region 5 offered Colors a 35% reduction based on Colors attitude during the settlement process (25% based on Colors' cooperation and 10% based on Colors' willingness to settle).

Office of Regional Counsel Primary Contact: Stephen Thorn, 312-353-9715

Administrative Settlement Agreement and Order on Consent executed for CERCLA Removal Action.

On June 11, 2007, the Superfund Division Director executed a CERCLA Administrative Settlement Agreement and Order on Consent (AOC) under Sections 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding the Southwestern Site area that is adjacent to the Johns Manville NPL Site located in Waukegan, Illinois. Asbestos-contaminated soils and waste have been discovered in areas identified as Sites 3, 4, 5 and 6 on property owned by Commonwealth Edison that is adjacent to the southern and western property lines of Johns Manville former asbestos manufacturing facility in Waukegan, Illinois. The settling parties are Johns Manville and Commonwealth Edison. Under the terms of the AOC, the settling parties have agreed to: a) conduct an Engineering Evaluation Cost Analysis Study (EECA) of the southwestern site area; b) conduct U.S. EPA's selected removal action in an Action Memorandum or other decision document after public comment; c) reimburse 100% of EPA's past costs at the southwestern site area; and d) reimburse future response costs including the costs of overseeing the work at the southwestern site area.

Office of Regional Counsel Contact: Janet R. Carlson, (312) 886-6059; Brad Bradley, Superfund (312) 886-4742

Waste Treatment Facility and Four Former Officials Indicted for Illegally Discharging Untreated Industrial Wastes.

On January 24, 2007, in Detroit in the Eastern District of Michigan, a grand jury issued a 12-count indictment alleging that Comprehensive Environmental Solutions, Inc. (CESI); CESI's former President, Michael G. Panyard; CESI's former CEO, Bryan Mallindine; and CESI's former plant manager, Charles Long, were in a criminal conspiracy to violate the Clean Water Act, to make false statements to government officials and to obstruct justice. The indictment further alleged that the defendants knowingly bypassed treatment equipment when discharging, violating the Clean Water Act; that defendants CESI and Panyard added water to CESI discharge samples and also discharged water to render DWSD sampling devices inaccurate, all violating the Clean Water Act; in seven counts that defendants CESI and Panyard gave falsified documents to and made oral and written

false statements to government officials; and that defendants CESI and Mallindine obstructed justice by ordering a floor drain to be cemented over during an investigation.

According to the indictment, in parts of 2002 CESI operated a waste treatment facility at 6011 Wyoming Ave., Dearborn, Michigan. The facility's tank farm had over 10 million gallons of storage capacity. CESI lacked adequate treatment processes and the facility's storage tanks were at or near capacity. But CESI continued to accept waste that it could not adequately treat. To make room for incoming wastes and to save treatment costs, CESI and the defendants often bypassed treatment processes and discharged untreated wastes directly to the Detroit sewer system. The defendants' false statements and obstruction of justice worked to conceal the defendants' misconduct. If convicted of the most serious charges, Mallindine faces imprisonment for up to ten years; the other defendants face imprisonment for up to five years; and all defendants face a criminal fine of up to \$50,000 per day of violation. A defendant is presumed innocent until proven guilty. U.S. EPA's Criminal Investigation Division, the Federal Bureau of Investigation, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the United States Coast Guard jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

TSCA Pre-Manufacture Notice Case Against Cortec Corporation Settled With Simultaneous Complaint and CAFO.

On January 31, 2007, Region 5 filed a simultaneous Complaint and Consent Agreement and Final Order (CAFO) initiating and resolving an administrative compliance action under Section 16 of Toxic Substances Control Act (TSCA), 15 U.S.C. 2615, and 40 C.F.R. § 720.120(f), against Respondent Cortec Corporation for violations alleged at the company's St. Paul, Minnesota facility. The Region alleges that Respondent Cortec manufactured two non-exempt new chemical substances for a non-exempt commercial purpose, without filing a notice with U.S. EPA under Section 5 of TSCA in violation of Section 5(a)(1)(A) of TSCA, and 40 C.F.R. § 720.120(a) and (b). Cortec claims the identities of the two substances as Confidential Business Information (the Complaint sets forth the Confidential Business Information (CBI); the CAFO does not). The Region proposed an unmitigated civil penalty of \$237,434 for the violations.

In the CAFO Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations. Respondent indicates that it filed a Low Volume Exemption for the substances at issue on August 9, 2005 (after the inspection date), thus achieving compliance with the relevant requirements. Based on the fact that Respondent timely achieved compliance after the inspection, and Respondent's co-operation and good faith in reaching the negotiated settlement set forth in the CAFO, the Region agreed to mitigate the civil penalty amount for the violations to \$202,000. This amount represents a 20% mitigation of the proposed penalty amount.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

Region 5 signs Consent Agreement and Final Order with Neil and Mary Lou Cowen.

On August 8, 2007, Region 5 signed a consent agreement and final order with Neil and Mary Lou Cowen of Indianapolis, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851.

Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. The Cowens own a number of single family residential rental properties in Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in April of 2007, alleging that the Cowens had failed to comply with lead paint disclosure requirements in three lease transactions and one sales transaction. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to a purchaser the required ten day lead paint inspection period. The Cowens will pay a penalty of \$3,325 to settle the violations and will pay \$8,475 for a window replacement Supplemental Environmental Project.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Terrence Bonace, (312) 886-3387

Region 5 files a Consent Agreement and Final Order to conclude case against Crane Composites, Inc., Channahon, Illinois.

On January 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crane Composites, Inc. (Crane) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On July 5, 2006, Region 5 filed an administrative complaint, with a proposed penalty of \$78,484, against Crane based on the following alleged violations: failure to label containers of hazardous waste, failure to close containers of hazardous waste, failure to control air emissions from containers of hazardous waste, failure to include all the necessary components of a contingency plan (no emergency equipment descriptions and no evacuation plan) and failure to submit the contingency plan to the local police department, and failure to conduct and document annual hazardous waste training. Crane has agreed to pay a penalty of \$50,000. This reduction reflects information submitted by Crane after the complaint was filed and a 10% reduction based on expedited settlement.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715

Region 5 enters into a Consent Agreement and Final Order resolving violations of the Clean Water Act (CWA), by the City of Crawfordsville, Indiana.

On January 4, 2007, Region 5 entered into a Consent Agreement and Final Order (CAFO) that resolves claims against the City of Crawfordsville, Indiana (City). The CAFO charged the City with violations of its NPDES permit under Section 301 of the CWA. Specifically, the Agency alleges that from September 2004, until May 2005, the City exceeded its daily and monthly limits for ammonium and copper in the permit. The Agency proposed an appropriate penalty of \$35,000. The City agreed to pay the \$35,000 penalty, and to also install an ultraviolet purifier and to clean its filters, all of which will improve the quality of its discharges. The Agency agreed to accept the proposal. The City is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631

Region 5 files a Consent Agreement and Final Order to conclude case against Crest Industries, Ltd., New Lenox, Illinois.

On June 1, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crest Industries, Ltd. (Crest) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On September 30, 2005, Region 5 filed an administrative complaint against Crest based on alleged violations at Crest's 1066 Industry Road, New Lenox, Illinois facility. The alleged violations at facility included: failure to have written tank assessments that were professionally reviewed and certified; failure to provide adequate secondary containment for its hazardous waste storage tanks, failure to equip its hazardous waste storage tanks with a fixed roof, closure device or closed vent system; failure to implement a hazardous waste training program and keep employee training records; failure to maintain a contingency plan; and failure to apply for a hazardous waste management facility and storage permit as required by failing to meet the above generator exemption conditions and storing hazardous waste in excess of 90 days. Crest has agreed to pay a penalty in installments over a term of 25 months totaling \$200,000. This reduction reflects information submitted by Crest after the complaint was filed and other considerations.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715, and Luis Oviedo, (312) 353-9538

Region 5 Enters into a Consent Agreement and Final Order Resolving A Violation of Section 103 of CERCLA by Crystal Valley Cooperative, Lake Crystal, Minnesota.

On October 13, 2006, the Regional Administrator, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under CERCLA Section 103 pursuant to which Crystal Valley Cooperative agrees to pay a civil penalty of \$18,789. The CAFO was filed with the Regional Hearing Clerk on October 13, 2006. Crystal Valley Cooperative experienced a release of 2,200 pounds of ammonia on April 16, 2005, when a bolt broke on the front running gear of an ammonia nurse tank while the tank was being transported by a Crystal Valley Coop employee. The tank rolled over into a ditch, causing the cage around the valve to break off and the valve to open. Crystal Valley Cooperative failed to promptly notify the National Response Center of the release of 2,200 pounds of ammonia. The initial penalty calculated for the CERCLA violation was \$28,907. For settlement purposes, this number was mitigated down to \$18,789 based on a 10% reduction for quick settlement and a 25% reduction for good faith and cooperation. Under the settlement, Crystal Valley Cooperative will pay a cash civil penalty of \$18,789.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

Trucking Company Pleads Guilty to Negligently Discharging Boron Contaminated Water Without a Permit.

On January 11, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and pled guilty to a January 4, 2007, one-count information alleging that Curry Office Supply negligently discharged a pollutant to a water of the United States without an NPDES permit, in violation of the Clean Water Act. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold

knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

The indictment alleged that beginning in 2001, coal combustion ash in a large excavation at the Curry facility contaminated several million gallons of ponded rainwater in that excavation with excessive boron levels. The indictment also alleged that between March and May 2003 and on Lippold's orders, the Curry facility discharged a substantial portion of the boron ash wastewater into an unnamed tributary of the Sangamon River using sprayer trucks, a hose and a buried discharge pipe. The indictment also alleged that Lippold ordered this discharge after IEPA told Curry Ready Mix and Curry Ice & Coal that IEPA would not issue an NPDES permit to discharge the boron ash wastewater and after IEPA refused to issue a provisional variance to allow the Curry facility to discharge the boron ash wastewater in violation of water quality standards. The information alleged that defendant Curry Office Supply was negligent in supervising an agent at the Curry facility. In the plea agreement, defendant Curry Office Supply agreed to pay a \$50,000 criminal fine and serve three years of probation. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois State Police jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Trucking Company Sentenced For Negligently Discharging Boron Contaminated Water Without a Permit.

On June 25, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and was sentenced to a \$50,000 criminal fine and three years probation for negligently discharging a pollutant to a water of the United States without an NPDES permit, in violation of the Clean Water Act. Curry Office Supply had pled guilty on January 11, 2007, to January 4, 2007, one-count information alleging this crime. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

The indictment alleged that beginning in 2001, coal combustion ash in a large excavation at the Curry facility contaminated several million gallons of ponded rainwater in that excavation with excessive boron levels. The indictment also alleged that between March and May 2003 and on Lippold's orders, the Curry facility discharged a substantial portion

of the boron ash wastewater into an unnamed tributary of the Sangamon River using sprayer trucks, a hose and a buried discharge pipe. The indictment also alleged that Lippold ordered this discharge after IEPA told Curry Ready Mix and Curry Ice & Coal that IEPA would not issue an NPDES permit to discharge the boron ash wastewater and after IEPA refused to issue a provisional variance to allow the Curry facility to discharge the boron ash wastewater in violation of water quality standards. The information alleged that defendant Curry Office Supply was negligent in supervising an agent at the Curry facility. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois State Police jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Region 5 signs Consent Agreement and Final Order with D & D Garden Products, Inc.

On April 12, 2007, Region 5 signed a CAFO with D & D Garden Products, Inc. (D & D), Lombard, Illinois, in settlement of a complaint that EPA filed on June 22, 2006, which alleged that D & D had violated Section 12(a)(1)(A) of FIFRA by selling and distributing the pesticide product Shoo-fly Hornet Jet Bomb, the registration of which had been cancelled. The complaint proposed a \$45,000 penalty. Region 5 mitigated the penalty to \$1,000 based on documentation indicating D & D's inability to pay the penalty and continue in business, as well as its good faith and cooperation.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Terence Bonace, (312) 886-3387

Region Resolves TSCA Lead Disclosure Case against H&C Building and the Dan H. Watkins Trust (Moline, Illinois).

On September 27, 2006, the Acting Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which H&C Building and the Dan H. Watkins Trust (Respondents) agreed to pay a penalty of \$8,885 for violations of the "Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property" (Disclosure Rule), 40 C.F.R. Part 745, Subpart F; Section 409 of Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689; and Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, at a residential apartment complex they own Moline, Illinois. Specifically, Region 5 alleged that Respondents failed to include within or as an attachment to the each of six leases to rent apartments at the complex, prior to the lessees being obligated under contract to rent the apartments: a lead warning statement; a statement by Respondents disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to Respondents regarding lead-based paint and/or lead-based paint hazards in the apartments or a statement that no such records exist; a statement by the lessees affirming receipt of certain information set out in the Disclosure Rule; the lead hazard information pamphlet; and signatures and dates of signatures of Respondents and the lessees certifying the accuracy of their statements. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on September 28, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Secondary Contact: Joana Bezerra, (312) 886-6004

Region 5 files a Consent Agreement and Final Order to conclude case against Dana Container, Inc., Detroit, Michigan.

On September 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Dana Container, Inc. (Dana) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On December 22, 2005, Region 5 filed an administrative complaint, with a proposed penalty of \$381,730, against Dana based on alleged violations at Dana's 1551 Caniff Street facility and 11430 Russell Street facility. The alleged violations at the 1551 Caniff Street facility included: failure to label hazardous waste; failure to conduct inspections of the 90-day storage area; failure to meet design requirements for the 90-day storage area; failure to implement a hazardous waste training program and keep training records; failure to provide safety equipment and provide required aisle space; failure to maintain a contingency plan; and failure to label a container storing used oil. The alleged violations at Dana's 11430 Russell Street facility included: failure to label hazardous waste; failure to make a hazardous waste determination; failure to keep hazardous waste containers closed; failure to include the required elements of a training program; failure to keep records documenting job experience required for a position and any training provided; failure to equip the facility with a device capable of summoning emergency assistance; and failure to have a contingency plan. Dana has agreed to pay a penalty of \$151,000. This reduction reflects information submitted by Dana after the complaint was filed that warranted the complete removal of proposed penalties for four counts and a 10% reduction based on expedited settlement.

Office of Regional Counsel Primary Contact: Stephen Thorn, (312) 353-9715

Region 5 Approves Michigan *E. Coli* TMDL for the Deer Creek Tributary of the North Branch of the Clinton River.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 22, 2006, the Region approved the TMDL submitted to U.S. EPA by Michigan Department of Environmental Quality to address *E. coli* levels in the Deer Creek Tributary of the North Branch of the Clinton River, an impaired water in southeast Michigan largely within Macomb County northeast of Detroit. The TMDL establishes the maximum daily load of *E. coli* coming from point and non-point sources to ensure Deer Creek will meet the established Michigan water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jeanette Marrero, (312) 886-6543

Degussa Engineered Carbons, LP Completes SEP Pursuant to Consent Agreement and Final Order resolving violations of the Clean Air Act.

On September 5, 2007, Region 5 formally accepted the SEP completion report filed by Degussa Engineered Carbons. The SEP complies with the terms of the January 18, 2006, CAFO. The SEP resulted in the replacement of 47 wood stoves with EPA certified high efficiency stoves in homes of low income individuals in Washington County, Ohio and Wood County, West Virginia. In addition, chimneys and flues were repaired or replaced

as necessary. The wood stove changeouts are expected to reduce emissions of various air pollutants in these non-attainment areas by over 16 tons.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Brian Dickens, Air Division, (312) 886-6073

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order to conclude case against Del's Metal Co., Rock Island, Illinois.

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) concluding an administrative penalty action against Del's Metal Co. (Del's Metal), Rock Island, Illinois for violations of the Clean Air Act (CAA), 42 U.S.C. §7401, *et seq.*, and regulations concerning the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at its facility in Rock Island, Illinois. The CAFO requires Del's Metal pay a penalty of \$40,000. On September 27, 2006, EPA filed an administrative penalty order against Del's Metal for not complying with the regulations concerning the operation of its two furnaces. Del's Metal has discontinued the operation of its furnaces which will result in fewer pollutants being released to the environment. The proposed penalty in this matter was \$100,548.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Citizen Suit Filed Challenging Approval of I-69 Highway Project in Indiana.

On October 2, 2006, several citizen groups and citizens filed a court challenge seeking to block further implementation of the I-69 Highway project. The project is a proposed 142 mile highway project from Indianapolis to Evansville, Indiana which is a segment of the proposed North American Free Trade Highway project. The complaint was brought against the U.S. Department of Transportation, the Federal Highway Administration, the U.S. Department of Interior, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers, the Indiana Department of Transportation, and various officials affiliated with these agencies. The suit seeks to overturn the Federal Highway Administration's Record of Decision approving a Tier 1 Environmental Impact Statement for the project which was issued on March 24, 2004 and ancillary decisions by the FWS and the Corps in support of this Record of Decision. In the complaint, the plaintiffs allege the Defendants violated the National Environmental Policy Act and Section 4(f) of the Department of Transportation Act through the issuance of the Record of Decision. They allege the Defendants violated Section 7 of the Endangered Species Act by failing to take into consideration impacts to the endangered Indiana Bat and improperly issuing an incidental take permit for the project. Finally, they allege the Defendants violated Section 404 of the Clean Water Act by failing to consider implementation of the least environmentally damaging practicable alternative for the project.

Office of Regional Counsel Primary Contact: Thomas J. Kenney, (312) 886-0708

Northern District of Ohio enters Consent Decree resolving violations of the Clean Water Act by Detrex Corporation.

On November 21, 2006, the Northern District of Ohio entered a Consent Decree resolving Clean Water Act violations alleged to have been committed by Detrex Corporation. Because the Decree was lodged on November 15, 2006, the CD entry by the Court was premature because it did not allow for the thirty day comment period required

by the Clean Water Act. After no comments were received in 30 days from the date of lodging, the Department of Justice and the Defendant agreed that the entry date, for purposes of determining compliance with the Decree, would be December 15, 2006, thirty days from the lodging of the Decree.

Specifically, the Complaint in the matter alleges violations of Detrex's National Pollutant Discharge Elimination System (NPDES) issued pursuant to Section 402 of the Act. The violations occurred at a chemical manufacturing facility located in Ashtabula, Ohio. Because of Detrex's inability to afford a penalty, the settlement requires Detrex is to pay a civil penalty of \$250,000 over four years. In addition, Detrex constructed and will operate a 5,000 gallon surge tank to correct effluent violations at the facility which will cause it to come into compliance with the CWA requirements cited in the Complaint.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Purita Angeles, secondary contact: (312) 353-5112

Region 5 files Consent Agreement and Final Order with the Detroit Edison Company.

On January 31, 2007, Region 5 and the Detroit Edison Company, (Detroit Edison) entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that Detroit Edison violated Section 103 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of Emergency Planning and Community Right-to-Know Act (EPCRA) when it failed to give immediate notice of a release of a reportable quantity of sodium hydroxide to the National Response Center, the Michigan State Emergency Response Commission (SERC), and the Local Emergency Planning Committee (LEPC), and when it failed to provide written follow up to the SERC and the LEPC. The initial proposed penalty in the complaint filed on October 26, 2006 was \$144,412.67. Based on Detroit Edison's cooperation, willingness to quickly resolve this matter, and new information relevant to determining when there was knowledge of a release that left the facility, and new information on how risk to the environment has been stopped, the parties agreed to resolve this matter by Detroit Edison's payment of a civil penalty of \$52,333.35.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; secondary contact: James Entzinger, (312) 886-4062

Joint Motion for Modification of Consent Decree in U.S. v. Don Prow and Rochester Topsoil entered by Minnesota District Court.

U.S. EPA and the Army Corps of Engineers entered into a Consent Decree with Defendants Don Prow and Rochester Topsoil on April 21, 2006. The Decree settled violations of the Section 404 of the Clean Water Act. Under the consent decree, Defendants were ordered to pay a \$250,000 civil penalty; fully restore Willow Creek and altered wetlands within one year; and mitigate their violations by creating and protecting new wetlands at an off-site location known as Rock Dell Farms. Details of the injunctive requirements were described in the Consent Decree in a narrative restoration and mitigation work plan with the locations for restoration and mitigation depicted on maps. Defendants paid the \$250,000 civil penalty and began and finished most (although not all) of the required restoration work on time. Based upon a review of the completed work, Region 5 and the Corps proposed five limited changes to the consent decree and Work Plan to clarify Defendants' remaining obligations and to avoid any potential confusion

which could arise should enforcement be necessary. The five changes were: 1. creation of New Vegetation Sampling Zone H; 2. identification of Vegetation Sampling Zones; 3. deletion of Obsolete Text in Work Plan Appendix; 4. modification of Construction Compliance Schedule, and 5. modification of Legal Description for Conservation Easement. The District Court granted the Joint Motion to Modify the Decree on July 10, 2007.

Office of Regional Counsel Primary Contact: Sandra M. Lee, (312) 886-6841

EPA and the Dow Chemical Company enter into three CERCLA settlement agreements and orders on consent for the critical removal actions for cleanup of dioxin in, and along, the Tittabawassee River in Midland County, Michigan.

On July 12, 2007, the United States Environmental Protection Agency (U.S. EPA) and The Dow Chemical Company (“Dow”) entered into three separate Administrative Settlement Agreements and Orders on Consent under the authority of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA). The Administrative Settlement Agreements and Orders provide for CERCLA time critical removal actions to clean up dioxin-contaminated bottom deposits, sediments, and/or soils in, or along, the Tittabawassee River in Midland County, Michigan.

The first Administrative Settlement Agreement and Order on Consent (“AOC”) provides for the performance of removal actions by Dow to cleanup approximately 14,000 cubic yards of dioxin-contaminated bottom deposits and sediments at (and the reimbursement of response costs incurred by the United States at or in connection with) the area known as Reach D, which is located at and in the vicinity of an historic flume situated along the northeast bank of the Tittabawassee River, within The Dow Chemical Company Midland Plant property.

Under the second AOC, Dow agrees to perform a removal action at an area known as Reach J-K, which is located in overbank areas on the northeast side of the Tittabawassee River, approximately 3.6 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers. Under this AOC, Dow will remove a dioxin-contaminated naturally occurring levee, as well as cap one dioxin-contaminated upland area and fence off another dioxin-contaminated wetland area. Dow will also reimburse response costs incurred by the United States. This Site is located within Dow's property bounded to the northeast by a wetland with Saginaw Road to the northeast beyond the wetland, the Caldwell boat launch to the South, and to the west by the east channel bank of the Tittabawassee River, in Midland County, Michigan.

Under the third AOC, Dow agrees to perform a removal action at an area known as Reach O of the Tittabawassee River, an approximately 1,300 foot-long point bar extending approximately 50 to 100 feet into the Tittabawassee River and situated parallel to the northeast bank of the Tittabawassee River, approximately 6.1 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers and located within, or immediately adjacent to, Dow property located to the south of North Saginaw Road in Midland County, Michigan. Under this AOC, Dow will remove dioxin-contaminated sediments in three designated locations of the point bar. Dow will also reimburse response costs incurred by the United States. Each of these three performance based

removal action are to be begin no later than August 15, 2007, and must be completed by December 15, 2007.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; James Augustyn, additional contact: (440) 250-1742

EPA Regions 3 and 5 enter into an Administrative Order on Consent with DuPont to lower action level for C-8 (PFOA) caused by Washington Works Facility.

On November 20, 2006, the Administrators for EPA Regions 3 and 5 signed an Order on Consent with E.I. DuPont de Nemours & Co. The Order requires treatment or provision of alternate drinking water to residents affected by DuPont's Washington Works facility, located near Parkersburg, West Virginia. The facility, which manufactures products using perfluorooctanoic acid (also known as PFOA or C8) – is located on the Ohio River and affects drinking water sources in both WV and Ohio.

The Order contains an action level of 0.50 ppb that triggers the offer of installation of drinking water treatment or offer of provision of an alternate source of drinking water, by DuPont. This Order replaces an Order on Consent signed by Regions 3 and 5 in 2002, which resulted in a temporary threshold level of 150 ppb.

Currently there is no consensus on the possible toxicity of C-8 to humans. However, recent results from experimental animal studies and new data on human blood serum levels of C-8 in residents living near the Washington Works facility raise concern for possible human health effects from C-8 in drinking water. This Order is a precautionary action based on an evaluation of these recent study results and the new data. More human health and experimental studies are in progress, but results will not be available for several more years. In the meantime, the new action level will reduce local exposure to C-8 from drinking water and reduce the possibility of adverse health effects. DuPont agreed to the site-specific action level of 0.50 ppb.

C-8 is used extensively in various manufacturing processes nationwide, including those for stain-resistant carpets and fabrics, stain-resistant paints, fire fighting foam, and oil- and grease-resistant food cartons and wrappers. Therefore, in developing this Order, EPA closely coordinated with the Office of Civil Enforcement, the Office of Water, the Office of Pollution Pesticides and Toxic Substances, and the states of Ohio and West Virginia. EPA also carefully developed a communications strategy in connection with the Order.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Charlene Denys, Water Division (312) 886-6206

U.S. EPA Region 5 enters Consent Agreement and Final Order with EBW Electronics, Inc., Including a Supplemental Environmental Project to Abate Lead-Based Paint Hazards in Holland, Michigan.

On September 24, 2007, the Region 5 Regional Administrator signed a Final Order concluding an administrative action against EBW Electronics, Inc., under Section 325(c) of EPCRA. The Consent Agreement alleged that during calendar year 2004, EBW Electronics processed 1,400 pounds of lead, and violated Section 313 of EPCRA by failing to timely submit a Form R. A civil penalty of \$15,345 was calculated, which includes a 30% reduction for cooperation and compliance. EBW Electronics will pay \$3,836 to settle this action. In addition to the penalty, EBW Electronics will fund a SEP

project valued at \$11,509, which will be monitored by the Michigan Department of Community Health, Lead and Healthy Homes Section (Michigan DCH), and conducted by a qualified lead abatement contractor, to abate and/or mitigate lead-based paint hazards in three residential housing units located in Holland, Michigan.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Tom Crosetto (312) 886-6294

President of Plating Firm in Minnesota Charged.

On August 22, 2007, Keith David Rosenblum, Eco Finishing's Chief Executive Officer and President, and Martin Wayne Meister, Eco Finishing's Plant Manager, were indicted by a Federal Grand Jury in Minneapolis on eleven felony counts of violating the Clean Water Act stemming from Eco Finishing's metal finishing operations. The charges include alleged violations of discharge limits for cyanide, pH, chromium and zinc, failing to submit analytic results, failing to report violations, and conspiracy. In addition, Keith Rosenblum was charged with four additional counts involving tampering with monitoring methods, failing to submit reports, and failing to report violations. Eco Finishing, an electroplating firm located in Fridley, Minnesota, was indicted earlier for Clean Water Act violations in related charges. On February 15, 2007, Eco Finishing was sentenced following its plea to the charges. Eco Finishing was required to pay the amount of \$250,000, consisting of a fine of \$225,000 and \$25,000 in extraordinary restitution to be paid to the Federal Transport Program. In addition, the company was placed on 3 years probation. Ted Gibbons, Eco Finishing's former chemist, was also sentenced to 18 months imprisonment for violating the Clean Water Act and tampering with environmental testing equipment. An indictment is only an accusation, and all defendants are entitled to a fair trial at which the government must prove guilt beyond reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Consent Decree Lodged in Dupont Global Sulfuric Acid Plant Initiative Case.

On July 20, 2007, a Consent Decree (CD) was lodged in the Southern District of Ohio resolving the E.I. du Pont de Nemours & Company (DuPont) global sulfuric acid plant case. This CD resolves a U.S. EPA Clean Air Act (CAA) Section 113(a)(1) and (3) enforcement action against DuPont at its sulfuric acid production facilities located in Ohio, Virginia, Louisiana, and Kentucky. The global resolution set forth in the CD also involves EPA Regions 3, 4 and 6, and three states: Ohio, Louisiana and Virginia. Region 5 initiated the investigations and negotiations leading to this Consent Decree, and acted as the "lead region" throughout the negotiations.

This case is part of EPA's national New Source Review and Prevention of Significant Deterioration Acid Plant Priority Sector, a national initiative originally initiated by Region 5. Under this CD, DuPont will reduce sulfur dioxide emissions by approximately 13,600 tons annually from its four acid plants, through the installation of state-of-the-art controls at each plant. DuPont estimates the cost of this injunctive relief to be approximately \$68.5 million. DuPont will also pay \$4,125,000 in civil penalties to the Plaintiffs, including \$2,475,000 to the United States.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

U.S. EPA Signs Release of CERCLA 107(l) Lien on PRP/Defendant-Owned Portion of the Southeast Rockford Groundwater Contamination Superfund Site-Source Area 7.

On August 1, 2007, USEPA signed a release of a CERCLA 107(l) lien on property owned by Mr. Glen Ekberg, an owner-operator at Source Area 7 of the SE Rockford Superfund (SER) Site in Rockford, Illinois. The Release of Lien is in fulfillment of a USEPA obligation pursuant to an August 2006 cost recovery Consent Decree (CD) in U.S. v. Glen Ekberg, No. 01-C-50457, N.D. IL-Western Div. Under the CD, the defendant was obligated to pay U.S. EPA \$1,231,125 (plus interest) in two (2) installments between September 2006 and July 1, 2007. In the CD at paragraph 34, the United States agreed that upon full payment by Mr. Ekberg, an existing federal CERCLA 107(l) lien placed on his property in 2003 would be released. Mr. Ekberg completed his (full and complete) payment on June 29, 2007. The SER Site is an approximately 10 square-mile area where groundwater is contaminated (primarily) by VOCs above 10 parts-per-billion. The Site was placed on the NPL in March 1989. A series of removal actions, remedial studies and development of a final source control ROD occurred between 1989 and 2002. The United States settled response work, and past and future costs with the City of Rockford, IL and a number of other generator and owner parties between 1998 and 2000. Source Area 7 is in the southeastern portion of the SER Site. Mr. Ekberg's property is located within Source Area 7. Mr. Ekberg, as an owner of a portion of the SER Site, was given general notice in 1998, and asked to participate in settlement negotiations. Mr. Ekberg refused. In December 2001, the United States sued Mr. Ekberg for past and future costs associated with Source Area 7. In March and April 2003, U.S. EPA perfected a CERCLA 107(l) lien on Mr. Ekberg's property. The August 2006 CD resolves all cost recovery against Mr. Ekberg.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Superfund Division contact: Russ Hart, RPM, (312) 886-4484

CERCLA ElectroVoice, MI Five Year Review and IC Implementation.

On September 20, 2006, EPA Region 5 signed a Five-Year Review Report for the Electro-Voice Superfund Site located in Buchanan, Michigan. The Five Year Review determined that the hazardous waste cap and soil cleanup were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy may not be functioning as intended because there were Trichloroethylene (TCE) exceedances of the Maximum Contaminant Level (MCL) at downgradient wells that previously did not have exceedances. The Five-Year Review Report recommended contingency actions to address the groundwater issues.

As part of the Five-Year Review, the Region implemented an Institutional Control (IC) study for the Site. As part of the IC study, EPA Region 5 worked with the PRPs to develop a restrictive covenant under Part 201 of the Michigan NREPA for the Site to implement the following restrictions on the Electro-Voice property: a) prohibit interference with the hazardous waste cap over former lagoon area; b) prohibit interference with limited industrial area (former drywell area); c) prohibit residential use; d) prohibit groundwater use; and e) prohibit interference with monitoring wells. The PRPs surveyed the hazardous waste cap and limited soil industrial use areas, which was incorporated into the restrictive covenant. The owner provided the Region with a title commitment and copies of recorded encumbrances that demonstrated that: a) the owner had authority to execute the restrictive covenant; and b) prior in time recorded

encumbrances did not appear to interfere with the land and groundwater restrictions. The owner recorded the restrictive covenant with the county recorder's office on September 12, 2006. The restrictive covenant is enforceable by the PRPs, the State of Michigan pursuant to Part 201 of the Michigan NREPA and U.S. EPA as a third party beneficiary.

As part of the Five Review process, the Region reviewed an existing City of Buchanan, MI ordinance that prohibited residents from using the contaminated groundwater at the Site. The Region reviewed the City Ordinance. As a result of this review, the Region sent the City an updated groundwater contamination map and requested that the City to designate the revised area as a restricted groundwater use area.

Office of Regional Counsel Contact: Jan Carlson, (312) 886-6059

Region 5 signs a Consent Agreement and Final Order with Electronic Industries, Inc.

On May 29, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against Electronic Industries, Incorporated, of Vadnais Heights, Minnesota. Region 5 alleges that Electronic Industries violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) and lead compounds it processed, manufactured, or otherwise used during calendar year 2004. In settlement, Electronic Industries will pay a civil penalty of \$4,150.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Terry Bonace, Waste, Pesticides, and Toxics Division, (312) 886-3387

Region 5 Settles RCRA Transporter Case with EMCO Chemical Distributors, Inc. of North Chicago, IL.

On September 27, 2007, Region 5 filed a Consent Agreement and Final Order settling an administrative Complaint and Compliance Order that was issued to EMCO Chemical Distributors on March 21, 2007. The Complaint alleged that EMCO Chemical, a transporter of hazardous waste: (1) stored 20 shipments of hazardous waste at its North Chicago facility beyond the ten days permitted by the RCRA regulations; (2) improperly accepted the return of a shipment of hazardous waste after the disposal facility rejected the shipment; and (3) failed to label ten drums of hazardous waste with the accumulation start date or the words "Hazardous Waste." EPA was seeking a civil penalty of \$328,705 for these violations. The compliance order addressed concerns that there may have been spills or other releases in the areas where the drums of hazardous waste were stored for more than ten days.

EMCO agreed, as a supplemental environmental project, to replace their underground piping system which connects the chemical loading/unloading area to the 80 tanks in their tank farm, with an aboveground piping system. This aboveground piping system will cost at least \$200,000 to design and install. EMCO has also agreed to pay a civil penalty of \$52,000, and will retain a consultant to sample, analyze and cleanup, if necessary, the area where the hazardous waste was stored for more than ten days.

Contacts: Terry Stanuch, 312-886-8044, legal contact; and Judith Kriz, 312-353-6057, technical contact

United States Lodges Consent Decree Requiring Equistar Chemical, Lp To Spend \$125 Million To Reduce Pollution.

The Department of Justice filed a Complaint and Consent Decree resolving a myriad of air, water and hazardous waste violations at seven of Equistar Chemical's petrochemical plants in Texas, Illinois, Iowa and Louisiana. The Consent Decree, lodged in the Northern District of Illinois on July 18, 2007, requires Equistar to invest in comprehensive control and operational measures expected to significantly reduce air, water and hazardous waste pollution from the seven manufacturing facilities. The violations were primarily identified during NEIC inspections of Equistar's Morris, Illinois, and Channelview, Texas, olefin production facilities. The total cost of the injunctive relief required under the Consent Decree is estimated at \$125 million. In addition to the injunctive relief, Equistar will pay a civil penalty of \$2.5 million in cash (to be divided among the federal government and participating states including Illinois) and spend \$6.56 million on federal and state supplemental environmental projects. Region 5 was actively involved in the negotiations of the Consent Decree which requires \$225,000 for state community-based supplemental environmental projects in Illinois including: \$70,000 to the Minooka, Illinois, Community School District to fund the purchase of a new school bus that is biodiesel fuel compatible; \$105,000 to the Illinois EPA Clean School Bus Program to be used within Grundy, Kendall, Kankakee, Livingston, or LaSalle counties to reduce emissions from diesel-powered school buses by installing EPA certified oxidation reduction catalysts, particulate filters, or anti-idling technologies; and \$50,000 to the Grundy County Emergency Management Agency – Hazmat Team to fund the purchase of emergency response equipment. Regional

Office of Regional Counsel Contact: Susan Prout, (312) 353-1029



Enforcement Case Summaries Fiscal Year 2007: List of Cases in Alphabetical Order F through K

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

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You can view them sorted by name, state or statute.

Name (F to K)

- Fabian, R.
- Fairway International Corp.
- Five Star Laundry
- Flavorchem Corporation
- Flory, George L.
- Franklin County Powers of IL
- Freeport Farm and Fleet, Inc.
- Gallagher Farm Service
- General Motors Corporation (2)
- Gerke Excavating, Inc.
- Grief Industrial Packaging & Services, LLC
- HA International LLC
- Hassan Barrel Company, Inc.
- Henry W Peabody, Inc.
- Hondo Incorporated d/b/a Coca-Cola Company
- Honeywell International Corporation
- Hospital Laundry Services
- Hutton Auto Body, Inc.
- Hydromet Environmental (USA), Inc. (3)
- Illinois Attorney General
- Indeck-Elwood LLC
- Indianapolis, IN
- Investors Management Services Corp.
- Jackson-Jennings Farm Bureau Coop Association (2)
- Johns Manville (2)
- John R. Sand & Gravel Company
- Jones Dairy Farm, Inc.
- Kastalon, Inc.
- Kemps, LLC
- King, Mark R.
- Kircher, David
- Kohler Landfill
- Krach, Karen
- Kramer, H.
- Kuzlick, Joseph (2)

Federal Court in CWA Section 404 wetlands case, U.S. v. Fabian No. 2:02CF495, grants United States Motion for Summary Judgment on Liability applying the Justice Kennedy-Test from Rapanos v. U.S., 126 S.Ct. 2208 (2006).

On March 29, 2007, the Federal District Court (N.D. IN) ruled on the parties' cross-Motions for Summary Judgment. The court granted the United States' motion with respect to liability and denied defendant's Motions for Summary Judgment and Oral Argument. The court held that the United States proved CWA Section 404 wetlands jurisdiction, on the facts presented, sufficient to meet the test established by Justice Kennedy in the Rapanos decision. The court denied the United States' motions for summary judgment on penalty and injunctive relief (restoration) with leave to refile to better establish facts of record that the court deemed important. A Status Conference is set for April 20, 2007.

In March 1998, Mr. R. Fabian, the owner of an approximately 30-acre parcel of land primarily in Lake County, Indiana, performed an unpermitted filling of approximately 10 acres of wetland property that is adjacent and hydrologically connected to the Little Calumet River, a federal navigable waterway. Mr. Fabian did not request or secure a

permit from the U.S. Army Corps of Engineers. And, Mr. Fabian had previously (in February 1998) been made aware of the wetlands status of the property in question and need for a permit for any filling activities. Mr. Fabian also ignored 1998 and 1999 U.S. EPA administrative compliance orders concerning the property. After referral of the case, a December 2002 complaint was filed. After preliminary activities and attempted negotiations, the district court originally set an August 2005 briefing schedule due date for cross-Motions for Summary Judgment. The court stayed proceedings for further attempted mediation in December 2005 and further (post- Rapanos) briefing in August 2006. The court's March 29, 2007 finding of liability against Mr. Fabian notes that the United States' brief and evidence offered sufficient factual proof under the test from Rapanos established by Justice Kennedy to show acceptable adjacency between the wetlands in question and a federal navigable in fact body of water (Little Calumet River).

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Greg Carlson, Water Division (312) 886-0124

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Fairway International Corp.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$43,320. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$1,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact: (312) 886-6322

Region 5 enters an administrative Consent Agreement and Final Order (CAFO) resolving alleged EPCRA 312 violations at Five Star Laundry in Chicago, Illinois.

On September 19, 2006, Region 5 filed a four-count Administrative Complaint alleging that Five Star Laundry had violated Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) by failing to submit an Emergency and Hazardous Chemical Inventory form for sulfuric acid for each of calendar years 2003, 2004 and 2005. The Complaint cited one violation each for missing forms for 2003 and 2004, and two violations for late-filed forms for 2005, resulting in a total proposed penalty of \$43,298. The Complaint arose out of a May 2006 inspection where U.S. EPA determined that Five Star Laundry had over 700 pounds of sulfuric acid at its facility on at least one occasion in 2003 and over 2,900 pounds of sulfuric acid in 2004 and 2005. Sulfuric acid is an extremely hazardous substance under EPCRA with a minimum reporting threshold level of 500 pounds.

On February 23, 2007, Region 5 issued a CAFO resolving the alleged EPCRA 312 violations. Under the terms of the CAFO, in consideration of Five Star Laundry's quick return to compliance, cooperation, and the facts and circumstances of the case, including

Five Star Laundry's substantial reduction in the amounts of sulfuric acid used at the facility, Region 5 reduced the civil penalty from \$ 43,298 to \$19,000.

Office of Regional Counsel Contact: Reginald A. Pallesen, (312) 886-0555; additional contact: James Entzminger, (312) 886-4062

EPA Region 5 Signs a Consent Agreement and Final Order with Flavorchem Corporation in Downers Grove, Illinois.

On May 16, 2007, EPA, Region 5, and Flavorchem Corporation (Flavorchem) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Clean Air Act at Flavorchem's manufacturing plant in Downers Grove, DuPage County, Illinois. Flavorchem produces flavoring extracts, syrups and food colorings at its facility. Flavorchem has operated several emission sources of volatile organic compounds including a north wet mix area and coffee press, a south wet mix area and cocoa press, a spray dryer, a dry mix room with small mixers, a dry mix room with a mega-mixer, a fragrance room, a packaging room, a bean dryer and vanilla concentrator at the facility. DuPage County was designated as a severe nonattainment area for the 1-hour ozone standard from 1992 until EPA designated DuPage County as a moderate nonattainment area for the 8-hour ozone standard effective June 15, 2004 and revoked the 1-hour ozone standard effective June 15, 2005. The CAFO alleges that Flavorchem failed to obtain construction and operating permits for the emission sources at its facility in violation of the Illinois State Implementation Plan, failed to submit a Title V permit application, and operated without a Title V operating permit in violation of Sections 502 and 503 of the Act, 42 U.S.C. 7661a and 7661b. Flavorchem submitted a complete permit application to Illinois EPA on October 10, 2006 and will be in full compliance with the permitting requirements upon issuance of a permit. EPA calculated a preliminary civil penalty of \$125,042 for these violations and notified Flavorchem of this amount in a pre-filing and opportunity to confer letter. In consideration of the facts of this case, Flavorchem's cooperation with U.S. EPA and Flavorchem's good faith efforts to comply, EPA determined and Flavorchem agreed that the appropriate civil penalty to settle this action is \$75,025.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Tanya Hurlburt, additional contact: (312) 353-4145

Business Owner sentenced for spilling oil onto a tributary of the Great Miami River; United States v. George L. Flory.

On September 14, 2007, George L. Flory was sentenced for spilling oil onto a tributary of the Great Miami River. Mr. Flory was sentenced to three years of probation, of which the first six months must be served as home confinement. During the term of probation Mr. Flory is required to perform 100 hours of community service. In addition, Mr. Flory was ordered to pay \$260,948 in restitution. The restitution will be paid to the Coast Guard and the United States Environmental Protection Agency, the agencies who performed the clean up at the facility operated by Mr. Flory.

Mr. Flory was the owner and operator of Personal Touch Environmental (PTE), a company which specialized in the recycling of waste oil collected from Dayton area residences and facilities. Mr. Flory stored the waste oil in drums and storage tanks at the

PTE facility which is bordered by an unnamed tributary of the Great Miami River. On February 16, 2004, there were approximately 700 drums and storage tanks at the PTE facility, many of which were leaking oil directly into the tributary bordering the facility. The information charged that on numerous days beginning on or about April 16, 2002 and continuing to on or about February 12, 2004, Mr. Flory knowing caused waste oil stored at the PTE facility to be discharged into and upon an unnamed tributary of the Great Miami River.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Coast Guard, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

U.S. District Court for Southern District of Illinois Grants Motion for Summary Judgment in Prevention of Significant Deterioration Permit Expiration Case

On October 17, 2006, the United States District Court for the Southern District of Illinois ruled on cross-motions filed by the Sierra Club and defendant power companies concerning the proper interpretation of 40 C.F.R. §§52.21(b)(9) (commence as applied to construction) and 52.21(b)(11) (begin actual construction). *Sierra Club v. Franklin County Power of Illinois et al.*, Case No. 05-cv-4095-JPG. Specifically, the Court determined that the defendants had neither begun a continuous program of actual on-site construction nor entered into a binding agreement to undertake a program of actual construction within 18 months of receipt of their Prevention of Significant Deterioration (PSD) permit. As a result, the Court granted Sierra Club's motion for summary judgment, enjoined the defendants to stop actual construction until they have obtained a valid PSD permit and directed the parties to submit further briefing on penalties.

At the outset, the Court dismissed the defendants' jurisdictional arguments by finding that: 1) the fact that no agency had explicitly determined that defendants' permit had expired was irrelevant to their cause of action objection, as this was not a challenge to a final agency action but rather a citizen suit to compel action; 2) permit shields are relevant only for Title V permits; and 3) Sierra Club had established sufficient injury-in-fact to provide standing for at least one of its members. The Court similarly dismissed the defendants' constitutional objections, noting that their Due Process concerns were "nonsensical" (slip op. at 17) and their Separation of Powers argument was "schizophrenic" (slip op. at 18).

In its discussion on the merits, the Court provided a well-reasoned and detailed analysis of the specific facts to determine that the defendants' activities "were simply not the kind of continuous or on-going construction activities of a permanent nature" listed in the regulations and EPA guidance (slip op. at 23). The Court also found that the construction agreements did not provide a "binding commitment to build" (slip op. at 27).

Office of Regional Counsel Contact: Louise Gross, (312) 886-6844

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Freeport Farm and Fleet, Inc.

Region 5 initiated pre-filing discussions on this matter in December, 2006. The proposed penalty was \$2,600. On January 25, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold a cancelled pesticide, Ortho Home Defense Ortho-Klor Insect & Termite Killer. During settlement discussions, the Respondent agreed to pay a civil penalty of \$2,600.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; secondary contact: Terry Bonace, (312) 886-3387

Region 5 signs Consent Agreement and Final Order with Gallagher Farm Service.

On March 29, 2007, Region 5 signed a CAFO with Gallagher Farm Service (Gallagher), Belding, Michigan, in settlement of a complaint that EPA filed on September 21, 2006, alleging violations of FIFRA. The complaint alleged violations of Section 12(a)(1)(C), for selling a registered pesticide, the composition of which differed at the time of sale from the composition described in its registration; of Section 12(a)(1)(E) by selling a misbranded pesticide; and of Section 12(a)(2)(L) for failing to file a true and accurate Pesticide Report for Pesticide-Producing and Device-Producing Establishments for calendar year 2002. The complaint proposed a \$24,200 penalty. In consideration of the gravity of the violation, Gallagher's good faith efforts to comply and cooperation, Region 5 mitigated the penalty to \$15,000, payable in two installments.

Office of Regional Counsel Contact:

United States Lodges Consent Decree for CERCLA Cost Recovery for the Lakeland Disposal Site, Kosciusko County, MI.

On May 21, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Northern District of Indiana a civil Consent Decree regarding the Lakeland Disposal Superfund Site in Kosciusko County, Michigan. Under the decree, General Motors Inc., Da-Lite Screen Company, Inc., Morton International Owens-Illinois, Inc., Robertshaw Controls Company, Warsaw Black Oxide Inc., United Technologies Corp., CTS Corp., Dalton Corp., Johnson Controls, Inc., Kosciusko County, Indiana, Leco Corp., McGill Manufacturing Company Inc., R.R. Donnelley & Sons Company, and Uniroyal, Inc., will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs. In a related action with respect to the Site, a separate Consent Decree was also lodged on May 21, 2007, fully resolving violations alleged in the related civil action against Mr. David Lindsey, former owner and operator of the Site.

The Lakeland Disposal Superfund Site is a former landfill occupying approximately 39 acres approximately 3-1/2 miles northwest of Claypool, Indiana. Sloan Ditch, an agricultural drainage ditch, forms the boundary of the eastern and northern edges of the Site. Wooded areas are located east of the landfill along Sloan Ditch and the adjacent wetlands. Several wetland areas exist along Sloan Ditch and on the landfill itself.

At least 18,000 drums of waste materials were deposited at the Site. In addition, approximately 8,900 tons of plating sludge and more than 2 million gallons of plating waste containing various hydroxide sludges of aluminum, cadmium, chromium, copper, lead, nickel, tin, selenium, and zinc were disposed of on the Site. Other wastes reportedly disposed of there include spent filter sand, wastewater treatment sludge containing copper, nickel and chromium, sewage sludge, and cyanide, zinc and chrome plating liquids. The Remedial Investigation/Feasibility Study (RI/FS), Pre-Design Study for the Lakeland Site was conducted by four parties: Dana Corporation, General Motors Corporation, United Technologies Automotive Inc., and Warsaw Black Oxide, Inc..

The remedial design and remedial action (RD/RA) work was performed by five parties: Dana, Eaton, General Motors Corporation, UTA, and Warsaw Black Oxide, pursuant to a Unilateral Administrative Order (UAO). The UAO respondents have completed the RD/RA work satisfactorily, and the Site is currently in Operation and Maintenance. U.S. EPA approved the RI/FS and has overseen the RD/RA work conducted by the ACO and UAO Parties. U.S. EPA completed the Site's CERCLA Section 121 (c) Five Year Remedy Review on August 14, 2005.

The Consent Decree calls for the payment of \$1,391,195.02 in past costs and payment of U.S. EPA's future costs. U.S. EPA will receive \$1,125,000.00 to be deposited in a Lakeland Special Account within the U.S. EPA Hazardous Substances Superfund to be retained and used to conduct or finance response actions at the Site.

Office of Regional Counsel Contact: Luis Oviedo, (312) 353-9538; Superfund Division Contact: Scott Hansen, (312) 886-1999

U.S. EPA issues a RCRA 3008h Administrative Order on Consent for Corrective Action at the Center Point Business Campus in Pontiac, Michigan.

On May 24, 2007, U.S. EPA and General Motors Corporation (GMC) entered into an Administrative Order for Corrective Action at the Center Point Business Campus (formerly the Pontiac Truck Group facility) in Pontiac, Michigan. The Order requires GMC to complete Corrective Action by, among other things, operating and maintaining a multi-phase extraction system, imposing institutional controls where necessary, and maintaining financial assurance for the costs of Corrective Action. GMC has removed soils contaminated with benzene, toluene, ethylbenzene, and xylene (BTEX), polynuclear aromatics (PNA's), lead, solvents, and paint. In addition, GMC is recovering light non-aqueous phase liquid (LNAPL) from groundwater.

GMC's Pontiac facility encompasses approximately 400 acres of land. From 1927 through 1990, GMC produced medium and heavy duty trucks and buses at the facility. Between 1991 and 1995, all buildings were demolished and the area was redeveloped as the Centerpoint Business Campus. Presently, the Centerpoint Business Campus includes a Truck Engineering Center, the Pontiac Assembly Center, the GM Truck Product Center, a wastewater treatment plant and two stormwater retention ponds.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620) and Dan Patulski, RCRA Corrective Action Section, (312) 886-0656

The Seventh Circuit Denies Motion to Clarify and Petition for Rehearing in *U.S. v. Gerke Excavating CWA Section 404 Case*.

In *United States v. Gerke Excavating, Inc.*, 464 F.3d 723 (7th Cir. 2006) the Seventh Circuit held that Justice Kennedy's significant nexus standard in the *Rapanos* decision would govern the further stages of the litigation (following *U.S. v. Marks* "narrowest ground" approach to Supreme Court decisions where there is no majority opinion). On September 29, 2006, plaintiff-appellee United States filed a motion to clarify this opinion of Seventh Circuit arguing that federal regulatory jurisdiction exists if either the plurality's standard or Justice Kennedy's significant nexus standard is satisfied. On October 5, 2006, defendant-appellant Gerke filed a petition for rehearing with suggestion for rehearing *en banc*, and on November 2, 2006, the United States filed an answer to the petition. In an order dated December 1, 2006, the court denied the motion and the petition. U.S. EPA is not a party to the proceedings. The Corps of Engineers is the lead enforcement agency for the case.

Office of Regional Counsel Contact: Ignacio Arrázola, (312) 886-7152

Region 5 signs a pre-filing Consent Agreement and Final Order with Greif Industrial Packaging & Services, LLC and Greif, Inc. (Greif), Alsip, Illinois, resolving Clean Air Act violations.

On September 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commencing and concluding, under Section 113 of the Clean Air Act, 42 U.S.C. § 7413, alleged violations of the regulations at 40 C.F.R. Part 63, Subpart Q, related to the use of chromium-based chemicals in two industrial process cooling towers constructed prior to 1994, at Greif's plant in Alsip, Illinois. The chromium-based water treatment chemicals were used as corrosion inhibitors in the cooling towers. Greif stopped using the chromium-based water treatment chemicals shortly after U.S. EPA inspected the plant. Under the terms of the CAFO, Greif has agreed to pay \$120,000 as a penalty.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237 and Kathryn Siegel, Air Enforcement and Compliance Assurance Branch, (312) 353-1377

Final Order Ratifying Terms of a Consent Agreement with HA International LLC.

On September 14, 2007, a Final Order ratifying the terms of a Consent Agreement and Final Order was signed. The Final Order directs the Respondent to pay a civil penalty in the amount of Eighteen Thousand And Seven Hundred And Sixty-Three (\$18,763.00) dollars. The Region's initial demand was Thirty Two Thousand And Two Hundred and Seventy-Two (\$32,272) dollars.

Section 313 of the Emergency Planning and Community Right To Know Act (EPCRA) requires certain facilities to file Toxics Release Inventory (TRI) forms. HA International LLC operates a facility in Oregon, Illinois, and failed to file timely a Form R for calendar years 2002, 2003 and 2004 to document and report its emissions of ammonia. The Respondent exceeded the 60 days requirement for curing the violations but did not secure an economic benefit from its non-compliance.

The Region initially calculated a penalty in the amount of \$64,544. Consistent with the applicable guidance policies, the Region proposed initially a penalty in the amount of \$32,272, a 50% reduction. In the course of negotiations, the Region reduced the penalty an additional 20% in consideration of "other factors as justice may require." Respondent has agreed to pay a civil penalty in the amount of \$18,763.

Office of Regional Counsel Contact: Steven P. Kaiser, (312) 353-3804

Fort Wayne, Indiana Business and Owner Charged with Environmental Crime.

On June 27, 2007, Alan Hersh and Hassan Barrel Company, Inc., were indicted in United States District Court, Northern District of Indiana, Fort Wayne Division, for one (1) felony violation of the federal Resource Conservation and Recovery Act (RCRA). The indictment alleges unlawful storage and disposal of RCRA hazardous waste at the Hassan Barrel Company, Inc. facility located in Fort Wayne, Indiana. Hersh was arrested in North Carolina on July 2, 2007. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management, Office of Criminal Investigation, which are part of the Northern District of Indiana Environmental Crimes Task Force. The Indictment is merely an allegation and all persons charged are presumed innocent until and unless proven guilty in court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Region 5 enters into a Consent Agreement and Final Order resolving FIFRA violations by Henry W. Peabody, Inc. (Peabody), Lynnfield, MA.

On May 24, 2007 Region 5 entered into a Consent Agreement and Final Order that resolves claims against Henry W. Peabody, Inc., Lynnfield, MA. U.S. EPA filed a civil administrative action against Peabody, commenced and concluded pursuant to the Act and 40 C.F.R. § 22.18 on May 24, 2007. The action charged that the company violated Section 12(a) of the Act and 40 C.F.R. § 152.15 by distributing or selling an unregistered pesticide.

After Region 5 received a trade complaint regarding Peabody (which is located in Massachusetts), the Region discussed the matter with Headquarters and Region 2 enforcement. Thereafter Region 2 deferred the enforcement case to Region 5. Specifically, the Agency alleged that from March 2005 to December 2005, when Region 5 issued a stop sale order, the company distributed or sold burlap, jute and hessian cloth that had been treated with copper ammonium sulfate and copper sulfate, which had a pesticidal purpose and for which Peabody made pesticidal claims. The company distributed or sold the product without first registering the product, in violation of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Originally, the Agency sought the statutory maximum penalty but after negotiations, discussions with Headquarters, and evaluating litigation considerations, the Agency agreed to accept respondents' proposal of \$52,500 as an appropriate penalty. The company is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631 and Dave Star, WPTD, (312) 886-6009

U.S. EPA reaches administrative settlement for violation of the CERCLA regarding notification requirements for released substances.

Hondo Incorporated d/b/a/ Coca-Cola Bottling Company of Chicago operates a business that stores and uses hazardous substances, such as anhydrous ammonia. On March 20, 2006, there was a release of approximately 563 pounds of anhydrous ammonia from the facility due to a leak from one of its storage tanks. Though Hondo immediately addressed and remedied the leak, it did not report the release to the National Response Center for a little over three hours.

On October 16, 2006, U.S. EPA filed an administrative complaint against the Respondent for violations of CERCLA. Specifically, Respondent failed to immediately notify the National Response Center of a release of a reportable quantity of anhydrous ammonia from its facility. After receiving the complaint, the parties entered in to settlement negotiations and the parties were able to reach a settlement. The Respondent agreed to sign a Consent Agreement and Final Order (CAFO) which requires the Respondent to assure that it is now in compliance and pay a civil penalty of \$10,478. The CAFO was signed by the Region 5 Regional Administrator on January 19, 2007 and filed with the Regional Hearing Clerk on January 22, 2007.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

United States Lodges Consent Decree for CERCLA Remedial Action, Cost Recovery and Natural Resource Damages for Woodstock Municipal Landfill, Woodstock, IL.

On August 1, 2007, the U.S. Department of Justice, on behalf of EPA Region 5 and the U.S. Department of Interior, lodged in the U.S. District Court for the Northern District of Illinois a civil Consent Decree regarding the Woodstock Municipal Landfill Site in Woodstock, Illinois. Under the Decree, the two settling parties, City of Woodstock and Honeywell International Corporation, will reimburse EPA for all CERCLA past and future response costs and complete the remedial action at the Site and also pay an amount in natural resource damages.

The Woodstock Municipal Landfill is a former publicly-owned solid waste landfill that received various municipal and industrial wastes through the 1950s and 1960s, allegedly including heavy metals-containing sludge from a former "Autolite" plant owned by a Honeywell International predecessor. EPA issued a ROD for the Site in 1993 identifying a cap and pump-and-treat remedy, which the responsible parties declined to implement; they petitioned the agency for a ROD amendment. Following review, EPA issued an Amended ROD in 1998 and again invited the PRPs to implement the revised remedy; again they declined to do so voluntarily and EPA issued a UAO for remedial action. The PRPs generally complied with the UAO except for the requirement that they pay all EPA's oversight costs. EPA then made demand for all unpaid costs, and engaged the Justice Department when the PRPs did not respond. The Consent Decree calls for the payment of \$567,000 in past costs, payment of "interim" response costs incurred during the pendency of negotiations, and payment of EPA's future costs, in addition to payment

of \$400,000 to the Department of Interior as natural resource damages. The Decree also calls for completion of the remedial action, which now generally consists of wetlands restoration, monitoring of groundwater contaminant attenuation, and review of institutional controls

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814; Superfund Division Contact: Brad Bradley, (312) 886-4742

Consent Agreement and Final Order executed in EPCRA Administrative Action.

On May 29, 2007, the Regional Administrator executed a Consent Agreement and Final Order (CAFO) in an enforcement action, resolving an Administrative Complaint filed against Hospital Laundry Services (HLS), under the Emergency Planning and Community Right-to-Know Act (EPCRA). The CAFO provides for payment of a \$41,242 civil penalty by Respondent for violations of Section 312 of EPCRA, 42 U.S.C. § 11022.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947

Region 5 enters into a Consent Agreement and Final Order Resolving Violations of Section 3008 RCRA by Hutton Auto Body, Inc., Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body, located in Streamwood, Illinois.

On January 25, 2007, the Director of Waste, Pesticides and Toxics Division, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under RCRA Section 3008 pursuant to which Hutton Auto Body, Inc; Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body agreed to pay a civil penalty of \$100. The CAFO was filed with the Regional Hearing Clerk on January 31, 2007. U.S. EPA initially calculated a proposed a penalty of \$21,175 against Hutton Auto Body, Inc. and a penalty of \$6,875 against Bernice Hutton and Jimmie Hutton, for a total combined penalty of \$28,050. For settlement purposes, this number was mitigated down to \$100 based on financial documentation that supported a significant inability to pay a penalty.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

Fourth Official of Defunct Hazardous Waste Reclamation Firm Pleads Guilty.

On January 26, 2007, Julianna H. Bauter, the former environmental compliance officer for Hydromet Environmental (USA), Inc., pleaded guilty to making a false statement to the Illinois EPA concerning the prior disposal of wastes from the Hydromet facility in Newman, IL. The company and five of its former officers and employees have variously been charged with making false statements to Illinois EPA, illegally transporting hazardous waste without a manifest, and conspiracy. Three former Hydromet employees pleaded guilty previously. The former President of Hydromet has not returned to the U.S. to answer the charges, and is currently considered a fugitive. Hydromet was a hazardous waste reclamation firm which shut down operations in 1988, and then attempted to re-open and obtain a new RCRA permit in 2001. According to the indictment, after Hydromet shut its doors, Illinois EPA obtained a court order requiring existing hazardous

wastes to be treated or disposed of properly. Instead, Hydromet employees shipped tons of hazardous waste containing lead, cadmium and selenium to a dilapidated warehouse in East Chicago, Indiana and hid cyanide-bearing hazardous wastes on-site. When the cyanide-bearing wastes started eating through the storage tanks, Hydromet employees disposed of the wastes by falsely declaring them to be non-hazardous. Hydromet employees then falsely told Illinois EPA that the Newman facility was fully operational and ready to receive hazardous wastes, when in fact many necessary components and items of equipment were missing, broken or inoperable. Under a plea agreement entered in court, Bauter faces a maximum sentence of two years of probation, a fine of \$3,000 and up to 90 days home confinement. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and Illinois EPA jointly investigated this matter. Sentencing was set for May 10, 2007.

Office of Regional Counsel Contact: David Taliaferro, (312) 886-0815

Hazardous Waste Reclamation Company Officials Sentenced For a Hazardous Waste Conspiracy.

On March 9, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental (USA), Inc., plant manager John Pugh and former Hydromet warehouse supervisor Ronald Martin were sentenced for their roles in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency (IEPA). Pugh received nine months' imprisonment, nine months' home confinement and two years' probation for the crime of conspiracy; and Martin received one year of probation for making a false statement to IEPA. On February 28, 2007, former Hydromet chemist Douglas Bennett was also sentenced, to two years of probation for the crime of conspiracy. Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; William A. Morgan, its former CEO; Pugh; Julianna H. Bauter, its former environmental compliance official; Bennett; and Martin, with the conspiracy. The defendants were also variously charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Hazardous Waste Reclamation Company Official Sentenced For a Hazardous Waste Conspiracy.

On June 1, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental, Inc., environmental compliance official Julianna Bauter was sentenced to 30 days of home confinement, a \$3,000 fine and one year of probation for her role in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency (IEPA). Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; Bauter; William A. Morgan, its former CEO; John Pugh, its former plant manager; Douglas Bennett, its former chemist; and Ronald Martin, a former warehouse supervisor, with the conspiracy. The defendants were also variously

charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each.

According to the indictment, Hydromet owned and operated an unsuccessful hazardous waste reclamation facility in Newman, Illinois. To continue operation and avoid the costs of safely disposing of hazardous wastes, the defendants stored hazardous wastes in a dilapidated warehouse in East Chicago, Indiana; hid other hazardous wastes on-site from the IEPA, then disposed of the wastes by falsely declaring them to be non-hazardous materials, including by sending them to a non-hazardous landfill in Indianapolis, Indiana; and falsely told IEPA that the Newman facility was fully operational and ready to receive hazardous wastes when in fact many necessary components and items of equipment were missing, broken or inoperable. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Illinois Attorney General Files Petitions for Review of U.S. EPA's Orders Denying Petitions to Object to Clean Air Act Operating Permits.

On November 25, 2005 and April 5, 2006, U.S. EPA received petitions from the Illinois Attorney General (IAG) requesting that the Administrator object to Clean Air Act Title V operating permits which the Illinois Environmental Protection Agency (IEPA) proposed to issue to various Midwest Generation coal-fired utilities. The IAG alleged that, because the proposed permits did not include schedules to bring the facilities into compliance with opacity emissions limits, and IEPA did not obtain in the permit applications sufficient information to determine whether the sources were subject to new source review, the proposed permits did not comply with the Clean Air Act and 40 C.F.R. part 70. On June 14 and 20, 2007, the Administrator signed orders denying the petitions. In Petitions for Review filed September 14, 2007, the IAG requested that the United States Court of Appeals for the Seventh Circuit review U.S. EPA's orders.

Office of Regional Counsel Contact: Jane Woolums, (312)886-6720; Genevieve Damico, Air and Radiation Division, (312) 353-4761

EAB denies review in part and remands in part PSD permit for Indeck, Elwood, Illinois.

On September 27, 2006, the Environmental Appeals Board (EAB) issued an order remanding to Illinois Environmental Protection Agency (IEPA) a PSD permit issued to Indeck-Elwood, LLC (Indeck) for the construction of a 660-megawatt coal-fired steam electric generating station in Elwood, Illinois, adjacent to the Midewin National Tallgrass Prairie, a national prairie preserve, on the grounds that 1) the permit includes a condition which allows Indeck to construct a power plant with less capacity than addressed by the permit application; 2) IEPA and Indeck failed to conduct a proper assessment of impairment to soils and vegetation that would occur as a result of the proposed facility; 3) the permit provision exempting all shutdown, startup, and malfunction events from short-term emission limits is unlawful; and 4) Indeck's proposed particulate matter emissions limit does not reflect Best Available Control Technology (BACT). In addition to these grounds, Petitioners, the Sierra Club and other environmental groups, had challenged the permit on the following grounds, of which the EAB denied review: 1) the permit's sulfur

dioxide limits do not reflect BACT because Indeck did not credibly consider the use of low-sulfur coal; 2) the permit unlawfully allows Indeck to burn any solid fuel without defining such term or considering alternative fuels in its BACT analysis; 3) the permit's nitrogen oxide limit does not reflect BACT; 4) IEPA unlawfully failed to set a BACT limit for fluorides; and 5) IEPA erroneously concluded that it has no obligation to consider alternative locations for the proposed facility. In addition, Petitioners raised several challenges relating to the Endangered Species Act (ESA), *inter alia*, that EPA's consultation with U.S. Fish and Wildlife Services generated significant new information about the proposed facility, and that the administrative record should be opened and the public should be afforded to opportunity to comment on this new information. The EAB accepted EPA's position that the ESA, the Clean Air Act and relevant regulations do not provide for public participation or comment on the ESA consultation process as part of a PSD permit proceeding. However, the EAB noted that it may "be prudent" for EPA "to move the ESA consultation process further up in the permit development chain where there is more flexibility to make and implement any ESA-related permit modifications."

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Clean Water Act Consent Decree Lodged in Indianapolis Sewer Overflow Case.

On October 4, 2006, the United States Department of Justice (DOJ) lodged a Clean Water Act consent decree on EPA's behalf in federal court in Indianapolis, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The State of Indiana is a co-plaintiff in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year—down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The City of Indianapolis will also pay a penalty of \$1,117,800, which will be divided evenly between the DOJ and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the City of Indianapolis can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems. The decree will be subject to a 30-day public comment period and subsequent judicial approval and is available on the DOJ website.

Office of Regional Counsel Primary Contact: Gary Prichard, (312) 886-0570; Susan Perdomo, additional contact: (312) 886-0557

Region 5 signs Consent Agreements and Final Orders with Investors Management Services Corp. and Leroy W. Vaughn, resolving Lead-Based Paint violations.

On August 28 and 30, 2007, Respondents Investors Management Services Corp. and Leroy W. Vaughn entered into pre-filing settlement agreements resolving violations of the Lead-Based Paint Hazard Reduction Act for failing to comply with the requirements in 40 C.F.R. Part 745, Subpart F, in the leasing of target housing in Detroit, Michigan.

Under the terms of the two settlements, Respondents will pay a total civil penalty of \$3,200, and perform a supplemental environmental project (SEP) in Detroit to abate and/or mitigate lead-based paint hazards in residential housing where one or more children reside. The abatement/mitigation will be performed in partnership with the Greater Detroit Area Health Council, CLEARCorpsDetroit, a not for profit organization, at a total cost of \$32,400.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237, and Estrella Calvo, Pesticides and Toxics Compliance Section, (312) 353-8931

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Corydon, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Corydon, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact: (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Salem, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced fourteen pesticides in an unregistered establishment located in Salem, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact: (312) 886-6009

Consent Decree Lodged Requiring Reimbursement of Response Costs at the Johns Manville Site 2 (Former Shooting Range) Superfund Site.

On August 26, 2007, the United States lodged with the United States District Court for the Northern District of Illinois a CERCLA consent decree resolving the liability of four parties and the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. The United States has incurred approximately \$4,500,000 in site costs. The consent decree is subject to a 30-day public comment period before the Court will hear a motion to enter. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games. Waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, (312) 886-6235

Consent Decree Entered Requiring Reimbursement of Response Costs at the Johns Manville, Site 2 (Former Shooting Range) Site.

On September 17, 2007, the United States District Court for the Northern District of Illinois entered a CERCLA 107 consent decree resolving the liability of four parties and the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. Through this settlement, the United States is recovering approximately 83 percent of the \$4,523,000 in costs incurred for the site. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games and waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, (312) 886-6235

U.S. Court of Appeals for the Federal Circuit denies Request for Rehearing En Banc on Taking Claim.

On November 30, 2006, the United States Court of Appeals for the Federal Circuit denied petitioner's request for a rehearing en banc. The Court had originally issued an opinion on August 9, 2006 requiring the lower Court to dismiss the taking claim that had been filed against the government. The Appellate Court found that the plaintiff, John R. Sand and Gravel Company, had not filed its claim within the applicable statute of limitation.

The Appellate Court ordered the case remanded to the lower Court for dismissal of the complaint. Thus, the plaintiff was awarded no damages or attorney fees.

The Metamora Landfill Superfund Site is located in Lapeer County, Michigan. The landfill began operations in 1955 as a privately owned, unregulated open dump utilized by residents of the Village of Metamora. The operator, Russell Parrish, began illegally accepting drums of liquid industrial wastes during the mid-1960s. This continued through the 1970s. At no point was it ever licensed to accept liquid industrial wastes.

In 1969, the Plaintiff, John R. Sand & Gravel Company, entered into a 50-year lease with Parrish which granted it the exclusive right to mine sand and gravel on the Parrish property. At the time plaintiff entered into the lease, the landfill was in existence and operating as a landfill.

In September 1984, the Site was placed on the NPL. A RI/FS was conducted and two RODs were issued: one requiring the excavation and disposal of more than 30,000 drums at the Site, and the second requiring the remediation of contaminated groundwater and the closure and capping of the landfill. Both of these RODs were implemented by the PRPs. In the area covered by the landfill cap, EPA required that institutional controls be put in place to preclude activities, including mining, that could disturb the cap.

In June 2002, Plaintiff filed a complaint alleging that the environmental remediation of the Site that excluded Plaintiff from a portion of the Site caused a physical taking of a portion of its sand and gravel mining lease. The United States filed several pre-trial motions, one which was for summary judgment based on the statute of limitation. The lower Court found that the taking claim was timely filed and denied the motion.

After a trial on liability, the lower Court ruled in the United States' favor that there was no taking and thus awarded the plaintiff no damages or attorney fees. The lower Court's decision stated that the plaintiff lacked a compensable property interest because it took the mining lease subject to the existence of the landfill and allowed the landfill to continue to operate in an area that was subject to the lease. The lower Court also went on to rule that any mining in the area of the landfill cap could impact the existing groundwater remediation and endangering the public health and safety, thereby creating a public nuisance. Since the mining would be a public nuisance, preventing the plaintiff from mining would not be a compensable interest.

On appeal, the United States did not brief the issue of the statute of limitation. However, in a 2-1 decision, the Appellate Court, based on an amicus brief filed by the PRP group doing the work at the Site and *sua sponte*, considered the issue of the applicable statute of limitation. The Appellate Court disagreed with the lower Court and found that the taking claim had accrued more than six years prior to the filing of the complaint. Thus, the taking claim was time barred. The Appellate Court vacated the lower Court's decision and remanded the case with instruction that the lower Court dismiss the plaintiff's complaint. The plaintiff petitioned for a rehearing by the full Court, which was denied on November 30, 2006. The dissenting opinion, while finding that the taking claim was timely filed, stated it would have affirmed the lower Court ruling that there was no taking because the plaintiff took its mining lease subject to the existing landfill.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Jones Dairy Farm, Inc., Fort Atkinson, Wisconsin.

On June 27, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Jones Dairy Farm, Inc. for allegedly violating CERCLA § 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center 3 hours and 10 minutes after a release of approximately 2,805 pounds of ammonia, which has a reportable quantity of 100 pounds, took place. Jones Dairy Farm also allegedly violated EPCRA § 304(b), 42 U.S.C. § 11004(b), by notifying the State Emergency Response Commission (SERC) 3 hours and 11 minutes after the release, and EPCRA § 304(c), 42 U.S.C. § 11004(c), by not providing the SERC with written follow up emergency notice as soon as practicable after the release. Region 5 calculated a proposed penalty in this matter of \$114,735. Based on Jones Dairy Farm's cooperation, willingness to settle, and other facts raised during negotiations, Region 5 deemed adequate a total settlement value of \$60,000. The CAFO requires Jones Dairy Farm to pay a penalty of \$36,060 and implement a Supplemental Environmental Project. The Supplemental Environmental Project, valued at \$29,925, requires the installation of ammonia sensors in the compressor room that will be linked into an alarm in a guard house manned 24 hours per day.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715

Region 5 files Consent Agreement and Final Order with Kastalon, Inc. of Alsip, Illinois.

On August 8, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against Kastalon, Inc. (Kastalon), 4100 West 124 th Place, Alsip, Illinois, for alleged violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and the regulations set forth at 40 C.F.R. §§ 372.22 and 372.30. Region 5 alleged that Kastalon failed to file toxic chemical release inventory forms (Form Rs) for 4,4'-Methylenebis (N,N-dimethyl)benzenamine and trichloroethylene for the calendar year 2001 in a timely manner. Region 5 calculated a proposed penalty of \$3,092. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under the CAFO, Kastalon must pay a civil penalty of \$2,164. The penalty represents a substantial sanction against Kastalon, and will deter future violations of Section 313 of EPCRA.

Office of Regional Counsel Contact: Kevin Chow, (312) 353-6181; Additional Contact: Kenneth Zolnierczyk, (312) 353-9687

Region 5 executes CAFO with Kemps, LLC, resolving CERCLA/EPCRA Violations at its facilities in Rochester and Farmington, Minnesota.

On February 7, 2007, the Region filed a Consent Agreement and Final Order resolving an Administrative Complaint originally filed on August 14, 2006. The Complaint sought penalties associated with a release of ammonia at its ice cream production facility in Rochester, Minnesota, under section 103(a) of CERCLA and section 304(a) of EPCRA. Specifically, the Complaint alleges that Respondent failed to notify the National Response Center and the Minnesota SERC immediately upon learning of the release. During settlement negotiations, Respondent offered to resolve liability for a second

ammonia release at a Kemps cottage cheese production facility in Farmington, Minnesota, for which the Region had already issued an information request and received a response. Consequently, we amended the Complaint to include counts for failure to immediately notify the NRC and Minnesota SERC of the Farmington release and another count for failure to provide prompt written follow up notification to the SERC. Kemps will implement two SEPs to mitigate the penalty proposed in the Amended Complaint of \$128,231, one SEP to install intermediate pressure relief valves in the refrigeration system at its Farmington facility and to install seven emergency ammonia detection sensors at its Rochester facility. Kemps will pay a civil penalty of \$50,290.

Office of Regional Counsel Contact: Robert Guenther, (312) 886-0566

Region 5 Enters into Pre-filing Settlement with Mark R. King under the Residential Lead-Based Paint Hazard Reduction Act.

On April 26, 2007, Region 5 signed a combined complaint and consent agreement with Mark R. King (“Respondent”), to settle violations of the Lead Disclosure Rule, 40 C.F.R. Part 745, Subpart F, for his residential properties located in Youngstown, Ohio. The settlement will require Respondent to pay a penalty of \$7,610, and perform a supplemental environmental project at a cost of \$68,500 to be used to conduct lead-based paint hazard abatement of his residential properties over the next eighteen months.

U.S. EPA and the U.S. Department of Housing and Urban Development (“HUD”) have targeted our Section 1018 Residential Lead-Based Paint Hazard Reduction Act joint enforcement efforts in cities with a large number of children with elevated blood lead (“EBL”) levels. U.S. EPA and HUD work with the local departments of public health to try to identify landlords and management companies with a history of children with EBLs, and then investigate those landlords and management companies. The Youngstown City Health District identified Mark King an appropriate landlord for our joint investigation.

Respondent had owned and managed over 230 properties, primarily single family dwellings, in Youngstown. He buys distressed properties, renovates them, and then rents them. He had received at least eight notices from the Youngstown City Health District related to lead hazards in his rental properties. In response to U.S. EPA’s subpoena, Respondent provided documents demonstrating his failure to comply with the Lead Disclosure Rule for some of his rental properties.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Estrella Calvo, (312) 353-8931

Ypsilanti Landlord Convicted of Substantial Endangerment for Discharging Untreated Sewage to Water.

In 2004, David Kircher owned the Eastern Highlands apartment complex in Ypsilanti, Michigan. On June 29, 2005, the Michigan Attorney General filed a two-count felony complaint against Kircher alleging that Kircher knowingly and unlawfully discharged a substance into the Huron River and that this discharge posed a substantial endangerment to the public health, safety or welfare. Kircher’s bench trial began October 2, 2006, in Washtenaw County Circuit Court before Judge Archie Brown. On October 12, 2006,

Judge Brown issued his verdict, finding Kircher guilty on both counts. Kircher will be sentenced on December 6, 2006. Kircher faces a potential prison term of five years and a potential criminal fine of not less than \$1 million, plus \$2,500-\$25,000 for each violation and up to \$25,000 for each day of violation.

The complaint alleged that on October 12-14, 2004, Kircher and people under his direction pumped about 25,000-100,000 gallons of untreated sewage from Eastern Highlands to a storm drain flowing directly into the Huron River. At least three children were exposed to the untreated sewage during this discharge, including two minors who ingested some of the sewage.

The Southeast Michigan Environmental Crimes Task Force including U.S. EPA's Criminal Investigation Division, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the Michigan Attorney General jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

CERCLA Kohler Landfill, WI Five Year Review.

On September 20, 2007, EPA Region 5 signed a Five-Year Review Report for the Kohler Company Landfill Site located in Kohler, Wisconsin. The Five Year Review determined that the landfill cap and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the rate at which the landfill was being brought to final grade would allow the landfill to remain open until 2011, under a State permit. At that time, the remaining 20% of the landfill cap will be installed. Given the private ownership of the landfill and the surrounding land, an IC study will be done for the site. The study will evaluate the surrounding land use and existing groundwater use restrictions to determine if institutional controls will be necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Region 5 signs Consent Agreement and Final Order with Karen Krach.

On March 23, 2006, a CAFO was signed with Karen Krach of Fishers, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Ms. Krach owns a number of single family residential rental properties in and around Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in July of 2006, alleging that Ms. Krach had failed to comply with lead paint disclosure requirements in three lease transactions and three sales transactions. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to purchasers the required ten day lead paint inspection period. Ms. Krach will pay a penalty of \$13,600 to settle the violations.

Office of Regional Counsel Primary Contacts: Erik Olson, (312) 886-6829, Mark Koller, (312) 353-2591 and additional contact: Estrella Calvo, (312) 353-8931

Region 5 and H. Kramer Enter Into An Amendment to Consent Agreement and Final Order.

On June 1, 2007, Region 5 and H. Kramer entered into an amendment to the Consent Agreement and Final Order (CAFO) originally filed on March 30, 2006. The original CAFO simultaneously commenced and concluded an action for Clean Air Act violations at H. Kramer's secondary brass and bronze production plant in Chicago, Illinois. In addition to paying a penalty, the CAFO requires H. Kramer to perform a supplemental environmental project (SEP). The SEP requires H. Kramer to modify its baghouse collection system to improve the capture and control of fugitive emissions from two rotary furnaces. Currently, the fugitive emission lines from these furnaces converge and are directed to one baghouse. A second baghouse serves as a backup to handle the combined emissions if the first baghouse fails. The original SEP would connect each furnace to one of the baghouses by installing a separate flue line from each furnace to one of the baghouses.

H. Kramer has requested a modification to the SEP which would allow it to install a baghouse that the company purchased through a bankruptcy sale as a replacement for the backup baghouse that it agreed to connect to one of its two rotary furnaces. The replacement baghouse has a greater flow rate than the backup baghouse and includes four compartments whereas the old backup baghouse includes one compartment. The new baghouse is expected to improve the ability to control fugitive emissions from the furnace and will be easier to maintain because of its multi-compartment design. The cost of the SEP will increase from \$500,000 to \$780,000. The additional costs include the purchase price of the replacement baghouse, the cost to dismantle, clean and transport the baghouse to the H. Kramer facility, the demolition and disposal of the old backup baghouse, and the erection and connection of the new replacement baghouse. The schedule to complete the SEP will be extended by approximately four months from May 2007 to September 2007. The additional time is required to obtain the necessary permits, demolish the old backup baghouse, and install and test the new baghouse.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Kushal Som, additional contact: (312) 353-5792

Cleveland-Area Man Sentenced for Hate Crime; United States v. Joesph Kuzlik.

Joseph Kuzlik, of Cleveland, Ohio, was sentenced on February 21, 2007, to 27 months in federal prison and three years of supervised release for committing a racially-motivated crime which violated the federally protected civil rights of a Cleveland family. Kuzlik was also ordered to pay restitution to the U.S. Environmental Protection Agency (U.S. EPA) in the amount of \$23,000, \$767 to the Ohio EPA, and additional sums to the individual victims who suffered financial losses as a result of the offenses. At the sentencing hearing, Judge Patricia Anne Gaughan said, "The abusive and serious nature of this offense is obvious to anyone with a modicum of decency and morality. I cannot imagine the terror that was inflicted on these victims. A message must be sent loud and clear that this behavior will not be tolerated and will result in a punishment at the high end of the guideline range."

On November 27, 2006, Kuzlik pleaded guilty to conspiring to interfere with the federally protected housing rights of an interracial family because of their race, and for making false statements to federal investigators. Another Cleveland resident, David Fredericy, was sentenced on January 17, 2007, to serve 33 months in prison for his role in the crime.

Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate interracial residents in their neighborhood, including placing toxic mercury on the porch of a family with children for the purpose of intimidating them because one of the parents was African-American. As part of his guilty plea, Kuzlik admitted that he and Fredericy were attempting to intimidate the family and drive them from the neighborhood. In order to keep their unlawful actions secret, both Fredericy and Kuzlik lied to federal investigators from the EPA, the federal agency initially charged with cleaning up the mercury and investigating the incident.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Cleveland-Area Man Pleads Guilty to Hate Crime; United States v. Joseph Kuzlik.

A Cleveland-area man, Joseph Kuzlik, pleaded guilty today to conspiring to commit and for committing hate crimes targeting African-American residents of Cleveland, Ohio. Specifically, Kuzlik, who had been charged along with another individual, Cleveland resident David Fredericy, pleaded guilty to conspiracy and interference with federally protected housing rights because of race. He also pleaded guilty to making false statements to federal investigators. Previously Fredericy pleaded guilty to all the counts of the indictment. The indictment in this case alleged that Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate African-American residents in their neighborhood. The indictment charged, among other acts, that the defendants placed a toxic substance, mercury, on the porch of an inter-racial family with children. As part of his guilty plea, Kuzlik admitted that he did so for the purpose of intimidating them because they were an inter-racial family. Kuzlik also admitted to lying to federal investigators from the Environmental Protection Agency, the federal agency that was initially charged with cleaning up the mercury and investigating the incident, for the purpose of keeping his unlawful actions secret. The maximum potential penalties for conviction on the conspiracy and civil rights charges is 10 years in prison, a \$250,000 fine, and three years of supervised release following any period of incarceration, per count. The maximum term of imprisonment for the false statements charge is five years. A sentencing hearing has been scheduled for February 21, 2007. This case was investigated, in a joint investigation, by the Federal Bureau of Investigation, the Ohio Environmental Protection Agency, the City of Cleveland Police Department, and the U.S. EPA CID, all members of the Northeast Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, Criminal Counsel, (440) 250-1761



Enforcement Case Summaries Fiscal Year 2007: List of Cases in Alphabetical Order L through Z

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state, or statute.

Name (L to Z)

- L&M Radiator, Inc.
- Lake Zurich, IL
- Lakeshore Foundry, Inc.
- Lambda Bioremediation Systems, Inc.
- Lesaffre Yeast Corporation
- MAPEI Inc.
- Masterwear Corp.
- McClain Properties
- Meijer, Inc.
- Memorandum of Agreement
- Mercury Displacement Industries, Inc.
- Michigan Department of Environmental Quality
- Microbe Guard, Inc. (2)
- Midland-Impact
- Midwest Sheets Company (2)
- Millennium Holdings, LLC
- Miller Environmental Co., Inc.
- Milwaukee Metropolitan Sewage District
- Milwaukee Solvay Coke & Gas Site
- Minnesota Mercury Total Maximum Daily Load
- Minnesota Metal Finishing, Inc.
- Mosaic USA, LLC
- Multi-Service, Inc.
- Musser, James G.
- Nacelle Land and Management Corporation
- National Lacquer and Paint
- National Lead Industries
- New Albany Links Development Company, Ltd.
- Newport-St. Paul Storage
- Newton, Isaiah
- North American EN, Inc.
- North American Galvanizing & Coating, Inc.
- North Shore Gas
- Northeast Ohio Regional Sewer District
- Northwestern Plating Works, Inc.
- Premium Agriculture Commodities, Inc.
- Rager Fertilizer Company
- Rapier, Naomi L.
- Raybestos Products Company (2)
- Reardon Properties
- Redeen Engraving Company
- Reece, Richard D.
- Rhodia Inc.
- Rolls Royce Corporation
- Ronald Mark Davenport
- Sahli Enterprises, Inc.
- Schott Metal Products, Inc.
- Scott Brass, Inc.
- Sherwin-Williams Company
- Sierra Club (3)
- SLI Corporation
- SJM Properties
- Smurfit-Stone Container Enterprises
- Snappy Apple Farms, Inc.
- Spectro Alloys Corporation
- Sprayon Products
- Star Acquisition, Inc.
- Star Distributors Incorporated
- State Of Indiana
- Steel Dynamics, Inc.
- STRIB Industries, Inc.
- Stroh Die Casting Co, Inc.
- Target Corporation
- Tate & Lyle Ingredients Americas, Inc.
- TCI Manufacturing, Inc.
- Terre Haute
- Tester, Larry
- Three Bond International
- Transformer Decommissioning, Inc.
- Tri-Ag Distributors, Inc.
- Trilla Steel Drum Corp.
- Ulmer, Scot F. (2)
- Underground Warehouses, Inc.
- United Phosphorus, Inc.
- Ursitti, Victoria

- Office of Enforcement and Compliance Assurance (OECA)
- Ohio Environmental Development Limited Partnership
- Ohio NPDES Program
- Ottawa L.L.C.
- Owens Corning Corp.
- P & B Investment, Inc.
- Pacholski, David L. (3)
- Parker, Ika and Patricia
- PennTex Resources Illinois, Inc. (2)
- Peoples Gas
- Plaspros, Inc.
- Port Stop Citgo
- Powell, Charles
- Prairie State Generating Company, LLC
- Premcor Refining Group Inc.
- U.S. Department of Transportation
- Valspar Corporation
- Vertellus Agriculture & Nutrition Specialties LLC
- Wakatomika Creek Watershed
- Warsaw Chemical Company, Inc.
- Wash King Laundry
- Waste Management of Wisconsin, Inc.
- Water Saver Faucet Co.
- WCI Steel, Inc.
- Westhaven Group LLC
- Wisconsin Electric Power Company Settlement
- Wisconsin Public Service Corporation
- W.J. Hagerty & Sons Ltd, Inc
- Zaclon, Inc.

Region 5 files a Consent Agreement and Final Order to commence and conclude case against L&M Radiator, Inc., Hibbing, Minnesota.

On November 15, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for two violations of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, L&M allegedly failed to timely file Form Rs with the U.S. EPA and the State of Minnesota for Copper and Lead in calendar year 2002. L&M processed these toxic chemicals above the regulatory thresholds and, therefore, was required to file the Form Rs by July 1, 2003. L&M did not file until September 24, 2003. Region 5 calculated a proposed penalty in this matter of \$29,684. In response to a Notice of Intent to File letter, L&M indicated a desire to resolve this matter. Region 5 offered and L&M accepted a 30% reduction for cooperation and efforts to comply. The agreed upon CAFO commences and concludes the case, and requires L&M to pay a penalty of \$20,779.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Stormwater Finding of Violation Issued to the Village of Lake Zurich, IL.

On September 10, 2007, Region 5 issued a Finding of Violation and Order for Compliance to the Village of Lake Zurich, IL for violations of its Municipal Separate Storm Sewer (MS4) permit. Pursuant to 33 U.S.C. §§1318 and 1319(a), Region 5 ordered the Village to address total suspended solids violations from a stormwater outfall to the southeastern end of Lake Zurich.

Road construction in the Village is contributing excessive sediment loads to the sewer system. The Village maintains a retention pond that requires regular maintenance to trap sediments in the stormwater. The Order requires the Village to maintain this pond and sewer lines in order to properly intercept the sediments entering the system. The Region has also issued a compliance order to the Illinois Department of Transportation to use best management practices at their road construction site.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

U.S. EPA issues RCRA 3008h Administrative Corrective Action Order in Lakeshore Foundry, Inc. of Waukegan, Illinois.

On November 7, 2006, an Agreed Administrative Corrective Action Order in Lakeshore Foundry, Inc., was issued. The Order requires the Lake Shore Foundry (LSF) facility to address hazardous waste contamination (principally lead) above acceptable Federal and Illinois background levels in soil and other effected media; and to provide requisite proof of financial ability to properly perform and/or fund the activities subject to the Order.

The Resource Conservation and Recovery Act (RCRA) § 3008h Order will respond to findings of lead and potentially other hazardous substances at the active metals foundry operated by LSF. The 3008h Order requires LSF to perform a RCRA Interim Measures action and create an accompanying report; create a Description of Current Conditions demonstrating a facility-wide assessment of risks and proposed responses under RCRA; help develop a proposal of final corrective measures with a Statement of Basis; and, implement all appropriately determined final corrective measures at the facility.

The LSF facility is an active metal foundry located at 653 Market Street, Waukegan, Lake County, Illinois. LSF physically borders on the shore of Lake Michigan. The LSF facility property has a 100-plus year history of heavy industrial uses, and LSF has operated in its current capacity and location for at least 50 years. The United States Environmental Protection Agency (EPA) and the Illinois Environmental Protection Agency (ILEPA) sampling inspections at LSF in 2003 and 2004 found toxicity characteristic leaching procedure (TCLP) lead concentrations in foundry sand above the regulatory limit of [40 CFR 261.24](#), as well as indications of other hazardous wastes and constituents pursuant to [40 CFR Part 261](#) EXIT Disclaimer. During 2004-2005, negotiations ensued between EPA and LSF. After internal EPA determinations concerning administrative penalty issues and enforcement approach, a RCRA 3008h Agreed Order was negotiated and issued.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613 and Jill Groboski, RCRA Compliance Section, (312) 886-3890

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Lambda Bioremediation Systems, Inc. Columbus, Ohio.

On January 31, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, Lambda offered for sale and distributed a “microbial consortium” for pesticidal use that was not registered FIFRA. In response to a Notice of Intent to File letter, Lambda indicated a desire to work cooperatively to resolve this matter. Lambda presented financial information that reflected an inability to pay and an agency analysis of Lambda’s financial circumstances confirmed that Lambda had an ability to pay only a nominal penalty. The CAFO, in which Lambda agrees to comply with FIFRA, commences and concludes the case, and requires Lambda to pay a penalty of \$500.00.

Office of Regional Counsel Contact: Mary Fulghum, (312) 886-4683

Region 5 Settles Clean Air Act Matter with Lesaffre Yeast Corporation.

On June 21, 2007, Region 5 issued a Consent Agreement and Final Order ("CAFO") settling Clean Air Act (CAA) violations by Lesaffre Yeast Corporation. On December 15, 2006, U.S. EPA filed a complaint against Respondent Lesaffre Yeast Corporation ("Lesaffre" or "Respondent"). The complaint alleges that Lesaffre violated Nonattainment New Source Review Requirements contained in the Act and in the Wisconsin State Implementation Plan ("SIP") (Count I) as well as emission limitations contained in Lesaffre's Title V permit and the Wisconsin SIP (Count II) at its facility in Milwaukee, Wisconsin. That facility closed in December 2005. This CAFO settles the complaint. EPA made a penalty reduction based on the degree of cooperation by the Respondent and potential litigation risk. The CAFO settles the matter for \$202,500 (the complaint proposed a penalty for Count I of \$488,080). Additionally, under the CAFO, the Respondent agrees that: (1) any emission reduction resulting from the activities which are the subject of the Complaint shall not be considered as a creditable contemporaneous emission decrease for purposes of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs; (2) emission reductions resulting from activities which are the subject of the Complaint shall not be used or sold in any emission trading or marketing program of any kind; and (3) the shutdown of the facility on December 22, 2005, was a "permanent shutdown" as defined by the United States Environmental Protection Agency Reactivation Policy.

Office of Regional Counsel Contacts: Catherine Garypie, (312) 886-5825; Jeff Cahn, (312) 886-6670; Manojkumar Patel, Air & Radiation Division, (312) 353-3565

Region 5 files a Consent Agreement and Final Order to commence and conclude case against MAPEI Inc., West Chicago, Illinois.

On June 15, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against MAPEI Inc. of West Chicago, Illinois, for alleged violations of § 113 of the Clean Air Act and the Illinois SIP. MAPEI's alleged violations stemmed from two instances of failing to obtain a construction permit prior to commencing construction on an emission source. In each case, MAPEI had filed a permit application, but had not received a construction permit until after they began construction. In settlement, MAEPI has agreed to pay U.S. EPA's proposed penalty of \$5,240, and will undertake a pollution prevention Supplemental Environmental Project (SEP) valued at \$34,000. In its SEP MAEPI will reformulate two products, resulting in a projected reduction of hazardous air pollutants (HAPs) of .86 tons per year.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

Comprehensive Environmental Response, Compensation, and Liability Act Consent Decree Entered 5/25/2007 in U.S. v. Masterwear Corp., et al.

On May 25, 2007, Judge John Daniel Tinder of the Southern District of Indiana, Indianapolis Division, signed an order entering a consent decree in the case of U.S. v. Masterwear Corp., et al, No. 1:05-cv-00373-JDT-WTL.

Masterwear was a former industrial laundry and dry cleaning business that operated in downtown Martinsville, Indiana. U.S. EPA conducted a site inspection on four separate dates from late 2003 to early 2004 and found perchloroethylene vapors in homes and

businesses in the area that exceeded the Indiana Department of Environmental Management sub-chronic action level. On April 20, 2004, U.S. EPA issued a Unilateral Administrative Order (“UAO”) pursuant to Section 106 of CERCLA to William Cure and Jim Reed to conduct a removal action at the Masterwear Site. DOJ, on behalf of U.S. EPA, later filed a complaint for cost recovery against Masterwear Corp., William and Elizabeth Cure, and Jim and Linda Lou Mull Reed pursuant to Section 107 of CERCLA.

Per the consent decree, the Settling Defendants, through their insurance companies, will continue conducting the removal action as required by the UAO and will pay \$380,000 to reimburse U.S. EPA for past response costs and some future response costs for the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; secondary contact: Ken Theisen, On-Scene Coordinator, (312) 886-1959 and Department of Justice contact: Tom Benson, (202) 514-5261

McClain Properties enters CAFO settling violations of Lead Disclosure Rule under TSCA § 16(a) and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act.

On September 27, 2007, McClain Properties entered a consent agreement and final order settling alleged violations of the Lead Disclosure Rule at 40 C.F.R. Part 745. The alleged violations concern the Respondent’s failure to comply with the requirements of providing lessees, before they become obligated on a lease, a lead warning statement, an accurate lead disclosure statement, a list of any records or reports available to the lessor and an acknowledgement by lessor and lessee concerning the foregoing matters. Respondent agreed to perform a lead paint abatement project and thus obtained a 90% reduction in the proposed penalty under EPA’s 2004 Policy “SEPs in Administrative Enforcement Matters Involving Section 1018 Lead-based Paint Cases.” The reduced penalty amount is \$1,263.00.

Office of Regional Counsel Contact: Gaylene Vasaturo, (312) 886-1811

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Meijer, Inc.

Region 5 initiated pre-filing discussions on this matter in August 2006. The proposed penalty amount was \$48,000. On July 12, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding to settle violations of Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68 with Meijer, Inc. concerning the Meijer Kitchen facility (a minor non-Title V facility) in Middlebury, Indiana. The Respondent failed to have documentation concerning required training and failed to update certain information in the risk management plan for the anhydrous ammonia refrigeration process at the facility. Based on Meijer’s cooperation and new information relating to the length of time of the violations, the parties agreed to resolve this matter by Meijer, Inc.’s payment of a civil penalty of \$25,000.

Office of Regional Counsel Contacts: Jan Carlson, (312) 886-6059, Ann Coyle, (312) 886-2248 and Monika Chrzaszcz, technical contact: (312) 886-0181

Wisconsin Memorandum of Agreement (MOA) Signed.

EPA and the State of Wisconsin have now signed the “One Cleanup Program Memorandum of Agreement” (MOA). This MOA provides the framework for the State of Wisconsin to use a single, consolidated approach to the cleanup of a wide range of types of sites through its N.R. 700 rules rather than utilizing a range of separate programs with conflicting approaches and cleanup standards. The MOA also clarifies the relationship between EPA and the State of Wisconsin in providing for cleanups in Wisconsin; in particular, the MOA delineates the “enforcement comfort” to be given by EPA to sites Wisconsin addresses through its program.

The MOA is nationally significant in that it is the first MOA to address cleanup requirements across several environmental media, including CERCLA, RCRA, TSCA and LUST. EPA and the State of Wisconsin believe this MOA will result in an improved ability to achieve cleanup and redevelopment of contaminated properties in Wisconsin.

Office of Regional Counsel Contacts: Leverett Nelson, (312) 886-6666 and Karen Peaceman, (312) 353-5751

Region 5 signs a Consent Agreement and Final Order with the Mercury Displacement Industries, Inc.

Region 5 initiated this enforcement action in January 2007. On September 27, 2007, Region 5 filed a Consent Agreement and Final Order with Mercury Displacement Industries, Inc., in Edwardsburg, Michigan. The Region alleged that Mercury Displacement Industries, Inc. failed to timely submit Form Rs to the Administrator for both lead and mercury for the 2005 calendar year, as required by Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c). Mercury Displacement Industries, Inc. agreed to resolve this matter prior to the issuance of an administrative complaint with a payment of a civil penalty amount of \$ 1,984.00. The total calculated Category II, Level 4 penalty for the alleged violations was \$ 2,834.00; however, this penalty was reduced approximately 30% in accordance with mitigating factors delineated in the Enforcement Response Policy for Section 313 of EPCRA.

Office of Regional Counsel Contact: James Morris, (312) 886-6632; Kenneth Zolnierczyk, primary contact, (312) 353-9687

Ex-Parte Warrant issued for 4180 Luna Pier, Luna Pier, Michigan, Eastern District of Michigan.

On January 17, 2007, Judge Zatkoff, Eastern District of Michigan, issued a warrant which allows U.S. EPA, its contractors and accompanying federal, state and local authorities, to conduct inspection and removal activities related to oil spills at 4180 Luna Pier Road, Luna Pier, Michigan. Under the terms of the warrant issued under Sections 311(b), (c), (e) and (m) of the Clean Water Act, 33 U.S.C. § 311(b), (c), (e) and (m), U.S. EPA can access the site to investigate and to remove soil and groundwater contamination which poses an imminent and substantial threat to the public health, welfare and environment. The warrant was served by On-Scene-Coordinators to a facility representative on January 17, 2007.

U.S. EPA will work with MDEQ to curtail the imminent and substantial threat to public health, welfare and the environment. The warrant provides U.S. EPA with access for sixty (60) days.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

FIFRA Administrative Warrants Executed To Access Franchises of Microbe Guard, Inc., in Minnesota.

On September 22, 2006, the United States Attorney General's Office (United States) at the District of Minnesota obtained, on behalf of EPA, administrative warrants to access five franchises of Microbe Guard, Inc., in various locations in Minnesota. These warrants are authorized under Section 9(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The United States obtained these warrants to allow inspectors to access the franchise facilities because EPA had reason to believe that these facilities held evidence of sales or distributions of unregistered pesticides, which are violations of FIFRA. EPA sought these warrants because, on September 5, 2006, one of the Microbe Guard, Inc. franchise owners revoked voluntary access to its facility for an inspector of the Minnesota Department of Agriculture, who was in the process of inspecting the facility at that time. The inspector was conducting the inspection on behalf of EPA as part of an effort to determine the credibility of certain defenses Microbe Guard, Inc., had made in an EPA administrative FIFRA enforcement proceeding against it. The inspector had observed Microbe Guard, Inc. products which were possible unregistered pesticides at the franchise facility, but was asked to leave before completing the inspection or collecting any labels or other evidence concerning the Microbe Guard, Inc. products. FIFRA authorizes the issuance of administrative warrants by federal magistrate courts to allow access to inspectors acting on behalf of EPA to investigate possible FIFRA noncompliance.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829 or Mark Palermo, (312) 886-6082

Region 5 signs Consent Agreement and Final Orders with Microbe Guard, Inc.

On October 3, 2006, Region 5 signed a consent agreement and final order with Microbe Guard, Inc. of Maple Grove, Minnesota, to settle violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j. Microbe Guard, Inc. distributes antimicrobial pesticides for use in mold prevention and mold remediation, primarily in the new construction industry. Region 5 initiated this enforcement action by filing an administrative complaint in February of 2006, alleging that Microbe Guard, Inc. unlawfully distributed and sold multiple unregistered pesticides. The complaint included violations alleging the sale or distribution of Microbe Guard Mold Blast, Microbe Guard BioBlast, and Microbe Guard Duralast. At the time of the sale or distributions alleged in the complaint, Microbe Guard was labeling and/or advertising these products as pesticides, but had not registered them as required by FIFRA. Microbe Guard, Inc. will pay a penalty of \$28,000 to settle the violations, which represents the proposed penalty of \$36,400 reduced in light of Microbe Guard, Inc.'s willingness to settle the case.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829; Crissy Pellegrin, (312) 353-5263; Secondary Contact: Dea Zimmerman, (312) 886-7187

Region 5 signs Consent Agreement and Final Order with Respondent Midland-Impact, Rockville, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO, resolving claims against respondent for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Rockville, Indiana in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Tipton, Indiana Business Charged with Environmental Crimes.

On January 11, 2007, the United States Attorney's Office, Southern District of Indiana filed a criminal information against Midwest Sheets Company (MWS) of Tipton, Indiana for 3 violations of the Clean Water Act (CWA). MWS owned an operated a corrugated cardboard sheet manufacturing facility who allegedly negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. Furthermore, MWS is alleged to have failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges allegedly caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of more than 2,000 fish in Cicero Creek. MWS and the government also filed a plea agreement that, if accepted by the court, requires that MWS will plead guilty to 3 violations of the CWA and pay a criminal fine of \$600,000 (\$150,000 suspended during the one year probation). In addition, MWS agreed to pay approximately \$23,000 in restitution to the Tipton POTW and the state of Indiana for their response costs. The plea agreement also requires the company to make specific changes in its training policies to prevent further illegal discharges. The defendant is presumed innocent until and unless convicted at trial or following a guilty plea accepted by the court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Tipton, Indiana Business Convicted and Sentenced for Environmental Crimes.

On September 6, 2007, Midwest Sheets Company (MWS) of Tipton, Indiana pleaded guilty and was sentenced for three criminal violations of the Clean Water Act (CWA) in United States District Court, Southern District of Indiana. MWS owned an operated a corrugated cardboard sheet manufacturing facility that negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly

owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. MWS failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of approximately 2,000 fish. MWS cooperated with the criminal investigation, paid full restitution for the damages caused by the discharges, and pleaded guilty to three negligence violations under the CWA. MWS was sentenced to: 1) pay a criminal fine of \$600,000 (\$150,000 suspended during a one-year probation period); 2) implement an employee training program for environmental compliance; 3) implement a corporate environmental compliance program; 4) conduct an environmental audit; 5) comply with all environmental laws; and 6) make a public apology in the local Tipton, Indiana newspaper as well as a trade journal.

Office of Regional Counsel Contact: David Mucha (312) 886-9032

Region 5 signs two Administrative Settlement Agreements and Orders on Consent for the Kalamazoo River Superfund Site.

On February 21, 2007, Region 5 signed two Administrative Settlement Agreements and Orders on Consent (AOCs) for CERCLA response work at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "Site"). Region 5, the State of Michigan, and two potentially responsible parties, Millennium Holdings LLC, and Georgia-Pacific LLC (the "PRPs"), signed an AOC to perform a \$20-25 million time-critical removal action in an area of the Kalamazoo River called the Plainwell Impoundment area (Removal AOC). As part of the removal settlement, U.S. EPA contributed \$1 million from a previous bankruptcy settlement at the Site; the Michigan Department of Natural Resources (MDNR) contributed \$500,000 in cash; and the Michigan Department of Environmental Quality (MDEQ) forgave \$1.5 million in past costs. An AOC for Supplemental Remedial Investigation/Feasibility Study (SRI/FS) was also signed among Region 5 and the PRPs (SRI/FS AOC). The PRPs will provide financial assurances in the amount of \$15 million for the SRI/FS work for the entire river. The two AOCs are the result of over two years of mediated settlement negotiations between Respondents and several government partners, including: Region 5; MDEQ; MDNR; the Michigan Department of Attorney General; the National Oceanic and Atmospheric Administration; and the U.S. Fish and Wildlife Service. The U.S. Department of Justice participated in several mediation sessions. The mediation successfully facilitated resolution of significant differences among the participants that were delaying cleanup of the river.

The time-critical removal action will include dredging and/or excavating approximately 132,000 cubic yards of wastes (4,400 lbs. of PCBs) from in-stream sediments, river banks, and floodplain soils. Disposal will occur at an on-Site landfill owned by Millennium Holdings. The PRPs intend to remove a portion of the Plainwell Dam in order to construct a water control structure, which will serve to de-water the impoundment area and facilitate excavation in the "dry." As a result of the dam removal, the river will be restored to its original channel. Region 5 and MDEQ will both oversee the work and have approved the engineering design plan for the action.

The SRI/FS AOC requires the Respondents to conduct additional sampling throughout the Kalamazoo River, which will supplement existing data. Region 5 has approved, with support from MDEQ and the Natural Resource Trustees, a work plan for the supplemental sampling in select locations within the first reach of the river. The Region

intends to issue Records of Decision (RODs) for the river reaches in an upstream to downstream pattern.

Office of Regional Counsel Contacts: Eileen Furey, (312) 886-7950; Jacqueline Clark, (312) 353-4191; Program Contacts: Shari Kolak (RPM), (312) 886-6004; Sam Borries (OSC), (312) 353-8360

Oil Reclamation Company and Owner Charged With Illegal Sewer Discharges.

On July 9, 2007, in Indianapolis, Indiana, the United States Attorney for the Southern District of Indiana filed an information charging Miller Environmental Co., Inc., and its owner Anthony McCullough, each with three counts of knowingly making unlawful discharges at three Miller Environmental facilities in Shelbyville, Indiana, and Rushville, Indiana. The Miller Environmental facilities reclaimed and re-processed used oil; manufactured and blended chemicals; and degreased and derusted parts. The information charged that on at least 34 occasions between July 2002 and November 2003, the defendants discharged wastewaters containing oily residue, waste chemicals, acids, caustics, biocides and degreasing and derusting chemicals into local sanitary sewers in violation of the Clean Water Act. Conviction on each count carries a potential prison term of up to three years and criminal fines of up to \$50,000 per day of violation. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division jointly investigated this matter with other members of the Indiana Inter-Agency Environmental Crimes Task Force for the Southern District of Indiana, including the Federal Bureau of Investigation, the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

Office of Regional Counsel Contact: Kris Vezner, ORC, (312) 886-6827

Region 5 investigating improper disposal of PCBs by the Milwaukee Metropolitan Sewerage District.

On July 20, 2007, it was brought to Region 5's attention that approximately 40 tons of PCB-contaminated fertilizer had been donated by the Milwaukee Metropolitan Sewerage District to Milwaukee County. Approximately seven tons of the contaminated fertilizer was spread over four county parks and more than 30 schools received the fertilizer. At least one sample of the fertilizer contained 85ppm of PCBs. Working in consultation with the Wisconsin Department of Natural Resources, regional staff from the Superfund, Land and Chemicals, and Water Divisions have visited the impacted sites and collected samples to determine the extent of contamination. While awaiting the sampling results, the Region is evaluating enforcement and clean-up options.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248

U.S. EPA Region 5 enters Administrative Settlement Agreement and Order on Consent for the Milwaukee Solvay Coke & Gas Superfund Site in Milwaukee, Wisconsin.

On January 26, 2007, the Region 5 Superfund Division Director signed an administrative settlement agreement and order on consent (AOC), for a remedial investigation and feasibility study (RI/FS), at a former coke and gas facility in Milwaukee, Wisconsin. The Milwaukee Coke and Gas Site covers 46 acres in close proximity to the City of

Milwaukee and Harbor. Industrial activity, including a large coking operation, occurred at the Site between 1866 and 1983. The coking operation not only supplied coke for the steel industry, but was a primary source of coke gas for residential and commercial use in the City of Milwaukee until the introduction of natural gas in the 1940s. Five Respondents have entered into the AOC to determine the nature and extent of contamination identify and evaluate remedial alternatives, and to reimburse U.S. EPA for oversight costs. It is anticipated that the Site will be redeveloped after the cleanup, and will help revitalize the mostly industrial area surrounding the Site.

Office of Regional Counsel Primary Contact: Craig Melodia, (312) 353-8870, and secondary contact: Denise Boone (312) 886-6217

EPA Approves Minnesota Mercury Total Maximum Daily Load (TMDL).

On March 27, 2007, EPA Region 5 approved the Minnesota Pollution Control Agency's TMDL for mercury impaired waters pursuant to Section 303(d) of the Clean Water Act. Minnesota has over 1,200 impaired waters (820 lakes and 419 river reaches) due to mercury in fish tissue. The TMDL addresses 512 of these impaired waters. The TMDL estimates that 99% of the mercury load to these waters is from atmospheric deposition, with only 1% of the mercury load coming from direct point source water discharges. The mercury TMDL divides the state into two regions (the northeast and southwest), and establishes a statewide mercury reduction goal from anthropogenic emissions of 93% from 1990 levels. The TMDL is set at a level necessary to achieve a fish tissue mercury concentration of 0.2 ppm, which corresponds to the State's fish consumption advisory threshold of one meal per week for any segment of the population. The fish tissue target is a surrogate measure for the State's numeric water column standard. Minnesota has a number of implementation activities planned to address mercury loading from in-state air emissions to address these impaired waters.

Office of Regional Counsel Contact: Craig Melodia (312) 353-8870; Barbara Pace, OGC, (202) 564-0016; Julianne Socha, Water Division (312) 886-4436

Presiding Officer Grants In Part and Denies In Part EPA Region 5 Motion for Accelerated Decision on Liability In RCRA *Minnesota Metal Finishing, Inc.* Administrative Action; and Sets Schedule for Hearing On Undecided Claims and Penalty.

On January 9, 2007, Chief Administrative Law Judge Biro issued an Order granting accelerated decision that *Minnesota Metal Finishing, Inc.* (MMF) was liable under Minnesota's authorized hazardous waste regulations for failure to maintain hazardous waste training records, and for failure to obtain a hazardous waste storage permit, at its facility in Minneapolis, Minnesota. Chief Judge Biro denied accelerated decision that MMF was liable for failure to conduct, and have a required program for, hazardous waste training; failure to have a proper contingency plan; failure to minimize the risk of a release of hazardous waste; and failure to have an external emergency communication device in a process area at the facility. The Order confirms that Minnesota and federal regulations that apply to "new" hazardous waste storage facilities, apply to "new" generator facilities when such generator facilities fail to comply with the conditions for an exemption from the hazardous waste permitting requirements. In an accompanying Order, Judge Biro scheduled a hearing for May 22, 2007, on the undecided issues of liability and penalty. The hearing will be in Minneapolis.

Office of Regional Counsel Contact: Michael McClary (312) 886-7163

Region 5 signs a Consent Agreement and Final Order with Mosaic USA, LLC resolving violations of Underground Injection Control (UIC) requirements.

On September 10, 2007, the Regional Administrator signed a Final Order resolving alleged violations of its UIC permit by Mosaic USA, LLC, d/b/a/ Mosaic Potash Hersey. The CAFO was filed with the Regional Hearing Clerk on September 17, 2007. Mosaic failed to demonstrate Part II mechanical integrity for 19 of its underground injection wells at its potash mining facility in Hersey, Michigan. The complaint proposed the statutory maximum administrative penalty of \$157,500. Based on Mosaic's immediate cooperation in remedying these violations, the lack of potential contamination of underground sources of drinking water due to the violations, and other factors consistent with the Safe Drinking Water Act and the Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy, the Region agreed to mitigate the penalty to \$50,000. Mosaic has returned to compliance with its permit and the UIC regulations.

Office of Regional Counsel Primary Contact: John Tielsch, (312) 353-7447; Other contact: William Bates, UIC Program (312) 886-6110

Company President and Company Sentenced for Illegal Discharges to the Sewer System and a Hazardous Waste Violation; United States v. Melvin Tatman and Multi-Service, Inc.

On December 14, 2006, Melvin Tatman and Multi-Service, Inc. ("MSI") were sentenced for illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman was sentenced to six months home confinement to be followed by 18 months of probation. Mr. Tatman was also ordered to serve 100 hours of community service and pay a \$5,000 fine. MSI was sentenced to two years of probation and ordered to pay a \$20,000 fine.

Previously, Mr. Tatman and MSI pled guilty to a four-count Information charging them with illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman is the owner and President of MSI, an Ohio corporation, which is a textile cleaning facility in Dayton, Ohio. The industrial laundering operation at the facility produces wastewater that includes heavy metals, waste oil, and organic chemicals.

The Information alleged that Mr. Tatman and MSI knowingly discharged wastewater with a pH below 5.0 into the Dayton sewer system in the first count, that Mr. Tatman and MSI negligently discharged ignitable wastewater into the Dayton sewer system in the second count, and that Mr. Tatman and MSI negligently bypassed the pretreatment system associated with the industrial laundering operation at MSI's facility in Dayton. In the last count, the Information alleged that MSI knowingly caused 3,500 gallons of ignitable hazardous waste to be transported without a manifest.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the City of Dayton, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson (440) 250-1761

Former President of Michigan Business Charged with Environmental Crimes.

On March 2, 2006, James G. Musser, was arraigned and pleaded not guilty to an indictment filed on December 13, 2006 in United States District Court, Eastern District of Michigan, Northern Division, Bay City, Michigan. The indictment charges James G. Musser with 3 criminal counts under the Resource Conservation and Recovery Act (“RCRA”), for storage and disposal of hazardous waste at the Hoskins Manufacturing facility in Mio, Michigan and the disposal of hazardous waste at the Hoskins Manufacturing facility in Hamburg, Michigan. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha (312) 886-9032

Consent Decree Entered in the Northern District of Ohio for Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and the Estate of Joseph Berick.

On January 5, 2007, Judge Ann Aldrich, U.S. District Court, Northern District of Ohio, issued an order entering a consent decree resolving violations of Sections 311(b) and (j) of the CWA, 33 U.S.C. §§ 1321(b) and 1321(j) and defendants’ liability for oil spill remediation costs. Under the terms of the consent decree, Lake Underground and Nacelle will pay \$200,000 to the Oil Spill Liability Trust Fund and \$100,000 to the general treasury as civil penalties.

On at least two occasions in 1996, the owners and operators of a brine storage facility, Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and Joseph Berick (the defendants), spilled oil and brine from a surface impoundment located in Painesville Township, Ohio, to a tributary to the Mentor Marsh, a State of Ohio designated reserve. Nacelle Land and Management Corporation and Lake Underground Storage Corporation were small closely held corporations which were primarily operated by and for the benefit of Joseph Berick. In addition to the oil spill violations, the defendants failed to prepare or implement a Spill Prevention, Control and Countermeasure (SPCC) Plan, and failed to submit a report for the spills. The defendants also violated a Clean Water Act § 309(a) Administrative Order which required them to cease all discharges from the brine impoundment.

After Region 5 submitted referrals to the U.S. Department of Justice, the impoundment which was the source of the problems associated with the brine, SPCC and OPA (Oil Pollution Act) violations, was closed as a result of an Oil Spill Liability Trust Fund emergency clean-up response/spill removal action that was funded through the U.S. Coast Guard. The cost of the OPA cleanup was \$2,642,352.57. In addition, Nacelle and Joseph Berick, pursuant to a state administrative action, closed the Class II brine disposal well located at the site of the violations.

Joseph Berick passed away in December 2003, during pre-filing negotiations with the U.S. Department of Justice. Joseph Berick’s widow Marion Berick passed away in 2005. The defendants and the Estate of Joseph Berick claimed an inability to pay both the response costs and past penalties and provided the U.S. Department of Justice with financial information which demonstrated the claimed inability to pay.

The consent decree entered on January 5, 2007, fully resolves the past penalty claims of U.S. EPA for violations of the discharge and Oil Pollution Act provisions of the Clean Water Act. The consent decree does not contain injunctive relief provisions because the corporations have ceased doing business.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

U.S. District Court enters Summary Judgment on liability in National Lacquer and Paint CERCLA cost recovery case.

On January 4, 2007 the U.S. District Court for the Northern District of Illinois granted U.S. EPA's Summary Judgment Motion on liability at the National Lacquer and Paint Site in Chicago, Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004 EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), penalties for noncompliance with Unilateral Administrative Orders (UAOs) under Section 106 of CERCLA, and penalties against the operator for failure to answer EPA's information request. This decision grants EPA summary judgment on liability under Section 107 of CERCLA. EPA's Motion for Summary Judgment as to costs and penalties has yet to be ruled upon by the Court.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

U.S. District Court for the Southern District of Indiana grants Motion for Access.

On December 20, 2006, the United States District Court for the Southern District of Indiana, Indianapolis Division, granted the United States' motion, filed on behalf of the United States Environmental Protection Agency, for an Immediate Order in Aid of Access. The order allows U.S. EPA, and its representatives, access to a number of properties in Indianapolis, Indiana that need to be sampled for lead contamination and if necessary have the contaminated soil removed.

The former American Lead facility is located at 2102 Hillside Avenue, Indianapolis, Indiana. American Lead operated a lead reclamation smelter from 1946 to 1965. In 1965, National Lead Industries (NL) acquired the American Lead facility and became the owner and operator of the facility. In 1971, NL had several buildings and the slag piles removed from the property. The property remained vacant until 1985, when Central Concrete Company (CCC) purchased the property. In 1990, CCC sold the property to Irving Materials Inc. who is the current owner of the former smelter and uses the facility primarily for the storage of concrete products. During the period of lead smelting operations, lead fumes and dust were released from the facility as a point and fugitive sources. These operations contributed to lead contamination at the facility and the surrounding areas.

In October 1995, the Indiana Department of Environmental Management (IDEM) collected samples on the facility. Lead concentrations ranged from 47 ppm to 6,400 ppm. In August 1995, the Marion County Health Department collected 17 composite samples

of soil within a .5 mile radius of the facility. The results from these samples showed lead contamination ranging from 128 ppm to 17,200 ppm. In August 1998, IDEM and NL entered into an agreement for NL to conduct an investigation of the extent of contamination on and off the facility. Based on the results of the investigation and due to an existing concrete cover on the facility, it was determined that no action on the facility was needed. However, the results of the investigation documented possible exposure to lead in the area surrounding the facility that presented potential risks to human health and the environment. Thus, following the study, the parties entered into negotiations for NL to conduct removal work in the area surrounding the facility. Negotiations continued between IDEM and NL until March 2003, when IDEM requested assistance from the EPA Region 5 Emergency Response Branch for a removal assessment/removal action due to the concentrations of lead contamination, and failed negotiations with NL.

After the matter was referred to the EPA, EPA entered into negotiations with NL for it to conduct a time-critical removal at certain areas surrounding the Site. EPA and NL reached an agreement and on January 31, 2005, EPA signed an Administrative Order on Consent (Order) with NL. Pursuant to the terms of the agreement, NL would investigate properties within the area depicted in the Order and excavate and properly dispose of lead contaminated soil.

Pursuant to the Order, NL agreed to use its best efforts to obtain access agreements to sample and if necessary excavate contaminated soil. While generally successful in obtaining such agreements, NL was unable to obtain access to a number of properties. Many of the properties in questions were vacant lots, abandoned or otherwise unoccupied. NL notified EPA of its inability to obtain access to all of the potentially affected properties within the area depicted in the Order. On April 13, 2006, EPA wrote to the listed property owners, requesting that access be granted. Of the original 25 properties for which access was needed, EPA was able to obtain access to seven more properties. However, for the remaining 18, access was still not granted. For 13 of the properties, the April letter was returned as undeliverable while EPA received no response from the other five. On June 15, 2006, EPA mailed an Access Order to the 18 remaining properties. While it was not anticipated that this would lead to more access agreements, EPA wanted to exhaust all administrative options before seeking judicial intervention. NL was able to obtain access agreements for two of these properties. Therefore, there remained 16 properties for which access was needed. EPA filed a referral with the Department of Justice requesting that a motion be filed in aid of access. A complaint was filed and after allowing time for service by publication, a motion for access was filed that was granted by the Court on December 20, 2006.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region 5 Signs Consent Agreement and Final Order with New Albany Links Golf Company et al for Violations of Clean Water Act.

On October 17, 2006, Region 5 entered into a Consent Agreement and Final Order (CAFO) with New Albany Links Golf Company, New Albany Links Development Company, Ltd. and Joseph Ciminello (Respondents) simultaneously commencing and concluding an action pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. §1319(g). In creating a golf course and residential development in New Albany, Ohio, Respondents deposited fill material into 7.8 acres of wetlands adjacent to Sugar Run Creek and adjacent to an unnamed tributary of Sugar Run Creek without a Section 404 permit in violation of Section 301 of the CWA. Respondents also deposited fill

material into portions of the 4,700 linear feet of these on-site waterways without a Section 404 permit. The unnamed tributary of Sugar Run Creek and the impacted adjacent wetlands along Sugar Run Creek flow into Sugar Run Creek which is a water of the United States and is a navigable water under the Act. These waterways are part of the larger Scioto River watershed.

The proposed penalty in this matter was \$157,500. In consideration of the Respondents' willingness to perform a Supplemental Environmental Project (SEP), which includes the creation of 20 acres of wetlands in the Scioto River watershed and the donation of these wetlands and a buffer zone of 67 acres to a third-party conservator, U.S. EPA mitigated the penalty to \$115,000. The cost of the SEP, excluding the cost of the land, is in excess of \$230,000. In addition, under Section 309(a) of the CWA, the Respondents are conducting partial on-site restoration of the impacted waterways and creating an additional 16 acres of mitigation wetlands at the same site as the SEP wetlands. These mitigation wetlands will be part of an overall 103 acre protected site which will be donated to a local conservator and preserved in perpetuity. Region 5 did not receive comments on the proposed settlement.

Office of Regional Counsel Primary Contact: Randa Bishlawi, (312) 886-0510;
Secondary Contact: David Schulenberg, Water Division, (312) 886-6680

Consent Agreement and Final Order Filed Penalizing Failure of Newport-St. Paul Cold Storage Company to Immediately Notify National Response Center of Release of Ammonia.

On August 21, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order whereby Newport-St. Paul Cold Storage Company, of Newport, Minnesota, agreed to pay a civil penalty of \$11,223, for failing to immediately notify the National Response Center (NRC) of a release into the environment of approximately 950 pounds of ammonia. The company's facility from which the release occurred is located at 2233 Maxwell Avenue, Newport Minnesota 55055. The failure was a violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a).

Ammonia is categorized as a "hazardous substance" under Section 101(14) of CERCLA, and any release of 100 pounds or more of ammonia must be immediately reported to the NRC. At approximately 6:30 p.m. on June 4, 2005, a release into the air of approximately 950 pounds of ammonia occurred at the Newport-St. Paul Cold Storage facility. The facility did not report the release to the NRC until approximately 8:47 a.m. on June 6, 2005.

The Consent Agreement provides Newport-St. Paul Cold Storage 30 days from August 21, 2007, within which to pay the penalty.

Office of Regional Counsel Contact: Michael J. McClary, (312) 886-7163

Guilty Pleas In E. St. Louis Asbestos Renovation Case.

On July 12, 2007, Isaiah Newton pleaded guilty to conspiring to violate the Clean Air Act relating to the improper removal and disposal of asbestos from a building in 2002. According to documents filed in court, Newton was hired to supervise a work crew at a prominent building in downtown E. St. Louis known as the Spivey Building. Newton

admitted that pipe insulation and other asbestos-containing materials were improperly removed without the use of any water to control emissions, and that the waste was improperly disposed of in dumpsters without warning the transporters that the waste contained asbestos, and that he had discussed with the man who hired him, Charles Powell, that the building contained asbestos. Powell pleaded guilty to related charges on June 15, 2007. A date for sentencing has not been set.

Office of Regional Counsel Contact: David M. Taliaferro (312) 886-0815

RCRA Complaint Filed Against North American EN, Inc.

On September 27, 2007, Region 5 filed an administrative complaint under RCRA against North American EN, Inc. in Elk Grove, Illinois for illegal storage of hazardous waste. A large quantity generator who accumulated waste on-site, North American EN is alleged to have failed in its obligation to have a contingency plan for its facility, and to provide necessary training in emergency procedures to its personnel. Because it failed to comply with the above conditions for exemption from a permit and it had never obtained a permit or interim status, Region 5 alleged that its storage of hazardous waste was illegal. The Respondent North American EN further failed to complete a necessary waste analysis.

The complaint seeks a penalty of \$55,748 for the violations.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

Seventh Circuit finds that there is a cause of action under Section 107(a) of CERCLA for responsible parties against other responsible parties when they have undertaken voluntary response actions and do not have a cause of action in contribution available under Section 113(f).

On January 17, 2007, the Seventh Circuit Court of Appeals held in Metropolitan Water Reclamation District of Greater Chicago v North American Galvanizing & Coatings, Inc. that a liable party who undertook a cleanup has a cause of action under Section 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against other liable parties when it has undertaken a voluntary response action and does not have a cause of action for contribution available under Section 113(f) of CERCLA. The U.S. government was not a party in this case but had filed an amicus brief. Four Circuit Courts have now opined on whether Section 107(a) provides potentially liable parties with a cause of action to seek contribution for response costs from other liable parties since the Supreme Court's decision in Cooper Industries v. Aviall Services, Inc., 543 U.S. 157 (2004). The 7th Circuit case is in accord with Consolidated Edison Co. v. UGI Utilities, 423 F.3d 90 (2d Cir. 2005), and Atlantic Research Corp. v. United States, 459 F.3d 827 (8th Cir., August 11, 2006). A contrary position was issued by the Third Circuit in E.I DuPont De Nemours & Co. v. United States, 460 F.3d 515 (3d Cir. 2006). Petitions for certiorari review by the Supreme Court have been filed for all 3 of these other cases. On January 19, 2007, the Supreme Court granted certiorari for review of the Atlantic Research Corporation decision.

Office of Regional Counsel Contact: Lawrence Kyte, (312) 886-4245

U.S. EPA enters into Administrative Order on Consent with North Shore Gas for an RI/FS at two sites in Waukegan, Illinois.

North Shore Gas operated manufacture gas plants (MGP) in Waukegan, Illinois. Two of these locations were: the North Plant Site located at 849 Pershing Road, Waukegan, Lake County, Illinois and the South Plant Site located at 2 North Pershing Road and 1 South Pershing Road, Waukegan, Lake County, Illinois. Both properties covered by the agreement are relatively close to Lake Michigan. MGPs produced gas from coal from the mid-19th through the mid-20th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, North Shore Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater. Groundwater flow is toward Lake Michigan. On July 23, 2007, the U.S. EPA signed an Administrative Order on Consent with North Shore Gas. Pursuant to the terms of the AOC, the North Shore Gas agreed to conduct a Remedial Investigation and Feasibility Study (RI/FS) at each Site and to pay oversight costs incurred by the U.S. EPA at each Site. Neither Site is on the National Priorities List but both are considered sites under the Superfund Alternative Site Program. Following the completion of the RI/FS, a final cleanup determination will be made for each site by U.S. EPA, in consultation with Illinois EPA, the City of Waukegan and area residents.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

United States files complaint against NEORS in the Northern District of Ohio citing violations of an information request issued under the Clean Water Act.

On January 5, 2007, the United States filed a complaint in the Northern District of Ohio alleging that the Northeast Ohio Regional Sewer District (NEORS) violated the Clean Water Act by failing to comply with an information request issued under Section 308 of the Act. EPA sought sampling of the District's combined sewer overflows, which cause the District's receiving streams to violate applicable water quality standards. The information request was issued in May of 2005.

For the last 18 months, EPA has attempted to resolve the request for a sampling program with the District, offering several avenues for settlement of the outstanding informational needs. NEORS refused all avenues of resolution. The filed complaint did not include the underlying water quality violations themselves, which the United States is still attempting to resolve through settlement talks.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Valdis Aistars, secondary contact (312) 886-0264

Owner of Former Metal Finishing Company Indicted on Environmental and Labor Embezzlement Charges.

On August 21, 2007, the owner of a former metal finishing business was arrested on federal environmental and labor charges. The defendant, David Jacobs, was the president and owner of the former Northwestern Plating Works, Inc. (NPW), located at 3114 South Kolin Avenue, Chicago, Illinois. NPW used cyanides, acid, corrosives, brass, copper, zinc and nickel in its electroplating business. The defendant was charged in an indictment returned by a federal grand jury on August 16, 2007, with one count of improperly

storing and handling hazardous wastes under the Resource Conservation and Recovery Act. He was also charged with one count of embezzling more than \$830,000 from an employee pension plan. The indictment is an allegation only, and the defendant is presumed innocent of these charges unless proven guilty at trial.

Office of Regional Counsel Contact: David Mucha (312) 886-9032

EPA Issues Federal Inspector Credentials to Five Tribal Inspectors.

During September, 2006, Region 5 issued five federal inspector credentials to Tribal inspectors for the purpose of conducting storm water compliance inspections under the Clean Water Act. Three of the credentials were issued to inspectors from the Fond du Lac Band and two from the Mille Lacs Band. Both Bands are located in the State of Minnesota.

The Office of Enforcement and Compliance Assurance (OECA) issued "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA" on September 30, 2004. This guidance outlined the requirements for issuing federal credentials to tribal inspectors, including: training requirements; tracking requirements; requirements for safeguarding the credentials; and a requirement that the Region and the Tribe enter into a Memorandum of Understanding (MOU) governing the use of federal credentials. OECA subsequently issued additional guidance outlining the procedures for processing requests for federal credentials.

The Region identified storm water enforcement as one of the areas where the presence of tribal inspectors with federal credentials could enhance environmental protection in Indian country. The Region has entered into a MOU with both Bands governing the use of the federal credentials. In addition to other requirements, the MOU describes the way in which EPA and the tribal inspectors will identify regulated facilities and determine appropriate facilities for inspection. The MOU also includes a Quality Assurance Plan which sets forth in detail how the inspections will be conducted in accordance with federal requirements. All of the tribal inspectors completed the training required in the OECA guidance, and also completed a three-day training program in Chicago in May of this year. EPA is funding the Bands for inspection activities under this program through Direct Implementation Tribal Cooperative Agreements (DITCAs).

Office of Regional Counsel Primary Contact: Rodger Field, (312) 353-8243; Secondary Contact: Jenny Davison, Water Division (312) 886-0184

Citizen Suit Filed to Restore Vehicle Inspection Programs in Cincinnati and Dayton, Ohio.

On October 11, 2006, an Ohio citizen named John P. Frank and an entity known as Ohio Environmental Development Limited Partnership filed an action in the U.S. District Court for the Southern District of Ohio seeking to re-instate the vehicle inspection programs known as "E-Check" in the Cincinnati and Dayton, Ohio ozone nonattainment areas. The plaintiffs claim that the Ohio Environmental Protection Agency violated the Clean Air Act when it halted the E-Check program which is still required in Ohio's federally-approved State Implementation Plan (SIP). The plaintiffs ask the Court to order immediate reinstatement of the program.

On April 15, 2005, U.S. EPA proposed in the Federal Register to approve, per the State of Ohio's request, to approve revisions aspects of the ozone SIP, including re-designation of the Cincinnati area to attainment and, among other things, converting the vehicle inspection programs to a contingency measure in the 1-hour ozone maintenance plan. The notice stated in relevant part that: "in response to comments, EPA is deferring action on conversion of E-Check to contingent status in the Cincinnati and Dayton areas. That is, EPA is approving a maintenance plan for the Cincinnati area in which E-Check remains an active measure for which Ohio takes no credit." Subsequently, Ohio ended its vehicle inspection program at the end of 2005. To date, no substitute measures have been approved by EPA.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

On January 9, 2007 Region 5 received a December 28, 2006 letter that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program.

On January 9, 2007 Region 5 received a December 28, 2006 letter (with enclosures) that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program. The revision involves a transfer of the program element for Concentrated Animal Feeding Operations from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The rest of the Ohio NPDES program will remain with the OEPA. The submittal will be reviewed for completeness and then reviewed for content. After it is reviewed, a decision will be made by U.S. EPA on whether it can be approved.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Region 5 signs a Consent Agreement and Final Order with Ottawa L.L.C.

On April 11, 2007, Region 5 signed a CAFO with Ottawa L.L.C. (Respondent) that both initiates and fully resolves the TSCA Section 16, 15 U.S.C. § 2615(a), administrative action. On December 22, 2005, Region 5 sent Respondent a pre-filing notice letter informing Respondent that it violated the Lead Disclosure Rule, 42 U.S.C. § 4851 of TSCA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$28,600 for violations which originated with the failure to include certain information, either within each contract or as an attachment to each contract, before Respondent's lessees were obligated under leasing contracts. The information Respondent failed to include in the contracts included:

- a Lead Warning Statement;
- a statement disclosing the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence;
- a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist;
- a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet; and the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

In consideration of Respondent's cooperation and other factors as justice may require, Region 5 agreed to reduce the proposed penalty to \$20,060 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joana Bezerra, (312) 886-6004

Region 5 Executes CAFO with Owens Corning Corp., Resolving CERCLA Violations at its Facility in Granville, Ohio.

On June 27, 2007, the Region filed a Consent Agreement and Final Order resolving Owens Corning's liability for violating section 103(a) of CERCLA due to a release of over 800 pounds of trichloroethylene at a product testing and production facility in Granville, Ohio. Specifically, the Region alleged that Owens Corning failed to notify the National Response Center immediately upon learning of the release on October 12, 2006. The settlement requires Owens Corning to pay a cash penalty of \$3,000 and spend at least \$18,000 on a Supplemental Environmental Project (SEP) to replace the testing booth from which the trichloroethylene was released with another booth using another substance, one which is not listed as hazardous under 40 C.F.R. part 304.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; James Entzminger, alternate contact: (312) 886-4062

Region 5 files Consent Agreement and Final Order with P & B Investments, Inc.

On April 2, 2007, Region 5 and P & B Investments, Inc. (Respondent) entered into a pre-complaint Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that the Respondent, as lessor of target housing in Detroit Michigan, violated the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4252d et seq., and Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), (b)(6).

The initial proposed penalty in this matter was \$59,039, which was calculated consistent with the statutory penalty criteria of Section 16 of TSCA, 15 U.S.C. § 2615, and Section 1018 Disclosure Rule Enforcement Response Policy ("penalty policy"). Also consistent with the penalty policy, U.S. EPA mitigated the proposed penalty by 30% to \$41,327 in consideration of Respondent's cooperation, the immediate steps to comply with the Disclosure Rule and in consideration of the value of early settlement. The penalty of \$41,327 was further mitigated to \$4,133 due to Respondent's agreement to perform Supplemental Environmental Project (SEP) involving a window replacement project and lead clearance sampling to protect tenants from potential lead-based paint hazards at a cost of at least \$37,194.

Office of Regional Counsel Primary Contact: Tamara Carnovsky, (312) 886-2250; Estrella Calvo additional contact: (312) 353-8931

Technician at Oil Refinery Charged With Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On April 25, 2007, David L. Pacholski was charged in a one-count information with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

The information alleges that, pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

The information also alleges that Pacholski worked at the BP refinery in Oregon, Ohio. Pacholski was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charges that between June 18, 2003, and June 20, 2003, Pacholski did not check the refinery for leaks. Therefore, the monitoring data and certifications submitted by Pacholski for those days were false.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Technician at Oil Refinery Pleads Guilty to Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On May 4, 2007, David L. Pacholski pled guilty to a one-count information charging him with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Technician at oil refinery sentenced for making false statements in monitoring reports; United States v. David L. Pacholski.

On September 17, 2007, David L. Pacholski was sentenced for making false statements in connection with his employment at the BP refinery in Oregon, Ohio. Mr. Pacholski was sentenced to one year of probation. In addition, Mr. Pacholski was ordered to pay a \$500 fine. Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances. Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly. The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

A Region 5 1995 Wetland Consent Decree survives attack by the Rapanos Decision in the United States District Court For The Northern District of Ohio.

On May 18, 2007, the United States District Court for the Northern District of Ohio, Western Division, dismissed Defendants' (Ike and Patricia Parker) motion under Federal Rule of Civil Procedure 60(b) to set aside a Consent Decree based on the Rapanos Decision. The parties to the 1995 Consent Decree are the Parkers, the State of Ohio, and the Agency. The Supreme Court's decision in *Rapanos v. United States*, 126 S.Ct. 2208, 165 L.Ed. 2d 159 (2006) (*Rapanos*) modified the definition of a wetland under the Clean Water Act (CWA). By changing the definition, the *Rapanos* decision arguably narrowed the scope of wetlands enforcement under the CWA. This dismissal denying Defendants' motion involving that decision is therefore a victory for the EPA.

In 1991, the Department of Justice and the State of Ohio filed a Complaint against the Parkers for violation of Sections 310 & 404 of the CWA. The Parkers destroyed several acres of wetland when they attempted to develop their property. The Parkers placed fill in the wetland, thereby destroying it. The parties entered into a Consent Decree in 1995 in which the Parkers agreed to pay a \$1000 penalty and transfer the title to their property to the State of Ohio. The State was then required under the Consent Decree to create other wetlands on the property in mitigation for the wetland that the Parkers destroyed.

The Parkers argued in their motion that the Consent Decree should be set aside under 60(b) because their property no longer met the definition of a wetland under the CWA.

The Court held that even if Rapanos modified the definition of wetlands under the CWA, Rapanos had no effect on State Law which was very much a part of the complaint. The Court did not address whether the Parkers would prevail under federal law alone. The Court further held that the Parkers' motion was not timely, and that the judgment requiring the transfer of the property in the Consent Decree was not a prospective application (on-going), another requirement of 60(b).

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631 and Dave Schulenberg, Water Division, (312) 886-6680

United States and the State of Illinois File Complaint and Consent Decree Against PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively, Defendants) by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking.

Beginning in June 2006, U.S. EPA and ATSDR collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern.

The proposed Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants' key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled. With respect to Defendants' Other Gathering Facilities (gathering facilities that are not identified as Key Gathering Facilities), if at any time, valid monitoring conducted within a one mile radius of one of the Other Gathering Facilities shows an H₂S exceedance of 70 ppb averaged over thirty minutes, or if there is no valid monitoring data for that Other Gathering Facility, then U.S. EPA, after consultation with the Illinois EPA (IEPA), will determine whether any control measures are necessary to adequately protect human health and welfare and the environment after consideration of Defendants' reports, the results of any valid monitoring and other investigation performed by U.S. EPA and/or IEPA, and in consideration of (i) the impact of the emission source and the potential control measure (i.e., proximity, emission contribution); and (ii) technical and practical feasibility of the potential control measures.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division, Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA contact: Cary Secrest, (202) 564-8661; and DOJ Michael Zoeller, (202) 305-1478

United States District Court Enters Consent Decree Between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

Following the close of the public comment period, on June 6, 2007, the United States District Court for the Southern District of Illinois entered a Consent Decree between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively "Defendants"). On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with the Defendants by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking. No comments were submitted regarding the proposed settlement.

The Consent Decree is the result of expedited negotiations between the United States, the State of Illinois and Defendants. Beginning in June 2006, in response to local citizens' complaints, U.S. EPA and the Agency for Toxic Substances and Disease Registry collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern. The highest five minute average concentration was 873 parts per billion by volume (ppb) at a residence in Petrolia, Illinois. At the same location, the highest hourly concentration was 417 ppb, with maximum hourly values often over 200 ppb. At least one monitor detected concentrations over 1,000 ppb, over a 1-minute averaging time. The highest readings were recorded in the evening to morning hours, when most people are at home. ATSDR has established an acute inhalation minimal risk level (MRL) at 70 ppb based on a 30-minute exposure.

The Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants' key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants are in the process of installing elevated flares at six gathering facilities, specifically Newell, Robins, Johnson, Boyd, Westall and Cummins facilities (hereinafter "Key Gathering Facilities"). Elevated flares are designed to destroy H₂S emissions from wells, tanks, oil truck loading operations and emergency pits. Since lodging of the Consent Decree, Defendants have installed a vapor collection system at each of the Key Gathering Facilities to collect vapors displaced from tanks, cisterns and other vessels and direct these vapors to a flare. Defendants have installed an automated electric kill system, designed to automatically shut off electricity to pumps on all oil wells to prevent any overflow of brine water to an emergency pit, for all active oil wells tied to the Newell, Robins, Johnson and Boyd gathering facilities. Based on the effectiveness of the floating cover system and the automated electric kill system, U.S. EPA will evaluate the need to install addition floating cover systems and/or automated electric kill systems.

Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas. One of the sites is located in the southern half of the Lawrence Wellfield at a residence in close proximity to two other gathering facilities that are not among the Key Gathering Facilities. In addition, U.S. EPA is monitoring sulfur dioxide at two of the three residential sites.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division, Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA contact: Cary Secrest, (202) 564-8661; DOJ, Michael Zoeller, (202) 305-1478

U.S. EPA enters into Administrative Order on Consent with Peoples Gas for removal work at three sites in Chicago, Illinois.

Peoples Gas operated a number of manufacture gas plants (MGP) in various locations throughout Chicago, Illinois. Three of these locations were: the 22nd Street Station, located at 2200 South Racine Avenue, Chicago, Illinois; the Hough Place Station, located at 2500 S. Corbett St., Chicago, Illinois; and the Pitney Court Station, located at 3052 Pitney Court, Chicago, Illinois. All of the properties covered by the agreement are relatively close to the Chicago River, which was a transportation route when the MGP facilities operated. MGPs produced gas from coal from the mid-19th through the mid-20th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, Peoples Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater and adjoining Chicago River. Removal work was undertaken and is on-going at each of these sites under the Illinois Site Remediation Program.

On June 5, 2007, the U.S. EPA signed an Administrative Order on Consent with Peoples Gas. Pursuant to the terms of the AOC, the Respondent agreed to continue the on-going removal work at the three sites under U.S. EPA oversight and to pay the oversight costs incurred by the U.S. EPA at the sites.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region settles EPCRA 313 Reporting Case against Plaspros, Inc.

On September 29, 2006, Region 5 filed a combination Complaint/Consent Agreement and Final Order (CAFO) resolving an administrative case under Section 313 of EPCRA, 42 U.S.C. 11023, against Plaspros, Incorporated (Respondent), located in McHenry, Illinois. The Region alleged that the Respondent failed, as required, to submit to the U.S. EPA and to the State of Illinois a Form R for Toluene for the 2002 calendar year, on or before July 1, 2003. The Region's inspection of the Plaspros facility revealed that during the calendar year 2002, Respondent as defined by 40 C.F.R. 372.3, the toxic chemical toluene, listed at 40 C.F.R. 372.65, in quantities exceeding the 10,000 pound

threshold for reporting set forth at Section 313(f) and at 40 C.F.R. 372.25, but that no Form R had been filed for the chemical. The Respondent has subsequently come into compliance by submitting the required Form R. The proposed civil amount for the violation of \$18,700 was reduced in the CAFO to \$14,000 in recognition of Respondent's good faith and co-operation.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

Region 5 signs Consent Agreement and Final Orders with Port Stop Citgo.

On January 19, 2007, Region 5 signed a consent agreement and final order with Robert Magnuson, owner of the Port Stop Citgo station in LaPorte, Indiana, to settle violations of Section 9003 of the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6991b, and EPA's Underground Storage Tank regulations, 40 C.F.R. Part 280. The Port Stop facility has three 10,000 gallon steel underground storage tanks for holding gasoline prior to sale to the public. In order to ensure that steel tanks like those belonging to Port Stop do not rust through and release their contents to the environment, such tanks are equipped with corrosion protection systems. Region 5 initiated this enforcement action by filing an administrative complaint in March of 2006, alleging that Port Stop Citgo failed to test and to maintain its tanks' corrosion protection system as required by law. Port Stop Citgo will pay a penalty of \$25,000 to settle the violations, which represents the proposed penalty of \$48,775 reduced in light of Port Stop's willingness to settle the case and other factors as justice may require.

Office of Regional Counsel Primary Contact: Erik Olson, (312) 886-6829; Sandra Siler, additional contact (312) 886-7187

Charges filed in E. St. Louis asbestos renovation.

On January 19, 2007, Charles Powell and Isaiah Newton were charged with 7 felony violations of the Clean Air Act and one count of conspiracy arising from the improper removal and disposal of asbestos from a building in East St. Louis, IL. According to the Indictment, in 2002, Powell hired Newton to supervise a work crew at the Spivey Building. Pipe insulation, floor tile and transite paneling in the building contained asbestos. Powell and Newton are charged with knowingly failing to notify the Illinois EPA about the project, failing to remove the asbestos before commencing the renovation, removing the asbestos without a trained representative present, removing the asbestos without adequately wetting it, as well as violations of asbestos disposal requirements. Each count carries a potential penalty of 5 years imprisonment and/or a fine of up to \$250,000. Criminal defendants are presumed innocent of the charges unless proven guilty beyond a reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Environmental groups appeal EAB's decision denying petition for review of PSD permit for coal-powered electricity generating plant in Washington County, Illinois.

On October 25, 2006, the Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch filed with the 7th Circuit a Petition for Review of the Environmental Appeals Board's (EAB) decision of August 24, 2006, which denied review of a Prevention of Significant Deterioration (PSD) permit

issued by the Illinois Environmental Protection Agency (IEPA), which has a delegated PSD program, to Prairie State Generating Company, LLC, authorizing the construction of a 1500-megawatt pulverized coal-fuel powered electricity generating plant in southern Illinois. The petitioners, in their appeal to the EAB, had challenged IEPA's determinations of the "best available control technology" emission limits for sulfur dioxide, nitrogen oxides, and particulate matter, taking issue, in particular, with the relatively high-sulfur coal from the mine that will be co-located with the electric generating plant. Petitioners also challenged IEPA's analysis of the facility's air quality impacts, contended that a review of environmental impacts under NEPA was warranted, and argued that IEPA violated environmental justice obligations. The EAB accepted IEPA's position that compelling the use of low-sulfur coal would redefine the facility's basic design or purpose. The EAB also rejected the rest of Petitioners' arguments, finding that Petitioners had failed to meet their burden of demonstrating that IEPA's determinations were either factually or legally "clearly erroneous" or otherwise warranted review.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Department of Justice Files Complaint and Lodges Consent Decree Addendum with The Premcor Refining Group and The Lima Refining Company.

On August 16, 2007, the Department of Justice, the State of Ohio, and Memphis/Shelby County, Tennessee, simultaneously filed their Complaints and a proposed Consent Decree Addendum ("Addendum") with The Premcor Refining Group Inc., and the Lima Refining Company (collectively, "Premcor") for alleged environmental violations at petroleum refineries owned and operated by Premcor.

The original Consent Decree in this matter was lodged in June 2005 in the Western District of Texas against Valero Refining Company ("Valero"). Following the lodging of the original Consent Decree, Premcor was acquired by Valero Energy Corporation via the September 1, 2005 merger of Premcor Inc., with and into Valero Energy Corporation. Valero assumed ownership of and control over Premcor's petroleum refineries in Lima, Ohio ("Lima Refinery"), Memphis, Tennessee, and Port Arthur, Texas.

Premcor is estimating that it will spend \$85 million to install and implement emission control technologies at the Lima Refinery. Upon completion of installation of controls and control measures, Premcor is estimating that it will reduce over 1,000 tons per year ("TPY") of oxides of nitrogen, over 1,800 TPY of sulfur dioxide, and over 80 TPY of particulate matter.

Under the Addendum, Premcor will pay a total civil penalty of \$4,250,000 as follows: \$2,750,000 to the United States, of which \$40,000 will be a civil penalty paid to the EPA Hazardous Substances Superfund; \$800,000 to Plaintiff-Intervener, the State of Ohio; and \$700,000 to Plaintiff-Intervener, Memphis Shelby County Health Department.

Premcor has also agreed to perform supplemental environmental projects ("SEPs"). Premcor will perform three federal SEPs at a total cost of \$925,000, and will fund two State SEPs at a total cost of \$250,000. The three federal SEPs are as follows: (1) Premcor shall develop and implement a Traffic Signal Synchronization study to optimize traffic flow in the City of Lima to reduce emissions from preventable vehicle idling resulting from inefficient traffic flow; (2) Premcor shall install controls on unregulated and/or uncontrolled atmospheric relief vents at the Lima Refinery that will route emissions from

such vents to a control device to eliminate or significantly reduce the potential for fugitive volatile organic compound (“VOC”) emissions; and (3) Premcor shall perform a SEP designed to demonstrate the use of infrared imaging equipment to identify emissions from leaking components and other sources of fugitive VOC emissions at the Lima Refinery.

The State SEPs for the Lima Refinery are: Premcor shall transfer \$200,000 to the Lake Michigan Air Directors Consortium to support PM 2.5 speciation monitoring and source sampling; and Premcor shall transfer \$50,000 to the Ohio Environmental Council for the installation of diesel retrofit technologies to reduce emissions of particulates and ozone precursors from municipal trucks and/or buses.

For the Lima refinery, the total value of the federal and State penalties and SEPs is \$2.565 million.

Office of Regional Counsel Contacts: Mary McAuliffe, (312) 886-6237, William Wagner, (312) 886-4684, Kathryn Siegel, Air and Radiation Division, (312) 353-1377, and James Entzminger, Waste, Pesticides and Toxics Division, (312) 886-4062

Region 5 files FIFRA Consent Order concerning Premium Agricultural Commodities, Inc.

On November 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Premium Agricultural Commodities, Inc., (Premium). In the CAFO, EPA alleges that Premium produced pesticides in a Blanchester, Ohio, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Premium distributed those pesticides using labels that did not bear a valid establishment registration number. Premium has now returned to compliance with the requirements of FIFRA. In the CAFO, Premium agrees to pay a penalty of \$1,548. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact, (312) 886-6009

Ohio Bulk Fertilizer Storage Company Pleads Guilty To Knowingly Discharging Fertilizer Into Little Walnut Creek Without a Permit.

On July 9, 2007, Rager Fertilizer Company (RFC), appeared in the United States District Court for the Southern District of Ohio, in Columbus, Ohio, and pleaded guilty to a one-count information alleging that it knowingly discharged a pollutant through a point source to a water of the United States without a National Pollutant Discharge Elimination System (NPDES) permit, in violation of the Clean Water Act. RFC operated liquid bulk fertilizer storage, and fertilizer application, businesses. On June 1, 2007, the United States Attorney for the Southern District filed a one-count felony information alleging that on May 15, 2003, employees at FRS’s facility at 160 Cedar Hill Road, Amanda, Ohio, knowingly discharged fertilizer containing ammonia nitrogen and phosphorus into Little Walnut Creek, which drains into Walnut Creek. Walnut Creek in turn is a tributary of the Scioto River.

The information alleged that when a gauge on a liquid fertilizer storage tank at the facility broke in April 2003, fertilizer leaked from a storage tank into a facility

containment dike. The information alleged that RFC employees on May 15, 2003, used a pump and hose to drain the leaked fertilizer from the dike into a drainage tile basin. The information alleged that the tile basin drained the liquid fertilizer into underground drainage tile that directed the pollutants into the Little Walnut Creek. U.S. EPA's Criminal Investigation Division, the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation; and the Ohio EPA, Office of Special Investigations, jointly investigated this matter.

Office of Regional Counsel Contact: Michael McClary, (312) 886-7163

Richmond, Indiana newspaper runs story on Laurel Stone Church Road Site Complaint.

On May 19, 2007, the Richmond, Indiana Palladium Newspaper published a story about the pending Federal law suit for the Laurel Stone Church Road Superfund Site. U.S. EPA referred the Laurel Church Road Superfund to the Department of Justice on June 20, 2006 for cost recovery, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). U.S. EPA seeks to recover funds expended, from October 10, 2002 to August 15, 2003, while conducting CERCLA emergency removal activities at the Site. During the action, topsoil was excavated and partially buried and subsurface drums were removed and placed into roll-off boxes for off-site disposal. Once excavation was completed, the areas were backfilled and graded. A portion of the road that was damaged by the heavy disposal trucks was removed and replaced. A total of 5,656 drums and 5,256 tons of contaminated soil and other wastes were transported off-site for disposal.

A complaint was filed in U.S. District Court in this matter on November 25, 2006, seeking \$2,381,429.21 in past costs, in addition to pre-judgement interest. The named defendants to the complaint are the current owners, Mr. and Mrs. Daniel R. and Naomi Lynn Rapiere and the past operator of the Site, Franklin County. The Rapiers added Mr. and Mrs. Gale and Juanita Hornsby in a countersuit. It is suspected that either the Rapiers or the Franklin County Commissioner brought this matter to the attention of the Richmond, Indiana newspaper.

Office of Regional Counsel Contact: Nola Hicks, (312) 886-7949 and Ruth Woodfork, Superfund, (312) 353-6431

U.S. EPA enters into Administrative Order on Consent (AOC) with Raybestos Products Company for removal work in Reach 4 of Shelly Ditch in Crawfordsville, Indiana.

On February 22, 2007, the U.S. EPA signed an Administrative Order on Consent with Raybestos. Pursuant to the terms of the AOC, the Respondent agreed to remove contaminated sediment from Reach 4 of Shelly Ditch and to pay oversight costs incurred by the U.S. EPA at the Site. Though signed in February 2007, the AOC was not effective until May 15, 2007, as the AOC was part of a negotiated settlement that also included a Consent Decree that addressed past costs incurred at Shelly Ditch and Raybestos' potential liability at Sugar Creek. It was agreed that the effective date of the AOC would be delayed until the motion for entry was filed. The Department of Justice has filed a motion for entry regarding the Consent Decree and the motion is pending before the court.

The Shelly Ditch is an intermittent stream that accepts surface runoff that discharges into Sugar Creek. Sugar Creek is designated as a “full-body contact” water body and as an “expected use” stream by the Indiana Department of Natural Resources. Three culverts or outfalls located on the west perimeter of the Raybestos’ facility at 1204 Darlington Avenue in Crawfordsville, Indiana empty into Shelly Ditch. The facility, established in 1951, manufactures friction plates for automatic transmissions. During its operation, there was a release of PCBs from the Raybestos facility into Shelly Ditch. On February 28, 1997, the Indiana Department of Environmental Management (IDEM) and Raybestos entered into an agreement concerning the investigation and cleanup of PCBs in Shelly Ditch. However, IDEM was unable to reach an agreement with Raybestos on a cleanup for the Ditch. IDEM then referred the matter to U.S. EPA. On December 6, 2000, U.S. EPA issued a unilateral administrative order (UAO) to Raybestos to remove PCBs over 10 ppm from Reaches 1 to 3 of the Ditch. Reaches 4 and 5 were not addressed by the UAO. Raybestos complied with the UAO and completed the work in July 2003.

In May 2003, U.S. EPA and Raybestos entered into negotiations to address Raybestos’ potential liability for the Sugar Creek Remedial Site, which included Reaches 4 and 5 of Shelly Ditch. During this time, Raybestos conducted sampling in Reaches 4 and 5, as well Sugar Creek, to determine the extent and levels of PCB and lead contamination in the two Reaches and the impact, if any, of the Reaches on Sugar Creek.

Office of Regional Counsel Primary Contact: Robert Smith, (312) 886-0765

U.S. District Court enters consent decree for recovery of past costs incurred at the Shelly Ditch Site in Crawfordsville, Indiana.

On May 24, 2007, the United States District Court for the Southern District of Indiana, Indianapolis Division entered a Consent Decree for the Shelly ditch, Sugar Creek and Calumet Container Site. Pursuant to the terms of the Consent Decree, the Settling Defendant, Raybestos Products Company will agree to pay \$119,519.18 of United States Environmental Protection Agency’s (U.S. EPA) past costs incurred at the Shelly Ditch Site. In addition, pursuant to a May 15, 2007 Administrative Order on Consent between U.S. EPA and Raybestos, the Settling Defendant has agreed to implement a removal action in Reach 4 of Shelly Ditch and pay U.S. EPA’s costs in overseeing this work. Under the Consent Decree, the Settling Defendant will receive a release for liability for costs incurred at Shelly Ditch, except those covered by the Administrative Order on Consent, and a release from liability for the Sugar Creek and Calumet Container Sites.

Office of Regional Counsel Contact: Robert Smith, (312) 886-0765

Region 5 files Consent Agreement and Final Order with Laurence Reardon and Reardon Properties Limited Partnership.

On February 28, 2007, Region 5 and Laurence Reardon and Reardon Properties Limited Partnership, entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA’s claims alleging that Laurence Reardon and Reardon Properties Limited Partnership violated the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Lead-Based Paint Hazard Reduction Act”), 42 U.S.C. § 4852d *et seq.*, and Sections 409 and 16 of TSCA, 15 U.S.C. §§ 2689, 2615, and 40 C.F.R. §§ 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) by failing to make certain required disclosures in the leasing of sixty-seven (67) apartments. U.S. EPA filed its complaint in this matter on August 8, 2006, and sought a penalty of \$146,630. At Respondents’ request, Region 5 agreed to

participate in Alternative Dispute Resolution (ADR) discussions under Judge Gunning's supervision. The parties have agreed to settle this case for a total of \$61,176, plus interest, in two installment payments. The penalty is being mitigated for litigation risk identified in the ADR process and for Respondents' good faith attitude.

Office of Regional Counsel Contact: Jeffrey A. Cahn, (312) 886-6670 and Scott Cooper, (312) 866-1332

Consent Agreement and Final Order executed in RCRA Administrative Action for Redeen Engraving Company and Floyd W. Redeen

On November 9, 2006, the Regional Administrator executed a Consent Agreement and Final Order ("CAFO") in an enforcement action, resolving an administrative complaint filed against Redeen Engraving Company ("the Company") and Floyd W. Redeen, under the Resource Conservation and Recovery Act ("RCRA"). The CAFO provides for payment of a \$100 civil penalty by Mr. Redeen for the Company's violations of state authorized RCRA regulations in the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

On June 19, 2006, a Region 5 official, on delegated authority of the Administrator, filed a Complaint and Compliance Order, alleging in two counts that the Company violated the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), in that the Company: (1) stored hazardous waste without having a permit; and (2) failed to document hazardous waste determinations. Prior to the filing of the Complaint, the Company sold its engraving business and was dissolved by Mr. Redeen, its sole shareholder. While under Illinois law, as sole shareholder Mr. Redeen is liable for the Company's penalty in an amount equal to his distribution of the Company's assets, a thorough analysis of Mr. Redeen's financial circumstances by an agency financial analyst revealed that he had an ability to pay only a nominal penalty. Consequently, the Administrator's Delegated Complainant has agreed to resolve this matter on Mr. Redeen's payment of \$100.

Office of Regional Counsel Contact: Richard Wagner, (312) 886-7947

Muncie, Indiana Businessman Criminally Charged with Illegal Hazardous Waste Transportation, Storage and Disposal.

On March 20, 2007, Richard D. Reece was charged by a federal grand jury with violating the Resource Conservation and Recovery Act ("RCRA"), in a three-count indictment filed in United States District Court, Southern District of Indiana, Indianapolis, Indiana. The indictment alleges that two trailers containing drums of hazardous wastes were discovered on March 11, 2004 in Muncie, Indiana by the Delaware County Emergency Management Agency and Muncie Fire Department in response to citizen complaints of chemical odors. The indictment charges Reece with illegal transportation of hazardous wastes in these trailers without manifests, to un-permitted facility, and storage and disposal of the wastes. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Northern District Of Indiana Enters Consent Decree Resolving Violations Of The Clean Air Act By Rhodia Inc.

On July 23, 2007, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by Rhodia Inc. at six sulfuric acid plants. Specifically, the Complaint in the matter alleged that Rhodia had failed to comply with the Prevention of Significant Deterioration regulations, Title V permitting requirements, and the New Source Performance Standards (NSPS) applicable to sulfuric acid plants. The global settlement addresses violations at all of Rhodia's sulfuric acid plants, including its plants in California, Indiana, Texas and Louisiana. The City of Hammond, Indiana, Indiana, Louisiana, and California were Plaintiff-Intervenors in this matter. Under the settlement, Rhodia will install control equipment to achieve emission limits for sulfur dioxide, will apply for proper permits and will comply with the NSPS requirements at its plants. In addition, Rhodia will pay a \$2 million penalty that will be shared amongst the United States and the Plaintiff-Intervenors.

Office of Regional Counsel Primary Contact: Cynthia A. King, 312-886-6831, Nathan Frank, secondary contact, (312) 886-3850

Region 5 files CAFO to commence and conclude case against Rolls Royce Corporation, Indianapolis, Indiana.

On March 30, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against Rolls Royce Corporation for alleged violations of the Stratospheric Ozone Standards, found at 42 C.F.R. Part 82. Rolls Royce's alleged violations stemmed from failing to follow proper repair and recordkeeping procedures pertaining to three pieces of industrial process refrigerant equipment which contained R-22, an HCFC. Rolls Royce discovered the violations through an internal audit and disclosed the violations to Region 5. In addition, they replaced all three appliances in a timely fashion. Region 5 calculated, and Rolls Royce has agreed to pay, a penalty of \$18,329.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

Decatur Man Imprisoned For Illegal Dumping into the Sangamon River.

Ronald Mark Davenport, of Decatur, Illinois, was sentenced January 19, 2007 to 3 months in prison following his plea to the charge of illegally dumping toxic pollutants into the Sangamon River in violation of the federal Clean Water Act. In addition, Federal District Judge Michael McCuskey required Davenport to serve 90 days on home confinement and 12 months on supervised release. Davenport, an employee and partner of Able One Sealcoating of Decatur, previously pleaded guilty to charges that he stopped at the Decatur Bulk Watering Station on September 19, 2004, to purchase water to clean tar and chemicals from his tank truck. The company used a 1,000 gallon tank mounted on a pickup truck known as "Big Sue" to haul waterproof coatings to work sites. Davenport admitted that he had pumped more than 250 gallons of water into the tank, then opened the tank drain and discharged at least 50 gallons of wastewater containing toxic pollutants into the water station's drain. At that time, the tank contained an unknown quantity of tar and other toxic chemicals. The water station's drain was designed to direct water to the Sangamon River, approximately 100 yards from the water station.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

The United States files a complaint against the operators of the Crescent Plating Superfund Site.

On June 6, 2007, the Department of Justice filed a CERCLA complaint in the Northern District of Illinois, Eastern Division, on behalf of U.S. EPA and against Paul Carr and James Saporito. The complaint is for cost recovery pursuant to Section 107(a) and for penalties for unreasonably failing to comply with an information request pursuant to Section 104(e). The complaint alleges that Paul Carr and James Saporito are liable for response costs as operators of the facility at the time of disposal. The complaint also alleges Paul Carr unreasonably failed to comply with an information request and therefore should pay a civil penalty of \$32,500 per day from August 15, 2005. U.S. EPA conducted a time-critical removal action at the former plating facility between December 2003 and June 2004 and has incurred almost \$1 million in un-reimbursed response costs as of June 22, 2006.

The United States settled with Mike Sahli and Sahli Enterprises, Inc. to resolve their liability at the Site on May 22, 2006. The Settling Defendants paid \$225,000 in exchange for contribution protection, a covenant not to sue, and the release of a federal lien on the property.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Steven Faryan, (312) 353-9351 and DOJ Contact: Jennifer Lukas-Jackson, (202) 305-2332

U.S. District Court in Ohio denies extension of time to serve complaint to enjoin RCRA 3013 order in Schott Metal Products, Inc. v. EPA et al.

On September 7, 2006, Schott Metal Products, Inc. and Samuel Schott filed a civil complaint in the U.S. District Court for the Northern District of Ohio seeking an order enjoining the EPA from enforcing a RCRA Section 3013 unilateral administrative order against them. The complaint named EPA and Region 5's Waste, Pesticides and Toxics Division Director as defendants. After 158 days passed without service, the United States moved to dismiss. The plaintiffs then filed a motion to extend the time for service, and filed a supplemental motion to extend on February 26, 2007. On March 6, 2007, the U.S. District Court for the Northern District of Ohio denied the motions for extension on the grounds that Schott and Schott Metals had not shown good cause for their delay.

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814

Region 5 enters a CAA Consent Agreement and Final Order requiring Scott Brass, Inc., to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411 and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00.

On April 17, 2007, Region 5 and Scott Brass, Inc. (Respondent) entered into a Consent Agreement and Final Order requiring Respondent to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411, and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00. On April 17, 2007, the Region also issued to Respondent an Administrative Consent Order requiring it to submit to the Indiana Department of Environmental Management within 180 days a complete Title V Permit Application for its facility, pursuant to section 111 of the Clean Air Act, 42 U.S.C. § 7411, the regulation at 40 C.F.R. Part 70, and the provision at 326 Indiana Administrative Code 2-7 of the Indiana State Implementation. On September 28, 2006, the Region issued

a Complaint and Notice of Opportunity for Hearing which alleged that Respondent constructed a facility in 1997 but: 1) failed to apply for a Part 70 Permit before the date of construction, in violation of 326 Indiana Administrative Code 2-7; 2) failed to provide EPA written notice of the date of commencement of construction of its four electric induction furnaces, in violation of 40 C.F.R. § 60.7(a)(1); 3) failed to provide EPA written notice of the actual date of initial start-up, in violation of 40 C.F.R. § 60.7(a)(3); 4) failed to provide EPA written notice of its initial Method 9 Visible Emission Test in violation of 40 C.F.R. § 60.7(a)(6); 5) failed to conduct a Method 9 Visible Emission Test, in violation of the regulations at 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2); and violated section 111 of the Act, 42 U.S.C. § 7411. The Complaint proposed a civil penalty of \$42,470.00. On March 9, 2007, the Region amended the Complaint and alleged Respondent operated its facility from December 12, 2002, to November 15, 2005, without a permit, in violation of section 111 of the Act, 42 U.S.C. § 7411. The Region reduced the proposed civil penalty due to a reduction in the number of days of alleged violation and other factors.

Office of Regional Counsel Contact: Jeffery M. Trevino, (312) 886-6729; additional contact: Kushal Som, (312) 353-5792

Court enters a Consent Decree for recovery of response costs at the Cross Brothers Pail Recycling Superfund Site in Kankakee, Illinois.

On October 24, 2006, the District Court for the Central District of Illinois entered a Consent Decree between U.S. EPA and three responsible parties that were named by U.S. EPA as defendants in a cost recovery complaint: the Sherwin-Williams Company, the Glidden Company, and Specialty Coatings, Inc. Under the terms of the Consent Decree the Defendants are required to pay \$200,000 into a site-specific special account. On September 9, 1983, the Cross Brothers Site was added to the National Priorities List, and on September 28, 1989, U.S. EPA issued a Record of Decision that required installation of a soil flushing system, and extraction and treatment of contaminated groundwater to attain identified cleanup standards. The Defendants performed a remedial design and remedial action of the selected remedy under a Unilateral Administrative Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). On February 29, 2000, the Department of Justice filed a complaint for response costs against the Defendants.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Terese Vandonsel (312) 353-6564

7th Circuit to hear oral argument in *Sierra Club et al. v. U.S. EPA on PSD permit appeal.*

On May 31, 2007, at 9:30 a.m., the U.S. Court of Appeals for the Seventh Circuit will hear oral argument in the PSD permit appeal of *Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch, Petitioners, v. United States Environmental Protection Agency, Respondent, and Prairie State Generating Company, LLC, Intervenor-Respondent*. The issues on appeal are 1) Did the Environmental Appeals Board (EAB) reasonably construe the CAA and the record in this case when it ruled that the Illinois EPA was not required to evaluate, as part of the BACT analysis for the Prairie State Generating Company (Prairie State) PSD permit, the energy, environmental and economic impacts of importing low-sulfur coal to fuel a proposed electricity generating plant, where this control option would fundamentally

change the design of the facility proposed by Prairie State to use a 30-year on-site supply of coal; and 2) Did the EAB reasonably find that the proposed facility would not contribute to violation of the recently-adopted 8-hour ozone NAAQS in the neighboring St. Louis air quality area, and that Illinois EPA's use of the 1-hour ozone modeling as a surrogate for the newer 8-hour standard was not inappropriate.

On August 24, 2006, the EAB denied Petitioners' request for review of a PSD permit issued to Prairie State for construction of a proposed 1500-megawatt pulverized coal-fuel powered electricity generating plant to be located in Washington County, Illinois. The facility would be located at the mouth of a new mine, also developed by Prairie State, which would provide the principal source of coal fuel used at the facility. Petitioner originally challenged the permit on 16 grounds, but is appealing only the above-mentioned two issues.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

7th Circuit finds in favor of EPA in CAA case.

In *Sierra Club, et al. v. U.S. Environmental Protection Agency and Prairie State Generating Company, LLC*, No. 06-3907 (August 24, 2007) the Seventh Circuit upheld the EAB's ruling that the Illinois Environmental Protection Agency (IEPA) did not unreasonably exclude the use of low sulfur coal from its BACT analysis for a power plant to be built at the mouth of a mine that will only produce high-sulfur coal. Petitioners had claimed that the IEPA improperly rejected consideration of low-sulfur coal as a method for controlling emissions of SO₂ from the proposed facility at Step 1 of its BACT analysis, that the IEPA had improperly treated low-sulfur coal as "redefining" the source, and that the IEPA violated the statutory requirement to consider "clean fuels." The EAB found that because the project consisted of both the construction of a power plant and a mine at the mouth of the power plant, which would supply coal to the plant for the approximate 30-year expected life of the plant, IEPA did not err in its view that requiring Prairie State to use low-sulfur coal from the western states would "redefine the source." The 7th Circuit agreed, noting, in particular, that the EAB correctly found that it was not the burning of low-sulfur coal, but receiving it from a distant mine that required reconfiguring the plant (*i.e.* replacing a half-mile long conveyor belt with a rail spur and facilities for unloading coal from rail cars). *Note:* Illinois is a delegated state for PSD, and thus U.S. EPA was the Respondent in this action. The court also upheld the EAB's rejection of the Sierra Club's request for review of IEPA's method of determining the facility's compliance with the NAAQS for ozone stated in the new 8-hour standard, by relying on the 1-hour modeling formula as a surrogate, pending EPA's development of a modeling formula specific to the 8-hour standard.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

Department of Justice Lodges Consent Decree in Clean Air Act Matter.

On August 23, 2007, the U.S. Department of Justice lodged with the U.S. District Court for the Western District of Wisconsin a consent decree settling *Sierra Club v. EPA*. Sierra Club alleged in a March 19, 2007 complaint that U.S. EPA had failed to respond timely to petitions to object to operating permits that the Wisconsin Department of Natural Resources proposed to issue to the University of Wisconsin – Madison and Louisiana

Pacific Corp. in Tomahawk, Wisconsin under Title V of the Clean Air Act. The consent decree provides that U.S. EPA will respond to Sierra Club's petitions on the permits within 10 days of entry.

Office of Regional Counsel Contact: Jane Woolums, (312) 886-6720; Air and Radiation Division Contacts: Susan Siepkowski, (312) 353-2654; Danny Marcus, (312) 353-8781

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with SLI Corporation *a.k.a.* PMO, Inc.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$18,058. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold five different unregistered pesticides. During settlement discussions, the Respondent agreed to pay a civil penalty of \$8,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact: (312) 886-6322

Court Enters Consent Decree for Section 1018 Lead-Based Paint Case in Minnesota.

On December 8, 2006, the District of Minnesota entered a consent decree between the Environmental Protection Agency, the Department of Housing and Urban Development, and the U.S. Attorney's Office for the District of Minnesota with a Minneapolis landlord, Steven J. Meldahl, the owner of SJM Properties. This consent decree resolves his violations of reporting and recordkeeping requirements regarding the disclosure of lead-based paint information. Meldahl has agreed to address all lead-based paint hazards in the 34 Minneapolis rental homes he owns and manages. In addition to making his rental units lead safe, Meldahl has paid a civil penalty of \$5,000 for violating Section 1018 of the Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations at 40 C.F.R. Section 745, Subpart F ("Lead Disclosure Rule"). The complaint and proposed consent decree were simultaneously filed on August 3, 2006.

This settlement is the sixth consent decree in Minnesota that requires landlords to abate all lead hazards in their rental units. Pursuant to the six consent decrees, nearly 5,000 rental units in Minneapolis and St. Paul will be made lead safe for tenants. Moreover, the landlords involved in these six settlements have paid civil penalties as well as provided over \$170,000 for local children's health projects, including funding a mobile lead poisoning screening vehicle called the "Leady Eddie Van." The "Leady Eddie Van" is now fully equipped and being used to screen children for lead poisoning throughout Minnesota.

Office of Regional Counsel Primary Contact: Mary McAuliffe, (312) 886-6237; Scott Cooper, additional contact: (312) 886-1332

Clean Air Act Consent Decree Entered in U.S. v. Smurfit (N.D. Ill).

On February 7, 2007, the United States District Court for the Northern District of Illinois entered a Clean Air Act consent decree requiring Smurfit-Stone Container Enterprises

(Smurfit) to comply with the Illinois State Implementation Plan at the company's Schaumburg, Illinois printing facility. Smurfit will pay a civil penalty of \$325,000, half of which will go to the State of Illinois, a plaintiff-intervenor in the case.

The decree specifically requires Smurfit to comply with applicable Volatile Organic Compound (VOC) emission limits by continuing to operate its new regenerative thermal oxidizer at the facility's flexographic and rotogravure printing lines. The decree also requires Smurfit to comply with the Illinois Emissions Reduction Market System regulations, which establish an emission cap-and-trading program for major sources of VOC. The company spent over one million dollars in complying with the injunctive portions of the agreement.

Office of Regional Counsel Contact: Louise Gross, (312) 886-6844

Region 5 signs Consent Agreement and Final Order with Snappy Apple Farms, Inc.

On 05/22/2007, Region 5 signed a consent agreement and final order with Snappy Apple Farms, Inc. of Casnovia, Michigan, to settle violations of Section 312 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11022. Section 312 of EPCRA, and its implementing regulations at 40 CFR Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act to prepare or have available a material safety data sheet for a hazardous chemical, to submit to the state emergency response commission, appropriate local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter an Emergency and Hazardous Chemical Inventory Form. The form must contain the information required by Section 312(d) of EPCRA, covering all extremely hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 5,000 pounds. The maximum quantity at any one time of anhydrous ammonia at the facility for the calendar years 2002-2004 is 8,000 pounds. Anhydrous ammonia is an extremely hazardous substance under EPCRA. The facility exceeded the reporting threshold by 16 times and the facility never submitted the Emergency and Hazardous Chemical Inventory Forms. Due to an inability-to-pay the full proposed penalty of \$74,483.07 and other mitigating factors, Snappy Apple Farms will pay a penalty of \$7,919 and will perform a Supplemental Environmental Project valued at \$4,581. The SEP will consist of purchasing hazardous materials response equipment for the local fire department.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: James Entzminger, (312) 866-4062

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Spectro Alloys Corporation, Rosemount, Minnesota.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Spectro Alloys Corporation, for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, 40 CFR Part 63, Subpart RRR. The CAFO requires Spectro Alloys to pay a penalty of \$70,923. On February 9, 2007, Region 5 issued a Finding of Violation to Spectro Alloys for allegedly exceeding the emission rate limit for dioxin/furans and failing to maintain annual afterburner inspection records for 2003, 2004, 2005, 2006. Spectro Alloys subsequent retesting of the group 1 furnace demonstrated compliance with the dioxin/furan emission

limits. Spectro contends it had a regular practice of conducting the afterburner inspections and is committed to maintaining the records on a going forward basis. Recognizing some litigation risk, Spectro Alloys' cooperation, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$96,713 to a settlement penalty of \$70,923.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

U.S. Circuit Court Grants Motion Dismissing the Petition in Sherwin Williams' Appeal of the Ohio SIP Approved by U.S. EPA under the Clean Air Act.

The United States Court of Appeals for the Sixth Circuit has, on July 12, 2007, granted the motion of Petitioner, Diversified Brands f/k/a Sprayon Products, a Division of The Sherwin Williams Company, to voluntarily dismiss the petition in this case. The original petition in this matter was filed after promulgation of a final rule published and made effective on April 25, 1996. 61 Fed Reg 18,255 (1996). The rule established volatile organic compound reasonably available control technology (RACT) requirements for specific sources in Ohio, including the facility operated by petitioner in this case. After lengthy discussions, the parties reached agreements on technical changes to the operation of the facility subject to the regulation which was the subject of Petitioner's appeal. Sprayon agreed to install high efficiency incineration equipment to control its volatile organic compound (VOC) emissions. Ohio EPA drafted a site-specific regulation as a means to modify its State Implementation Plan and to incorporate the agreement in principle on technical issues among all the parties (Sprayon, Ohio EPA and US EPA). Ohio EPA proposed the new regulation to incorporate the parties' agreements into the State Implementation Plan. On December 5, 2006, US EPA published a notice in the Federal Register requesting public comment on the new regulation (71 Fed Reg 70699 (Dec. 6, 2006)). The comment period expired on January 5, 2007. The Agency has approved, published and promulgated the new Ohio SIP revision. 72 Fed Reg 15045 (March 30, 2007). At Sprayon's request, the Sixth Circuit has dismissed the petition for appeal. Sprayon is now the only aerosol can filling operation controlled with a high efficiency incinerator.

Office of Regional Counsel Contact: Thomas C. Nash, 312-886-0552; Steve Rosenthal, (312) 886-6052

CAFO signed resolving violations of RCRA alleged against Star Acquisition, Inc.

On March 7, 2007, the Director of the Waste, Pesticides & Toxics Division signed a Consent Agreement and Final Order (CAFO) resolving violations identified in a pre-filing notice letter issued by Region 5, U.S. EPA, against Star Acquisition, Inc. (Star or Respondent), under Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Under the terms of this CAFO, Star shall pay a settlement amount of \$1,289 within 30 days of the effective date of the CAFO.

Respondent has signed the CAFO, certifying that it is currently in compliance with all applicable requirements of RCRA. Respondent has also remitted a check for payment of the penalty.

Office of Regional Counsel Contact: James Cha, (312) 886-0813

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with Star Distributors Incorporated.

Region 5 initiated prefiling discussions on this matter in March, 2007. The proposed penalty was \$4,550. On June 14, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Power Moth Balls**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$3,640.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terry Bonace, additional contact: (312) 886-3387

Clean Water Act Consent Decree Entered in Indianapolis Sewer Overflow Case.

On December 19, 2006, the United States District Court for the Southern District of Indiana entered a Clean Water Act consent decree, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The United States and the State of Indiana are co-plaintiffs in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year—down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The city will also pay a penalty of \$1,117,800, which will be divided evenly between the United States and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the city can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems.

Office of Regional Counsel Primary Contact: Gary Prichard, (312) 886-0570; Susan Perdomo, additional contact: (312) 886-0557

Region 5 signs Consent Agreement and Final Order and Administrative Consent Order resolving CAA violations with Steel Dynamics, Inc., Butler, Indiana.

On September 21, 2007, Region 5 signed a Consent Agreement and Final Order (CAFO) and an Administrative Consent Order (ACO) with Steel Dynamics, Inc. (SDI), in settlement of a Notice and Finding of Violation (NOV) issued to SDI on September 28, 2006. The NOV alleged that SDI violated the Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, at C.F.R. Part 60, Subpart A Aa at its Butler, Indiana facility (facility). Specifically, the NOV alleged that between 2003 and 2006, SDI's emissions from its Butler, Indiana facility equaled or exceeded 3%, in violation of 40 C.F.R. § 60.272a(a)(2) and Section 111(e) of the Clean Air Act (Act) and 326 IAC 2-3-3(1); that Respondent failed to properly report these exceedances in violation of 40 C.F.R. § 60.276a(b) and Section 111(e) of the Act; and that Respondent failed to use good pollution control

practice for minimizing emissions, in violation of 40 C.F.R. § 60.11(d). The ACO sets forth specific measures to bring SDI into compliance. The CAFO, which simultaneously initiates and concludes this matter, includes a provision for SDI to perform a SEP worth over \$133,000. The SEP involves the installation of a compartment leak detection system as an additional control to the COM on its baghouse. In addition, SDI will pay a civil penalty of \$13,540.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Joseph Ulfig, ARD, (312) 353-8205

Region 5 files a Consent Agreement and Final Order to commence and conclude case against STRIB Industries, Inc. (d/b/a Products Chemical Company), Cleveland, Ohio.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against STRIB Industries, Inc., doing business as Products Chemical Company, for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires Products Chemical Company to pay a penalty of \$33,911 in three installments with interest. On December 20, 2006, Region 5 issued a Finding of Violation to Products Chemical for allegedly failing to timely submit an initial notification report and exceeding the VOC content limits for certain architectural coatings from 1999 through 2005. On May 16, 2006, Products Chemical submitted an initial notification report. On February 28, 2007, Products Chemical submitted past due exceedance fee and tonnage exemption reports along with past due exceedance fees. These efforts remedied the violations. Also, Products Chemical has reformulated many of its products so that they are now below the VOC content limits. As a result of Products Chemical's cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$59,345 to a settlement penalty of \$33,911. The settlement payment will be made in installments due to an evaluation of Products Chemical's ability to pay.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Region 5 signs a Consent Agreement and Final Order with Stroh Die Casting Co, Inc.

Region 5 initiated this enforcement action in September 2006 when the Region filed an administrative complaint against Stroh Die Casting Co., Inc. for violations of the secondary aluminum production NESHAP, 40 C.F.R. Part 63, Subpart RRR and Section 112 of the Clean Air Act, 42 U.S.C. § 7412. On August 1, 2007, Region 5 filed a consent agreement and final order in resolution of the violations alleged in the complaint. Pursuant to the settlement, Stroh Die Casting will pay a penalty of \$20,000. The settlement penalty amount was based on the company's financial documentation in support of its claim of inability to pay the proposed penalty, good faith effort to comply with the NESHAP, and the extent of the violations.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Tanya Hurlburt, Air and Radiation Division, (312) 353-4145

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Target Corporation.

Region 5 initiated pre-filing discussions on this matter in July, 2007. The proposed penalty was \$45,500. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold the following unregistered pesticides: Antimicrobial Toilet Seat, Home Ultimate Full Mattress Pad, Home Ultimate Twin Mattress Pad, Home Ultimate King Mattress Pad, Home Ultimate Pillow, and Cleaner with Bleach. During settlement discussions, the Respondent agreed to pay a civil penalty of \$40,950.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, (312) 886-3387

EPA enters Consent Agreement and Final Order and Administrative Order on Consent with Tate & Lyle Ingredients Americas, Inc., resolving violations of the Clean Air Act.

On September 13, 2007, the Regional Administrator signed a Final Order resolving Clean Air Act (CAA) violations by Tate & Lyle Ingredients Americas, Inc. (Tate & Lyle) at its plant located in Lafayette, Indiana (the South Plant). Specifically, Tate & Lyle installed a gluten dryer at the South Plant without obtaining a proper permit or installing best available control technology for carbon monoxide as required by the Prevention of Significant Deterioration requirements of the Act. Under the Consent Agreement and Final Order (CAFO), Tate & Lyle will pay a civil penalty of \$188,100. Under a separate Administrative Consent Order, Tate & Lyle has agreed to apply for proper permits at the South Plant that will include best available control technology emission limits for volatile organic compounds and carbon monoxide for all of its dryers at the South Plant.

Office of Regional Counsel Contact: Cynthia A. King, (312) 886-6831; secondary contact: Erik Hardin, (312) 886-2043

Illinois Manufacturing Firm and Owner Plead Guilty To Illegal Hazardous Waste Storage.

On July 27, 2007, TCI Manufacturing, Inc. (TCI) and one of its owners, Michael W. Maynard, pleaded guilty in Bureau County circuit court to criminal storage of hazardous waste, a Class A misdemeanor. TCI manufactures conveyors and other equipment used in quarries and gravel pits at a facility located in Walnut, Illinois. According to the charges filed, in December 2004, the company had collected and was storing over thirty 55-gallon drums of xylene paint waste, some of which was as much as 4-years old, without obtaining a needed RCRA permit. TCI and Maynard pleaded guilty to the charges the same day, and were sentenced in accordance with a plea agreement. TCI and Maynard were each fined \$2,500. TCI and Maynard were also required to pay restitution to the Illinois Environmental Protection Trust Fund in the amount of \$17,500 each and to pay \$50,000 each to the Midwest Environmental Enforcement Association. The case was prosecuted by the Illinois Attorney General's office and was investigated by EPA CID.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Terre Haute, Indiana Business and its President Convicted for Environmental Crimes.

On May 24, 2007, a federal jury in Indianapolis, Indiana, found Derrick Hagerman of Terre Haute, Indiana, and Wabash Environmental Technologies, LLC, guilty of ten felony counts of false statements under the Clean Water Act. Wabash was a waste water treatment facility in Terre Haute, Indiana that discharged to the Wabash River under a Clean Water Act permit. The indictment alleged that from on or about January 2004 and continuing to on or about October 2004, Hagerman and Wabash periodically reviewed bench sheets from Wabash's lab listing analytical results for waste water discharge samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit that showed Wabash to be in violation of effluent limitations in its permit for Ammonia, BOD5, Copper, Zinc and Phenol. Hagerman and Wabash knowingly failed to report to the Indiana Department of Environmental Management lab results showing these violations, but instead reported results that were in compliance with Wabash's Clean Water Act permit. As part of a scheme to conceal the false statements, Defendants Hagerman and Wabash knowingly created false bench sheets showing few if any violations, and purporting to be analytical results of waste water samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management, as part of the Indiana Inter-Agency Environmental Crime Task Force for the Southern District of Indiana.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Emissions Tester admitted making false pollution reports, banned from air testing for two years.

On Friday, November 17, 2006, Larry Tester, current owner of Genesis Air, Inc., a smokestack emissions testing firm, was charged in Michigan state court with one count of submitting a false statement in a report required under Michigan law. Tester admitted in court that he had falsified data in an air emissions test report sent both to his client and the Michigan DEQ which made the test appear to have been validly conducted. In fact, Tester admitted he knew the test was not valid. Tester pleaded guilty to the charge in accordance with a plea agreement with the government, and was sentenced the same day to serve 2 years probation and to pay \$12,890 in restitution to his former client. As a part of his probation, Tester is prohibited from being involved in the stack testing business for the term of his probation, and is required to publish a public apology in a trade journal explaining what he did and the repercussions.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Three Bond International's Self-Disclosure of Violation of TSCA Polymer Exemption Rule Meets Criteria of Audit Policy.

On July 30, 2007, U.S. EPA Region 5 notified Three Bond International that its self-disclosure of a failure to file a report on the import of an exempt polymer as required by 40 C.F.R. 723.250(f) at its West Chester, Ohio facility met all nine criteria of EPA's audit Policy.

Office of Regional Counsel Contact: Gaylene Vasaturo, 312-886-1811

Region 5 Executes CAFO with Transformer Decommissioning, Inc., Resolving TSCA PCB Violation at its Facility in Nabb, Indiana.

On August 21, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Transformer Decommissioning, Inc. (TDI), for a violation of the PCB Rule under TSCA resulting from the emptying of six transformers containing over 100 gallons of PCB-contaminated oil into holding tanks for non-PCB-contaminated oils at its transformer disposal facility in Nabb, Indiana. TDI, after an inspection by the State, acknowledged its error and disposed of the contents of the tanks as contaminated waste. The settlement requires TDI to pay a cash penalty of \$27,625 representing one count of improper disposal of PCBs.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; Kendall Moore, alternate contact: (312) 353-1147

Region 5 files FIFRA Consent Order concerning Tri-Ag Distributors, Inc.

On November 20, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. § 136 l(a), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35, resolving claims for civil penalties against Tri-Ag Distributors, Inc., (Tri-Ag). The CAFO simultaneously commenced and concluded EPA's action for the alleged violations of FIFRA. In the CAFO, EPA alleges that Tri-Ag produced pesticides in a Farina, Illinois, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Tri-Ag distributed or sold those pesticides using labels that did not bear a valid establishment registration number. Tri-Ag has now returned to compliance with the requirements of FIFRA. Under the CAFO, Tri-Ag agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630; David Star, secondary contact, (312) 886-6009

Region 5 enters a RCRA Consent Agreement and Final Order with Trilla Steel Drum Corp. for a \$101,627 civil penalty.

On June 21, 2007, Region 5 and Respondent Trilla Steel Drum Corp. (Trilla) entered into a Consent Agreement and Final Order (CAFO) requiring Trilla to pay a \$101,627 civil penalty for violations of the Resource Conservation and Recovery Act.

On September 29, 2006, Region 5 filed an administrative complaint alleging that Trilla treated hazardous waste in its drying ovens without a permit, failed to make required waste determinations, improperly handled containers of waste, and did not comply with contingency planning and training requirements. That six-count complaint sought a \$175,846 penalty.

In settlement discussions, Trilla presented mitigating evidence, especially concerning the nature and extent of its training program. Trilla also presented evidence showing that the potential harm to the environment from these violations was minimized because any emissions from the treatment activities were still within the limits of its Title V air permit. Trilla had ceased using its drying ovens even before Region 5 issued its original notice of violation and has certified that it is now in compliance with the RCRA

requirements cited in the complaint. Region 5 considered these mitigating factors, along with Trilla's cooperation, under the Agency's RCRA penalty policy, and proposed a revised penalty of \$101,627. Trilla agreed to pay the proposed amount.

Trilla subsequently submitted financial information to Region 5, requesting that it be allowed to pay its penalty in installments due to cash flow issues. While the information was not conclusive, in the interest of resolving the matter quickly, Region 5 agreed to allow Trilla to pay half of the penalty within 30 days of the CAFO's effective date, and the remaining balance (plus \$677.51 of accrued interest on that amount) within 150 days of the effective date.

Office of Regional Counsel Contact: Thomas Krueger, (312) 886-6729; program contact: Spiros Bourgikos, (312) 886-6862

Real Estate Company President Pleads Guilty to Conspiracy and Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 19, 2007, Scot F. Ulmer pled guilty to a two-count Information charging him with conspiracy and obstruction of justice. Mr. Ulmer was the President of the Westhaven Group LLC ("Westhaven"), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a "Lead Disclosure Form."

In January 2004, the United States Environmental Protection Agency ("U. S. EPA") sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Real Estate Company President sentenced for Conspiracy and Obstruction of Justice; United States v. Scot F. Ulmer.

On September 17, 2007, Scot F. Ulmer was sentenced for conspiracy and obstruction of justice related to a U.S. Environmental Protection Agency (U.S. EPA) investigation into his company, the Westhaven Group LLC (Westhaven). Mr. Ulmer was sentenced to five years of probation, the first 10 months of which must be served in a halfway house. In addition, Mr. Ulmer was ordered to pay a fine of \$20,000. Mr. Ulmer was the President of the Westhaven, a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or,

in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

In January 2004, U. S. EPA sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

EPA enters Consent Agreement and Final Order with Underground Warehouses, Inc., resolving CERCLA reporting violations.

On September 29, 2006, the Regional Administrator signed a Final Order resolving a violation of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by Underground Warehouse, Inc. (UWI) at its facility located in Quincy, Illinois. Specifically, UWI failed to immediately notify the National Response Center of a release of anhydrous ammonia on August 26, 2005. Under the Consent Agreement and Final Order, UWI will pay a civil penalty of \$14,170 for this violation.

Office of Regional Counsel Primary Contact: Cynthia King, 312-886-6831

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with United Phosphorus, Inc.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$6,500. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(2)(N) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of a pesticide product. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

Environmental Compliance Official Charged With Negligence Related to Fish Kill.

On July 10, 2007, in Urbana, Illinois, the United States Attorney for the Central District of Illinois filed a three-count information charging Victoria Ursitti with negligent conduct relating to a July 11, 2002, discharge of ammonia-laden wastewater into the Urbana-Champaign sanitary sewer. Ursitti was an environmental compliance official with the University of Illinois at Urbana-Champaign. According to the charges filed, in spring

2002 the University undertook a boiler-cleaning project that generated thousands of gallons of wastewater with elevated ammonia concentrations. Ursitti was responsible for the project's environmental compliance, but was allegedly negligent in overseeing the discharges. The wastewater contained too much ammonia for the treatment plant to handle, resulting in the wastewater being discharged into a tributary of the Vermillion River. According to the charges filed, the discharged wastewater caused a substantial fish kill as it flowed approximately 40 miles downstream to the Vermillion River. Conviction on each count carries a potential prison term of up to one year and criminal fines of up to \$100,000. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Citizen Suit Filed Challenging Approval of I-69 Highway Project in Indiana.

On October 2, 2006, several citizen groups and citizens filed a court challenge seeking to block further implementation of the I-69 Highway project. The project is a proposed 142 mile highway project from Indianapolis to Evansville, Indiana which is a segment of the proposed North American Free Trade Highway project. The complaint was brought against the U.S. Department of Transportation, the Federal Highway Administration, the U.S. Department of Interior, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers, the Indiana Department of Transportation, and various officials affiliated with these agencies. The suit seeks to overturn the Federal Highway Administration's Record of Decision approving a Tier 1 Environmental Impact Statement for the project which was issued on March 24, 2004 and ancillary decisions by the FWS and the Corps in support of this Record of Decision. In the complaint, the plaintiffs allege the Defendants violated the National Environmental Policy Act and Section 4(f) of the Department of Transportation Act through the issuance of the Record of Decision. They allege the Defendants violated Section 7 of the Endangered Species Act by failing to take into consideration impacts to the endangered Indiana Bat and improperly issuing an incidental take permit for the project. Finally, they allege the Defendants violated Section 404 of the Clean Water Act by failing to consider implementation of the least environmentally damaging practicable alternative for the project.

Office of Regional Counsel Primary Contact: Thomas J. Kenney, (312) 886-0708

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with The Valspar Corporation.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$40,500. On September 11, 2007, Region 5 filed a Consent Agreement and Final Order commencing and concluding a proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide on eight separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$32,400.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact (312) 886-6322

RCRA Permit to Vertellus Agriculture & Nutrition Specialties LLC.

U.S. EPA Region 5 issued a RCRA permit to Vertellus Agriculture & Nutrition Specialties LLC (formerly known as Reilly Industries, Inc.) in Indianapolis, IN. The permit mainly provides requirements for three boilers that burn hazardous waste. U.S. EPA has not yet authorized the state of Indiana to administer certain regulations, including the Boilers and Industrial Furnace regulations (40 CFR Section 266.100 *et seq.*, known as the BIF regulations). U.S. EPA Region 5 issued the RCRA permit requirements for operations at the Permittee's Facility, which fall under the BIF regulations. The permit became effective on November 6, 2006.

Office of Regional Counsel Contact: Jan Carlson, (312) 886-6059 and Jae Lee (312) 886-3781

Region 5 Approves Ohio TMDLs for Wakatomika Creek Watershed.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 28, 2006, the Region approved TMDLs submitted to U.S. EPA by Ohio Environmental Protection Agency to address *E. coli* and dissolved solids levels in the Wakatomika Creek watershed, an impaired water in central Ohio within Coshocton, Knox, Licking and Muskingum Counties. The TMDL establishes maximum daily loads for *E. coli* largely originating from livestock and septic tank sources and for salinity to address contamination from mining sources to ensure the Wakatomika Creek watershed will meet established Ohio water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jean Chruscicki, (312) 353-1435

Region 5 files a Consent Agreement and Final Order to conclude case against Warsaw Chemical Company, Inc., Warsaw, Indiana.

On September 28, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Warsaw Chemical Company, Inc. (Warsaw) for allegedly violating Section 3005 of the Solid Waste Disposal Act. On June 8, 2006, Region 5 conducted an investigation at Warsaw's 390 Argonne Road, Warsaw, Indiana facility. EPA determined that Warsaw had failed to comply with certain hazardous waste permit exemption conditions for generators. Region 5 had initially proposed a penalty of \$69,260 but determined that it was appropriate and consistent with the penalty policy to adjust the penalty to \$60,934 based on Warsaw's cooperation, good faith, and other factors as justice may require. During negotiations, Warsaw submitted financial information to Region 5, indicating that it had recently been encountering financial difficulties. While the information was not conclusive, in the interest of resolving the matter, Region 5 agreed to allow Warsaw to pay the \$60,934 penalty in installments over a term of 36 months plus interest.

Office of Regional Counsel Contact: Randa Bishlawi, (312) 886-0510

CERCLA Wash King Laundry, MI Five Year Review.

On September 28, 2006, EPA Region 5 signed a Five-Year Review Report for the Wash King Laundry Superfund Site located in Baldwin, Michigan. The Five-Year Review determined that the soil-vapor extraction and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy was taking longer than anticipated and could require adjustments. The Five-Year Review Report recommended contingency actions to address the groundwater issues and an IC study.

Because the groundwater capture wells are encountering low extraction rates, the projected length of time required for the groundwater remedy to reach unrestricted use of the groundwater has been extended. While many of the local homeowners in this rural area are hooked into a water-supply system, some are not and, therefore, an IC study will be done for the site. The study will evaluate the current groundwater concentrations in areas where homes still use private wells and evaluate the existing groundwater use restrictions to determine if institutional controls will be necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Federal District Court enters CERCLA remedial design and remedial action consent decree.

On September 27, 2007, United States District Court Judge Barbara Crabb entered the consent decree in United States of America v. Waste Management of Wisconsin, Inc., Civil Action Docket No. 07-C-0424. The Consent Decree was lodged in the United States District Court for the Western District of Wisconsin. Pursuant to the terms of the Consent Decree, the settling defendant will (1) reimburse future costs incurred by EPA and the Department of Justice ("DOJ"), and (2) continue to perform studies and response work that previously was undertaken under the terms of CERCLA Section 106 unilateral administrative orders ("UAOs"). In addition, the Consent Decree will serve as a vehicle to reimburse settling defendant for \$1,525,306.84 in response costs that it incurred in connection with the remedial action. The amount that Waste Management of Wisconsin ("Waste") is receiving reflects the net proceeds from the sale of Uniroyal Technology Corp. stock that Waste is eligible to receive.

As background, in 1993, pursuant to a bankruptcy settlement agreement and stipulated order involving various Uniroyal-related entities, in Case No. 91-32791, U.S. Bankruptcy Court, Northern District of Indiana, the United States received shares of Uniroyal Technology Corp. stock. The bankruptcy settlement agreement and stipulated order required EPA to credit the proceeds of the sale of that stock to various sites for which the Uniroyal entities were allegedly liable, including the Hagen Farm Site, thereby reducing the liability of other parties potentially responsible for those Sites. EPA has determined that \$1,525,306.84 is available to reduce the liability of other potentially responsible parties in connection with the Hagen Farm Site as required by the bankruptcy settlement agreement and stipulated order. The proceeds of the stock sale attributable to the Hagen Farm Site, after offset for unrecovered EPA costs for the Site, will be deposited in a special account for the Site. Based on certifications made by Waste concerning unrecovered costs incurred at the site, EPA will disburse, in accordance with the Consent Decree, the special account funds to Waste. Put simply, the Uniroyal settlement stipulated that settlement proceeds be used to "reduce the liability" of the other PRPs,

Waste performed all of the RD/RA work at the Hagen site under UAOs and is, therefore, eligible to receive the Uniroyal proceeds net of U.S. EPA's unreimbursed response costs.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; Shiela Sullivan, additional contact (312) 886-5251

EPA Region 5 Signs a Consent Agreement and Final Order with Water Saver Faucet Co. in Chicago, Illinois.

On September 25, 2007, EPA, Region 5, and Water Saver Faucet Co. (Water Saver) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Section 313 of the Emergency Planning and Community Right-to-Know Act at Water Saver's manufacturing plant in Chicago, Illinois. The CAFO alleges that Water Saver failed to submit timely Form R reports for copper and lead for calendar year 2004. The Form R reports were due on July 1, 2005. Water Saver submitted the forms on July 15, 2005. EPA calculated a preliminary civil penalty of \$21,928 for these violations and notified Water Saver of this amount in a pre-filing and opportunity to confer letter. In consideration of the facts of this case, Water Saver's cooperation with U.S. EPA and good faith efforts to comply, EPA determined and Water Saver agreed that the appropriate civil penalty to settle this action is \$15,350. To further mitigate the penalty, Water Saver developed a SEP proposal which the Region did not accept because it is a profitable project. The project involves extraction of metals, primarily copper and nickel, from the solid waste generated by Water Saver. This eliminates the need for disposal of hazardous waste. Water Saver informed EPA that it will implement the project even though it is not acceptable as a SEP. Once implemented, the project will totally eliminate the hazardous waste generated by Water Saver, i.e., approximately 18 gross tons of F006 plating waste per year.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Tony Silvasi, additional contact, (312) 886-6878

RCRA Consent Decree Entered in WCI Steel 7003/Bankruptcy Matter.

On February 6, 2006, the United States District Court for the Northern District of Ohio, Eastern Division, entered a Consent Decree signed by the United States and WCI Steel, Inc. ("WCI"). The Consent Decree resolves a Resource Conservation and Recovery Act ("RCRA") Complaint filed by the United States on December 18, 2006, which sought injunctive relief (compliance with a RCRA 7003 Order which EPA issued to WCI) and penalties (for failure to comply with the RCRA 7003 Order). The Consent Decree also resolves claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties submitted in a predecessor WCI bankruptcy case (In re: WCI Steel, Inc., et. al., Case No. 05-81439 (Bankr. N.D. Ohio)).

In addition, under the Consent Decree, WCI is required to pay a civil penalty to the United States in the amount of \$620,000. This penalty will be paid through resolution of claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties relating to WCI's alleged violations of the Order previously submitted in Debtor WCI's bankruptcy case in the United States Bankruptcy Court for the Northern District of Ohio (In re: WCI Steel, Inc., et. al., Case No. 05-81439).

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Program Contact: Michael Beedle, (312) 353-7922

Real Estate Company President Charged With Conspiracy and Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 2, 2007, Scot F. Ulmer was charged in a two-count Information with conspiracy and obstruction of justice. The information alleges that Ulmer was the President of the Westhaven Group LLC (“Westhaven”), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. The information states that sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

The information alleges that in January 2004, the United States Environmental Protection Agency (“U. S. EPA”) sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charges that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charges that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force. If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Wisconsin Electric Power Company Settlement.

The consent decree between the United States Environmental Protection Agency and Wisconsin Electric Power Company resolving Clean Air Act New Source Review claims against the company for violating New Source Review regulations was entered on September 30, 2007. The parties filed a Motion to Enter the consent decree on October 24, 2003. Shortly thereafter, the State of Michigan, Clean Wisconsin, Sierra Club, and the Citizens' Utility Board intervened in the law suit and proposed modifications to the consent decree.

In granting the United States' Motion to Enter, the judge stated that “there is no dispute that BACT controls would achieve greater reductions [at two plants that did not receive controls under the decree]. Yet requiring BACT at all units would not be a settlement – it would be more akin to a judgment against one party. The court . . . believes that the

proposed decree provides a significant reduction in pollutants for the citizens of both states.”

Under the decree, WEPCO will spend \$600 million to install four scrubbers and four selective catalytic converters to reduce 72,300 tons per year of SO₂ and 32,600 tons per year of NO_x, respectively. The settlement covers WEPCO’s entire system, which includes 23 units at five power plants. WEPCO has agreed to pay a civil penalty of \$3.1 million and mitigation costs totaling at least \$20 million. The \$20 million will finance an environmental project demonstrating a new technology, TOXECON, designed to achieve a 90% removal of mercury.

Office of Regional Counsel Contact: Sabrina Argentieri, (312) 353-5485

Region 5 files an Administrative Order on Consent with Wisconsin Public Service to conduct RI/FS at the Campmarina Site in Sheboygan, Wisconsin.

On February 5, 2007, Region 5 filed an Administrative Order on Consent (AOC), Docket Number V-W-07-C-862, for Wisconsin Public Service Corporation (WPSC) to do a remedial investigation/feasibility study (RI/FS) for the Campmarina site in Sheboygan, Wisconsin. The Campmarina work is being done under the Superfund Alternative Site (SAS) program and is part of a package of sites that WPSC is addressing with the region. The Campmarina site was a former manufactured gas plant (MGP) along the banks of the Sheboygan River. Wastes and by-products from the MGP remain on the former plant site and in the adjacent river. The contaminants of concern are polyaromatic hydrocarbons and other organic hydrocarbons. The RI/FS will determine the nature and extent of the contamination and provide a set of remedial alternatives for the two operable units.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with W.J. Hagerty & Sons Ltd, Inc.

Region 5 initiated prefiling discussions on this matter in March, 2007. The proposed penalty was \$13,650. On June 10, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Hagerty Anti-Mite**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$10,920.

Office of Regional Counsel Primary Contact: Nidhi O’Meara, (312) 886-0568; Terry Bonace, additional contact (312) 886-3387

Environmental Appeals Board Grants Region’s Second Motion for Extension of Time to File Notice of Appeal in Zaclon Inc Matter, RCRA Docket No. RCRA-05-2004-0019.

On August 21, 2007, the EAB granted Region 5’s motion for a second extension of time in which to decide whether to appeal Judge Susan Biro decision in the Zaclon, Inc. matter. Judge Biro had issued a decision on June 4, 2007 that was not made public due to Confidential Business Information claims raised by the Respondents during the hearing. The Region was granted an initial extension of time 30 days subsequent to the issuance of a redacted CBI decision. Judge Biro issued a redacted version on or about July 24, 2007.

The EAB's Order signed by Judge Reich extends the period in which the Region must decide whether to appeal Judge Biro's decision to October 24, 2007.

Office of Regional Counsel Contact: Larry Kyte, (312) 886-4245



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Illinois

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Illinois:

- Albemarle Corporation
- Aldi, Inc.
- Allied Waste Industries, Inc.
- Alpharma, Inc.
- AlSCO Inc.
- AP Management, Inc.
- Apex Oil Company (2)
- Ashland, Inc. (2)
- Bonnie Owen Realty, Inc.
- Bunge North America, Inc. (2)
- Capital Tax Corporation
- C.B.D. Inc.
- C.G. & S. Provision Company
- Circom, Inc.
- Claire-Sprayway, Inc.
- Commonwealth Edison
- Crane Composites, Inc.
- Crest Industries, Ltd.
- Curry Office Supply, Inc (2)
- D & D Garden Products, Inc.
- Dan H. Watkins Trust
- Del's Metal Co.
- Ekberg, Glen
- EMCO Chemical Distributors, Inc.
- Equistar Chemical, Lp
- Fairway International Corp.
- Five Star Laundry
- Flavorchem Corporation
- Franklin County Powers of IL
- Grief Industrial Packaging & Services, LLC
- HA International LLC
- Henry W Peabody, Inc.
- Hondo Incorporated d/b/a Coca-Cola Company
- Honeywell International Corporation
- Hospital Laundry Services
- Hutton Auto Body, Inc.
- Hydromet Environmental (USA), Inc. (3)
- Illinois Attorney General
- Indeck-Elwood LLC
- Johns Manville (2)
- Kastalon, Inc.
- Kramer, H.
- Lake Zurich, IL
- Lakeshore Foundry, Inc.
- MAPEI Inc.
- National Lacquer and Paint
- North American EN, Inc.
- North American Galvanizing & Coating, Inc.
- North Shore Gas
- Northwestern Plating Works, Inc.
- Ottawa L.L.C.
- PennTex Resources Illinois, Inc. (2)
- Peoples Gas
- Plaspros, Inc.
- Powell, Charles
- Prairie State Generating Company, LLC
- Redeen Engraving Company
- Ronald Mark Davenport
- Sahli Enterprises, Inc.
- Sherwin-Williams Company
- Sierra Club (2)
- SLI Corporation
- Smurfit-Stone Container Enterprises
- Star Distributors Incorporated
- TCI Manufacturing, Inc.
- Tri-Ag Distributors, Inc.
- Trilla Steel Drum Corp.
- Underground Warehouses, Inc.
- Ursitti, Victoria
- Water Saver Faucet Co.

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Albemarle Corporation.

Region 5 initiated pre-filing discussions on this matter in June 2007. On July 9, 2007 Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of two pesticide products. Additionally, the containers of each of these pesticide products did not have any labeling them in accordance with FIFRA and its regulations. During settlement discussions, the Respondent agreed to pay a civil penalty of \$26,000.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, technical contact, (312) 886-6322

Region 5 signs Consent Agreement and Final Order with Aldi, Inc.

On January 29, 2007, a CAFO was signed with Aldi, Inc. (Aldi), Dwight, Illinois, in settlement of an administrative action that EPA filed on July 5, 2006, regarding a release that occurred at Aldi's facility on August 22, 2005. The complaint alleged that Aldi had violated Section 103(a) of CERCLA by failing to immediately notify the National Response Center of the release; Section 304(a) of EPCRA by failing to immediately notify the SERC and the LEPC of the release; Section 304(c) of EPCRA, by failing to provide a written follow-up emergency notice to the Illinois SERC and the LEPC as soon as practicable after the release occurred; and Section 312(a) of EPCRA, by failing to submit to the Illinois SERC, LEPC and local fire department a completed Emergency and Hazardous Chemical Inventory Form for calendar years 2003 and 2004, by the March 1 deadline. The complaint proposed a penalty of \$93,433. Pursuant to the CAFO Aldi will complete a SEP designed to protect the environment or public health by purchasing and donating emergency response turnout equipment to the Dwight Fire Department at a cost of not less than \$23,150. In consideration of Aldi's willingness to perform the SEP, its cooperation, as well as certain litigation considerations, Region 5 agreed to a civil penalty, in addition to the SEP, of \$23,150.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; James Entzminger, (312) 886-4062

Federal District Court enters CERCLA cost recovery Consent Decree.

On May 16, 2007, United States District Court Judge Suzanne B. Conlon entered the consent decree in United States of America v. Allied Waste Industries, Inc., f/k/a/ Browning Ferris Industries, Inc., and Waste Management of Illinois, Inc., Civil Action Docket No. 06-C-5245. This consent decree is for a past cost recovery settlement for the Tri-County/Elgin Landfill Superfund Site in Kane County, Illinois (the "Site"), and resolves the remaining claims of the United States for costs incurred in taking remedial response actions at the Site. The settling defendants are Allied Waste Industries, Inc., (f/k/a/ Browning Ferris Industries of Illinois ("BFI")) ("Allied") (owner of part of the Elgin Landfill portion of the Site); and Waste Management of Illinois, Inc. ("WMII") (owner of the Elgin-Wayne Disposal part of the Tri-County Landfill portion of the Site). Allied and WMII are also past owners and operators at the Site.

As of November 30, 2006, the unrecovered Site costs totaled \$1,760,729.14, with prejudgment interest on that amount of \$593,974.57 (accrued since the date of demand made February 27, 1998), for a total of \$2,354,703.71. Under the consent decree, the settling defendants will reimburse \$2,120,000.00 in past response costs and prejudgment interest incurred by the United States Environmental Protection Agency (“EPA”) and the United States Department of Justice (“DOJ”). This represents a recovery of 90% of EPA’s and U.S. DOJ’s costs with prejudgment interest. Allied and WMII will pay future oversight costs, and will continue to perform remedial action work at the Site, under the terms of the final unilateral administrative orders issued to each on November 3, 1999, under authority of 42 U.S.C. § 9606 (“UAOs”). This settlement concludes EPA’s cost recovery efforts for the Site.

U.S. DOJ initiated this litigation by filing a complaint on September 27, 2006, to recover the remaining unreimbursed response costs incurred by EPA in connection with the Site.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; John Fagiolo, additional contact (312) 886-0800

Consent Agreement and Final Order with Alpharma, Chicago Heights, Illinois.

U.S. EPA and Alpharma, Inc. have entered into a Consent Agreement and Final Order to settle an administrative enforcement action. For failing to immediately notify the National Response Center of a release of a reportable quantity of sulfuric acid from its Chicago Heights facility, Alpharma has agreed to perform two supplemental environmental projects valued at \$24,737 and pay a civil penalty of \$5,000.

On October 31, 2005, at 9 am, two employees of Alpharma discovered a release of sulfuric acid from a storage tank. The release sprayed out of a “pin hole” leak approximately 6 feet above the base of the tank over the secondary containment wall surrounding the tank to the ground. Approximately 13, 277 pounds of sulfuric acid, more than 13 times the reportable quantity was released. The person in charge of the facility did not notify the National Response Center until 3:58 pm, nearly 7 hours after the release occurred.

After receiving a notice of intent to file an administrative complaint, Alpharma engaged in pre-filing settlement discussions with U.S. EPA. Alpharma was cooperative and willing to resolve the matter before the agency filed the complaint. Alpharma is performing two SEPs which U.S. EPA’s PROJECT program values at \$24,737. The SEPs will replace the facility’s current underground sulfuric acid piping with above ground, acid resistant piping and install a remote monitor and alarm system for the sulfuric acid tank. These SEPs will help prevent a future release in this environmental justice area. In addition, Alpharma is updating its Emergency Response Plan per the Agency’s recommendations.

U.S. EPA filed the fully-executed CAFO on December 20, 2006. Alpharma submitted payment for the penalty on January 11, 2007 and submitted its updated Emergency Response Plan to the Agency on January 19, 2007.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

Region 5 files Consent Agreement and Final Order with AlSCO Inc.

On September 19, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against AlSCO Inc., which owned or operated an industrial laundry and linen supply facility located at 2221 West Oakdale Avenue, Chicago, Illinois 60618, for alleged violations of Section 3005(a) of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6925(a). AlSCO Inc. is a large quantity generator of hazardous waste who allegedly failed to meet certain conditions for an exemption from obtaining a permit for the storage of hazardous waste. AlSCO Inc. allegedly failed to: meet hazardous waste training requirements for its employees; have a contingency plan; familiarize local officials and hospitals with the hazardous waste generation at the facility; meet hazardous waste recordkeeping and data management requirements; minimize the possibility of hazardous waste releases; maintain proper spill control and decontamination equipment; label hazardous waste storage containers with the date of accumulation or with the words "Hazardous Waste"; properly manage such storage containers or to keep them closed; maintain proper aisle space in storage areas; and inspect storage areas weekly or to maintain an inspection log. By violating its duty to obtain a permit, AlSCO Inc. became subject to civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Region 5 calculated a proposed penalty of \$311,764. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under this CAFO, AlSCO Inc. agrees to pay \$280,587 in civil penalties. This amount represents a substantial sanction against AlSCO Inc., and will deter future violations.

Office of Regional Counsel Primary Contact: Kevin Chow, (312) 353-6181; Additional Contact: Brad Grams, Land & Chemicals Division, (312) 886-7747

Region 5 signs a Consent Agreement and Final Order with AP Management, Inc., resolving Lead-Based Paint violations.

On March 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commences and concludes, under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, alleged violations of the regulations at 40 C.F.R. Part 745, Subpart F, related to leasing transactions at a residential building located in Chicago, Illinois. Under the terms of the CAFO, AP Management, Inc., formerly known as Banner Property Management, Inc., agrees to pay \$1,350 as a penalty, and to perform a supplemental environmental project to conduct lead-based paint abatement and/or mitigation at one or more Chicago area residential properties where a child resides, through the not for profit organization Neighborhood Housing Services of Chicago, at a cost of \$12,125.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237 and Pamela Grace, Waste Pesticides and Toxics Division, (312) 353-2833

Court Denies United States Motion for Summary Judgment Against Apex Oil Company.

On March 15, 2007, the United States District Court for the Southern District of Illinois denied the United States motion for summary judgment on count one of a two count

complaint against the Apex Oil Company. In count one of the complaint, the United States alleges that Apex Oil released gasoline which has contributed to a large plume of petroleum-based substances located under the Village of Hartford, Illinois. Among other things, the United States alleges that vapors from the plume present an imminent and substantial endangerment to human health and the environment. The court held that “[g]iven the nature of this case and the specialized knowledge that the facts entail, the Court is not in a position to make factual findings at this stage.” As a result, this case will likely proceed to trial this year.

Office of Regional Counsel Primary Contact: Brian Barwick, (312) 886-6620

Court Sets Trial Date in United States v. Apex Oil Company.

On May 24, 2007, the United States District Court for the Southern District of Illinois set aside up to five weeks starting on January 7, 2008, for trial in United States v. Apex Oil Company. In its April 2005 Complaint under Section 7003 of RCRA, the United States alleges that Apex Oil released gasoline that has commingled with other responsible parties releases and resulted in a large plume of refined petroleum substances beneath the Village of Hartford, Illinois. Among other things, vapors from the plume have migrated into homes in Hartford causing fires, explosions, and evacuations and, therefore, present an imminent and substantial endangerment to human health and the environment.

EPA entered into an Administrative Order on Consent with four of the other responsible parties requiring interim measures, an investigation of the plume, and development of a cleanup plan. The United States’ complaint seeks injunctive relief requiring Apex Oil to cooperate and participate with other responsible parties in the cleanup of the plume.

Office of Regional Counsel Primary Contact: Brian Barwick, (312) 886-6620

Region 5 signs Administrative Order on Consent with Ashland, Inc. requiring corrective action under RCRA in Willow Springs, Illinois.

On August 9, 2007, Region 5 signed an Administrative Order on Consent (AOC) pursuant to Section 3008(h) of RCRA, requiring Ashland Inc. (Ashland) to perform corrective action at its chemical distribution center. Ashland’s 32-acre facility was formerly owned and operated by the Department of Defense (DOD) and General Motors as a jet-engine testing facility in the 1950s. The property changed ownership several times before Ashland acquired it in 1971 for use as a chemical distribution facility and for use as an oil distribution facility for Valvoline, a division of Ashland. Although DOD closed in place its USTs, used for fuel storage at its 18 test cells, in 1996, it may have left underground piping associated with each tank. VOCs were found in the groundwater at the facility and, subsequently, Ashland Inc. entered into a Notice of Agreement with the Illinois EPA, which required groundwater monitoring and operation of a groundwater collection and treatment system. The AOC requires Ashland to investigate and remediate all hazardous wastes or constituents at or from the facility. Ashland is pursuing a separate settlement with DOD.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; John Nordine, ARD, (312) 353-1243

Region 5 signs a Consent Agreement and Final Order with Ashland Inc., Calumet City, IL.

On September 29, 2006, Region 5 signed a Consent Agreement and Final Order (CAFO) with FONA International, Incorporated (Respondent) that both initiates and fully resolves both Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CAA) violations. On September 22, 2005, Region 5 issued a Notice of Violation (NOV) under the CAA to Respondent for failing to obtain construction and operating permits, in violation of the Illinois State Implementation Plan (SIP) and Section 110 of the CAA, 42 U.S.C. § 7410. On February 2, 2006, Region 5 issued a NOV to Respondent for various RCRA violations including failure to retain copies of manifests for hazardous waste generated.

Representatives from EPA and Respondent met in October of 2005 to discuss the CAA NOV. In May of 2006, the RCRA Division issued a pre-filing notice of opportunity to confer to Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$59,440.00. The Air Division also issued a notice of intent to file a civil administrative complaint against Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$104,759.00. In July of 2006, the parties meet to discuss both the RCRA and Air violations.

In consideration of the Respondent's cooperation, attitude, and other factors as justice may require, Region 5 agreed to reduce the civil penalty to \$70,000 in settlement of the case.

Office of Regional Counsel Primary Contact: Cathleen Martwick, (312) 886-7166;
Secondary Contacts: Diane Sharrow, (312) 886-6199 and Donald Law, (312) 886-6024

Region 5 Executes CAFO with Bonnie Owen Realty, Inc., of Carbondale, Illinois, Resolving TSCA Lead-Based Paint Disclosure Rule Violations.

On September 25, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Bonnie Owen Realty, Inc., for 7 violations of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, and section 409 of TSCA, 15 U.S.C § 2689, for failure to make disclosures regarding lead-based paint as required by regulations under those statutes. Given the residence of a child with elevated blood lead levels in the target housing, the Agency initially calculated a penalty of \$38,080 for those 7 violations. Taking account of Respondent's cooperation in resolving the matter, its subsequent analysis that the target housing was indeed free of lead-based paint and its expenditure of in excess of \$6,000 to replace 16 windows at two additional properties in Carbondale, the CAFO requires Respondent to pay civil penalty of \$533.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; Joana Bezerra, alternate technical contact, (312) 886-6004

Court Enters Consent Decree Between United States, Eight States, and Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On January 16, 2007, the United States District Court for the Central District of Illinois entered a Consent Decree between the United States, eight States, and Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, "Bunge") that resolves violations of the Clean Air Act, certain State violations and reporting violations. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a Plaintiff-Intervenor and a signatory to the Consent Decree.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States in which Bunge operates a plant filed their Complaints and Motions-in-Intervention simultaneously. We received no comments during the public comment period. Upon entry of the Consent Decree, both State and Federal violations related to Bunge's eleven oilseed processing plants and one corn germ extraction plant are resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge's plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge's Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge's oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$12 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. The civil penalties will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Region 5 Signs a Consent Decree with Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, "Bunge") that resolves violations of the Clean Air Act. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a signatory to the Consent Decree, and filed their Complaints and Motions-in-Intervention simultaneously. Upon entry, both State and Federal violations related to Bunge's eleven oilseed processing plants and one corn germ extraction plant will be resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge's plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement sweeping environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge's Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge's oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$14 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. This amount will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates, as follows:

Louisiana: \$83,335.00 to the Louisiana Department of Environmental Quality to fund the Mercury Removal/Education Program at LDEQ, spending no less than \$15,000.00, in St. Charles Parish. Based on the needs of the schools, the funds will be used to defray the costs of

(a) removing and disposing of present mercury, lead and/or asbestos contamination, and/or,

(b) eliminating the use of mercury instruments in local educational institutions.

Illinois

1. Alexander County Hazardous Materials Equipment and Training SEP: \$54,000.00 to the Alexander County Emergency Services and Disaster Agency for hazardous materials response equipment and training
2. Vermilion County Hazardous Materials Equipment and Training SEP: \$90,000.00 to the Vermilion County Emergency Management Agency for hazardous materials response equipment and training
3. Pulaski County Hazardous Materials Equipment and Training SEP: \$62,000.00 to the Pulaski County Emergency Services and Disaster Agency for hazardous materials response equipment and training
4. Lead Abatement SEP: \$294,000.00 to the City of Danville, Illinois, Department of Public Development, Division of Community Development for lead abatement projects at residential locations in Danville, Illinois

Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles

Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program

Kansas

1. Emporia School District Diesel Retrofit: \$22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253.
2. Southern Lyon County School District Diesel Retrofit: \$16,065.00 for a project retrofitting diesel vehicles owned and operated by the Southern Lyon County Unified School District No. 252.
3. KACEE Fund Contribution: \$44,630.00 to the Kansas Association for Conservation and Environmental Education to provide for environmental education within the State of Kansas.

Mississippi

1. Hancock County Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Hancock County Fire Department for hazardous materials response equipment and training
2. Long Beach Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Long Beach Fire Department for hazardous materials response equipment and training
3. Biloxi Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Biloxi Fire Department for hazardous materials response equipment and training

4. Pass Christian Fire Department Hazardous Materials Equipment and Training SEP. \$20,843.75 to the Pass Christian Fire Department for hazardous materials response equipment and training

Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa

Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

U.S. District Court dismisses 106 Pattern and Practice Counterclaim in National Lacquer and Paint CERCLA cost recovery case.

On February 8, 2007 the U.S. District Court for the Northern District of Illinois dismissed Defendant Capital Tax Corporation's 106 pattern and practice counterclaim at the National Lacquer and Paint site in Chicago Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004, EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) penalties for noncompliance with unilateral administrative orders (UAOs) under Section 106 of CERCLA, punitive damages under Section 107 of CERCLA, and penalties against the operator for failure to answer EPA's information request. One of the Defendant's, Capital Tax Corporation filed a 3 count counterclaim against the EPA alleging that Section 106 was unconstitutional on its face, as applied by EPA, and that the CERCLA 107 lien provision is unconstitutional. All counterclaims alleged the unconstitutionality was based upon the fact that no judicial hearing is available prior to receiving a UAO and prior to having a lien placed on a person's property. The court earlier dismissed Defendant's counterclaim that Section 106 is unconstitutional on its face. In this decision, the court found that given the fact that Section 106 allows a party to comply with a UAO and then seek reimbursement, and that the EPA must go to court to collect its penalties and treble damages, that as applied Section 106 of CERCLA is not unconstitutional.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

EPA Settles C.B.D. Inc. EPCRA Reporting Matter.

On June 5, 2007, EPA issued a Consent Agreement and Final Order (CAFO) under EPCRA Section 325 resolving claims for civil penalties for violations of EPCRA Section 313 reporting requirements by the C.B.D. Inc. facility located at 1185 Jansen Farm Court, Elgin, Illinois. The CAFO simultaneously commences and concludes EPA's action for EPCRA Section 313 violations regarding the Form R reporting of lead not contained in stainless steel, brass or bronze alloy for calendar year 2004. Under the CAFO, Respondent will pay a penalty of \$3,500. EPA conducted an inspection at the facility on

June 22, 2006, and the forms were submitted on June 28, 2006. The CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630

Region 5 signs a Combined Complaint and Consent Agreement with C.G. & S. Provision Company.

Region 5 began pre-filing discussions in this matter in April, 2006. On July 19, 2007, Region 5 filed a complaint and consent agreement and final order that initiates and concludes proceedings with C.G. & S. Provision Company to settle violations of both Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and violations of Sections 304(a) and 312(a) of the Emergency Planning and Community Right to Know Act (EPCRA). The specific violations were failure to immediately notify the National Response Center and the State Emergency Response Commission (SERC) of an August 11, 2005 release of anhydrous ammonia from this facility and failing to submit completed Emergency and Hazardous Chemical Inventory forms to the SERC and the local fire department for the 2002-2005 calendar years by March 1 of the relevant year. C.G. & S. Provision Company is currently in compliance with Section 312 of EPCRA; the settlement will require C.G. & S. Provision Company to pay a penalty of \$27,000 broken into eighteen monthly payments with interest. This penalty includes a reduction for inability to pay, a reduction for cooperation and a reduction for quick settlement.

Office of Regional Counsel Contact: Padmavati Bending, (312) 353-8917

On May 18, 2007 Region 5 filed a Consent Agreement and Final Order to commence and conclude case against Circom, Inc., Bensenville, Illinois.

On May 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against Circom, Inc. (Circom), for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Bensenville, Illinois. The CAFO requires Circom to pay a penalty of \$1397. Circom failed to submit to the Administrator of U.S. EPA and to Illinois a Form R for lead for the calendar year 2005 by July 1, 2006. After an inspection of the facility by U.S. EPA, Circom came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$6,500. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 within 51 days of its due date, its cooperation and, and the fact the company is a small business.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Region 5 signs a Consent Agreement and Final Order with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company.

On April 11, 2007, Region 5 signed a CAFO with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company (Respondent) that both initiates and fully resolves the FIFRA Section 14, 7 U.S.C. 136l(a), administrative action. In July 2006, Region 5 sent

Respondent a pre-filing notice letter informing Respondent that it violated Sections 12(a)(1)(C) of FIFRA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$4,400 for violations which originated when Respondent's supplemental distributor, Murphy Supply Company, sold and distributed one pesticide product whose composition differed from its composition as described in the statement required in connection with the pesticide's registration. In consideration of the Respondent's attitude and good faith efforts to comply with FIFRA, Region 5 agreed to reduce the civil penalty to \$3960.00 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joseph Lukascyk, (312) 886-6233

Administrative Settlement Agreement and Order on Consent executed for CERCLA Removal Action.

On June 11, 2007, the Superfund Division Director executed a CERCLA Administrative Settlement Agreement and Order on Consent (AOC) under Sections 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding the Southwestern Site area that is adjacent to the Johns Manville NPL Site located in Waukegan, Illinois. Asbestos-contaminated soils and waste have been discovered in areas identified as Sites 3, 4, 5 and 6 on property owned by Commonwealth Edison that is adjacent to the southern and western property lines of Johns Manville former asbestos manufacturing facility in Waukegan, Illinois. The settling parties are Johns Manville and Commonwealth Edison. Under the terms of the AOC, the settling parties have agreed to: a) conduct an Engineering Evaluation Cost Analysis Study (EECA) of the southwestern site area; b) conduct U.S. EPA's selected removal action in an Action Memorandum or other decision document after public comment; c) reimburse 100% of EPA's past costs at the southwestern site area; and d) reimburse future response costs including the costs of overseeing the work at the southwestern site area.

Office of Regional Counsel Contact: Janet R. Carlson, (312) 886-6059; Brad Bradley, Superfund, (312) 886-4742

Region 5 files a Consent Agreement and Final Order to conclude case against Crane Composites, Inc., Channahon, Illinois.

On January 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crane Composites, Inc. (Crane) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On July 5, 2006, Region 5 filed an administrative complaint, with a proposed penalty of \$78,484, against Crane based on the following alleged violations: failure to label containers of hazardous waste, failure to close containers of hazardous waste, failure to control air emissions from containers of hazardous waste, failure to include all the necessary components of a contingency plan (no emergency equipment descriptions and no evacuation plan) and failure to submit the contingency plan to the local police department, and failure to conduct and document annual hazardous waste training. Crane has agreed to pay a penalty of \$50,000. This reduction reflects information submitted by Crane after the complaint was filed and a 10% reduction based on expedited settlement.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715

Region 5 files a Consent Agreement and Final Order to conclude case against Crest Industries, Ltd., New Lenox, Illinois.

On June 1, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crest Industries, Ltd. (Crest) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On September 30, 2005, Region 5 filed an administrative complaint against Crest based on alleged violations at Crest's 1066 Industry Road, New Lenox, and Illinois facility. The alleged violations at facility included: failure to have written tank assessments that were professionally reviewed and certified; failure to provide adequate secondary containment for its hazardous waste storage tanks, failure to equip its hazardous waste storage tanks with a fixed roof, closure device or closed vent system; failure to implement a hazardous waste training program and keep employee training records; failure to maintain a contingency plan; and failure to apply for a hazardous waste management facility and storage permit as required by failing to meet the above generator exemption conditions and storing hazardous waste in excess of 90 days. Crest has agreed to pay a penalty in installments over a term of 25 months totaling \$200,000. This reduction reflects information submitted by Crest after the complaint was filed and other considerations.

Office of Regional Counsel Contacts: Stephen Thorn, (312) 353-9715, and Luis Oviedo, (312) 353-9538

Trucking Company Pleads Guilty to Negligently Discharging Boron Contaminated Water Without a Permit.

On January 11, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and pled guilty to a January 4, 2007, one-count information alleging that Curry Office Supply negligently discharged a pollutant to a water of the United States without an NPDES permit, in violation of the Clean Water Act. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

The indictment alleged that beginning in 2001, coal combustion ash in a large excavation at the Curry facility contaminated several million gallons of ponded rainwater in that excavation with excessive boron levels. The indictment also alleged that between March and May 2003 and on Lippold's orders, the Curry facility discharged a substantial portion of the boron ash wastewater into an unnamed tributary of the Sangamon River using sprayer trucks, a hose and a buried discharge pipe. The indictment also alleged that

Lippold ordered this discharge after IEPA told Curry Ready Mix and Curry Ice & Coal that IEPA would not issue an NPDES permit to discharge the boron ash wastewater and after IEPA refused to issue a provisional variance to allow the Curry facility to discharge the boron ash wastewater in violation of water quality standards. The information alleged that defendant Curry Office Supply was negligent in supervising an agent at the Curry facility. In the plea agreement, defendant Curry Office Supply agreed to pay a \$50,000 criminal fine and serve three years of probation. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois State Police jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Trucking Company Sentenced For Negligently Discharging Boron Contaminated Water Without a Permit.

On June 25, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and was sentenced to a \$50,000 criminal fine and three years probation for negligently discharging a pollutant to a water of the United States without an NPDES permit, in violation of the Clean Water Act. Curry Office Supply had pled guilty on January 11, 2007, to a January 4, 2007, one-count information alleging this crime. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

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Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Region 5 signs Consent Agreement and Final Order with D & D Garden Products, Inc.

On April 12, 2007, Region 5 signed a CAFO with D & D Garden Products, Inc. (D & D), Lombard, Illinois, in settlement of a complaint that EPA filed on June 22, 2006, which alleged that D & D had violated Section 12(a)(1)(A) of FIFRA by selling and distributing the pesticide product Shoo-fly Hornet Jet Bomb, the registration of which had been cancelled. The complaint proposed a \$45,000 penalty. Region 5 mitigated the penalty to \$1,000 based on documentation indicating D & D's inability to pay the penalty and continue in business, as well as its good faith and cooperation.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Terence Bonace, (312) 886-3387

Region Resolves TSCA Lead Disclosure Case against H&C Building and the Dan H. Watkins Trust (Moline, Illinois).

On September 27, 2006, the Acting Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which H&C Building and the Dan H. Watkins Trust (Respondents) agreed to pay a penalty of \$8,885 for violations of the "Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property" (Disclosure Rule), 40 C.F.R. Part 745, Subpart F; Section 409 of Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689; and Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, at a residential apartment complex they own Moline, Illinois. Specifically, Region 5 alleged that Respondents failed to include within or as an attachment to the each of six leases to rent apartments at the complex, prior to the lessees being obligated under contract to rent the apartments: a lead warning statement; a statement by Respondents disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to Respondents regarding lead-based paint and/or lead-based paint hazards in the apartments or a statement that no such records exist; a statement by the lessees affirming receipt of certain information set out in the Disclosure Rule; the lead hazard information pamphlet; and signatures and dates of signatures of Respondents and the lessees certifying the accuracy of their statements. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on September 28, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Secondary Contact: Joana Bezerra, (312) 886-6004

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order to conclude case against Del's Metal Co., Rock Island, Illinois.

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) concluding an administrative penalty action against Del's Metal Co. (Del's Metal), Rock Island, Illinois for violations of the Clean Air Act (CAA), 42 U.S.C. §7401, *et seq.*, and regulations concerning the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at its facility in Rock Island, Illinois. The CAFO requires Del's Metal pay a penalty of \$40,000. On September 27, 2006, EPA filed an administrative penalty order against Del's Metal for not complying with the regulations

concerning the operation of its two furnaces. Del's Metal has discontinued the operation of its furnaces which will result in fewer pollutants being released to the environment. The proposed penalty in this matter was \$100,548.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

U.S. EPA Signs Release of CERCLA 107(l) Lien on PRP/Defendant-Owned Portion of the Southeast Rockford Groundwater Contamination Superfund Site-Source Area 7.

On August 1, 2007, USEPA signed a release of a CERCLA 107(l) lien on property owned by Mr. Glen Ekberg, an owner-operator at Source Area 7 of the SE Rockford Superfund (SER) Site in Rockford, Illinois. The Release of Lien is in fulfillment of a USEPA obligation pursuant to an August 2006 cost recovery Consent Decree (CD) in U.S. v. Glen Ekberg, No. 01-C-50457, N.D. IL-Western Div. Under the CD, the defendant was obligated to pay U.S. EPA \$1,231,125 (plus interest) in two (2) installments between September 2006 and July 1, 2007. In the CD at paragraph 34, the United States agreed that upon full payment by Mr. Ekberg, an existing federal CERCLA 107(l) lien placed on his property in 2003 would be released. Mr. Ekberg completed his (full and complete) payment on June 29, 2007. The SER Site is an approximately 10 square-mile area where groundwater is contaminated (primarily) by VOCs above 10 parts-per-billion. The Site was placed on the NPL in March 1989. A series of removal actions, remedial studies and development of a final source control ROD occurred between 1989 and 2002. The United States settled response work, and past and future costs with the City of Rockford, IL and a number of other generator and owner parties between 1998 and 2000. Source Area 7 is in the southeastern portion of the SER Site. Mr. Ekberg's property is located within Source Area 7. Mr. Ekberg, as an owner of a portion of the SER Site, was given general notice in 1998, and asked to participate in settlement negotiations. Mr. Ekberg refused. In December 2001, the United States sued Mr. Ekberg for past and future costs associated with Source Area 7. In March and April 2003, U.S. EPA perfected a CERCLA 107(l) lien on Mr. Ekberg's property. The August 2006 CD resolves all cost recovery against Mr. Ekberg.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Superfund Division contact: Russ Hart, RPM, (312) 886-4484

Region 5 Settles RCRA Transporter Case with EMCO Chemical Distributors, Inc. of North Chicago, IL.

On September 27, 2007, Region 5 filed a Consent Agreement and Final Order settling an administrative Complaint and Compliance Order that was issued to EMCO Chemical Distributors on March 21, 2007. The Complaint alleged that EMCO Chemical, a transporter of hazardous waste: (1) stored 20 shipments of hazardous waste at its North Chicago facility beyond the ten days permitted by the RCRA regulations; (2) improperly accepted the return of a shipment of hazardous waste after the disposal facility rejected the shipment; and (3) failed to label ten drums of hazardous waste with the accumulation start date or the words "Hazardous Waste." EPA was seeking a civil penalty of \$328,705 for these violations. The compliance order addressed concerns that there may have been spills or other releases in the areas where the drums of hazardous waste were stored for more than ten days.

EMCO agreed, as a supplemental environmental project, to replace their underground piping system which connects the chemical loading/unloading area to the 80 tanks in their tank farm, with an aboveground piping system. This aboveground piping system will cost at least \$200,000 to design and install. EMCO has also agreed to pay a civil penalty of \$52,000, and will retain a consultant to sample, analyze and cleanup, if necessary, the area where the hazardous waste was stored for more than ten days.

Office of Regional Counsel Contact: Terry Stanuch, (312) 886-8044 and technical contact: Judith Kriz, (312) 353-6057

United States Lodges Consent Decree Requiring Equistar Chemical, Lp To Spend \$125 Million To Reduce Pollution.

The Department of Justice filed a Complaint and Consent Decree resolving a myriad of air, water and hazardous waste violations at seven of Equistar Chemical's petrochemical plants in Texas, Illinois, Iowa and Louisiana. The Consent Decree, lodged in the Northern District of Illinois on July 18, 2007, requires Equistar to invest in comprehensive control and operational measures expected to significantly reduce air, water and hazardous waste pollution from the seven manufacturing facilities. The violations were primarily identified during NEIC inspections of Equistar's Morris, Illinois, and Channelview, Texas, olefin production facilities. The total cost of the injunctive relief required under the Consent Decree is estimated at \$125 million. In addition to the injunctive relief, Equistar will pay a civil penalty of \$2.5 million in cash (to be divided among the federal government and participating states including Illinois) and spend \$6.56 million on federal and state supplemental environmental projects. Region 5 was actively involved in the negotiations of the Consent Decree which requires \$225,000 for state community-based supplemental environmental projects in Illinois including: \$70,000 to the Minooka, Illinois, Community School District to fund the purchase of a new school bus that is biodiesel fuel compatible; \$105,000 to the Illinois EPA Clean School Bus Program to be used within Grundy, Kendall, Kankakee, Livingston, or LaSalle counties to reduce emissions from diesel-powered school buses by installing EPA certified oxidation reduction catalysts, particulate filters, or anti-idling technologies; and \$50,000 to the Grundy County Emergency Management Agency – Hazmat Team to fund the purchase of emergency response equipment.

Office of Regional Counsel Contact: Susan Prout (312) 353-1029

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Fairway International Corp.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$43,320. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$1,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-6322

Region 5 enters an administrative Consent Agreement and Final Order (CAFO) resolving alleged EPCRA 312 violations at Five Star Laundry in Chicago, Illinois.

On September 19, 2006, Region 5 filed a four-count Administrative Complaint alleging that Five Star Laundry had violated Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) by failing to submit an Emergency and Hazardous Chemical Inventory form for sulfuric acid for each of calendar years 2003, 2004 and 2005. The Complaint cited one violation each for missing forms for 2003 and 2004, and two violations for late-filed forms for 2005, resulting in a total proposed penalty of \$43,298. The Complaint arose out of a May 2006 inspection where U.S. EPA determined that Five Star Laundry had over 700 pounds of sulfuric acid at its facility on at least one occasion in 2003 and over 2,900 pounds of sulfuric acid in 2004 and 2005. Sulfuric acid is an extremely hazardous substance under EPCRA with a minimum reporting threshold level of 500 pounds.

On February 23, 2007, Region 5 issued a CAFO resolving the alleged EPCRA 312 violations. Under the terms of the CAFO, in consideration of Five Star Laundry's quick return to compliance, cooperation, and the facts and circumstances of the case, including Five Star Laundry's substantial reduction in the amounts of sulfuric acid used at the facility, Region 5 reduced the civil penalty from \$ 43,298 to \$19,000.

Office of Regional Counsel Contact: Reginald A. Pallesen, (312) 886-0555; additional contact: James Entzminger, (312) 886-4062

EPA Region 5 Signs a Consent Agreement and Final Order with Flavorchem Corporation in Downers Grove, Illinois.

On May 16, 2007, EPA, Region 5, and Flavorchem Corporation (Flavorchem) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Clean Air Act at Flavorchem's manufacturing plant in Downers Grove, DuPage County, Illinois. Flavorchem produces flavoring extracts, syrups and food colorings at its facility. Flavorchem has operated several emission sources of volatile organic compounds including a north wet mix area and coffee press, a south wet mix area and cocoa press, a spray dryer, a dry mix room with small mixers, a dry mix room with a mega-mixer, a fragrance room, a packaging room, a bean dryer and vanilla concentrator at the facility. DuPage County was designated as a severe nonattainment area for the 1-hour ozone standard from 1992 until EPA designated DuPage County as a moderate nonattainment area for the 8-hour ozone standard effective June 15, 2004 and revoked the 1-hour ozone standard effective June 15, 2005. The CAFO alleges that Flavorchem failed to obtain construction and operating permits for the emission sources at its facility in violation of the Illinois State Implementation Plan, failed to submit a Title V permit application, and operated without a Title V operating permit in violation of Sections 502 and 503 of the Act, 42 U.S.C. 7661a and 7661b. Flavorchem submitted a complete permit application to Illinois EPA on October 10, 2006 and will be in full compliance with the permitting requirements upon issuance of a permit. EPA calculated a preliminary civil penalty of \$125,042 for these violations and notified Flavorchem of this amount in a pre-filing and opportunity to confer letter. In

consideration of the facts of this case, Flavorchem's cooperation with U.S. EPA and Flavorchem's good faith efforts to comply, EPA determined and Flavorchem agreed that the appropriate civil penalty to settle this action is \$75,025.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670;
Tanya Hurlburt, additional contact, (312) 353-4145

U.S. District Court for Southern District of Illinois Grants Motion for Summary Judgment in Prevention of Significant Deterioration Permit Expiration Case.

On October 17, 2006, the United States District Court for the Southern District of Illinois ruled on cross-motions filed by the Sierra Club and defendant power companies concerning the proper interpretation of 40 C.F.R. §§52.21(b)(9) (commence as applied to construction) and 52.21(b)(11) (begin actual construction). *Sierra Club v. Franklin County Power of Illinois et al.*, Case No. 05-cv-4095-JPG. Specifically, the Court determined that the defendants had neither begun a continuous program of actual on-site construction nor entered into a binding agreement to undertake a program of actual construction within 18 months of receipt of their Prevention of Significant Deterioration (PSD) permit. As a result, the Court granted Sierra Club's motion for summary judgment, enjoined the defendants to stop actual construction until they have obtained a valid PSD permit and directed the parties to submit further briefing on penalties.

At the outset, the Court dismissed the defendants' jurisdictional arguments by finding that: 1) the fact that no agency had explicitly determined that defendants' permit had expired was irrelevant to their cause of action objection, as this was not a challenge to a final agency action but rather a citizen suit to compel action; 2) permit shields are relevant only for Title V permits; and 3) Sierra Club had established sufficient injury-in-fact to provide standing for at least one of its members. The Court similarly dismissed the defendants' constitutional objections, noting that their Due Process concerns were "nonsensical" (slip op. at 17) and their Separation of Powers argument was "schizophrenic" (slip op. at 18).

In its discussion on the merits, the Court provided a well-reasoned and detailed analysis of the specific facts to determine that the defendants' activities "were simply not the kind of continuous or on-going construction activities of a permanent nature" listed in the regulations and EPA guidance (slip op. at 23). The Court also found that the construction agreements did not provide a "binding commitment to build" (slip op. at 27).

Office of Regional Counsel Primary Contact: Louise Gross, (312) 886-6844

Region 5 signs a pre-filing Consent Agreement and Final Order with Greif Industrial Packaging & Services, LLC and Greif, Inc. (Greif), Alsip, Illinois, resolving Clean Air Act violations.

On September 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commencing and concluding, under Section 113 of the Clean Air Act, 42 U.S.C. § 7413, alleged violations of the regulations at 40 C.F.R. Part 63, Subpart Q, related to the use of chromium-based chemicals in two industrial process cooling towers constructed prior to 1994, at Greif's plant in Alsip, Illinois. The chromium-based water treatment chemicals were used as

corrosion inhibitors in the cooling towers. Greif stopped using the chromium-based water treatment chemicals shortly after U.S. EPA inspected the plant. Under the terms of the CAFO, Greif has agreed to pay \$120,000 as a penalty.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237 and Kathryn Siegel, Air Enforcement and Compliance Assurance Branch, (312) 353-1377

Final Order Ratifying Terms of a Consent Agreement with HA International LLC.

On September 14, 2007, a Final Order ratifying the terms of a Consent Agreement and Final Order was signed. The Final Order directs the Respondent to pay a civil penalty in the amount of Eighteen Thousand And Seven Hundred And Sixty-Three (\$18,763.00) dollars. The Region's initial demand was Thirty Two Thousand And Two Hundred and Seventy-Two (\$32,272) dollars.

Section 313 of the Emergency Planning and Community Right To Know Act (EPCRA) requires certain facilities to file Toxics Release Inventory (TRI) forms. HA International LLC operates a facility in Oregon, Illinois, and failed to file timely a Form R for calendar years 2002, 2003 and 2004 to document and report its emissions of ammonia. The Respondent exceeded the 60 days requirement for curing the violations but did not secure an economic benefit from its non-compliance.

The Region initially calculated a penalty in the amount of \$64,544. Consistent with the applicable guidance policies, the Region proposed initially a penalty in the amount of \$32,272, a 50% reduction. In the course of negotiations, the Region reduced the penalty an additional 20% in consideration of "other factors as justice may require." Respondent has agreed to pay a civil penalty in the amount of \$18,763.

Office of Regional Counsel Contact: Steven P. Kaiser, (312) 353-3804

Region 5 enters into a Consent Agreement and Final Order resolving FIFRA violations by Henry W. Peabody, Inc. (Peabody), Lynnfield, MA.

On May 24, 2007 Region 5 entered into a Consent Agreement and Final Order that resolves claims against Henry W. Peabody, Inc., Lynnfield, MA. U.S. EPA filed a civil administrative action against Peabody, commenced and concluded pursuant to the Act and 40 C.F.R. § 22.18 on May 24, 2007. The action charged that the company violated Section 12(a) of the Act and 40 C.F.R. § 152.15 by distributing or selling an unregistered pesticide.

After Region 5 received a trade complaint regarding Peabody (which is located in Massachusetts), the Region discussed the matter with Headquarters and Region 2 enforcement. Thereafter Region 2 deferred the enforcement case to Region 5. Specifically, the Agency alleged that from March 2005 to December 2005, when Region 5 issued a stop sale order, the company distributed or sold burlap, jute and hessian cloth that had been treated with copper ammonium sulfate and copper sulfate, which had a pesticidal purpose and for which Peabody made pesticidal claims. The company distributed or sold the product without first registering the product, in violation of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Originally, the Agency sought the statutory maximum penalty but after negotiations, discussions with Headquarters, and evaluating litigation considerations, the Agency agreed to accept respondents' proposal of \$52,500 as an appropriate penalty. The company is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631, Dave Star, WPTD, (312) 886-6009

U.S. EPA reaches administrative settlement for violation of the CERCLA regarding notification requirements for released substances.

Hondo Incorporated d/b/a/ Coca-Cola Bottling Company of Chicago operates a business that stores and uses hazardous substances, such as anhydrous ammonia. On March 20, 2006, there was a release of approximately 563 pounds of anhydrous ammonia from the facility due to a leak from one of its storage tanks. Though Hondo immediately addressed and remedied the leak, it did not report the release to the National Response Center for a little over three hours.

On October 16, 2006, U.S. EPA filed an administrative complaint against the Respondent for violations of CERCLA. Specifically, Respondent failed to immediately notify the National Response Center of a release of a reportable quantity of anhydrous ammonia from its facility. After receiving the complaint, the parties entered in to settlement negotiations and the parties were able to reach a settlement. The Respondent agreed to sign a Consent Agreement and Final Order (CAFO) which requires the Respondent to assure that it is now in compliance and pay a civil penalty of \$10,478. The CAFO was signed by the Region 5 Regional Administrator on January 19, 2007 and filed with the Regional Hearing Clerk on January 22, 2007.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

United States Lodges Consent Decree for CERCLA Remedial Action, Cost Recovery and Natural Resource Damages for Woodstock Municipal Landfill, Woodstock, IL.

On August 1, 2007, the U.S. Department of Justice, on behalf of EPA Region 5 and the U.S. Department of Interior, lodged in the U.S. District Court for the Northern District of Illinois a civil Consent Decree regarding the Woodstock Municipal Landfill Site in Woodstock, Illinois. Under the Decree, the two settling parties, City of Woodstock and Honeywell International Corporation, will reimburse EPA for all CERCLA past and future response costs and complete the remedial action at the Site and also pay an amount in natural resource damages.

The Woodstock Municipal Landfill is a former publicly-owned solid waste landfill that received various municipal and industrial wastes through the 1950s and 1960s, allegedly including heavy metals-containing sludge from a former "Autolite" plant owned by a Honeywell International predecessor. EPA issued a ROD for the Site in 1993 identifying a cap and pump-and-treat remedy, which the responsible parties declined to implement; they petitioned the agency for a ROD amendment. Following review, EPA issued an Amended ROD in 1998 and again invited the PRPs to implement the revised remedy; again they declined to do so voluntarily and EPA issued a UAO for remedial action. The

PRPs generally complied with the UAO except for the requirement that they pay all EPA's oversight costs. EPA then made demand for all unpaid costs, and engaged the Justice Department when the PRPs did not respond. The Consent Decree calls for the payment of \$567,000 in past costs, payment of "interim" response costs incurred during the pendency of negotiations, and payment of EPA's future costs, in addition to payment of \$400,000 to the Department of Interior as natural resource damages. The Decree also calls for completion of the remedial action, which now generally consists of wetlands restoration, monitoring of groundwater contaminant attenuation, and review of institutional controls

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814; Superfund Division Contact: Brad Bradley, (312) 886-4742

Consent Agreement and Final Order executed in EPCRA Administrative Action.

On May 29, 2007, the Regional Administrator executed a Consent Agreement and Final Order (CAFO) in an enforcement action, resolving an Administrative Complaint filed against Hospital Laundry Services (HLS), under the Emergency Planning and Community Right-to-Know Act (EPCRA). The CAFO provides for payment of a \$41,242 civil penalty by Respondent for violations of Section 312 of EPCRA, 42 U.S.C. § 11022.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947

Region 5 enters into a Consent Agreement and Final Order Resolving Violations of Section 3008 RCRA by Hutton Auto Body, Inc., Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body, located in Streamwood, Illinois.

On January 25, 2007, the Director of Waste, Pesticides and Toxics Division, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under RCRA Section 3008 pursuant to which Hutton Auto Body, Inc; Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body agreed to pay a civil penalty of \$100. The CAFO was filed with the Regional Hearing Clerk on January 31, 2007. U.S. EPA initially calculated a proposed a penalty of \$21,175 against Hutton Auto Body, Inc. and a penalty of \$6,875 against Bernice Hutton and Jimmie Hutton, for a total combined penalty of \$28,050. For settlement purposes, this number was mitigated down to \$100 based on financial documentation that supported a significant inability to pay a penalty.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

Hazardous Waste Reclamation Company Officials Sentenced For a Hazardous Waste Conspiracy.

On March 9, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental (USA), Inc., plant manager John Pugh and former Hydromet warehouse supervisor Ronald Martin were sentenced for their roles in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency (IEPA). Pugh received

nine months' imprisonment, nine months' home confinement and two years' probation for the crime of conspiracy; and Martin received one year of probation for making a false statement to IEPA. On February 28, 2007, former Hydromet chemist Douglas Bennett was also sentenced, to two years of probation for the crime of conspiracy. Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; William A. Morgan, its former CEO; Pugh; Julianna H. Bauter, its former environmental compliance official; Bennett; and Martin, with the conspiracy. The defendants were also variously charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Fourth Official of Defunct Hazardous Waste Reclamation Firm Pleads Guilty.

On January 26, 2007, Julianna H. Bauter, the former environmental compliance officer for Hydromet Environmental (USA), Inc., pleaded guilty to making a false statement to the Illinois EPA concerning the prior disposal of wastes from the Hydromet facility in Newman, IL. The company and five of its former officers and employees have variously been charged with making false statements to Illinois EPA, illegally transporting hazardous waste without a manifest, and conspiracy. Three former Hydromet employees pleaded guilty previously. The former President of Hydromet has not returned to the U.S. to answer the charges, and is currently considered a fugitive. Hydromet was a hazardous waste reclamation firm which shut down operations in 1988, and then attempted to re-open and obtain a new RCRA permit in 2001. According to the indictment, after Hydromet shut its doors, Illinois EPA obtained a court order requiring existing hazardous wastes to be treated or disposed of properly. Instead, Hydromet employees shipped tons of hazardous waste containing lead, cadmium and selenium to a dilapidated warehouse in East Chicago, Indiana and hid cyanide-bearing hazardous wastes on-site. When the cyanide-bearing wastes started eating through the storage tanks, Hydromet employees disposed of the wastes by falsely declaring them to be non-hazardous. Hydromet employees then falsely told Illinois EPA that the Newman facility was fully operational and ready to receive hazardous wastes, when in fact many necessary components and items of equipment were missing, broken or inoperable. Under a plea agreement entered in court, Bauter faces a maximum sentence of two years of probation, a fine of \$3,000 and up to 90 days home confinement. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and Illinois EPA jointly investigated this matter. Sentencing was set for May 10, 2007.

Office of Regional Counsel Contact: David Taliaferro, (312) 886-0815

Hazardous Waste Reclamation Company Official Sentenced For a Hazardous Waste Conspiracy.

On June 1, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental, Inc., environmental compliance official Julianna Bauter was sentenced to 30 days of home confinement, a \$3,000 fine and one year of probation for her role in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency

(IEPA). Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; Bauter; William A. Morgan, its former CEO; John Pugh, its former plant manager; Douglas Bennett, its former chemist; and Ronald Martin, a former warehouse supervisor, with the conspiracy. The defendants were also variously charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each.

According to the indictment, Hydromet owned and operated an unsuccessful hazardous waste reclamation facility in Newman, Illinois. To continue operation and avoid the costs of safely disposing of hazardous wastes, the defendants stored hazardous wastes in a dilapidated warehouse in East Chicago, Indiana; hid other hazardous wastes on-site from the IEPA, then disposed of the wastes by falsely declaring them to be non-hazardous materials, including by sending them to a non-hazardous landfill in Indianapolis, Indiana; and falsely told IEPA that the Newman facility was fully operational and ready to receive hazardous wastes when in fact many necessary components and items of equipment were missing, broken or inoperable. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Illinois Attorney General Files Petitions for Review of U.S. EPA's Orders Denying Petitions to Object to Clean Air Act Operating Permits.

On November 25, 2005 and April 5, 2006, U.S. EPA received petitions from the Illinois Attorney General (IAG) requesting that the Administrator object to Clean Air Act Title V operating permits which the Illinois Environmental Protection Agency (IEPA) proposed to issue to various Midwest Generation coal-fired utilities. The IAG alleged that, because the proposed permits did not include schedules to bring the facilities into compliance with opacity emissions limits, and IEPA did not obtain in the permit applications sufficient information to determine whether the sources were subject to new source review, the proposed permits did not comply with the Clean Air Act and 40 C.F.R. part 70. On June 14 and 20, 2007, the Administrator signed orders denying the petitions. In Petitions for Review filed September 14, 2007, the IAG requested that the United States Court of Appeals for the Seventh Circuit review U.S. EPA's orders.

Office of Regional Counsel Contact: Jane Woolums, (312)886-6720; Genevieve Damico, Air and Radiation Division, (312) 353-4761

EAB denies review in part and remands in part PSD permit for Indeck, Elwood, Illinois.

On September 27, 2006, the Environmental Appeals Board (EAB) issued an order remanding to Illinois Environmental Protection Agency (IEPA) a PSD permit issued to Indeck-Elwood, LLC (Indeck) for the construction of a 660-megawatt coal-fired steam electric generating station in Elwood, Illinois, adjacent to the Midewin National Tallgrass Prairie, a national prairie preserve, on the grounds that 1) the permit includes a condition which allows Indeck to construct a power plant with less capacity than addressed by the permit application; 2) IEPA and Indeck failed to conduct a proper assessment of impairment to soils and vegetation that would occur as a result of the proposed facility; 3) the permit provision exempting all shutdown, startup, and malfunction events from short-

term emission limits is unlawful; and 4) Indeck's proposed particulate matter emissions limit does not reflect Best Available Control Technology (BACT). In addition to these grounds, Petitioners, the Sierra Club and other environmental groups, had challenged the permit on the following grounds, of which the EAB denied review: 1) the permit's sulfur dioxide limits do not reflect BACT because Indeck did not credibly consider the use of low-sulfur coal; 2) the permit unlawfully allows Indeck to burn any solid fuel without defining such term or considering alternative fuels in its BACT analysis; 3) the permit's nitrogen oxide limit does not reflect BACT; 4) IEPA unlawfully failed to set a BACT limit for fluorides; and 5) IEPA erroneously concluded that it has no obligation to consider alternative locations for the proposed facility. In addition, Petitioners raised several challenges relating to the Endangered Species Act (ESA), *inter alia*, that EPA's consultation with U.S. Fish and Wildlife Services generated significant new information about the proposed facility, and that the administrative record should be opened and the public should be afforded to opportunity to comment on this new information. The EAB accepted EPA's position that the ESA, the Clean Air Act and relevant regulations do not provide for public participation or comment on the ESA consultation process as part of a PSD permit proceeding. However, the EAB noted that it may "be prudent" for EPA "to move the ESA consultation process further up in the permit development chain where there is more flexibility to make and implement any ESA-related permit modifications."

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Consent Decree Lodged Requiring Reimbursement of Response Costs at the Johns Manville Site 2 (Former Shooting Range) Superfund Site.

On August 26, 2007, the United States lodged with the United States District Court for the Northern District of Illinois a CERCLA consent decree resolving the liability of four parties and the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. The United States has incurred approximately \$4,500,000 in site costs. The consent decree is subject to a 30-day public comment period before the Court will hear a motion to enter. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games. Waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, (312) 886-6235

Consent Decree Entered Requiring Reimbursement of Response Costs at the Johns Manville, Site 2 (Former Shooting Range) Site.

On September 17, 2007, the United States District Court for the Northern District of Illinois entered a CERCLA 107 consent decree resolving the liability of four parties and the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of

Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. Through this settlement, the United States is recovering approximately 83 percent of the \$4,523,000 in costs incurred for the site. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games and waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, 312-886-6235

Region 5 files Consent Agreement and Final Order with Kastalon, Inc. of Alsip, Illinois.

On August 8, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against Kastalon, Inc. (Kastalon), 4100 West 124 th Place, Alsip, Illinois, for alleged violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and the regulations set forth at 40 C.F.R. §§ 372.22 and 372.30. Region 5 alleged that Kastalon failed to file toxic chemical release inventory forms (Form Rs) for 4,4'-Methylenebis (N,N-dimethyl)benzenamine and trichloroethylene for the calendar year 2001 in a timely manner. Region 5 calculated a proposed penalty of \$3,092. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under the CAFO, Kastalon must pay a civil penalty of \$2,164. The penalty represents a substantial sanction against Kastalon, and will deter future violations of Section 313 of EPCRA.

Office of Regional Counsel Primary Contact: Kevin Chow, (312) 353-6181; Additional Contact: Kenneth Zolnierczyk, (312) 353-9687

Region 5 and H. Kramer Enter Into An Amendment to Consent Agreement and Final Order.

On June 1, 2007, Region 5 and H. Kramer entered into an amendment to the Consent Agreement and Final Order (CAFO) originally filed on March 30, 2006. The original CAFO simultaneously commenced and concluded an action for Clean Air Act violations at H. Kramer's secondary brass and bronze production plant in Chicago, Illinois. In addition to paying a penalty, the CAFO requires H. Kramer to perform a supplemental environmental project (SEP). The SEP requires H. Kramer to modify its baghouse collection system to improve the capture and control of fugitive emissions from two rotary furnaces. Currently, the fugitive emission lines from these furnaces converge and are directed to one baghouse. A second baghouse serves as a backup to handle the combined emissions if the first baghouse fails. The original SEP would connect each furnace to one of the baghouses by installing a separate flue line from each furnace to one of the baghouses.

H. Kramer has requested a modification to the SEP which would allow it to install a baghouse that the company purchased through a bankruptcy sale as a replacement for the backup baghouse that it agreed to connect to one of its two rotary furnaces. The

replacement baghouse has a greater flow rate than the backup baghouse and includes four compartments whereas the old backup baghouse includes one compartment. The new baghouse is expected to improve the ability to control fugitive emissions from the furnace and will be easier to maintain because of its multi-compartment design. The cost of the SEP will increase from \$500,000 to \$780,000. The additional costs include the purchase price of the replacement baghouse, the cost to dismantle, clean and transport the baghouse to the H. Kramer facility, the demolition and disposal of the old backup baghouse, and the erection and connection of the new replacement baghouse. The schedule to complete the SEP will be extended by approximately four months from May 2007 to September 2007. The additional time is required to obtain the necessary permits, demolish the old backup baghouse, and install and test the new baghouse.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670;
Kushal Som, additional contact: (312) 353-5792

Stormwater Finding of Violation Issued to the Village of Lake Zurich, IL.

On September 10, 2007, Region 5 issued a Finding of Violation and Order for Compliance to the Village of Lake Zurich, IL for violations of its Municipal Separate Storm Sewer (MS4) permit. Pursuant to 33 U.S.C. §§1318 and 1319(a), Region 5 ordered the Village to address total suspended solids violations from a stormwater outfall to the southeastern end of Lake Zurich.

Road construction in the Village is contributing excessive sediment loads to the sewer system. The Village maintains a retention pond that requires regular maintenance to trap sediments in the stormwater. The Order requires the Village to maintain this pond and sewer lines in order to properly intercept the sediments entering the system. The Region has also issued a compliance order to the Illinois Department of Transportation to use best management practices at their road construction site.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

U.S. EPA issues RCRA 3008h Administrative Corrective Action Order in Lakeshore Foundry, Inc. of Waukegan, Illinois.

On November 7, 2006, an Agreed Administrative Corrective Action Order in Lakeshore Foundry, Inc., was issued. The Order requires the Lake Shore Foundry (LSF) facility to address hazardous waste contamination (principally lead) above acceptable Federal and Illinois background levels in soil and other effected media; and to provide requisite proof of financial ability to properly perform and/or fund the activities subject to the Order.

The Resource Conservation and Recovery Act (RCRA) § 3008h Order will respond to findings of lead and potentially other hazardous substances at the active metals foundry operated by LSF. The 3008h Order requires LSF to perform a RCRA Interim Measures action and create an accompanying report; create a Description of Current Conditions demonstrating a facility-wide assessment of risks and proposed responses under RCRA; help develop a proposal of final corrective measures with a Statement of Basis; and, implement all appropriately determined final corrective measures at the facility.

The LSF facility is an active metal foundry located at 653 Market Street, Waukegan, Lake County, Illinois. LSF physically borders on the shore of Lake Michigan. The LSF facility property has a 100-plus year history of heavy industrial uses, and LSF has operated in its current capacity and location for at least 50 years. The United States Environmental Protection Agency (EPA) and the Illinois Environmental Protection Agency (ILEPA) sampling inspections at LSF in 2003 and 2004 found toxicity characteristic leaching procedure (TCLP) lead concentrations in foundry sand above the regulatory limit of [40 CFR 261.24](#), as well as indications of other hazardous wastes and constituents pursuant to [40 CFR Part 261](#) EXIT Disclaimer. During 2004-2005, negotiations ensued between EPA and LSF. After internal EPA determinations concerning administrative penalty issues and enforcement approach, a RCRA 3008h Agreed Order was negotiated and issued.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613 and Jill Groboski, RCRA Compliance Section, (312) 886-3890

Region 5 files a Consent Agreement and Final Order to commence and conclude case against MAPEI Inc., West Chicago, Illinois.

On June 15, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against MAPEI Inc. of West Chicago, Illinois, for alleged violations of § 113 of the Clean Air Act and the Illinois SIP. MAPEI's alleged violations stemmed from two instances of failing to obtain a construction permit prior to commencing construction on an emission source. In each case, MAPEI had filed a permit application, but had not received a construction permit until after they began construction. In settlement, MAEPI has agreed to pay U.S. EPA's proposed penalty of \$5,240, and will undertake a pollution prevention Supplemental Environmental Project (SEP) valued at \$34,000. In its SEP MAEPI will reformulate two products, resulting in a projected reduction of hazardous air pollutants (HAPs) of .86 tons per year.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

U.S. District Court enters Summary Judgment on liability in National Lacquer and Paint CERCLA cost recovery case.

On January 4, 2007 the U.S. District Court for the Northern District of Illinois granted U.S. EPA's Summary Judgment Motion on liability at the National Lacquer and Paint Site in Chicago, Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004 EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), penalties for noncompliance with Unilateral Administrative Orders (UAOs) under Section 106 of CERCLA, and penalties against the operator for failure to answer EPA's information request. This decision grants EPA summary judgment on liability under Section 107 of CERCLA. EPA's Motion for Summary Judgment as to costs and penalties

has yet to be ruled upon by the Court.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

RCRA Complaint Filed Against North American EN, Inc.

On September 27, 2007, Region 5 filed an administrative complaint under RCRA against North American EN, Inc. in Elk Grove, Illinois for illegal storage of hazardous waste. A large quantity generator who accumulated waste on-site, North American EN is alleged to have failed in its obligation to have a contingency plan for its facility, and to provide necessary training in emergency procedures to its personnel. Because it failed to comply with the above conditions for exemption from a permit and it had never obtained a permit or interim status, Region 5 alleged that its storage of hazardous waste was illegal. The Respondent North American EN further failed to complete a necessary waste analysis. The complaint seeks a penalty of \$55,748 for the violations.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

Seventh Circuit finds that there is a cause of action under Section 107(a) of CERCLA for responsible parties against other responsible parties when they have undertaken voluntary response actions and do not have a cause of action in contribution available under Section 113(f).

On January 17, 2007, the Seventh Circuit Court of Appeals held in Metropolitan Water Reclamation District of Greater Chicago v North American Galvanizing & Coatings, Inc. that a liable party who undertook a cleanup has a cause of action under Section 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against other liable parties when it has undertaken a voluntary response action and does not have a cause of action for contribution available under Section 113(f) of CERCLA. The U.S. government was not a party in this case but had filed an amicus brief. Four Circuit Courts have now opined on whether Section 107(a) provides potentially liable parties with a cause of action to seek contribution for response costs from other liable parties since the Supreme Court's decision in Cooper Industries v. Aviall Services, Inc., 543 U.S. 157 (2004). The 7th Circuit case is in accord with Consolidated Edison Co. v. UGI Utilities, 423 F.3d 90 (2d Cir. 2005), and Atlantic Research Corp. v. United States, 459 F.3d 827 (8th Cir., August 11, 2006). A contrary position was issued by the Third Circuit in E.I DuPont De Nemours & Co. v. United States, 460 F.3d 515 (3d Cir. 2006). Petitions for certiorari review by the Supreme Court have been filed for all 3 of these other cases. On January 19, 2007, the Supreme Court granted certiorari for review of the Atlantic Research Corporation decision.

Office of Regional Counsel Contact: Lawrence Kyte, (312) 886-4245

U.S. EPA enters into Administrative Order on Consent with North Shore Gas for an RI/FS at two sites in Waukegan, Illinois.

North Shore Gas operated manufacture gas plants (MGP) in Waukegan, Illinois. Two of these locations were: the North Plant Site located at 849 Pershing Road, Waukegan, Lake County, Illinois and the South Plant Site located at 2 North Pershing Road and 1 South Pershing Road, Waukegan, Lake County, Illinois. Both properties covered by the

agreement are relatively close to Lake Michigan. MGPs produced gas from coal from the mid-19 th through the mid-20 th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, North Shore Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater. Groundwater flow is toward Lake Michigan. On July 23, 2007, the U.S. EPA signed an Administrative Order on Consent with North Shore Gas. Pursuant to the terms of the AOC, the North Shore Gas agreed to conduct a Remedial Investigation and Feasibility Study (RI/FS) at each Site and to pay oversight costs incurred by the U.S. EPA at each Site. Neither Site is on the National Priorities List but both are considered sites under the Superfund Alternative Site Program. Following the completion of the RI/FS, a final cleanup determination will be made for each site by U.S. EPA, in consultation with Illinois EPA, the City of Waukegan and area residents.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Owner of Former Metal Finishing Company Indicted on Environmental and Labor Embezzlement Charges.

On August 21, 2007, the owner of a former metal finishing business was arrested on federal environmental and labor charges. The defendant, David Jacobs, was the president and owner of the former Northwestern Plating Works, Inc. (NPW), located at 3114 South Kolin Avenue, Chicago, Illinois. NPW used cyanides, acid, corrosives, brass, copper, zinc and nickel in its electroplating business. The defendant was charged in an indictment returned by a federal grand jury on August 16, 2007, with one count of improperly storing and handling hazardous wastes under the Resource Conservation and Recovery Act. He was also charged with one count of embezzling more than \$830,000 from an employee pension plan. The indictment is an allegation only, and the defendant is presumed innocent of these charges unless proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Region 5 signs a Consent Agreement and Final Order with Ottawa L.L.C.

On April 11, 2007, Region 5 signed a CAFO with Ottawa L.L.C. (Respondent) that both initiates and fully resolves the TSCA Section 16, 15 U.S.C. § 2615(a), administrative action. On December 22, 2005, Region 5 sent Respondent a pre-filing notice letter informing Respondent that it violated the Lead Disclosure Rule, 42 U.S.C. § 4851 of TSCA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$28,600 for violations which originated with the failure to include certain information, either within each contract or as an attachment to each contract, before Respondent's lessees were obligated under leasing contracts. The information Respondent failed to include in the contracts included:

- a Lead Warning Statement;

- a statement disclosing the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence;

a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist;

a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet; and the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

In consideration of Respondent's cooperation and other factors as justice may require, Region 5 agreed to reduce the proposed penalty to \$20,060 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joana Bezerra, (312) 886-6004

United States and the State of Illinois File Complaint and Consent Decree Against PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively, Defendants) by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking.

Beginning in June 2006, U.S. EPA and ATSDR collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern.

The proposed Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants' key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled. With respect to Defendants' Other Gathering Facilities (gathering facilities that are not identified as Key Gathering Facilities), if at any time, valid monitoring conducted within a one mile radius of one of the Other Gathering Facilities shows an H₂S exceedance of 70 ppb averaged over thirty minutes, or if there is no valid monitoring data for that Other Gathering Facility, then U.S. EPA, after consultation with the Illinois EPA (IEPA), will determine whether any control measures are necessary to adequately protect human health and welfare and the environment after consideration of Defendants' reports, the results of any valid monitoring and other investigation performed by U.S. EPA and/or IEPA, and in

consideration of (i) the impact of the emission source and the potential control measure (i.e., proximity, emission contribution); and (ii) technical and practical feasibility of the potential control measures.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division Contacts: Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA Contact: Cary Secrest, (202) 564-8661; and DOJ Contact: Michael Zoeller, (202) 305-1478

United States District Court Enters Consent Decree Between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

Following the close of the public comment period, on June 6, 2007, the United States District Court for the Southern District of Illinois entered a Consent Decree between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively “Defendants”). On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with the Defendants by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking. No comments were submitted regarding the proposed settlement.

The Consent Decree is the result of expedited negotiations between the United States, the State of Illinois and Defendants. Beginning in June 2006, in response to local citizens’ complaints, U.S. EPA and the Agency for Toxic Substances and Disease Registry collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern. The highest five minute average concentration was 873 parts per billion by volume (ppb) at a residence in Petrolia, Illinois. At the same location, the highest hourly concentration was 417 ppb, with maximum hourly values often over 200 ppb. At least one monitor detected concentrations over 1,000 ppb, over a 1-minute averaging time. The highest readings were recorded in the evening to morning hours, when most people are at home. ATSDR has established an acute inhalation minimal risk level (MRL) at 70 ppb based on a 30-minute exposure.

The Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants’ key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants are in the process of installing elevated flares at six gathering facilities, specifically Newell, Robins, Johnson, Boyd, Westall and Cummins facilities (hereinafter “Key Gathering

Facilities”). Elevated flares are designed to destroy H₂S emissions from wells, tanks, oil truck loading operations and emergency pits. Since lodging of the Consent Decree, Defendants have installed a vapor collection system at each of the Key Gathering Facilities to collect vapors displaced from tanks, cisterns and other vessels and direct these vapors to a flare. Defendants have installed an automated electric kill system, designed to automatically shut off electricity to pumps on all oil wells to prevent any overflow of brine water to an emergency pit, for all active oil wells tied to the Newell, Robins, Johnson and Boyd gathering facilities. Based on the effectiveness of the floating cover system and the automated electric kill system, U.S. EPA will evaluate the need to install addition floating cover systems and/or automated electric kill systems. Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas. One of the sites is located in the southern half of the Lawrence Wellfield at a residence in close proximity to two other gathering facilities that are not among the Key Gathering Facilities. In addition, U.S. EPA is monitoring sulfur dioxide at two of the three residential sites.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division Contacts: Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA Contact: Cary Secrest, (202) 564-8661; and DOJ Contact: Michael Zoeller, (202) 305-1478

U.S. EPA enters into Administrative Order on Consent with Peoples Gas for removal work at three sites in Chicago, Illinois.

Peoples Gas operated a number of manufacture gas plants (MGP) in various locations throughout Chicago, Illinois. Three of these locations were: the 22 nd Street Station, located at 2200 South Racine Avenue, Chicago, Illinois; the Hough Place Station, located at 2500 S. Corbett St., Chicago, Illinois; and the Pitney Court Station, located at 3052 Pitney Court, Chicago, Illinois. All of the properties covered by the agreement are relatively close to the Chicago River, which was a transportation route when the MGP facilities operated. MGPs produced gas from coal from the mid-19th through the mid-20th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, Peoples Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater and adjoining Chicago River. Removal work was undertaken and is on-going at each of these sites under the Illinois Site Remediation Program.

On June 5, 2007, the U.S. EPA signed an Administrative Order on Consent with Peoples Gas. Pursuant to the terms of the AOC, the Respondent agreed to continue the on-going removal work at the three sites under U.S. EPA oversight and to pay the oversight costs incurred by the U.S. EPA at the sites.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region settles EPCRA 313 Reporting Case against Plaspros, Inc.

On September 29, 2006, Region 5 filed a combination Complaint/Consent Agreement and Final Order (CAFO) resolving an administrative case under Section 313 of EPCRA, 42 U.S.C. 11023 , against Plaspros, Incorporated (Respondent), located in McHenry, Illinois. The Region alleged that the Respondent failed, as required, to submit to the U.S. EPA and to the State of Illinois a Form R for Toluene for the 2002 calendar year, on or before July 1, 2003. The Region's inspection of the Plaspros facility revealed that during the calendar year 2002, Respondent as defined by 40 C.F.R. 372.3, the toxic chemical toluene, listed at 40 C.F.R. 372.65, in quantities exceeding the 10,000 pound threshold for reporting set forth at Section 313(f) and at 40 C.F.R. 372.25, but that no Form R had been filed for the chemical. The Respondent has subsequently come into compliance by submitting the required Form R. The proposed civil amount for the violation of \$18,700 was reduced in the CAFO to \$14,000 in recognition of Respondent's good faith and co-operation.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

Charges filed in E. St. Louis asbestos renovation.

On January 19, 2007, Charles Powell and Isaiah Newton were charged with 7 felony violations of the Clean Air Act and one count of conspiracy arising from the improper removal and disposal of asbestos from a building in East St. Louis, IL. According to the Indictment, in 2002, Powell hired Newton to supervise a work crew at the Spivey Building. Pipe insulation, floor tile and transite paneling in the building contained asbestos. Powell and Newton are charged with knowingly failing to notify the Illinois EPA about the project, failing to remove the asbestos before commencing the renovation, removing the asbestos without a trained representative present, removing the asbestos without adequately wetting it, as well as violations of asbestos disposal requirements. Each count carries a potential penalty of 5 years imprisonment and/or a fine of up to \$250,000. Criminal defendants are presumed innocent of the charges unless proven guilty beyond a reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Environmental groups appeal EAB's decision denying petition for review of PSD permit for coal-powered electricity generating plant in Washington County, Illinois.

On October 25, 2006, the Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch filed with the 7th Circuit a Petition for Review of the Environmental Appeals Board's (EAB) decision of August 24, 2006, which denied review of a Prevention of Significant Deterioration (PSD) permit issued by the Illinois Environmental Protection Agency (IEPA), which has a delegated PSD program, to Prairie State Generating Company, LLC, authorizing the construction of a 1500-megawatt pulverized coal-fuel powered electricity generating plant in southern Illinois. The petitioners, in their appeal to the EAB, had challenged IEPA's determinations of the "best available control technology" emission limits for sulfur

dioxide, nitrogen oxides, and particulate matter, taking issue, in particular, with the relatively high-sulfur coal from the mine that will be co-located with the electric generating plant. Petitioners also challenged IEPA's analysis of the facility's air quality impacts, contended that a review of environmental impacts under NEPA was warranted, and argued that IEPA violated environmental justice obligations. The EAB accepted IEPA's position that compelling the use of low-sulfur coal would redefine the facility's basic design or purpose. The EAB also rejected the rest of Petitioners' arguments, finding that Petitioners had failed to meet their burden of demonstrating that IEPA's determinations were either factually or legally "clearly erroneous" or otherwise warranted review.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Consent Agreement and Final Order executed in RCRA Administrative Action for Redeen Engraving Company and Floyd W. Redeen.

On November 9, 2006, the Regional Administrator executed a Consent Agreement and Final Order ("CAFO") in an enforcement action, resolving an administrative complaint filed against Redeen Engraving Company ("the Company") and Floyd W. Redeen, under the Resource Conservation and Recovery Act ("RCRA"). The CAFO provides for payment of a \$100 civil penalty by Mr. Redeen for the Company's violations of state authorized RCRA regulations in the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

On June 19, 2006, a Region 5 official, on delegated authority of the Administrator, filed a Complaint and Compliance Order, alleging in two counts that the Company violated the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), in that the Company: (1) stored hazardous waste without having a permit; and (2) failed to document hazardous waste determinations. Prior to the filing of the Complaint, the Company sold its engraving business and was dissolved by Mr. Redeen, its sole shareholder. While under Illinois law, as sole shareholder Mr. Redeen is liable for the Company's penalty in an amount equal to his distribution of the Company's assets, a thorough analysis of Mr. Redeen's financial circumstances by an agency financial analyst revealed that he had an ability to pay only a nominal penalty. Consequently, the Administrator's Delegated Complainant has agreed to resolve this matter on Mr. Redeen's payment of \$100.

Office of Regional Counsel Primary Contact: Richard Wagner, (312) 886-7947

Decatur Man Imprisoned For Illegal Dumping into the Sangamon River.

Ronald Mark Davenport, of Decatur, Illinois, was sentenced January 19, 2007 to 3 months in prison following his plea to the charge of illegally dumping toxic pollutants into the Sangamon River in violation of the federal Clean Water Act. In addition, Federal District Judge Michael McCuskey required Davenport to serve 90 days on home confinement and 12 months on supervised release. Davenport, an employee and partner of Able One Sealcoating of Decatur, previously pleaded guilty to charges that he stopped at the Decatur Bulk Watering Station on September 19, 2004, to purchase water to clean tar and chemicals from his tank truck. The company used a 1,000 gallon tank mounted on a pickup truck known as "Big Sue" to haul waterproof coatings to work sites. Davenport

admitted that he had pumped more than 250 gallons of water into the tank, then opened the tank drain and discharged at least 50 gallons of wastewater containing toxic pollutants into the water station's drain. At that time, the tank contained an unknown quantity of tar and other toxic chemicals. The water station's drain was designed to direct water to the Sangamon River, approximately 100 yards from the water station.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

The United States files a complaint against the operators of the Crescent Plating Superfund Site.

On June 6, 2007, the Department of Justice filed a CERCLA complaint in the Northern District of Illinois, Eastern Division, on behalf of U.S. EPA and against Paul Carr and James Saporito. The complaint is for cost recovery pursuant to Section 107(a) and for penalties for unreasonably failing to comply with an information request pursuant to Section 104(e). The complaint alleges that Paul Carr and James Saporito are liable for response costs as operators of the facility at the time of disposal. The complaint also alleges Paul Carr unreasonably failed to comply with an information request and therefore should pay a civil penalty of \$32,500 per day from August 15, 2005. U.S. EPA conducted a time-critical removal action at the former plating facility between December 2003 and June 2004 and has incurred almost \$1 million in un-reimbursed response costs as of June 22, 2006.

The United States settled with Mike Sahli and Sahli Enterprises, Inc. to resolve their liability at the Site on May 22, 2006. The Settling Defendants paid \$225,000 in exchange for contribution protection, a covenant not to sue, and the release of a federal lien on the property.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Steven Faryan, (312) 353-9351. Department of Justice Contact: Jennifer Lukas-Jackson, (202) 305-2332

Court enters a Consent Decree for recovery of response costs at the Cross Brothers Pail Recycling Superfund Site in Kankakee, Illinois.

On October 24, 2006, the District Court for the Central District of Illinois entered a Consent Decree between U.S. EPA and three responsible parties that were named by U.S. EPA as defendants in a cost recovery complaint: the Sherwin-Williams Company, the Glidden Company, and Specialty Coatings, Inc. Under the terms of the Consent Decree the Defendants are required to pay \$200,000 into a site-specific special account. On September 9, 1983, the Cross Brothers Site was added to the National Priorities List, and on September 28, 1989, U.S. EPA issued a Record of Decision that required installation of a soil flushing system, and extraction and treatment of contaminated groundwater to attain identified cleanup standards. The Defendants performed a remedial design and remedial action of the selected remedy under a Unilateral Administrative Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). On February 29, 2000, the Department of Justice filed a complaint for response costs against the Defendants.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Terese Vandonsel, (312) 353-6564

7th Circuit to hear oral argument in *Sierra Club et al. v. U.S. EPA on PSD permit appeal.*

On May 31, 2007, at 9:30 a.m., the U.S. Court of Appeals for the Seventh Circuit will hear oral argument in the PSD permit appeal of *Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch*, Petitioners, v. *United States Environmental Protection Agency*, Respondent, and *Prairie State Generating Company, LLC*, Intervenor-Respondent. The issues on appeal are 1) Did the Environmental Appeals Board (EAB) reasonably construe the CAA and the record in this case when it ruled that the Illinois EPA was not required to evaluate, as part of the BACT analysis for the Prairie State Generating Company (Prairie State) PSD permit, the energy, environmental and economic impacts of importing low-sulfur coal to fuel a proposed electricity generating plant, where this control option would fundamentally change the design of the facility proposed by Prairie State to use a 30-year on-site supply of coal; and 2) Did the EAB reasonably find that the proposed facility would not contribute to violation of the recently-adopted 8-hour ozone NAAQS in the neighboring St. Louis air quality area, and that Illinois EPA's use of the 1-hour ozone modeling as a surrogate for the newer 8-hour standard was not inappropriate.

On August 24, 2006, the EAB denied Petitioners' request for review of a PSD permit issued to Prairie State for construction of a proposed 1500-megawatt pulverized coal-fuel powered electricity generating plant to be located in Washington County, Illinois. The facility would be located at the mouth of a new mine, also developed by Prairie State, which would provide the principal source of coal fuel used at the facility. Petitioner originally challenged the permit on 16 grounds, but is appealing only the above-mentioned two issues.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

7th Circuit finds in favor of EPA in CAA case.

In *Sierra Club, et al. v. U.S. Environmental Protection Agency and Prairie State Generating Company, LLC*, No. 06-3907 (August 24, 2007) the Seventh Circuit upheld the EAB's ruling that the Illinois Environmental Protection Agency (IEPA) did not unreasonably exclude the use of low sulfur coal from its BACT analysis for a power plant to be built at the mouth of a mine that will only produce high-sulfur coal. Petitioners had claimed that the IEPA improperly rejected consideration of low-sulfur coal as a method for controlling emissions of SO₂ from the proposed facility at Step 1 of its BACT analysis, that the IEPA had improperly treated low-sulfur coal as "redefining" the source, and that the IEPA violated the statutory requirement to consider "clean fuels." The EAB found that because the project consisted of both the construction of a power plant and a mine at the mouth of the power plant, which would supply coal to the plant for the approximate 30-year expected life of the plant, IEPA did not err in its view that requiring Prairie State to use low-sulfur coal from the western states would "redefine the source." The 7th Circuit agreed, noting, in particular, that the EAB correctly found that it was not the burning of low-sulfur coal, but receiving it from a distant mine that required reconfiguring the plant (*i.e.* replacing a half-mile long conveyor belt with a rail spur and facilities for unloading coal from rail cars). *Note:* Illinois is a delegated state for PSD, and

thus U.S. EPA was the Respondent in this action. The court also upheld the EAB's rejection of the Sierra Club's request for review of IEPA's method of determining the facility's compliance with the NAAQS for ozone stated in the new 8-hour standard, by relying on the 1-hour modeling formula as a surrogate, pending EPA's development of a modeling formula specific to the 8-hour standard.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with SLI Corporation *a.k.a.* PMO, Inc.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$18,058. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold five different unregistered pesticides. During settlement discussions, the Respondent agreed to pay a civil penalty of \$8,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-6322

Clean Air Act Consent Decree Entered in U.S. v. Smurfit (N.D. Ill).

On February 7, 2007, the United States District Court for the Northern District of Illinois entered a Clean Air Act consent decree requiring Smurfit-Stone Container Enterprises (Smurfit) to comply with the Illinois State Implementation Plan at the company's Schaumburg, Illinois printing facility. Smurfit will pay a civil penalty of \$325,000, half of which will go to the State of Illinois, a plaintiff-intervenor in the case. The decree specifically requires Smurfit to comply with applicable Volatile Organic Compound (VOC) emission limits by continuing to operate its new regenerative thermal oxidizer at the facility's flexographic and rotogravure printing lines. The decree also requires Smurfit to comply with the Illinois Emissions Reduction Market System regulations, which establish an emission cap-and-trading program for major sources of VOC. The company spent over one million dollars in complying with the injunctive portions of the agreement.

Office of Regional Counsel Contact: Louise Gross, (312) 886-6844

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Star Distributors Incorporated.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$4,550. On June 14, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Power Moth Balls**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$3,640.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terry Bonace, additional contact, (312) 886-3387

Illinois Manufacturing Firm and Owner Plead Guilty To Illegal Hazardous Waste Storage.

On July 27, 2007, TCI Manufacturing, Inc. (TCI) and one of its owners, Michael W. Maynard, pleaded guilty in Bureau County circuit court to criminal storage of hazardous waste, a Class A misdemeanor. TCI manufactures conveyors and other equipment used in quarries and gravel pits at a facility located in Walnut, Illinois. According to the charges filed, in December 2004, the company had collected and was storing over thirty 55-gallon drums of xylene paint waste, some of which was as much as 4-years old, without obtaining a needed RCRA permit. TCI and Maynard pleaded guilty to the charges the same day, and were sentenced in accordance with a plea agreement. TCI and Maynard were each fined \$2,500. TCI and Maynard were also required to pay restitution to the Illinois Environmental Protection Trust Fund in the amount of \$17,500 each and to pay \$50,000 each to the Midwest Environmental Enforcement Association. The case was prosecuted by the Illinois Attorney General's office and was investigated by EPA CID.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Region 5 files FIFRA Consent Order concerning Tri-Ag Distributors, Inc.

On November 20, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. § 136 l(a), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35, resolving claims for civil penalties against Tri-Ag Distributors, Inc., (Tri-Ag). The CAFO simultaneously commenced and concluded EPA's action for the alleged violations of FIFRA. In the CAFO, EPA alleges that Tri-Ag produced pesticides in a Farina, Illinois, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Tri-Ag distributed or sold those pesticides using labels that did not bear a valid establishment registration number.

Tri-Ag has now returned to compliance with the requirements of FIFRA. Under the CAFO, Tri-Ag agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630; David Star, secondary contact, (312) 886-6009

Region 5 enters a RCRA Consent Agreement and Final Order with Trilla Steel Drum Corp. for a \$101,627 civil penalty.

On June 21, 2007, Region 5 and Respondent Trilla Steel Drum Corp. (Trilla) entered into a Consent Agreement and Final Order (CAFO) requiring Trilla to pay a \$101,627 civil penalty for violations of the Resource Conservation and Recovery Act.

On September 29, 2006, Region 5 filed an administrative complaint alleging that Trilla treated hazardous waste in its drying ovens without a permit, failed to make required

waste determinations, improperly handled containers of waste, and did not comply with contingency planning and training requirements. That six-count complaint sought a \$175,846 penalty.

In settlement discussions, Trilla presented mitigating evidence, especially concerning the nature and extent of its training program. Trilla also presented evidence showing that the potential harm to the environment from these violations was minimized because any emissions from the treatment activities were still within the limits of its Title V air permit. Trilla had ceased using its drying ovens even before Region 5 issued its original notice of violation and has certified that it is now in compliance with the RCRA requirements cited in the complaint. Region 5 considered these mitigating factors, along with Trilla's cooperation, under the Agency's RCRA penalty policy, and proposed a revised penalty of \$101,627. Trilla agreed to pay the proposed amount.

Trilla subsequently submitted financial information to Region 5, requesting that it be allowed to pay its penalty in installments due to cash flow issues. While the information was not conclusive, in the interest of resolving the matter quickly, Region 5 agreed to allow Trilla to pay half of the penalty within 30 days of the CAFO's effective date, and the remaining balance (plus \$677.51 of accrued interest on that amount) within 150 days of the effective date.

Office of Regional Counsel Contact: Thomas Krueger, (312) 886-6729; program contact: Spiros Bourgikos, (312) 886-6862

EPA enters Consent Agreement and Final Order with Underground Warehouses, Inc., resolving CERCLA reporting violations.

On September 29, 2006, the Regional Administrator signed a Final Order resolving a violation of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by Underground Warehouse, Inc. (UWI) at its facility located in Quincy, Illinois. Specifically, UWI failed to immediately notify the National Response Center of a release of anhydrous ammonia on August 26, 2005. Under the Consent Agreement and Final Order, UWI will pay a civil penalty of \$14,170 for this violation.

Office of Regional Counsel Primary Contact: Cynthia King, (312) 886-6831

Environmental Compliance Official Charged With Negligence Related to Fish Kill.

On July 10, 2007, in Urbana, Illinois, the United States Attorney for the Central District of Illinois filed a three-count information charging Victoria Ursitti with negligent conduct relating to a July 11, 2002, discharge of ammonia-laden wastewater into the Urbana-Champaign sanitary sewer. Ursitti was an environmental compliance official with the University of Illinois at Urbana-Champaign. According to the charges filed, in spring 2002 the University undertook a boiler-cleaning project that generated thousands of gallons of wastewater with elevated ammonia concentrations. Ursitti was responsible for the project's environmental compliance, but was allegedly negligent in overseeing the discharges. The wastewater contained too much ammonia for the treatment plant to handle, resulting in the wastewater being discharged into a tributary of the Vermillion River. According to the charges filed, the discharged wastewater caused a substantial fish kill as it flowed approximately 40 miles downstream to the Vermillion River. Conviction

on each count carries a potential prison term of up to one year and criminal fines of up to \$100,000. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

EPA Region 5 Signs a Consent Agreement and Final Order with Water Saver Faucet Co. in Chicago, Illinois.

On September 25, 2007, EPA, Region 5, and Water Saver Faucet Co. (Water Saver) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Section 313 of the Emergency Planning and Community Right-to-Know Act at Water Saver's manufacturing plant in Chicago, Illinois. The CAFO alleges that Water Saver failed to submit timely Form R reports for copper and lead for calendar year 2004. The Form R reports were due on July 1, 2005. Water Saver submitted the forms on July 15, 2005. EPA calculated a preliminary civil penalty of \$21,928 for these violations and notified Water Saver of this amount in a pre-filing and opportunity to confer letter. In consideration of the facts of this case, Water Saver's cooperation with U.S. EPA and good faith efforts to comply, EPA determined and Water Saver agreed that the appropriate civil penalty to settle this action is \$15,350. To further mitigate the penalty, Water Saver developed a SEP proposal which the Region did not accept because it is a profitable project. The project involves extraction of metals, primarily copper and nickel, from the solid waste generated by Water Saver. This eliminates the need for disposal of hazardous waste. Water Saver informed EPA that it will implement the project even though it is not acceptable as a SEP. Once implemented, the project will totally eliminate the hazardous waste generated by Water Saver, i.e., approximately 18 gross tons of F006 plating waste per year.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Tony Silvasi, additional contact, (312) 886-6878



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Indiana

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Indiana:

- AgroKey LLC.
- American Iron Oxide Company
- Anchor Glass Container Corp.
- ARG Corporation
- Boisture, Timothy A. (2)
- BP Products North America, Inc.
- Bunge North America, Inc.
- C&D Technologies, Inc.
- Calumet Containers
- CBS Corporation
- Cinergy Corp. (2)
- Colors, Inc.
- Cowen, Neil and Mary Lou
- Crawfordville, Indiana
- Department of Transportation
- Fabian, R.
- Hassan Barrel Company, Inc.
- Indianapolis, IN
- Jackson-Jennings Farm Bureau Coop Association (2)
- Krach, Karen
- Masterwear Corp.
- Meijer, Inc.
- Midland-Impact
- Midwest Sheets Company (2)
- Miller Environmental Co., Inc.
- National Lead Industries
- Port Stop Citgo
- Rapier, Naomi L.
- Raybestos Products Company (2)
- Reece, Richard D.
- Rhodia Inc.
- Rolls Royce Corporation
- Scott Brass, Inc.
- State Of Indiana
- Steel Dynamics, Inc.
- Tate & Lyle Ingredients Americas, Inc.
- Terre Haute
- Transformer Decommissioning, Inc.
- United Phosphorus, Inc.
- Vertellus Agriculture & Nutrition Specialties LLC
- Warsaw Chemical Company, Inc.
- W.J. Hagerty & Sons Ltd, Inc.

Region 5 signs a Combined Complaint and Consent Agreement with AgroKey LLC.

Region 5 initiated this enforcement action in August 2006 when the Region sent a pre-filing notice letter to AgroKey LLC (AgroKey) notifying the company of violations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The violations stemmed from vandalism at the AgroKey facility resulting in release of anhydrous ammonia from the facility in May 2005. AgroKey violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report the release to the National Response Center, the state emergency response commission and the local emergency planning committee. On May 9, 2007, Region 5 signed a combined complaint and consent agreement with AgroKey in settlement of the company's violations of CERCLA and EPCRA. Pursuant to the settlement, AgroKey will pay a penalty of \$37,623. Prior to the settlement, the company installed valve locks on 419 tanks at all of

its facilities, in addition to the 40 valve locks installed at the facility which was the subject of this enforcement action.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ruth McNamara, Superfund Division, (312) 353-3193

Northern District of Indiana enters Consent Decree resolving violations of the Clean Air Act by American Iron Oxide Company and Magnetics, International, Inc.

On November 28, 2006, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by American Iron Oxide Company (Amrox) and Magnetics International, Inc. (Magnetics) at three facilities in Indiana. Specifically, the Complaint in the matter alleged that Amrox and Magnetics had failed to comply with the hydrochloric acid and chlorine emission requirements, as well as the recordkeeping and reporting requirements of the Steel Pickling National Emission Standards for Hazardous Air Pollutants (Steel Pickling NESHAP), Subpart CCC. The settlement addresses violations at Amrox's Portage and Rockport, Indiana facilities, and Magnetics facility in Burns Harbor, Indiana. Under the settlement, Amrox and Magnetics will implement changes at the facilities to come into compliance with the Steel Pickling NESHAP. In addition, Amrox will perform two Supplemental Environmental Projects at the Portage facility. Amrox and Magnetics will pay a penalty of \$100,000 which is based on a finding that the companies had an inability to pay a greater penalty.

Office of Regional Counsel Primary Contact: Cynthia A. King, (312) 886-6831, Sara Dauk, secondary contact, (312) 886-0243

EPA receives adverse ruling in Bankruptcy Matter.

On February 21, 2007, the U.S. Bankruptcy Court for the Middle District of Florida, Tampa Division, in an oral ruling from the Bench, ruled that the United States' claim in the Anchor Glass Container Corporation bankruptcy case will be disallowed. The Judge ruled in response to an objection filed by the debtor's trustee in which the trustee requested that the court disallow EPA's claim because it is a claim for penalties. The United States had responded that the objection was without merit in that it misstated the pertinent provisions of the debtor's reorganization plan and applicable case law. Current case law holds that bankruptcy courts may not categorically disallow penalty claims. EPA asserted a general unsecured claim based on a \$96,901 penalty agreed to by EPA and Anchor Glass Container Corp. in an Administrative Consent Agreement and Final Order (CAFO) which was submitted as part of the proof of claim submitted by the U.S. in the bankruptcy case. In the CAFO, the parties specifically agreed that the penalty would be deemed an allowed claim in the bankruptcy case. The Department of Justice plans to appeal this adverse ruling by filing a Notice of Appeal with the United States District Court.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121

EPA issues a Unilateral Administrative Order to ARG Corporation and Norbert Toubes pursuant to Section 106 of CERCLA (Docket No. V-W-07-C-873).

On July 5, 2007, Region 5 issued a Unilateral Administrative Order ("UAO") to ARG Corporation and Norbert Toubes for the South Bend Lathe Superfund Site in South Bend,

Indiana. Region 5's Site Assessment identified a number of hazardous substances in drums, pails, underground storage tanks, a pit, and electrical transformer reservoirs at the former lathe manufacturing facility. The UAO requires the Respondents, among other things, to properly dispose of the hazardous substances, properly dispose of friable asbestos that pose a threat to the health and safety of cleanup workers, and conduct post-removal sampling to verify completion of the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Ken Theisen, OSC, (312) 886-1959

Environmental contractor receives 5 year prison term.

Timothy A. Boisture, 47, a former partner in an environmental clean-up firm, was sentenced March 6, 2007 to serve five years of imprisonment on each of the two counts of mail fraud on which he was convicted by a jury. The sentences will run concurrently. Boisture's sentence was the longest sentence to date for any crime investigated by the Indiana Inter-Agency Environmental Crimes Task Force.

Boisture's firm was hired in 1999 by the Indiana Department of Environmental Management (IDEM) to properly close 51 abandoned and leaking oil and injection wells in Vanderburgh County, IN. Leakage from the wells and associated equipment had contaminated a pond and a tributary of the Ohio River. Boisture was convicted of fraudulently charging the State of Indiana \$44,824.80 for nonexistent equipment and services and for obtaining more than \$150,000 in kickbacks from subcontractors Boisture hired. Boisture was also ordered to serve three years of supervised release following his prison term and to pay \$492,571 in restitution, of which more than \$330,000 will be made payable to the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

In related cases, former Indiana Department of Natural Resources Oil and Gas Division inspector Donald G. Veatch, age 58, of Francisco, IN, Carl F. Hanisch, age 72, of Mt. Carmel, IL, and Bi-State Pipe Co., Inc. were also sentenced following their earlier guilty pleas to making false statements. Veatch additionally pleaded guilty to bank fraud. Veatch was the state inspector assigned to the Vanderburgh County well closing project, and Hanisch and Bi-State Pipe Co., Inc. were sub-contractors. All three admitted knowingly making false statements about the equipment used to plug the wells. In addition, Veatch admitted that a company he owned received over \$110,000 from Boisture's firm purportedly for wastewater disposal. Veatch then paid Boisture kickbacks of over \$100,000 out of the funds his company received.

Veatch received one day in jail and three years of supervised release, of which 12 months must be served on home detention. Veatch was also ordered to pay restitution of more than \$385,000. Hanisch was placed on probation for 12 months and also ordered to pay restitution. Bi-State Pipe Co., Inc. (Bi-State Pipe) was placed on probation for one year. IDEM was reimbursed for the well plugging project from federal Oil Spill Liability Trust Fund, established under the Clean Water Act.

The case was prosecuted by Assistant U.S. Attorney Steven DeBrotta and Special Assistant U.S. Attorney David Taliaferro. The case was investigated by EPA CID Special Agent Jeff Denny, in a joint investigation with the Indiana Department of Natural

Resources, Law Enforcement Division, the Internal Revenue Service CID and the Federal Bureau of Investigation.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Jury convicts former environmental cleanup contractor of mail fraud.

On October 17, 2006, a federal jury convicted Timothy A. Boisture of two counts of mail fraud arising from an oil well plugging project in Southern Indiana, following a two-week trial. Boisture was a partner in Environmental Consulting and Engineering Co., Inc., an environmental clean-up firm, which was hired by Indiana Department of Environmental Management (IDEM) to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants and threatened a local pond and the Ohio River. Boisture was convicted on Counts One and Two of a five-count Indictment. Count One alleged that he defrauded IDEM by submitting false invoices charging over \$44,000 for equipment that was never installed and services that were not billed by his subcontractor. Count Two alleged that Boisture defrauded his partner by inducing three other subcontractors to pay him over \$140,000 in kickbacks. At Boisture's direction, the subcontractors submitted inflated invoices to Environmental Consulting, which Boisture approved. Once the inflated bills were paid by Environmental Consulting, the subcontractors then paid Boisture the bulk of the inflated amounts. The maximum sentence for mail fraud is 20 years on each count, although the judge is required to take into account federal sentencing guidelines which will likely call for less than the maximum sentence. Boisture may also be fined up to \$250,000 on each count. Boisture was acquitted of one other mail fraud charge, a count of money laundering and one count of making a false statement to investigators. Sentencing was set for January 23, 2007. The case was prosecuted by Assistant United States Attorney (AUSA) Steve DeBrotta and Special AUSA David Taliaferro.

Office of Regional Counsel Primary Contact: David M. Taliaferro, (312) 886-9872

Region 5 files FIFRA Consent Order concerning BP Products North America, Inc.

On December 6, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under 40 C.F.R. Part 22 concerning BP Products North America, Inc., (BP). In the CAFO, EPA alleges that BP violated Section 103 of CERCLA by failing to immediately notify the National Response Center (NRC) of a 660 pound leak of ammonia at BP's facility in Whiting Indiana. BP reported the release, which occurred on December 8, 2004, to the NRC almost nine and one half hours after it occurred. In the CAFO, BP agrees to pay a penalty of \$13,203.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; Ruth McNamara, secondary contact, (312) 353-3193

Region 5 Signs a Consent Decree with Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively,

“Bunge”) that resolves violations of the Clean Air Act. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a signatory to the Consent Decree, and filed their Complaints and Motions-in-Intervention simultaneously. Upon entry, both State and Federal violations related to Bunge’s eleven oilseed processing plants and one corn germ extraction plant will be resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge’s plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement sweeping environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x ; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge’s Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge’s oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$14 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. This amount will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates, as follows:

Louisiana: \$83,335.00 to the Louisiana Department of Environmental Quality to fund the Mercury Removal/Education Program at LDEQ, spending no less than \$15,000.00, in St. Charles Parish. Based on the needs of the schools, the funds will be used to defray the costs of

(a) removing and disposing of present mercury, lead and/or asbestos contamination, and/or,

(b) eliminating the use of mercury instruments in local educational institutions.

Illinois

1. Alexander County Hazardous Materials Equipment and Training SEP: \$54,000.00 to the Alexander County Emergency Services and Disaster Agency for hazardous materials response equipment and training.

2. Vermilion County Hazardous Materials Equipment and Training SEP: \$90,000.00 to the Vermilion County Emergency Management Agency for hazardous materials response equipment and training.

3. Pulaski County Hazardous Materials Equipment and Training SEP: \$62,000.00 to the Pulaski County Emergency Services and Disaster Agency for hazardous materials response equipment and training.

4. Lead Abatement SEP: \$294,000.00 to the City of Danville, Illinois, Department of Public Development, Division of Community Development for lead abatement projects at residential locations in Danville, Illinois.

Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles.

Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program.

Kansas

1. Emporia School District Diesel Retrofit: \$22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253.

2. Southern Lyon County School District Diesel Retrofit: \$16,065.00 for a project retrofitting diesel vehicles owned and operated by the Southern Lyon County Unified School District No. 252.

3. KACEE Fund Contribution: \$44,630.00 to the Kansas Association for Conservation and Environmental Education to provide for environmental education within the State of Kansas.

Mississippi

1. Hancock County Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Hancock County Fire Department for hazardous materials response equipment and training.

2. Long Beach Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Long Beach Fire Department for hazardous materials response equipment and training.

3. Biloxi Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Biloxi Fire Department for hazardous materials response equipment and training.

4. Pass Christian Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Pass Christian Fire Department for hazardous materials response equipment and training.

Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa.

Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Administrative Order on Consent with C&D Technologies, Inc., Attica, Indiana.

U.S. EPA and C&D Technologies, Inc. (C&D) have entered into a "streamlined" Resource Conservation and Recovery Act (RCRA) Section 3008(h) Administrative Order on Consent (AOC) that requires C&D to identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from its facility.

C&D owns and operates a 12.5 acre battery manufacturing plant bordering the Wabash River Attica, Indiana. Residential and commercial properties surround the remaining sides of the facility. Constituents of concern include volatile organic compounds and lead. In addition to an active battery manufacturing area, the facility contains a former landfill and riverbank property. The city of Attica's municipal drinking water well field is located approximately 0.25 miles south of the facility.

U.S. EPA filed the AOC with the Regional Hearing Clerk on January 18, 2007. C&D must submit a Current Conditions Report to U.S. EPA by March 2, 2007. C&D also must submit an Environmental Indicators Report by July 30, 2008, demonstrating that all current human exposures to contamination at or from the facility are under control and migration of contaminated groundwater at or from the facility is stabilized. C&D must propose to U.S. EPA by August 1, 2009, the final corrective measures necessary to protect human health and the environment from all current and reasonably expected future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

U.S. EPA Region 5 Issues CERCLA Administrative Cashout Settlement.

On November 18, 2006, U.S. EPA issued a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) administrative cashout agreement concerning the [Calumet Containers Superfund Site](#) located in Hammond, Indiana. The settlement requires 51 former customers of the Calumet Containers facility to make cash payments totaling \$1,664,967 to resolve potential civil liability under Sections 106 and 107 of CERCLA and under Section 7003 of (the Resource Conservation and Recovery Act) RCRA. In exchange, the settling parties will receive a full covenant not to sue from U.S. EPA concerning the Site. The Site formerly housed a factory where drums containing various chemicals, paints and inks were emptied, cleaned and repainted. The Agency investigated the Site and determined that a cleanup was necessary due to widespread soil contamination. Following the cleanup of the Site, the land was turned into a conservation area.

Office of Regional Counsel Contact: Rich Murawski, (312) 886-6721; Verneta Simon, Superfund Division, (312) 886-3601

U.S. District Court issues Order on EPA's Motion to Dismiss Citizen Suit Claims Challenging Bloomington, Indiana, CERCLA PCB Cleanups.

On September 29, 2006, the U.S. District Court for the Southern District of Indiana issued its "Entry on Defendants' Motions To Dismiss," dismissing all of Plaintiffs' non-Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) based claims. Plaintiffs (Sarah Frey, Kevin Enright, and Protect Our Woods) filed a first amended complaint against U.S. EPA and CBS Corporation (CBS)(successor to Westinghouse Electric Corporation) in 2003 alleging that CERCLA "source control" Polychlorinated Biphenyls (PCB) cleanups selected by U.S. EPA and implemented by CBS at three National Priorities List (NPL) sites were inadequate. These three cleanups are part of the CERCLA PCB remedial actions undertaken in Bloomington, Indiana, and were selected and implemented as alternatives to the incinerator remedy memorialized in a 1985 federal Consent Decree.

Specifically, Plaintiff's alleged that the cleanups were inadequate under Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), and the Clean Water Act (CWA); and that EPA had failed to follow the requirements of National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS). Plaintiff's also alleged that U.S. EPA failed to follow the requirements of CERCLA by failing to prepare a Remedial Investigation/Feasibility Study (RI/FS), by failing to comply with CERCLA public participation requirements, and by failing to memorialize the alternative cleanups in a new, or modified federal consent decree. In dismissing the claims under RCRA, TSCA, the CWA, and NEPA, the district court held that CERCLA Section 113(h) provided the sole basis for review of a CERCLA remedial action, and that CERCLA superseded or made inapplicable the requirements of NEPA as regards the cleanup at issue.

As background, in 1985, U.S. EPA, the Indiana Department of Environmental Management (IDEM), Monroe County, and the City of Bloomington (as plaintiffs) entered into a Consent Decree with Westinghouse Electric Corporation (Westinghouse) for the clean-up of six PCB contaminated sites located in, and around, Bloomington, Indiana. The remedial actions were selected in an enforcement decision document (EDD) issued by U.S. EPA on August 3, 1984. The Consent Decree (and EDD) called for the excavation of nearly 650,000 cubic yards of PCB-contaminated material and the incineration of those materials in a dedicated, two-train, garbage-fired, TSCA-permitted incinerator to be built and operated by Westinghouse - the sole potentially responsible party (PRP) responsible as a generator for the PCB contamination. Four of the sites covered by the Consent Decree are NPL sites.

After entry of the Consent Decree public opposition to the incinerator rose. Applications of the necessary permits to design and build the incinerator were submitted by Westinghouse in 1991. Legislation enacted by the State of Indiana, however, prevented IDEM from processing the permit applications. Accordingly, in February of 1994, the Consent Decree parties agreed to explore potential alternative to incineration.

Alternative source control cleanups (to be followed with groundwater/spring water cleanups and stream sediment cleanup) were selected and implemented at Lemon Lane Landfill, Neal's Landfill, and Bennett's Dump in 1999 and 2000.

Plaintiff's filed their original complaint in this matter, challenging these source control cleanups on April 20, 2000. On August 27, 2003, the District Court entered summary judgment on behalf of U.S. EPA holding that, because cleanup work remained (despite completion of source control operable units at the three sites) the fact that work remained precluded review under CERCLA's Section 113 (h)(4) citizen suit provision which allows judicial review where the remedial action "taken" was allegedly in violation of CERCLA.

Plaintiff's appealed this dismissal to the 7th Circuit, which reversed and remanded the matter stating that there must be an "objective indicator that allows for an external evaluation, with reasonable target completion dates, of the required work for the site." Thus, in light of the long period of time since the start of the cleanup (1985), and the long period of study still ahead, Plaintiffs were "finally entitled to their day in court."

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670;
Secondary Contact: Tom Alcamo, (312) 886-7278

S.D. Indiana Court in U.S. et al. v. Cinergy Corp. et al. Rules in Favor of the Plaintiffs on Summary Judgment for RMRR and Fair Notice.

On June 18, 2007, Judge McKinney of the S.D. of Indiana lifted the stay on the U.S. v. Cinergy PSD/New Source Review case and ruled on several pending motions, including deciding in favor of the Plaintiffs on the Plaintiffs' motions for summary judgment on routine maintenance, repair and replacement (RMRR) and fair notice. Each decision is discussed separately.

The U.S. initiated a lawsuit against Cinergy Corp. alleging that Cinergy violated new source review (NSR) provisions of the CAA when it made physical changes to units at various power plants that constitute modifications as that term is defined by 42 U.S.C. 7411(a)(4). The Plaintiffs moved for partial summary judgment that certain projects were not within the narrow range of activities that qualify for an exclusion from NSR as routine maintenance, repair or replacement under the CAA Section 111(a)(4) and 40 CFR 52.21(b)(2)(iii). In a 71 page decision, Judge McKinney ruled in favor of the Plaintiffs on each of the projects.

At the outset, the Court noted that Cinergy failed to comply with Local Rule 56.1 which required Cinergy to specifically indicate which of Plaintiffs' designated facts it disputes. Instead of doing this, Cinergy set out its own material facts in dispute. Accordingly, for purposes of this order, the Court accepted as true Plaintiffs' assertions.

The Court stated that the proper standard to apply to determine whether a project was routine and therefore within the RMRR exclusion is the standard it noted in *U.S. v. SIEGO*, 245 F. Supp. 994, 1008 (S.D. Ind. 2003). The Court went on to state:

The RMRR analysis is a common sense approach that involves a fact intensive inquiry, on a case-by-case basis, of several factors such as a project's nature and extent, its purpose, the frequency of the repair or replacement, and the project's cost. . . . The frequency factor includes a consideration of how frequently a type of repair or replacement is done at a particular unit as well as how frequently it is done within the industry.

The Court noted the fact that a project was a capital expenditure is an important consideration, as is the fact that outside contractors were used for a project. Also, significant to the Court is the fact that the projects were costly when compared to annual maintenance costs for the unit at issue and the fact that the costs were high enough to require high-level management approval.

One of the affirmative defenses Cinergy raised to the Plaintiffs' lawsuit was that it did not have fair notice of (1) the legal standards to apply to determine whether the RMRR provisions of the CAA is applicable to a given project and (2) the legal standards for determining whether a given project will cause a significant net emissions increase for purposes of NSR.

A. Fair Notice of legal standards concerning RMRR

For projects Cinergy undertook after September 1988, the Court reiterated its position from SIGECO that the 1988 Don Clay memorandum "explicitly notified the regulated community that the EPA considered routine maintenance to be a narrow exemption." The Court went on to say that the Clay memorandum and the 7th Circuit decision in WEPCO put the regulated community on notice that the routine maintenance exemption was a multifactor test and that no single factor was dispositive. So, Cinergy had fair notice of EPA's interpretation of the standards for the RMRR exclusion for all of its projects that began after the Clay memo.

For the projects begun prior to 1988, the Court found that the plain language of the CAA and its regulations, the EPA's official statements and prior interpretations, and Cinergy's failure to make any inquiry prior to construction (such as an applicability determination), reveal that Cinergy did have fair notice of the interpretation of the RMRR exclusion even prior to the 1988 Clay memo. An additional factor supporting the court's conclusion was evidence showing that Cinergy had actual knowledge of EPA's interpretation.

B. Fair Notice of the Standard for Determining Emissions

The Court first dismissed Cinergy argument that it did not have fair notice of the precise calculation methodology. The Court concluded that as long as Cinergy was aware of the regulatory standards for determining whether a project may result in significant increases in emissions, its understanding of the exact mathematical formula is irrelevant. The Court then found that Cinergy "certainly had fair notice of the standards after the WEPCO decision and for projects it began thereafter."

For projects begun prior to WEPCO, the Court concluded that Cinergy had fair notice of the standards for determining significant emission increases based on the plain language of the regulations. In addition, the Court found that Cinergy either had actual knowledge or should have been aware of the standards based on deposition testimony and the 1987 Casa Grande copper mining and processing applicability determination. The Court noted that the Casa Grande determination applied the wrong standard; actual to potential, but that this was harmless error. Cinergy's own witness acknowledged that the actual to potential test was more likely to result in a finding that a PSD permit was required, than the correct actual to future actual test.

Office of Regional Counsel Contacts: Gaylene Vasaturo, (312) 886-1811), Ignacio Arrazola, (312) 886-7152, Tom Williams, (312) 886-0814, Charles Mikalian, (312) 886-2242 and Timothy Thurlow, (312) 886-6623

U.S. District Court Denies Leave to File Additional Summary Judgment Motions and Re-schedules United States v. Cinergy, Inc. et al, (Clean Air Act) for Trial.

The United States District Court for the Southern District of Indiana, Magistrate Judge Magnus-Stinson presiding, convened a status conference in the *United States v. Cinergy* new source review case on July 11, 2008. The conference followed the court's order lifting a stay of proceedings that had been in place pending appellate resolution of a dispute over the applicable emissions test. At the conference, the plaintiffs moved for leave to file additional motions for partial summary judgment on Cinergy's "routine maintenance" defense on nine contested projects, the court having granted an earlier motion on all the other projects on June 18th, and on a legal issue involving the baseline to apply for calculating emissions resulting from several of the projects. Cinergy did not object to the request for leave to file an additional RMRR motion, but objected to the request related to emissions calculation baseline. The court took the matter under advisement, and scheduled trial to begin on May 5, 2008, with a final pretrial conference on April 11, 2008. According to the Magistrate, the Judge has set aside the month of May for the trial. On July 17, 2007, the Court issued a written order confirming the dates and denying plaintiffs' motion for leave to file additional summary judgment motions.

Office of Regional Counsel Contacts: Gaylene Vasaturo, (312) 886-1811; Ignacio Arrazola, (312) 886-7152; Tom Williams, (312) 886-0814; Chuck Mikalian, (312) 886-2242; Timothy Thurlow, (312) 886-6623

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Colors, Inc., Indianapolis, Indiana.

On October 2, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Colors, Inc. for allegedly violating Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center eight days after a release of approximately 45,906 pounds of sulfuric acid, which has a reportable quantity of 1,000 pounds, took place. The CAFO requires Colors to pay a penalty of \$19,214. Region 5 calculated a proposed penalty in this matter of \$29,707. As part of a streamlined enforcement action, Region 5 offered Colors a 35% reduction based on Colors attitude during the settlement process (25% based on Colors' cooperation and 10% based on Colors' willingness to settle).

Office of Regional Counsel Primary Contact: Stephen Thorn, (312) 353-9715

Region 5 signs Consent Agreement and Final Order with Neil and Mary Lou Cowen.

On August 8, 2007, Region 5 signed a consent agreement and final order with Neil and Mary Lou Cowen of Indianapolis, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof,

about the presence of lead based paint at the properties. The Cowens own a number of single family residential rental properties in Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in April of 2007, alleging that the Cowens had failed to comply with lead paint disclosure requirements in three lease transactions and one sales transaction. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to a purchaser the required ten day lead paint inspection period. The Cowens will pay a penalty of \$3,325 to settle the violations and will pay \$8,475 for a window replacement Supplemental Environmental Project.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Terrence Bonace, (312) 886-3387

Region 5 enters into a Consent Agreement and Final Order resolving violations of the Clean Water Act (CWA), by the City of Crawfordsville, Indiana.

On January 4, 2007, Region 5 entered into a Consent Agreement and Final Order (CAFO) that resolves claims against the City of Crawfordsville, Indiana (City). The CAFO charged the City with violations of its NPDES permit under Section 301 of the CWA. Specifically, the Agency alleges that from September 2004, until May 2005, the City exceeded its daily and monthly limits for ammonium and copper in the permit. The Agency proposed an appropriate penalty of \$35,000. The City agreed to pay the \$35,000 penalty, and to also install an ultraviolet purifier and to clean its filters, all of which will improve the quality of its discharges. The Agency agreed to accept the proposal. The City is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631

Citizen Suit Filed Challenging Approval of I-69 Highway Project in Indiana.

On October 2, 2006, several citizen groups and citizens filed a court challenge seeking to block further implementation of the I-69 Highway project. The project is a proposed 142 mile highway project from Indianapolis to Evansville, Indiana which is a segment of the proposed North American Free Trade Highway project. The complaint was brought against the U.S. Department of Transportation, the Federal Highway Administration, the U.S. Department of Interior, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers, the Indiana Department of Transportation, and various officials affiliated with these agencies. The suit seeks to overturn the Federal Highway Administration's Record of Decision approving a Tier 1 Environmental Impact Statement for the project which was issued on March 24, 2004 and ancillary decisions by the FWS and the Corps in support of this Record of Decision. In the complaint, the plaintiffs allege the Defendants violated the National Environmental Policy Act and Section 4(f) of the Department of Transportation Act through the issuance of the Record of Decision. They allege the Defendants violated Section 7 of the Endangered Species Act by failing to take into consideration impacts to the endangered Indiana Bat and improperly issuing an incidental take permit for the project. Finally, they allege the Defendants violated Section 404 of the Clean Water Act by failing to consider implementation of the least environmentally damaging practicable alternative for the project.

Office of Regional Counsel Primary Contact: Thomas J. Kenney, (312) 886-0708

Federal Court in CWA Section 404 wetlands case, U.S. v. Fabian No. 2:02CF495, grants United States Motion for Summary Judgment on Liability applying the Justice Kennedy-Test from Rapanos v. U.S., 126 S.Ct. 2208 (2006).

On March 29, 2007, the Federal District Court (N.D. IN) ruled on the parties' cross-Motions for Summary Judgment. The court granted the United States' motion with respect to liability and denied defendant's Motions for Summary Judgment and Oral Argument. The court held that the United States proved CWA Section 404 wetlands jurisdiction, on the facts presented, sufficient to meet the test established by Justice Kennedy in the Rapanos decision. The court denied the United States' motions for summary judgment on penalty and injunctive relief (restoration) with leave to refile to better establish facts of record that the court deemed important. A Status Conference is set for April 20, 2007.

In March 1998, Mr. R. Fabian, the owner of an approximately 30-acre parcel of land primarily in Lake County, Indiana, performed an unpermitted filling of approximately 10 acres of wetland property that is adjacent and hydrologically connected to the Little Calumet River, a federal navigable waterway. Mr. Fabian did not request or secure a permit from the U.S. Army Corps of Engineers. And, Mr. Fabian had previously (in February 1998) been made aware of the wetlands status of the property in question and need for a permit for any filling activities. Mr. Fabian also ignored 1998 and 1999 U.S. EPA administrative compliance orders concerning the property. After referral of the case, a December 2002 complaint was filed. After preliminary activities and attempted negotiations, the district court originally set an August 2005 briefing schedule due date for cross-Motions for Summary Judgment. The court stayed proceedings for further attempted mediation in December 2005 and further (post- Rapanos) briefing in August 2006. The court's March 29, 2007 finding of liability against Mr. Fabian notes that the United States' brief and evidence offered sufficient factual proof under the test from Rapanos established by Justice Kennedy to show acceptable adjacency between the wetlands in question and a federal navigable in fact body of water (Little Calumet River).

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Greg Carlson, Water Division, (312) 886-0124

Fort Wayne, Indiana Business and Owner Charged with Environmental Crime.

On June 27, 2007, Alan Hersh and Hassan Barrel Company, Inc., were indicted in United States District Court, Northern District of Indiana, Fort Wayne Division, for one (1) felony violation of the federal Resource Conservation and Recovery Act (RCRA). The indictment alleges unlawful storage and disposal of RCRA hazardous waste at the Hassan Barrel Company, Inc. facility located in Fort Wayne, Indiana. Hersh was arrested in North Carolina on July 2, 2007. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management, Office of Criminal Investigation, which are part of the Northern District of Indiana Environmental Crimes Task Force. The Indictment is merely an allegation and all persons charged are presumed innocent until and unless proven guilty in court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Clean Water Act Consent Decree Lodged in Indianapolis Sewer Overflow Case.

On October 4, 2006, the United States Department of Justice (DOJ) lodged a Clean Water Act consent decree on EPA's behalf in federal court in Indianapolis, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The State of Indiana is a co-plaintiff in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year—down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The City of Indianapolis will also pay a penalty of \$1,117,800, which will be divided evenly between the DOJ and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the City of Indianapolis can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems. The decree will be subject to a 30-day public comment period and subsequent judicial approval and is available on the DOJ website.

Office of Regional Counsel Primary Contact: Gary Prichard, (312) 886-0570; Susan Perdomo, additional contact, (312) 886-0557

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Corydon, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Corydon, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Salem, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-

producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced fourteen pesticides in an unregistered establishment located in Salem, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Karen Krach.

On March 23, 2006, a CAFO was signed with Karen Krach of Fishers, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Ms. Krach owns a number of single family residential rental properties in and around Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in July of 2006, alleging that Ms. Krach had failed to comply with lead paint disclosure requirements in three lease transactions and three sales transactions. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to purchasers the required ten day lead paint inspection period. Ms. Krach will pay a penalty of \$13,600 to settle the violations.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829; Mark Koller, (312) 353-2591; Estrella Calvo, additional contact, (312) 353-8931

Comprehensive Environmental Response, Compensation, and Liability Act Consent Decree Entered 5/25/2007 in U.S. v. Masterwear Corp., et al.

On May 25, 2007, Judge John Daniel Tinder of the Southern District of Indiana, Indianapolis Division, signed an order entering a consent decree in the case of U.S. v. Masterwear Corp., et al, No. 1:05-cv-00373-JDT-WTL.

Masterwear was a former industrial laundry and dry cleaning business that operated in downtown Martinsville, Indiana. U.S. EPA conducted a site inspection on four separate dates from late 2003 to early 2004 and found perchloroethylene vapors in homes and businesses in the area that exceeded the Indiana Department of Environmental Management sub-chronic action level. On April 20, 2004, U.S. EPA issued a Unilateral Administrative Order ("UAO") pursuant to Section 106 of CERCLA to William Cure and Jim Reed to conduct a removal action at the Masterwear Site. DOJ, on behalf of U.S. EPA, later filed a complaint for cost recovery against Masterwear Corp., William and Elizabeth Cure, and Jim and Linda Lou Mull Reed pursuant to Section 107 of CERCLA.

Per the consent decree, the Settling Defendants, through their insurance companies, will continue conducting the removal action as required by the UAO and will pay \$380,000 to reimburse U.S. EPA for past response costs and some future response costs for the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; secondary contact: Ken Theisen, On-Scene Coordinator, (312) 886-1959. Department of Justice contact: Tom Benson, (202) 514-5261

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Meijer, Inc.

Region 5 initiated prefiling discussions on this matter in August 2006. The proposed penalty amount was \$48,000. On July 12, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding to settle violations of Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68 with Meijer, Inc. concerning the Meijer Kitchen facility (a minor non-Title V facility) in Middlebury, Indiana. The Respondent failed to have documentation concerning required training and failed to update certain information in the risk management plan for the anhydrous ammonia refrigeration process at the facility. Based on Meijer's cooperation and new information relating to the length of time of the violations, the parties agreed to resolve this matter by Meijer, Inc.'s payment of a civil penalty of \$25,000.

Office of Regional Counsel Contacts: Jan Carlson, (312) 886-6059; Ann Coyle, (312) 886-2248; Monika Chrzaszcz, technical contact, (312) 886-0181

Region 5 signs Consent Agreement and Final Order with Respondent Midland-Impact, Rockville, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO, resolving claims against respondent for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Rockville, Indiana in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Tipton, Indiana Business Charged with Environmental Crimes.

On January 11, 2007, the United States Attorney's Office, Southern District of Indiana filed a criminal information against Midwest Sheets Company (MWS) of Tipton, Indiana

for 3 violations of the Clean Water Act (CWA). MWS owned an operated a corrugated cardboard sheet manufacturing facility who allegedly negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. Furthermore, MWS is alleged to have failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges allegedly caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of more than 2,000 fish in Cicero Creek. MWS and the government also filed a plea agreement that, if accepted by the court, requires that MWS will plead guilty to 3 violations of the CWA and pay a criminal fine of \$600,000 (\$150,000 suspended during the one year probation). In addition, MWS agreed to pay approximately \$23,000 in restitution to the Tipton POTW and the state of Indiana for their response costs. The plea agreement also requires the company to make specific changes in its training policies to prevent further illegal discharges. The defendant is presumed innocent until and unless convicted at trial or following a guilty plea accepted by the court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Tipton, Indiana Business Convicted and Sentenced for Environmental Crimes.

On September 6, 2007, Midwest Sheets Company (MWS) of Tipton, Indiana pleaded guilty and was sentenced for three criminal violations of the Clean Water Act (CWA) in United States District Court, Southern District of Indiana. MWS owned an operated a corrugated cardboard sheet manufacturing facility that negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. MWS failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of approximately 2,000 fish. MWS cooperated with the criminal investigation, paid full restitution for the damages caused by the discharges, and pleaded guilty to three negligence violations under the CWA. MWS was sentenced to: 1) pay a criminal fine of \$600,000 (\$150,000 suspended during a one-year probation period); 2) implement an employee training program for environmental compliance; 3) implement a corporate environmental compliance program; 4) conduct an environmental audit; 5) comply with all environmental laws; and 6) make a public apology in the local Tipton, Indiana newspaper as well as a trade journal.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Oil Reclamation Company and Owner Charged With Illegal Sewer Discharges.

On July 9, 2007, in Indianapolis, Indiana, the United States Attorney for the Southern District of Indiana filed an information charging Miller Environmental Co., Inc., and its owner Anthony McCullough, each with three counts of knowingly making unlawful discharges at three Miller Environmental facilities in Shelbyville, Indiana, and Rushville, Indiana. The Miller Environmental facilities reclaimed and re-processed used oil; manufactured and blended chemicals; and degreased and derusted parts. The information

charged that on at least 34 occasions between July 2002 and November 2003, the defendants discharged wastewaters containing oily residue, waste chemicals, acids, caustics, biocides and degreasing and derusting chemicals into local sanitary sewers in violation of the Clean Water Act. Conviction on each count carries a potential prison term of up to three years and criminal fines of up to \$50,000 per day of violation. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division jointly investigated this matter with other members of the Indiana Inter-Agency Environmental Crimes Task Force for the Southern District of Indiana, including the Federal Bureau of Investigation, the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

U.S. District Court for the Southern District of Indiana grants Motion for Access.

On December 20, 2006, the United States District Court for the Southern District of Indiana, Indianapolis Division, granted the United States' motion, filed on behalf of the United States Environmental Protection Agency, for an Immediate Order in Aid of Access. The order allows U.S. EPA, and its representatives, access to a number of properties in Indianapolis, Indiana that need to be sampled for lead contamination and if necessary have the contaminated soil removed.

The former American Lead facility is located at 2102 Hillside Avenue, Indianapolis, Indiana. American Lead operated a lead reclamation smelter from 1946 to 1965. In 1965, National Lead Industries (NL) acquired the American Lead facility and became the owner and operator of the facility. In 1971, NL had several buildings and the slag piles removed from the property. The property remained vacant until 1985, when Central Concrete Company (CCC) purchased the property. In 1990, CCC sold the property to Irving Materials Inc. who is the current owner of the former smelter and uses the facility primarily for the storage of concrete products. During the period of lead smelting operations, lead fumes and dust were released from the facility as a point and fugitive sources. These operations contributed to lead contamination at the facility and the surrounding areas.

In October 1995, the Indiana Department of Environmental Management (IDEM) collected samples on the facility. Lead concentrations ranged from 47 ppm to 6,400 ppm. In August 1995, the Marion County Health Department collected 17 composite samples of soil within a .5 mile radius of the facility. The results from these samples showed lead contamination ranging from 128 ppm to 17,200 ppm. In August 1998, IDEM and NL entered into an agreement for NL to conduct an investigation of the extent of contamination on and off the facility. Based on the results of the investigation and due to an existing concrete cover on the facility, it was determined that no action on the facility was needed. However, the results of the investigation documented possible exposure to lead in the area surrounding the facility that presented potential risks to human health and the environment. Thus, following the study, the parties entered into negotiations for NL to conduct removal work in the area surrounding the facility. Negotiations continued between IDEM and NL until March 2003, when IDEM requested assistance from the EPA Region 5 Emergency Response Branch for a removal assessment/removal action due to the concentrations of lead contamination, and failed negotiations with NL.

After the matter was referred to the EPA, EPA entered into negotiations with NL for it to conduct a time-critical removal at certain areas surrounding the Site. EPA and NL reached an agreement and on January 31, 2005, EPA signed an Administrative Order on Consent (Order) with NL. Pursuant to the terms of the agreement, NL would investigate properties within the area depicted in the Order and excavate and properly dispose of lead contaminated soil.

Pursuant to the Order, NL agreed to use its best efforts to obtain access agreements to sample and if necessary excavate contaminated soil. While generally successful in obtaining such agreements, NL was unable to obtain access to a number of properties. Many of the properties in questions were vacant lots, abandoned or otherwise unoccupied. NL notified EPA of its inability to obtain access to all of the potentially affected properties within the area depicted in the Order. On April 13, 2006, EPA wrote to the listed property owners, requesting that access be granted. Of the original 25 properties for which access was needed, EPA was able to obtain access to seven more properties. However, for the remaining 18, access was still not granted. For 13 of the properties, the April letter was returned as undeliverable while EPA received no response from the other five. On June 15, 2006, EPA mailed an Access Order to the 18 remaining properties. While it was not anticipated that this would lead to more access agreements, EPA wanted to exhaust all administrative options before seeking judicial intervention. NL was able to obtain access agreements for two of these properties. Therefore, there remained 16 properties for which access was needed. EPA filed a referral with the Department of Justice requesting that a motion be filed in aid of access. A complaint was filed and after allowing time for service by publication, a motion for access was filed that was granted by the Court on December 20, 2006.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region 5 signs Consent Agreement and Final Orders with Port Stop Citgo.

On January 19, 2007, Region 5 signed a consent agreement and final order with Robert Magnuson, owner of the Port Stop Citgo station in LaPorte, Indiana, to settle violations of Section 9003 of the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6991b, and EPA's Underground Storage Tank regulations, 40 C.F.R. Part 280. The Port Stop facility has three 10,000 gallon steel underground storage tanks for holding gasoline prior to sale to the public. In order to ensure that steel tanks like those belonging to Port Stop do not rust through and release their contents to the environment, such tanks are equipped with corrosion protection systems. Region 5 initiated this enforcement action by filing an administrative complaint in March of 2006, alleging that Port Stop Citgo failed to test and to maintain its tanks' corrosion protection system as required by law. Port Stop Citgo will pay a penalty of \$25,000 to settle the violations, which represents the proposed penalty of \$48,775 reduced in light of Port Stop's willingness to settle the case and other factors as justice may require.

Office of Regional Counsel Primary Contact: Erik Olson, (312) 886-6829; Sandra Siler, additional contact, (312) 886-7187

Richmond, Indiana newspaper runs story on Laurel Stone Church Road Site Complaint.

On May 19, 2007, the Richmond, Indiana Palladium Newspaper published a story about the pending Federal law suit for the Laurel Stone Church Road Superfund Site.

U.S. EPA referred the Laurel Church Road Superfund to the Department of Justice on June 20, 2006 for cost recovery, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). U.S. EPA seeks to recover funds expended, from October 10, 2002 to August 15, 2003, while conducting CERCLA emergency removal activities at the Site. During the action, topsoil was excavated and partially buried and subsurface drums were removed and placed into roll-off boxes for off-site disposal. Once excavation was completed, the areas were backfilled and graded. A portion of the road that was damaged by the heavy disposal trucks was removed and replaced. A total of 5,656 drums and 5,256 tons of contaminated soil and other wastes were transported off-site for disposal.

A complaint was filed in U.S. District Court in this matter on November 25, 2006, seeking \$2,381,429.21 in past costs, in addition to pre-judgement interest. The named defendants to the complaint are the current owners, Mr. and Mrs. Daniel R. and Noami Lynn Rapier and the past operator of the Site, Franklin County. The Rapiers added Mr. and Mrs. Gale and Juanita Hornsby in a countersuit. It is suspected that either the Rapiers or the Franklin County Commissioner brought this matter to the attention of the Richmond, Indiana newspaper.

Office of Regional Counsel Contact: Nola Hicks, (312) 886-7949 and Ruth Woodfork, Superfund (312) 353-6431

U.S. EPA enters into Administrative Order on Consent (AOC) with Raybestos Products Company for removal work in Reach 4 of Shelly Ditch in Crawfordsville, Indiana.

On February 22, 2007, the U.S. EPA signed an Administrative Order on Consent with Raybestos. Pursuant to the terms of the AOC, the Respondent agreed to remove contaminated sediment from Reach 4 of Shelly Ditch and to pay oversight costs incurred by the U.S. EPA at the Site. Though signed in February 2007, the AOC was not effective until May 15, 2007, as the AOC was part of a negotiated settlement that also included a Consent Decree that addressed past costs incurred at Shelly Ditch and Raybestos' potential liability at Sugar Creek. It was agreed that the effective date of the AOC would be delayed until the motion for entry was filed. The Department of Justice has filed a motion for entry regarding the Consent Decree and the motion is pending before the court.

The Shelly Ditch is an intermittent stream that accepts surface runoff that discharges into Sugar Creek. Sugar Creek is designated as a "full-body contact" water body and as an "expected use" stream by the Indiana Department of Natural Resources. Three culverts or outfalls located on the west perimeter of the Raybestos' facility at 1204 Darlington Avenue in Crawfordsville, Indiana empty into Shelly Ditch. The facility, established in 1951, manufactures friction plates for automatic transmissions. During its operation, there was a release of PCBs from the Raybestos facility into Shelly Ditch. On February 28, 1997, the Indiana Department of Environmental Management (IDEM) and Raybestos

entered into an agreement concerning the investigation and cleanup of PCBs in Shelly Ditch. However, IDEM was unable to reach an agreement with Raybestos on a cleanup for the Ditch. IDEM then referred the matter to U.S. EPA. On December 6, 2000, U.S. EPA issued a unilateral administrative order (UAO) to Raybestos to remove PCBs over 10 ppm from Reaches 1 to 3 of the Ditch. Reaches 4 and 5 were not addressed by the UAO. Raybestos complied with the UAO and completed the work in July 2003.

In May 2003, U.S. EPA and Raybestos entered into negotiations to address Raybestos' potential liability for the Sugar Creek Remedial Site, which included Reaches 4 and 5 of Shelly Ditch. During this time, Raybestos conducted sampling in Reaches 4 and 5, as well Sugar Creek, to determine the extent and levels of PCB and lead contamination in the two Reaches and the impact, if any, of the Reaches on Sugar Creek.

Office of Regional Counsel Primary Contact: Robert Smith, (312) 886-0765

U.S. District Court enters consent decree for recovery of past costs incurred at the Shelly Ditch Site in Crawfordsville, Indiana.

On May 24, 2007, the United States District Court for the Southern District of Indiana, Indianapolis Division entered a Consent Decree for the Shelly ditch, Sugar Creek and Calumet Container Site. Pursuant to the terms of the Consent Decree, the Settling Defendant, Raybestos Products Company will agree to pay \$119,519.18 of United States Environmental Protection Agency's (U.S. EPA) past costs incurred at the Shelly Ditch Site. In addition, pursuant to a May 15, 2007 Administrative Order on Consent between U.S. EPA and Raybestos, the Settling Defendant has agreed to implement a removal action in Reach 4 of Shelly Ditch and pay U.S. EPA's costs in overseeing this work. Under the Consent Decree, the Settling Defendant will receive a release for liability for costs incurred at Shelly Ditch, except those covered by the Administrative Order on Consent, and a release from liability for the Sugar Creek and Calumet Container Sites.

Office of Regional Counsel Contact: Robert Smith, (312) 886-0765

Muncie, Indiana Businessman Criminally Charged with Illegal Hazardous Waste Transportation, Storage and Disposal.

On March 20, 2007, Richard D. Reece was charged by a federal grand jury with violating the Resource Conservation and Recovery Act ("RCRA"), in a three-count indictment filed in United States District Court, Southern District of Indiana, Indianapolis, Indiana. The indictment alleges that two trailers containing drums of hazardous wastes were discovered on March 11, 2004 in Muncie, Indiana by the Delaware County Emergency Management Agency and Muncie Fire Department in response to citizen complaints of chemical odors. The indictment charges Reece with illegal transportation of hazardous wastes in these trailers without manifests, to un-permitted facility, and storage and disposal of the wastes. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Northern District Of Indiana Enters Consent Decree Resolving Violations Of The Clean Air Act By Rhodia Inc.

On July 23, 2007, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by Rhodia Inc. at six sulfuric acid plants. Specifically, the Complaint in the matter alleged that Rhodia had failed to comply with the Prevention of Significant Deterioration regulations, Title V permitting requirements, and the New Source Performance Standards (NSPS) applicable to sulfuric acid plants. The global settlement addresses violations at all of Rhodia's sulfuric acid plants, including its plants in California, Indiana, Texas and Louisiana. The City of Hammond, Indiana, Indiana, Louisiana, and California were Plaintiff-Intervenors in this matter. Under the settlement, Rhodia will install control equipment to achieve emission limits for sulfur dioxide, will apply for proper permits and will comply with the NSPS requirements at its plants. In addition, Rhodia will pay a \$2 million penalty that will be shared amongst the United States and the Plaintiff-Intervenors.

Office of Regional Counsel Primary Contact: Cynthia A. King, (312) 886-6831, Nathan Frank, secondary contact, (312) 886-3850

Region 5 files CAFO to commence and conclude case against Rolls Royce Corporation, Indianapolis, Indiana.

On March 30, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against Rolls Royce Corporation for alleged violations of the Stratospheric Ozone Standards, found at 42 C.F.R. Part 82. Rolls Royce's alleged violations stemmed from failing to follow proper repair and recordkeeping procedures pertaining to three pieces of industrial process refrigerant equipment which contained R-22, an HCFC. Rolls Royce discovered the violations through an internal audit and disclosed the violations to Region 5. In addition, they replaced all three appliances in a timely fashion. Region 5 calculated, and Rolls Royce has agreed to pay, a penalty of \$18,329.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

Region 5 enters a CAA Consent Agreement and Final Order requiring Scott Brass, Inc., to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411 and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00.

On April 17, 2007, Region 5 and Scott Brass, Inc. (Respondent) entered into a Consent Agreement and Final Order requiring Respondent to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411, and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00. On April 17, 2007, the Region also issued to Respondent an Administrative Consent Order requiring it to submit to the Indiana Department of Environmental Management within 180 days a complete Title V Permit Application for its facility, pursuant to section 111 of the Clean Air Act, 42 U.S.C. § 7411, the regulation at 40 C.F.R. Part 70, and the provision at 326 Indiana Administrative Code 2-7 of the Indiana State Implementation. On September 28, 2006, the Region issued a Complaint and Notice of Opportunity for Hearing which alleged that Respondent constructed a facility in 1997 but: 1) failed to apply for a Part 70 Permit before the date of construction, in violation of 326 Indiana Administrative Code 2-7; 2) failed to provide EPA written notice of the date of commencement of construction of its four electric

induction furnaces, in violation of 40 C.F.R. § 60.7(a)(1); 3) failed to provide EPA written notice of the actual date of initial start-up, in violation of 40 C.F.R. § 60.7(a)(3); 4) failed to provide EPA written notice of its initial Method 9 Visible Emission Test in violation of 40 C.F.R. § 60.7(a)(6); 5) failed to conduct a Method 9 Visible Emission Test, in violation of the regulations at 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2); and violated section 111 of the Act, 42 U.S.C. § 7411. The Complaint proposed a civil penalty of \$42,470.00. On March 9, 2007, the Region amended the Complaint and alleged Respondent operated its facility from December 12, 2002, to November 15, 2005, without a permit, in violation of section 111 of the Act, 42 U.S.C. § 7411. The Region reduced the proposed civil penalty due to a reduction in the number of days of alleged violation and other factors.

Office of Regional Counsel Contact: Jeffery M. Trevino, (312) 886-6729; additional contact: Kushal Som, (312) 353-5792

Clean Water Act Consent Decree Entered in Indianapolis Sewer Overflow Case.

On December 19, 2006, the United States District Court for the Southern District of Indiana entered a Clean Water Act consent decree, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The United States and the State of Indiana are co-plaintiffs in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year—down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The city will also pay a penalty of \$1,117,800, which will be divided evenly between the United States and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the city can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems.

Office of Regional Counsel Primary Contact: Gary Prichard, (312) 886-0570; Susan Perdomo, additional contact (312) 886-0557

Region 5 signs Consent Agreement and Final Order and Administrative Consent Order resolving CAA violations with Steel Dynamics, Inc., Butler, Indiana.

On September 21, 2007, Region 5 signed a Consent Agreement and Final Order (CAFO) and an Administrative Consent Order (ACO) with Steel Dynamics, Inc. (SDI), in settlement of a Notice and Finding of Violation (NOV) issued to SDI on September 28, 2006. The NOV alleged that SDI violated the Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, at C.F.R. Part 60, Subpart AaA at its Butler, Indiana facility (facility). Specifically, the NOV alleged that between 2003 and 2006, SDI's emissions from its Butler, Indiana facility equaled or exceeded 3%, in violation of 40 C.F.R. § 60.272a(a)(2) and Section 111(e) of the Clean Air Act (Act) and 326 IAC 2-3-3(1); that Respondent failed to properly report these exceedances in violation of 40 C.F.R. § 60.276a(b) and

Section 111(e) of the Act; and that Respondent failed to use good pollution control practice for minimizing emissions, in violation of 40 C.F.R. § 60.11(d). The ACO sets forth specific measures to bring SDI into compliance. The CAFO, which simultaneously initiates and concludes this matter, includes a provision for SDI to perform a SEP worth over \$133,000. The SEP involves the installation of a compartment leak detection system as an additional control to the COM on its baghouse. In addition, SDI will pay a civil penalty of \$13,540.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Joseph Ulfig, ARD, (312) 353-8205

EPA enters Consent Agreement and Final Order and Administrative Order on Consent with Tate & Lyle Ingredients Americas, Inc., resolving violations of the Clean Air Act.

On September 13, 2007, the Regional Administrator signed a Final Order resolving Clean Air Act (CAA) violations by Tate & Lyle Ingredients Americas, Inc. (Tate & Lyle) at its plant located in Lafayette, Indiana (the South Plant). Specifically, Tate & Lyle installed a gluten dryer at the South Plant without obtaining a proper permit or installing best available control technology for carbon monoxide as required by the Prevention of Significant Deterioration requirements of the Act. Under the Consent Agreement and Final Order (CAFO), Tate & Lyle will pay a civil penalty of \$188,100. Under a separate Administrative Consent Order, Tate & Lyle has agreed to apply for proper permits at the South Plant that will include best available control technology emission limits for volatile organic compounds and carbon monoxide for all of its dryers at the South Plant.

Office of Regional Counsel Contact: Cynthia A. King, (312) 886-6831; secondary contact: Erik Hardin, (312) 886-2043

Terre Haute, Indiana Business and its President Convicted for Environmental Crimes.

On May 24, 2007, a federal jury in Indianapolis, Indiana, found Derrik Hagerman of Terre Haute, Indiana, and Wabash Environmental Technologies, LLC, guilty of ten felony counts of false statements under the Clean Water Act. Wabash was a waste water treatment facility in Terre Haute, Indiana that discharged to the Wabash River under a Clean Water Act permit. The indictment alleged that from on or about January 2004 and continuing to on or about October 2004, Hagerman and Wabash periodically reviewed bench sheets from Wabash's lab listing analytical results for waste water discharge samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit that showed Wabash to be in violation of effluent limitations in its permit for Ammonia, BOD5, Copper, Zinc and Phenol. Hagerman and Wabash knowingly failed to report to the Indiana Department of Environmental Management lab results showing these violations, but instead reported results that were in compliance with Wabash's Clean Water Act permit. As part of a scheme to conceal the false statements, Defendants Hagerman and Wabash knowingly created false bench sheets showing few if any violations, and purporting to be analytical results of waste water samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of

Environmental Management, as part of the Indiana Inter-Agency Environmental Crime Task Force for the Southern District of Indiana.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Region 5 Executes CAFO with Transformer Decommissioning, Inc., Resolving TSCA PCB Violation at its Facility in Nabb, Indiana.

On August 21, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Transformer Decommissioning, Inc. (TDI), for a violation of the PCB Rule under TSCA resulting from the emptying of six transformers containing over 100 gallons of PCB-contaminated oil into holding tanks for non-PCB-contaminated oils at its transformer disposal facility in Nabb, Indiana. TDI, after an inspection by the State, acknowledged its error and disposed of the contents of the tanks as contaminated waste. The settlement requires TDI to pay a cash penalty of \$27,625 representing one count of improper disposal of PCBs.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; Kendall Moore, alternate contact (312) 353-1147

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with United Phosphorus, Inc.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$6,500. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(2)(N) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of a pesticide product. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

RCRA Permit to Vertellus Agriculture & Nutrition Specialties LLC.

U.S. EPA Region 5 issued a RCRA permit to Vertellus Agriculture & Nutrition Specialties LLC (formerly known as Reilly Industries, Inc.) in Indianapolis, IN. The permit mainly provides requirements for three boilers that burn hazardous waste. U.S. EPA has not yet authorized the state of Indiana to administer certain regulations, including the Boilers and Industrial Furnace regulations (40 CFR Section 266.100 *et seq.*, known as the BIF regulations). U.S. EPA Region 5 issued the RCRA permit requirements for operations at the Permittee's Facility, which fall under the BIF regulations. The permit became effective on November 6, 2006.

Contact: Jan Carlson, ORC, (312) 886-6059 and Jae Lee (312) 886-3781

Region 5 files a Consent Agreement and Final Order to conclude case against Warsaw Chemical Company, Inc., Warsaw, Indiana.

On September 28, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Warsaw Chemical Company, Inc. (Warsaw) for allegedly violating Section 3005 of the Solid Waste Disposal Act. On June 8, 2006, Region 5 conducted an investigation at Warsaw's 390 Argonne Road, Warsaw, Indiana facility. EPA determined that Warsaw had failed to comply with certain hazardous waste permit exemption conditions for generators. Region 5 had initially proposed a penalty of \$69,260 but determined that it was appropriate and consistent with the penalty policy to adjust the penalty to \$60,934 based on Warsaw's cooperation, good faith, and other factors as justice may require. During negotiations, Warsaw submitted financial information to Region 5, indicating that it had recently been encountering financial difficulties. While the information was not conclusive, in the interest of resolving the matter, Region 5 agreed to allow Warsaw to pay the \$60,934 penalty in installments over a term of 36 months plus interest.

Office of Regional Counsel Contact: Randa Bishlawi, (312) 886-0510

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with W.J. Hagerty & Sons Ltd, Inc.

Region 5 initiated pre-filing discussions on this matter in March, 2007. The proposed penalty was \$13,650. On June 10, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Hagerty Anti-Mite**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$10,920.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terry Bonace, additional contact, (312) 886-3387



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Michigan

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Michigan:

- ArvinMeritor, Inc.
- Babbitt, Michael L
- Berry Drain
- Carl's Tire Retreading Site
- CEMEX, Inc.
- Chemical Technologies, Inc.
- Comprehensive Environmental Solutions, Inc.
- Dana Container, Inc.
- Deer Creek Tributary
- Detroit Edison Company
- Dow Chemical Company
- EBW Electronics, Inc.
- Electro-Voice Superfund Site
- Gallagher Farm Service
- General Motors Corporation (2)
- Investors Management Services Corp.
- John R. Sand & Gravel Company
- Kircher, David
- McClain Properties
- Mercury Displacement Industries, Inc.
- Michigan Department of Environmental Quality
- Millennium Holdings, LLC
- Mosaic USA, LLC
- Musser, James G.
- P & B Investment, Inc.
- Snappy Apple Farms, Inc.
- Tester, Larry
- Valspar Corporation
- Wash King Laundry

United States Lodges Consent Decree for CERCLA Cost Recovery for the Rockwell International Site, Allegan, MI.

On July 30, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Western District of Michigan a civil Consent Decree regarding the Rockwell International Superfund Site in Allegan, Michigan. Under the decree, ArvinMeritor, Inc, corporate successor to Rockwell International's Automotive Division, will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs.

The Rockwell International Superfund Site is a former automotive manufacturing facility occupying approximately 30 acres along the Kalamazoo River in Allegan, Michigan. A consulting report generated by a corporate predecessor to ArvinMeritor concluded that the manufacturer has generated oily wastewater on-Site which was discharged to the Kalamazoo River, burned off waste oils that were held in an on-Site retention pond, and used transformers and capacitors with oils containing PCBs. The Site was listed on the National Priorities List in 1987. U.S. EPA issued an Administrative Order on Consent to Rockwell calling for Rockwell to conduct a Remedial Investigation and Feasibility Study (RI/FS) in 1988; U.S. EPA subsequently took over RI/FS development in 1998. In 2001,

U.S. EPA issued a Record of Decision (ROD) and a Unilateral Administrative Order (UAO) directing ArvinMeritor to design and implement the remedy contained in the ROD. ArvinMeritor complied with the UAO. The Consent Decree calls for the payment of \$3,475,000 in past costs and payment of U.S. EPA's future costs.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912; Superfund Division Contact: Mazin Enwyia, (312) 353-8414

Former Michigan Business Operator Charged With Illegal Storage and Disposal of Hazardous Waste.

On June 14, 2007, a federal grand jury charged Michael Lee Babbitt, age 58, with illegal storage and disposal of hazardous waste under RCRA. According to the Indictment, Babbitt operated a furniture and metal parts stripping business in Grand Rapids, MI, from 1987 until 2004. The business regularly generated hazardous spent solvents, including toluene and methylene chloride, and wastes which were contaminated with lead. Little if any of the wastes were shipped off-site for proper disposal, and when the business closed its doors in 2004, numerous drums and tanks of hazardous waste were left behind. The wastes were eventually safely disposed of at a landfill under the supervision of the Michigan DEQ. The charge against Babbitt carries a maximum punishment of up to five years imprisonment and a fine of up to \$50,000 per day of violation. An indictment is only an accusation, and all defendants are presumed innocent until and unless proven guilty in a court of law. The case was investigated by EPA CID, in a joint investigation with the Michigan DEQ's Office of Criminal Investigations.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Region 5 approves TMDL for Berry Drain, Michigan.

On September 27, 2006, Region 5 approved a Total Maximum Daily Load (TMDL) for total suspended solids for Berry Drain, which is located in Sanilac County, Michigan. Excessive levels of Total Suspended Solids Concentration (TSS) from point and nonpoint source discharges near the Sandusky wastewater treatment plant (WWTP) have resulted in levels of dissolved oxygen below the applicable water quality standard. Michigan has committed to imposing wasteload allocations on the point and nonpoint sources, and has entered into a consent order under which the Sandusky WWTP is upgrading its facilities to eliminate DO effluent discharge violations by October 2007. Additionally, the Sanilac County Conservation District is applying for a CWA 319 watershed planning grant to develop best management practices and control measures that will minimize excessive TSS runoff in the Berry Drain watershed.

Office of Regional Counsel Primary Contact: Jane Woolums, (312) 886-6720; Secondary Contact: Erin Newman, (312) 886-4587

Department of Justice files cost recovery action against parties that arranged for the disposal of tires or transported tires to Carl's Tire Retreading Fire Site in Grawn, Michigan.

On November 14, 2006, the U.S. Department of Justice filed a cost recovery action against 15 Potentially Responsible Parties for response costs incurred at the Carl's Tire Retreading Site in Grawn, Grand Traverse County, Michigan. The Department of Justice

also obtained tolling agreements from 10 additional Potentially Responsible Parties (PRPs).

On December 29, 1995, shredded tire material at the Carl's Retreading site caught fire and burned for 23 days. The burning tires and shredded tire material released a large quantity of pyrolytic oil containing benzene, ethylbenzene, styrene, toluene, xylenes, zinc and other hazardous substances. At the time of the fire, Carl's Retreading was owned by 3 partners, Mr. Steven D. Hubert, Mr. David A. Hubert, and Mr. Michael B. Grant. The facility was located at 5175 Sawyer Wood Drive in Grawn, Michigan from 1993 until sometime around 1997. U.S. EPA's initial response at the site was limited as the State of Michigan took the lead both in extinguishing the fire and in conducting a subsequent removal action. The State later, however, requested U.S. EPA's assistance in mitigating the releases of hazardous substance to soils and groundwater at the Site. U.S. EPA's response costs at the Site are approximately \$3 million.

Each of the 3 partners of Carl's Retreading, as well as a corporation formed in 1997 by Mr. Steven Hubert to own and operate the Site, filed for and was discharged from bankruptcy between 1999 and 2001.

This action seeks to recover costs from parties that either transported or arranged for the disposal of tires at the Site prior to the fire. The tires that the generators sent to Carl's were typically whole scrap tires that generators paid Carl's to pick up. Often Carl's dropped off trailers at a generator's site and later picked up those trailers after the generators filled them with whole scrap tires.

Office of Regional Counsel Primary Contact: Crissy L. Pellegrin, (312) 353-5263

Western District of Michigan enters Consent Decree resolving violations of the Clean Air Act by CEMEX, Inc., St. Mary's Cement, Inc. and St. Barbara Cement, Inc.

On December 12, 2006, the Western District of Michigan entered a Consent Decree resolving Clean Air Act violations alleged to have been committed by CEMEX, Inc., St. Mary's Cement, Inc., and St. Barbara Cement, Inc. Specifically, the Complaint in the matter alleges violations of the following requirements of the Act: Standards of Performance for New Stationary Sources, Section 111 of the Act, and regulations promulgated thereunder, at 40 CFR Part 60, Subpart F; and Hazardous Air Pollutants, Section 112 of the Act, and regulations promulgated thereunder, at 40 CFR Part 63, Subpart LLL, for the Portland Cement Manufacturing Industry. The Complaint also alleged violations of the Michigan CAA implementation plan, approved by the Administrator under Section 110 of the Act. The violations occurred at a Portland cement manufacturing facility located in Charelvoix, Michigan, which was owned and operated by CEMEX prior to March 31, 2005, and owned by St. Barbara and operated by St. Mary's on and after March 31, 2005. Under the settlement CEMEX is to pay a civil penalty of \$1,359,422, and St. Mary's has committed to undertaking remedial action at the facility which will cause it to come into compliance with the CAA requirements cited in the Complaint. In addition, St. Mary's is subject to reporting requirements, and is to perform Supplemental Environmental Projects at the facility.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947; Farro Assadi, secondary contact, (312) 886-1424

Region 5 files FIFRA Consent Order concerning Diversified Chemical Technologies, Inc.

On November 30, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Diversified Chemical Technologies, Inc., (Diversified). In the CAFO, EPA alleges that Diversified produced pesticides in a Detroit, Michigan, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Diversified distributed those pesticides using labels that did not bear a valid establishment registration number. Diversified has now returned to compliance with the requirements of FIFRA. In the CAFO, Diversified agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact, (312) 886-6009

Waste Treatment Facility and Four Former Officials Indicted for Illegally Discharging Untreated Industrial Wastes.

On January 24, 2007, in Detroit in the Eastern District of Michigan, a grand jury issued a 12-count indictment alleging that Comprehensive Environmental Solutions, Inc. (CESI); CESI's former President, Michael G. Panyard; CESI's former CEO, Bryan Mallindine; and CESI's former plant manager, Charles Long, were in a criminal conspiracy to violate the Clean Water Act, to make false statements to government officials and to obstruct justice. The indictment further alleged that the defendants knowingly bypassed treatment equipment when discharging, violating the Clean Water Act; that defendants CESI and Panyard added water to CESI discharge samples and also discharged water to render DWSD sampling devices inaccurate, all violating the Clean Water Act; in seven counts that defendants CESI and Panyard gave falsified documents to and made oral and written false statements to government officials; and that defendants CESI and Mallindine obstructed justice by ordering a floor drain to be cemented over during an investigation.

According to the indictment, in parts of 2002 CESI operated a waste treatment facility at 6011 Wyoming Ave., Dearborn, Michigan. The facility's tank farm had over 10 million gallons of storage capacity. CESI lacked adequate treatment processes and the facility's storage tanks were at or near capacity. But CESI continued to accept waste that it could not adequately treat. To make room for incoming wastes and to save treatment costs, CESI and the defendants often bypassed treatment processes and discharged untreated wastes directly to the Detroit sewer system. The defendants' false statements and obstruction of justice worked to conceal the defendants' misconduct. If convicted of the most serious charges, Mallindine faces imprisonment for up to ten years; the other defendants face imprisonment for up to five years; and all defendants face a criminal fine of up to \$50,000 per day of violation. A defendant is presumed innocent until proven guilty. U.S. EPA's Criminal Investigation Division, the Federal Bureau of Investigation, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the United States Coast Guard jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Region 5 files a Consent Agreement and Final Order to conclude case against Dana Container, Inc., Detroit, Michigan.

On September 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Dana Container, Inc. (Dana) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On December 22, 2005, Region 5 filed an administrative complaint, with a proposed penalty of \$381,730, against Dana based on alleged violations at Dana's 1551 Caniff Street facility and 11430 Russell Street facility. The alleged violations at the 1551 Caniff Street facility included: failure to label hazardous waste; failure to conduct inspections of the 90-day storage area; failure to meet design requirements for the 90-day storage area; failure to implement a hazardous waste training program and keep training records; failure to provide safety equipment and provide required aisle space; failure to maintain a contingency plan; and failure to label a container storing used oil. The alleged violations at Dana's 11430 Russell Street facility included: failure to label hazardous waste; failure to make a hazardous waste determination; failure to keep hazardous waste containers closed; failure to include the required elements of a training program; failure to keep records documenting job experience required for a position and any training provided; failure to equip the facility with a device capable of summoning emergency assistance; and failure to have a contingency plan. Dana has agreed to pay a penalty of \$151,000. This reduction reflects information submitted by Dana after the complaint was filed that warranted the complete removal of proposed penalties for four counts and a 10% reduction based on expedited settlement.

Office of Regional Counsel Primary Contact: Stephen Thorn, (312) 353-9715

Region 5 Approves Michigan *E. Coli* TMDL for the Deer Creek Tributary of the North Branch of the Clinton River.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 22, 2006, the Region approved the TMDL submitted to U.S. EPA by Michigan Department of Environmental Quality to address *E. coli* levels in the Deer Creek Tributary of the North Branch of the Clinton River, an impaired water in southeast Michigan largely within Macomb County northeast of Detroit. The TMDL establishes the maximum daily load of *E. coli* coming from point and non-point sources to ensure Deer Creek will meet the established Michigan water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jeanette Marrero, (312) 886-6543

Region 5 files Consent Agreement and Final Order with the Detroit Edison Company.

On January 31, 2007, Region 5 and the Detroit Edison Company, (Detroit Edison) entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that Detroit Edison violated Section 103 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of Emergency

Planning and Community Right-to-Know Act (EPCRA) when it failed to give immediate notice of a release of a reportable quantity of sodium hydroxide to the National Response Center, the Michigan State Emergency Response Commission (SERC), and the Local Emergency Planning Committee (LEPC), and when it failed to provide written follow up to the SERC and the LEPC. The initial proposed penalty in the complaint filed on October 26, 2006 was \$144,412.67. Based on Detroit Edison's cooperation, willingness to quickly resolve this matter, and new information relevant to determining when there was knowledge of a release that left the facility, and new information on how risk to the environment has been stopped, the parties agreed to resolve this matter by Detroit Edison's payment of a civil penalty of \$52,333.35.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670;
secondary contact: James Entzminger, (312) 886-4062

EPA and the Dow Chemical Company enter into three CERCLA settlement agreements and orders on consent for the critical removal actions for cleanup of dioxin in, and along, the Tittabawassee River in Midland County, Michigan.

On July 12, 2007, the United States Environmental Protection Agency (U.S. EPA) and The Dow Chemical Company ("Dow") entered into three separate Administrative Settlement Agreements and Orders on Consent under the authority of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA). The Administrative Settlement Agreements and Orders provide for CERCLA time critical removal actions to clean up dioxin-contaminated bottom deposits, sediments, and/or soils in, or along, the Tittabawassee River in Midland County, Michigan.

The first Administrative Settlement Agreement and Order on Consent ("AOC") provides for the performance of removal actions by Dow to cleanup approximately 14,000 cubic yards of dioxin-contaminated bottom deposits and sediments at (and the reimbursement of response costs incurred by the United States at or in connection with) the area known as Reach D, which is located at and in the vicinity of an historic flume situated along the northeast bank of the Tittabawassee River, within The Dow Chemical Company Midland Plant property.

Under the second AOC, Dow agrees to perform a removal action at an area known as Reach J-K, which is located in overbank areas on the northeast side of the Tittabawassee River, approximately 3.6 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers. Under this AOC, Dow will remove a dioxin-contaminated naturally occurring levee, as well as cap one dioxin-contaminated upland area and fence off another dioxin-contaminated wetland area. Dow will also reimburse response costs incurred by the United States. This Site is located within Dow's property bounded to the northeast by a wetland with Saginaw Road to the northeast beyond the wetland, the Caldwell boat launch to the South, and to the west by the east channel bank of the Tittabawassee River, in Midland County, Michigan.

Under the third AOC, Dow agrees to perform a removal action at an area known as Reach O of the Tittabawassee River, an approximately 1,300 foot-long point bar extending approximately 50 to 100 feet into the Tittabawassee River and situated parallel to the northeast bank of the Tittabawassee River, approximately 6.1 miles downstream of

the confluence of the Chippewa and Tittabawassee Rivers and located within, or immediately adjacent to, Dow property located to the south of North Saginaw Road in Midland County, Michigan. Under this AOC, Dow will remove dioxin-contaminated sediments in three designated locations of the point bar. Dow will also reimburse response costs incurred by the United States. Each of these three performance based removal action are to be begin no later than August 15, 2007, and must be completed by December 15, 2007.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; James Augustyn, additional contact, (440) 250-1742

U.S. EPA Region 5 enters Consent Agreement and Final Order with EBW Electronics, Inc., Including a Supplemental Environmental Project to Abate Lead-Based Paint Hazards in Holland, Michigan.

On September 24, 2007, the Region 5 Regional Administrator signed a Final Order concluding an administrative action against EBW Electronics, Inc., under Section 325(c) of EPCRA. The Consent Agreement alleged that during calendar year 2004, EBW Electronics processed 1,400 pounds of lead, and violated Section 313 of EPCRA by failing to timely submit a Form R. A civil penalty of \$15,345 was calculated, which includes a 30% reduction for cooperation and compliance. EBW Electronics will pay \$3,836 to settle this action. In addition to the penalty, EBW Electronics will fund a SEP project valued at \$11,509, which will be monitored by the Michigan Department of Community Health, Lead and Healthy Homes Section (Michigan DCH), and conducted by a qualified lead abatement contractor, to abate and/or mitigate lead-based paint hazards in three residential housing units located in Holland, Michigan.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Tom Crosetto (312) 886-6294

CERCLA ElectroVoice, MI Five Year Review and IC Implementation.

On September 20, 2006, EPA Region 5 signed a Five-Year Review Report for the Electro-Voice Superfund Site located in Buchanan, Michigan. The Five Year Review determined that the hazardous waste cap and soil cleanup were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy may not be functioning as intended because there were Trichloroethylene (TCE) exceedances of the Maximum Contaminant Level (MCL) at downgradient wells that previously did not have exceedances. The Five-Year Review Report recommended contingency actions to address the groundwater issues.

As part of the Five-Year Review, the Region implemented an Institutional Control (IC) study for the Site. As part of the IC study, EPA Region 5 worked with the PRPs to develop a restrictive covenant under Part 201 of the Michigan NREPA for the Site to implement the following restrictions on the Electro-Voice property: a) prohibit interference with the hazardous waste cap over former lagoon area; b) prohibit interference with limited industrial area (former drywell area); c) prohibit residential use; d) prohibit groundwater use; and e) prohibit interference with monitoring wells. The PRPs surveyed the hazardous waste cap and limited soil industrial use areas, which was incorporated into the restrictive covenant. The owner provided the Region with a title commitment and copies of recorded encumbrances that demonstrated that: a) the owner

had authority to execute the restrictive covenant; and b) prior in time recorded encumbrances did not appear to interfere with the land and groundwater restrictions. The owner recorded the restrictive covenant with the county recorder's office on September 12, 2006. The restrictive covenant is enforceable by the PRPs, the State of Michigan pursuant to Part 201 of the Michigan NREPA and U.S. EPA as a third party beneficiary.

As part of the Five Review process, the Region reviewed an existing City of Buchanan, MI ordinance that prohibited residents from using the contaminated groundwater at the Site. The Region reviewed the City Ordinance. As a result of this review, the Region sent the City an updated groundwater contamination map and requested that the City to designate the revised area as a restricted groundwater use area.

Office of Regional Counsel Contact: Jan Carlson, (312) 886-6059

Region 5 signs Consent Agreement and Final Order with Gallagher Farm Service.

On March 29, 2007, Region 5 signed a CAFO with Gallagher Farm Service (Gallagher), Belding, Michigan, in settlement of a complaint that EPA filed on September 21, 2006, alleging violations of FIFRA. The complaint alleged violations of Section 12(a)(1)(C), for selling a registered pesticide, the composition of which differed at the time of sale from the composition described in its registration; of Section 12(a)(1)(E) by selling a misbranded pesticide; and of Section 12(a)(2)(L) for failing to file a true and accurate Pesticide Report for Pesticide-Producing and Device-Producing Establishments for calendar year 2002. The complaint proposed a \$24,200 penalty. In consideration of the gravity of the violation, Gallagher's good faith efforts to comply and cooperation, Region 5 mitigated the penalty to \$15,000, payable in two installments.

United States Lodges Consent Decree for CERCLA Cost Recovery for the Lakeland Disposal Site, Kosciusko County, MI.

On May 21, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Northern District of Indiana a civil Consent Decree regarding the Lakeland Disposal Superfund Site in Kosciusko County, Michigan. Under the decree, General Motors Inc., Da-Lite Screen Company, Inc., Morton International Owens-Illinois, Inc., Robertshaw Controls Company, Warsaw Black Oxide Inc., United Technologies Corp., CTS Corp., Dalton Corp., Johnson Controls, Inc., Kosciusko County, Indiana, Leco Corp., McGill Manufacturing Company Inc., R.R. Donnelley & Sons Company, and Uniroyal, Inc., will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs. In a related action with respect to the Site, a separate Consent Decree was also lodged on May 21, 2007, fully resolving violations alleged in the related civil action against Mr. David Lindsey, former owner and operator of the Site.

The Lakeland Disposal Superfund Site is a former landfill occupying approximately 39 acres approximately 3-1/2 miles northwest of Claypool, Indiana. Sloan Ditch, an agricultural drainage ditch, forms the boundary of the eastern and northern edges of the Site. Wooded areas are located east of the landfill along Sloan Ditch and the adjacent wetlands. Several wetland areas exist along Sloan Ditch and on the landfill itself.

At least 18,000 drums of waste materials were deposited at the Site. In addition, approximately 8,900 tons of plating sludge and more than 2 million gallons of plating

waste containing various hydroxide sludges of aluminum, cadmium, chromium, copper, lead, nickel, tin, selenium, and zinc were disposed of on the Site. Other wastes reportedly disposed of there include spent filter sand, wastewater treatment sludge containing copper, nickel and chromium, sewage sludge, and cyanide, zinc and chrome plating liquids. The Remedial Investigation/Feasibility Study (RI/FS), Pre-Design Study for the Lakeland Site was conducted by four parties: Dana Corporation, General Motors Corporation, United Technologies Automotive Inc., and Warsaw Black Oxide, Inc.

The remedial design and remedial action (RD/RA) work was performed by five parties: Dana, Eaton, General Motors Corporation, UTA, and Warsaw Black Oxide, pursuant to a Unilateral Administrative Order (UAO). The UAO respondents have completed the RD/RA work satisfactorily, and the Site is currently in Operation and Maintenance. U.S. EPA approved the RI/FS and has overseen the RD/RA work conducted by the ACO and UAO Parties. U.S. EPA completed the Site's CERCLA Section 121 (c) Five Year Remedy Review on August 14, 2005.

The Consent Decree calls for the payment of \$1,391,195.02 in past costs and payment of U.S. EPA's future costs. U.S. EPA will receive \$1,125,000.00 to be deposited in a Lakeland Special Account within the U.S. EPA Hazardous Substances Superfund to be retained and used to conduct or finance response actions at the Site.

Office of Regional Counsel Contact: Luis Oviedo, (312) 353-9538; Superfund Division Contact: Scott Hansen, (312) 886-1999

U.S. EPA issues a RCRA 3008h Administrative Order on Consent for Corrective Action at the Center Point Business Campus in Pontiac, Michigan.

On May 24, 2007, U.S. EPA and General Motors Corporation (GMC) entered into an Administrative Order for Corrective Action at the Center Point Business Campus (formerly the Pontiac Truck Group facility) in Pontiac, Michigan. The Order requires GMC to complete Corrective Action by, among other things, operating and maintaining a multi-phase extraction system, imposing institutional controls where necessary, and maintaining financial assurance for the costs of Corrective Action. GMC has removed soils contaminated with benzene, toluene, ethylbenzene, and xylene (BTEX), polynuclear aromatics (PNA's), lead, solvents, and paint. In addition, GMC is recovering light non-aqueous phase liquid (LNAPL) from groundwater.

GMC's Pontiac facility encompasses approximately 400 acres of land. From 1927 through 1990, GMC produced medium and heavy duty trucks and buses at the facility. Between 1991 and 1995, all buildings were demolished and the area was redeveloped as the Centerpoint Business Campus. Presently, the Centerpoint Business Campus includes a Truck Engineering Center, the Pontiac Assembly Center, the GM Truck Product Center, a wastewater treatment plant and two stormwater retention ponds.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Dan Patulski, RCRA Corrective Action Section, (312) 886-0656

Region 5 signs Consent Agreements and Final Orders with Investors Management Services Corp. and Leroy W. Vaughn, resolving Lead-Based Paint violations.

On August 28 and 30, 2007, Respondents Investors Management Services Corp. and Leroy W. Vaughn entered into pre-filing settlement agreements resolving violations of the Lead-Based Paint Hazard Reduction Act for failing to comply with the requirements in 40 C.F.R. Part 745, Subpart F, in the leasing of target housing in Detroit, Michigan. Under the terms of the two settlements, Respondents will pay a total civil penalty of \$3,200, and perform a supplemental environmental project (SEP) in Detroit to abate and/or mitigate lead-based paint hazards in residential housing where one or more children reside. The abatement/mitigation will be performed in partnership with the Greater Detroit Area Health Council, CLEAR Corps Detroit, a not for profit organization, at a total cost of \$32,400.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237, and Estrella Calvo, Pesticides and Toxics Compliance Section, (312) 353-8931

U.S. Court of Appeals for the Federal Circuit denies Request for Rehearing En Banc on Taking Claim.

On November 30, 2006, the United States Court of Appeals for the Federal Circuit denied petitioner's request for a rehearing en banc. The Court had originally issued an opinion on August 9, 2006 requiring the lower Court to dismiss the taking claim that had been filed against the government. The Appellate Court found that the plaintiff, John R. Sand and Gravel Company, had not filed its claim within the applicable statute of limitation. The Appellate Court ordered the case remanded to the lower Court for dismissal of the complaint. Thus, the plaintiff was awarded no damages or attorney fees.

The Metamora Landfill Superfund Site is located in Lapeer County, Michigan. The landfill began operations in 1955 as a privately owned, unregulated open dump utilized by residents of the Village of Metamora. The operator, Russell Parrish, began illegally accepting drums of liquid industrial wastes during the mid-1960s. This continued through the 1970s. At no point was it ever licensed to accept liquid industrial wastes.

In 1969, the Plaintiff, John R. Sand & Gravel Company, entered into a 50-year lease with Parrish which granted it the exclusive right to mine sand and gravel on the Parrish property. At the time plaintiff entered into the lease, the landfill was in existence and operating as a landfill.

In September 1984, the Site was placed on the NPL. A RI/FS was conducted and two RODs were issued: one requiring the excavation and disposal of more than 30,000 drums at the Site, and the second requiring the remediation of contaminated groundwater and the closure and capping of the landfill. Both of these RODs were implemented by the PRPs. In the area covered by the landfill cap, EPA required that institutional controls be put in place to preclude activities, including mining, that could disturb the cap.

In June 2002, Plaintiff filed a complaint alleging that the environmental remediation of the Site that excluded Plaintiff from a portion of the Site caused a physical taking of a portion of its sand and gravel mining lease. The United States filed several pre-trial motions, one which was for summary judgment based on the statute of limitation. The lower Court found that the taking claim was timely filed and denied the motion.

After a trial on liability, the lower Court ruled in the United States' favor that there was no taking and thus awarded the plaintiff no damages or attorney fees. The lower Court's decision stated that the plaintiff lacked a compensable property interest because it took the mining lease subject to the existence of the landfill and allowed the landfill to continue to operate in an area that was subject to the lease. The lower Court also went on to rule that any mining in the area of the landfill cap could impact the existing groundwater remediation and endangering the public health and safety, thereby creating a public nuisance. Since the mining would be a public nuisance, preventing the plaintiff from mining would not be a compensable interest.

On appeal, the United States did not brief the issue of the statute of limitation. However, in a 2-1 decision, the Appellate Court, based on an amicus brief filed by the PRP group doing the work at the Site and *sua sponte*, considered the issue of the applicable statute of limitation. The Appellate Court disagreed with the lower Court and found that the taking claim had accrued more than six years prior to the filing of the complaint. Thus, the taking claim was time barred. The Appellate Court vacated the lower Court's decision and remanded the case with instruction that the lower Court dismiss the plaintiff's complaint. The plaintiff petitioned for a rehearing by the full Court, which was denied on November 30, 2006. The dissenting opinion, while finding that the taking claim was timely filed, stated it would have affirmed the lower Court ruling that there was no taking because the plaintiff took its mining lease subject to the existing landfill.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Ypsilanti Landlord Convicted of Substantial Endangerment for Discharging Untreated Sewage to Water.

In 2004, David Kircher owned the Eastern Highlands apartment complex in Ypsilanti, Michigan. On June 29, 2005, the Michigan Attorney General filed a two-count felony complaint against Kircher alleging that Kircher knowingly and unlawfully discharged a substance into the Huron River and that this discharge posed a substantial endangerment to the public health, safety or welfare. Kircher's bench trial began October 2, 2006, in Washtenaw County Circuit Court before Judge Archie Brown. On October 12, 2006, Judge Brown issued his verdict, finding Kircher guilty on both counts. Kircher will be sentenced on December 6, 2006. Kircher faces a potential prison term of five years and a potential criminal fine of not less than \$1 million, plus \$2,500-\$25,000 for each violation and up to \$25,000 for each day of violation.

The complaint alleged that on October 12-14, 2004, Kircher and people under his direction pumped about 25,000-100,000 gallons of untreated sewage from Eastern Highlands to a storm drain flowing directly into the Huron River. At least three children were exposed to the untreated sewage during this discharge, including two minors who ingested some of the sewage.

The Southeast Michigan Environmental Crimes Task Force including U.S. EPA's Criminal Investigation Division, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the Michigan Attorney General jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, 312-886-6827

McClain Properties enters CAFO settling violations of Lead Disclosure Rule under TSCA § 16(a) and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act.

On September 27, 2007, McClain Properties entered a consent agreement and final order settling alleged violations of the Lead Disclosure Rule at 40 C.F.R. Part 745. The alleged violations concern the Respondent's failure to comply with the requirements of providing lessees, before they become obligated on a lease, a lead warning statement, an accurate lead disclosure statement, a list of any records or reports available to the lessor and an acknowledgement by lessor and lessee concerning the foregoing matters. Respondent agreed to perform a lead paint abatement project and thus obtained a 90% reduction in the proposed penalty under EPA's 2004 Policy "SEPs in Administrative Enforcement Matters Involving Section 1018 Lead-based Paint Cases." The reduced penalty amount is \$1,263.00.

Office of Regional Counsel Contact: Gaylene Vasaturo, (312) 886-1811

Region 5 signs a Consent Agreement and Final Order with the Mercury Displacement Industries, Inc.

Region 5 initiated this enforcement action in January 2007. On September 27, 2007, Region 5 filed a Consent Agreement and Final Order with Mercury Displacement Industries, Inc., in Edwardsburg, Michigan. The Region alleged that Mercury Displacement Industries, Inc. failed to timely submit Form Rs to the Administrator for both lead and mercury for the 2005 calendar year, as required by Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c). Mercury Displacement Industries, Inc. agreed to resolve this matter prior to the issuance of an administrative complaint with a payment of a civil penalty amount of \$ 1,984.00. The total calculated Category II, Level 4 penalty for the alleged violations was \$ 2,834.00; however, this penalty was reduced approximately 30% in accordance with mitigating factors delineated in the Enforcement Response Policy for Section 313 of EPCRA.

Office of Regional Counsel Contact: James Morris, (312) 886-6632; Kenneth Zolnierczyk, primary contact, (312) 353-9687

Ex-Parte Warrant issued for 4180 Luna Pier, Luna Pier, Michigan, Eastern District of Michigan.

On January 17, 2007, Judge Zatkoff, Eastern District of Michigan, issued a warrant which allows U.S. EPA, its contractors and accompanying federal, state and local authorities, to conduct inspection and removal activities related to oil spills at 4180 Luna Pier Road, Luna Pier, Michigan. Under the terms of the warrant issued under Sections 311(b), (c), (e) and (m) of the Clean Water Act, 33 U.S.C. § 311(b), (c), (e) and (m), U.S. EPA can access the site to investigate and to remove soil and groundwater contamination which poses and imminent and substantial threat to the public health, welfare and environment. The warrant was served by On-Scene-Coordinators to a facility representative on January 17, 2007.

U.S. EPA will work with MDEQ to curtail the imminent and substantial threat to public health, welfare and the environment. The warrant provides U.S. EPA with access for

sixty (60) days.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

Region 5 signs two Administrative Settlement Agreements and Orders on Consent for the Kalamazoo River Superfund Site.

On February 21, 2007, Region 5 signed two Administrative Settlement Agreements and Orders on Consent (AOCs) for CERCLA response work at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the "Site"). Region 5, the State of Michigan, and two potentially responsible parties, Millennium Holdings LLC, and Georgia-Pacific LLC (the "PRPs"), signed an AOC to perform a \$20-25 million time-critical removal action in an area of the Kalamazoo River called the Plainwell Impoundment area (Removal AOC). As part of the removal settlement, U.S. EPA contributed \$1 million from a previous bankruptcy settlement at the Site; the Michigan Department of Natural Resources (MDNR) contributed \$500,000 in cash; and the Michigan Department of Environmental Quality (MDEQ) forgave \$1.5 million in past costs. An AOC for Supplemental Remedial Investigation/Feasibility Study (SRI/FS) was also signed among Region 5 and the PRPs (SRI/FS AOC). The PRPs will provide financial assurances in the amount of \$15 million for the SRI/FS work for the entire river. The two AOCs are the result of over two years of mediated settlement negotiations between Respondents and several government partners, including: Region 5; MDEQ; MDNR; the Michigan Department of Attorney General; the National Oceanic and Atmospheric Administration; and the U.S. Fish and Wildlife Service. The U.S. Department of Justice participated in several mediation sessions. The mediation successfully facilitated resolution of significant differences among the participants that were delaying cleanup of the river.

The time-critical removal action will include dredging and/or excavating approximately 132,000 cubic yards of wastes (4,400 lbs. of PCBs) from in-stream sediments, river banks, and floodplain soils. Disposal will occur at an on-Site landfill owned by Millennium Holdings. The PRPs intend to remove a portion of the Plainwell Dam in order to construct a water control structure, which will serve to de-water the impoundment area and facilitate excavation in the "dry." As a result of the dam removal, the river will be restored to its original channel. Region 5 and MDEQ will both oversee the work and have approved the engineering design plan for the action.

The SRI/FS AOC requires the Respondents to conduct additional sampling throughout the Kalamazoo River, which will supplement existing data. Region 5 has approved, with support from MDEQ and the Natural Resource Trustees, a work plan for the supplemental sampling in select locations within the first reach of the river. The Region intends to issue Records of Decision (RODs) for the river reaches in an upstream to downstream pattern.

Office of Regional Counsel Contacts: Eileen Furey, (312) 886-7950; Jacqueline Clark, (312) 353-4191; Program Contacts: Shari Kolak (RPM), (312) 886-6004; Sam Borries (OSC), (312) 353-8360

Region 5 signs a Consent Agreement and Final Order with Mosaic USA, LLC resolving violations of Underground Injection Control (UIC) requirements.

On September 10, 2007, the Regional Administrator signed a Final Order resolving alleged violations of its UIC permit by Mosaic USA, LLC, d/b/a/ Mosaic Potash Hersey. The CAFO was filed with the Regional Hearing Clerk on September 17, 2007. Mosaic failed to demonstrate Part II mechanical integrity for 19 of its underground injection wells at its potash mining facility in Hersey, Michigan. The complaint proposed the statutory maximum administrative penalty of \$157,500. Based on Mosaic's immediate cooperation in remedying these violations, the lack of potential contamination of underground sources of drinking water due to the violations, and other factors consistent with the Safe Drinking Water Act and the Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy, the Region agreed to mitigate the penalty to \$50,000. Mosaic has returned to compliance with its permit and the UIC regulations.

Office of Regional Counsel Primary Contact: John Tielsch, (312) 353-7447; Other contact: William Bates, UIC Program (312) 886-6110

Former President of Michigan Business Charged with Environmental Crimes.

On March 2, 2006, James G. Musser, was arraigned and pleaded not guilty to an indictment filed on December 13, 2006 in United States District Court, Eastern District of Michigan, Northern Division, Bay City, Michigan. The indictment charges James G. Musser with 3 criminal counts under the Resource Conservation and Recovery Act ("RCRA"), for storage and disposal of hazardous waste at the Hoskins Manufacturing facility in Mio, Michigan and the disposal of hazardous waste at the Hoskins Manufacturing facility in Hamburg, Michigan. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Region 5 files Consent Agreement and Final Order with P & B Investments, Inc.

On April 2, 2007, Region 5 and P & B Investments, Inc. (Respondent) entered into a pre-complaint Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that the Respondent, as lessor of target housing in Detroit Michigan, violated the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4252d et seq., and Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), (b)(6).

The initial proposed penalty in this matter was \$59,039, which was calculated consistent with the statutory penalty criteria of Section 16 of TSCA, 15 U.S.C. § 2615, and Section 1018 Disclosure Rule Enforcement Response Policy ("penalty policy"). Also consistent with the penalty policy, U.S. EPA mitigated the proposed penalty by 30% to \$41,327 in consideration of Respondent's cooperation, the immediate steps to comply with the Disclosure Rule and in consideration of the value of early settlement. The penalty of \$41,327 was further mitigated to \$4,133 due to Respondent's agreement to perform Supplemental Environmental Project (SEP) involving a window replacement project and lead clearance sampling to protect tenants from potential lead-based paint hazards at a cost of at least \$37,194.

Office of Regional Counsel Primary Contact: Tamara Carnovsky, (312) 886-2250;
Estrella Calvo additional contact, (312) 353-8931

Region 5 signs Consent Agreement and Final Order with Snappy Apple Farms, Inc.

On 05/22/2007, Region 5 signed a consent agreement and final order with Snappy Apple Farms, Inc. of Casnovia, Michigan, to settle violations of Section 312 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11022. Section 312 of EPCRA, and its implementing regulations at 40 CFR Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act to prepare or have available a material safety data sheet for a hazardous chemical, to submit to the state emergency response commission, appropriate local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter an Emergency and Hazardous Chemical Inventory Form. The form must contain the information required by Section 312(d) of EPCRA, covering all extremely hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 5,000 pounds. The maximum quantity at any one time of anhydrous ammonia at the facility for the calendar years 2002-2004 is 8,000 pounds. Anhydrous ammonia is an extremely hazardous substance under EPCRA. The facility exceeded the reporting threshold by 16 times and the facility never submitted the Emergency and Hazardous Chemical Inventory Forms. Due to an inability-to-pay the full proposed penalty of \$74,483.07 and other mitigating factors, Snappy Apple Farms will pay a penalty of \$7,919 and will perform a Supplemental Environmental Project valued at \$4,581. The SEP will consist of purchasing hazardous materials response equipment for the local fire department.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: James Entzminger, (312) 866-4062

Emissions Tester admitted making false pollution reports, banned from air testing for two years.

On Friday, November 17, 2006, Larry Tester, current owner of Genesis Air, Inc., a smokestack emissions testing firm, was charged in Michigan state court with one count of submitting a false statement in a report required under Michigan law. Tester admitted in court that he had falsified data in an air emissions test report sent both to his client and the Michigan DEQ which made the test appear to have been validly conducted. In fact, Tester admitted he knew the test was not valid. Tester pleaded guilty to the charge in accordance with a plea agreement with the government, and was sentenced the same day to serve 2 years probation and to pay \$12,890 in restitution to his former client. As a part of his probation, Tester is prohibited from being involved in the stack testing business for the term of his probation, and is required to publish a public apology in a trade journal explaining what he did and the repercussions.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with The Valspar Corporation.

Region 5 initiated prefilings discussions on this matter in March, 2007. The proposed penalty was \$40,500. On September 11, 2007, Region 5 filed a Consent Agreement and

Final Order commencing and concluding a proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide on eight separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$32,400.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

CERCLA Wash King Laundry, MI Five Year Review.

On September 28, 2006, EPA Region 5 signed a Five-Year Review Report for the Wash King Laundry Superfund Site located in Baldwin, Michigan. The Five-Year Review determined that the soil-vapor extraction and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy was taking longer than anticipated and could require adjustments. The Five-Year Review Report recommended contingency actions to address the groundwater issues and an IC study.

Because the groundwater capture wells are encountering low extraction rates, the projected length of time required for the groundwater remedy to reach unrestricted use of the groundwater has been extended. While many of the local homeowners in this rural area are hooked into a water-supply system, some are not and, therefore, an IC study will be done for the site. The study will evaluate the current groundwater concentrations in areas where homes still use private wells and evaluate the existing groundwater use restrictions to determine if institutional controls will be necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Minnesota

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Minnesota:

- [Accu-Tronics Manufacturing, Inc.](#)
- [Agro-K Corporation](#)
- [BTW, Inc.](#)
- [CertainTeed Corporation](#)
- [CHS, Inc.](#)
- [Cortec Corporation](#)
- [Crystal Valley Cooperative](#)
- [Don Prow and Rochester Topsoil](#)
- [Eco Finishing](#)
- [Electronic Industries, Inc.](#)
- [Kemps, LLC](#)
- [L&M Radiator, Inc.](#)
- [Microbe Guard, Inc. \(2\)](#)
- [Minnesota Mercury Total Maximum Daily Load](#)
- [Minnesota Metal Finishing, Inc.](#)
- [Newport-St. Paul Storage](#)
- [Newton, Isaiah](#)
- [Office of Enforcement and Compliance Assurance \(OECA\)](#)
- [Reardon Properties](#)
- [SJM Properties](#)
- [Spectro Alloys Corporation](#)
- [Star Acquisition, Inc.](#)
- [Target Corporation](#)

Region Resolves ECPRA Section 313 Case Against Accu-Tronics Manufacturing, Inc. (St. Paul, Minnesota).

On November 7, 2006, the Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which Accu-Tronics Manufacturing, Inc. (Accu-Tronics) agreed to pay a penalty of \$2,000 for a violation of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, at its facility in St. Paul, Minnesota. Specifically, Region 5 alleged that Accu-Tronics failed to timely file its calendar year 2004 Toxic Chemical Release Inventory Form R, for lead that it processes at its facility, with EPA and the State of Minnesota by July 1, 2005, as required by Section 313 of EPCRA. Respondent filed its calendar year 2004 Form R on November 2, 2005. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on November 9, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Terence Bonace, secondary contact, WPTD, (312) 886-3387

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with Agro-K Corporation.

Region 5 initiated prefilings discussions on this matter in September, 2006. The proposed penalty was \$54,600. On January 18, 2007, Region 5 filed a Consent Agreement and

Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold unregistered pesticides, Vigor-Cal and Vigor-Cal-Phos on twelve separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$39,680.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; secondary contact: Terry Bonace, (312) 886-3387

On April 16, 2007 Region 5 filed a Consent Agreement and Final Order to commence and conclude case against BTW, Inc., Coon Rapids, Minnesota.

On April 16, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against BTW, Inc. (BTW) for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Coon Rapids, Minnesota. The CAFO required BTW to pay a penalty of \$13,763. BTW made its payment on May 15, 2007. BTW failed to submit to U.S. EPA and to the State of Minnesota a Form R for lead for the calendar year 2004 by July 1, 2005. After an inspection of the facility by U.S. EPA, BTW came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$22,939. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 immediately after the site inspection, its cooperation, and its significant subsequent investments in reducing its lead solder usage (to the point where it wasn't required to file a Form R for 2006).

Office of Regional Counsel Contact: Thomas Krueger, (312) 886-6837; program contact, Terence Bonace, (312) 886-3387

Region 5 Settles Clean Air Act Matter with CertainTeed Corporation.

On May 23, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) settling Clean Air Act (CAA) violations by CertainTeed Corporation. The violations were voluntarily disclosed by CertainTeed to EPA in letters dated March 25, 2004 and December 14, 2004. In July 2005, EPA determined that CertainTeed had not met several of the criteria in EPA's [Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations](#) (EPA Audit Policy), so no penalty reduction was warranted. At that time, EPA also informed CertainTeed that the Agency intended to file an enforcement action. In a complaint filed on August 29, 2006, EPA alleged that CertainTeed was operating two pieces of equipment without a permit and was operating a third piece of equipment in violation of the facility's CAA Title V permit. Two of the violations lasted for a period of several years. After the complaint was filed, CertainTeed submitted written and verbal information to EPA which allowed the Agency to revisit and reverse its earlier determination regarding the application of the EPA Audit Policy. Ultimately, EPA determined that CertainTeed satisfied eight of the nine Audit Policy criteria, resulting in a 75% reduction in the proposed penalty. EPA also reduced the penalty based on the seriousness of the violation, and CertainTeed's good faith efforts to comply. The CAFO settles the matter for a total of \$13,750, plus the performance of a supplemental environmental project costing at least \$41,250 (the complaint proposed a

penalty of \$272,140). The supplemental environmental project consists of CertainTeed permanently retiring SO₂ or NO_x emission credits.

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Charmagne Ackerman, Environmental Engineer, (312) 886-0448

Region 5 signs Consent Agreement and Final Order with Respondent CHS, Inc. Grand Meadow, MN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced four pesticides in an unregistered establishment located at 73057 State Highway 16, Grand Meadow, Minnesota, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. The Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

TSCA Pre-Manufacture Notice Case against Cortec Corporation Settled With Simultaneous Complaint and CAFO.

On January 31, 2007, Region 5 filed a simultaneous Complaint and Consent Agreement and Final Order (CAFO) initiating and resolving an administrative compliance action under Section 16 of Toxic Substances Control Act (TSCA), 15 U.S.C. 2615, and 40 C.F.R. § 720.120(f), against Respondent Cortec Corporation for violations alleged at the company's St. Paul, Minnesota facility. The Region alleges that Respondent Cortec manufactured two non-exempt new chemical substances for a non-exempt commercial purpose, without filing a notice with U.S. EPA under Section 5 of TSCA in violation of Section 5(a)(1)(A) of TSCA, and 40 C.F.R. § 720.120(a) and (b). Cortec claims the identities of the two substances as Confidential Business Information (the Complaint sets forth the Confidential Business Information (CBI); the CAFO does not). The Region proposed an unmitigated civil penalty of \$237,434 for the violations.

In the CAFO Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations. Respondent indicates that it filed a Low Volume Exemption for the substances at issue on August 9, 2005 (after the inspection date), thus achieving compliance with the relevant requirements. Based on the fact that Respondent timely achieved compliance after the inspection, and Respondent's co-operation and good faith in reaching the negotiated settlement set forth in the CAFO, the Region agreed to mitigate the civil penalty amount for the violations to \$202,000. This amount represents a 20% mitigation of the proposed penalty amount.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

Region 5 Enters into a Consent Agreement and Final Order Resolving A Violation of Section 103 of CERCLA by Crystal Valley Cooperative, Lake Crystal, Minnesota.

On October 13, 2006, the Regional Administrator, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under CERCLA Section 103 pursuant to which Crystal Valley Cooperative agrees to pay a civil penalty of \$18,789. The CAFO was filed with the Regional Hearing Clerk on October 13, 2006. Crystal Valley Cooperative experienced a release of 2,200 pounds of ammonia on April 16, 2005, when a bolt broke on the front running gear of an ammonia nurse tank while the tank was being transported by a Crystal Valley Coop employee. The tank rolled over into a ditch, causing the cage around the valve to break off and the valve to open. Crystal Valley Cooperative failed to promptly notify the National Response Center of the release of 2,200 pounds of ammonia. The initial penalty calculated for the CERCLA violation was \$28,907. For settlement purposes, this number was mitigated down to \$18,789 based on a 10% reduction for quick settlement and a 25% reduction for good faith and cooperation. Under the settlement, Crystal Valley Cooperative will pay a cash civil penalty of \$18,789.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

Joint Motion for Modification of Consent Decree in U.S. v. Don Prow and Rochester Topsoil entered by Minnesota District Court.

U.S. EPA and the Army Corps of Engineers entered into a Consent Decree with Defendants Don Prow and Rochester Topsoil on April 21, 2006. The Decree settled violations of the Section 404 of the Clean Water Act. Under the consent decree, Defendants were ordered to pay a \$250,000 civil penalty; fully restore Willow Creek and altered wetlands within one year; and mitigate their violations by creating and protecting new wetlands at an off-site location known as Rock Dell Farms. Details of the injunctive requirements were described in the Consent Decree in a narrative restoration and mitigation work plan with the locations for restoration and mitigation depicted on maps. Defendants paid the \$250,000 civil penalty and began and finished most (although not all) of the required restoration work on time. Based upon a review of the completed work, Region 5 and the Corps proposed five limited changes to the consent decree and Work Plan to clarify Defendants' remaining obligations and to avoid any potential confusion which could arise should enforcement be necessary. The five changes were: 1. creation of New Vegetation Sampling Zone H; 2. identification of Vegetation Sampling Zones; 3. deletion of Obsolete Text in Work Plan Appendix; 4. modification of Construction Compliance Schedule, and 5. modification of Legal Description for Conservation Easement. The District Court granted the Joint Motion to Modify the Decree on July 10, 2007.

Office of Regional Counsel Primary Contact: Sandra M. Lee, (312) 886-6841

President of Plating Firm in Minnesota Charged.

On August 22, 2007, Keith David Rosenblum, Eco Finishing's Chief Executive Officer and President, and Martin Wayne Meister, Eco Finishing's Plant Manager, were indicted by a Federal Grand Jury in Minneapolis on eleven felony counts of violating the Clean Water Act stemming from Eco Finishing's metal finishing operations. The charges include alleged violations of discharge limits for cyanide, pH, chromium and zinc, failing to submit analytic results, failing to report violations, and conspiracy. In addition, Keith

Rosenblum was charged with four additional counts involving tampering with monitoring methods, failing to submit reports, and failing to report violations. Eco Finishing, an electroplating firm located in Fridley, Minnesota, was indicted earlier for Clean Water Act violations in related charges. On February 15, 2007, Eco Finishing was sentenced following its plea to the charges. Eco Finishing was required to pay the amount of \$250,000, consisting of a fine of \$225,000 and \$25,000 in extraordinary restitution to be paid to the Federal Transport Program. In addition, the company was placed on 3 years probation. Ted Gibbons, Eco Finishing's former chemist, was also sentenced to 18 months imprisonment for violating the Clean Water Act and tampering with environmental testing equipment. An indictment is only an accusation, and all defendants are entitled to a fair trial at which the government must prove guilt beyond reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Region 5 signs a Consent Agreement and Final Order with Electronic Industries, Inc.

On May 29, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against Electronic Industries, Incorporated, of Vadnais Heights, Minnesota. Region 5 alleges that Electronic Industries violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) and lead compounds it processed, manufactured, or otherwise used during calendar year 2004. In settlement, Electronic Industries will pay a civil penalty of \$4,150.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Terry Bonace, Waste, Pesticides, and Toxics Division, (312) 886-3387

Region 5 executes CAFO with Kemps, LLC, resolving CERCLA/EPCRA Violations at its facilities in Rochester and Farmington, Minnesota.

On February 7, 2007, the Region filed a Consent Agreement and Final Order resolving an Administrative Complaint originally filed on August 14, 2006. The Complaint sought penalties associated with a release of ammonia at its ice cream production facility in Rochester, Minnesota, under section 103(a) of CERCLA and section 304(a) of EPCRA. Specifically, the Complaint alleges that Respondent failed to notify the National Response Center and the Minnesota SERC immediately upon learning of the release. During settlement negotiations, Respondent offered to resolve liability for a second ammonia release at a Kemps cottage cheese production facility in Farmington, Minnesota, for which the Region had already issued an information request and received a response. Consequently, we amended the Complaint to include counts for failure to immediately notify the NRC and Minnesota SERC of the Farmington release and another count for failure to provide prompt written follow up notification to the SERC. Kemps will implement two SEPs to mitigate the penalty proposed in the Amended Complaint of \$128,231, one SEP to install intermediate pressure relief valves in the refrigeration system at its Farmington facility and to install seven emergency ammonia detection sensors at its Rochester facility. Kemps will pay a civil penalty of \$50,290.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566

Region 5 files a Consent Agreement and Final Order to commence and conclude case against L&M Radiator, Inc., Hibbing, Minnesota.

On November 15, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for two violations of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, L&M allegedly failed to timely file Form Rs with the U.S. EPA and the State of Minnesota for Copper and Lead in calendar year 2002. L&M processed these toxic chemicals above the regulatory thresholds and, therefore, was required to file the Form Rs by July 1, 2003. L&M did not file until September 24, 2003. Region 5 calculated a proposed penalty in this matter of \$29,684. In response to a Notice of Intent to File letter, L&M indicated a desire to resolve this matter. Region 5 offered and L&M accepted a 30% reduction for cooperation and efforts to comply. The agreed upon CAFO commences and concludes the case, and requires L&M to pay a penalty of \$20,779.

Office of Regional Counsel Primary Contact: Mony Chabria, (312) 886-6842

FIFRA Administrative Warrants Executed To Access Franchises of Microbe Guard, Inc., in Minnesota.

On September 22, 2006, the United States Attorney General's Office (United States) at the District of Minnesota obtained, on behalf of EPA, administrative warrants to access five franchises of Microbe Guard, Inc., in various locations in Minnesota. These warrants are authorized under Section 9(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The United States obtained these warrants to allow inspectors to access the franchise facilities because EPA had reason to believe that these facilities held evidence of sales or distributions of unregistered pesticides, which are violations of FIFRA. EPA sought these warrants because, on September 5, 2006, one of the Microbe Guard, Inc. franchise owners revoked voluntary access to its facility for an inspector of the Minnesota Department of Agriculture, who was in the process of inspecting the facility at that time. The inspector was conducting the inspection on behalf of EPA as part of an effort to determine the credibility of certain defenses Microbe Guard, Inc., had made in an EPA administrative FIFRA enforcement proceeding against it. The inspector had observed Microbe Guard, Inc. products which were possible unregistered pesticides at the franchise facility, but was asked to leave before completing the inspection or collecting any labels or other evidence concerning the Microbe Guard, Inc. products. FIFRA authorizes the issuance of administrative warrants by federal magistrate courts to allow access to inspectors acting on behalf of EPA to investigate possible FIFRA noncompliance.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829 or Mark Palermo, (312) 886-6082

Region 5 signs Consent Agreement and Final Orders with Microbe Guard, Inc.

On October 3, 2006, Region 5 signed a consent agreement and final order with Microbe Guard, Inc. of Maple Grove, Minnesota, to settle violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j. Microbe Guard, Inc. distributes antimicrobial pesticides for use in mold prevention and mold remediation, primarily in the new construction industry. Region 5 initiated this enforcement action by

filing an administrative complaint in February of 2006, alleging that Microbe Guard, Inc. unlawfully distributed and sold multiple unregistered pesticides. The complaint included violations alleging the sale or distribution of Microbe Guard Mold Blast, Microbe Guard BioBlast, and Microbe Guard Duralast. At the time of the sale or distributions alleged in the complaint, Microbe Guard was labeling and/or advertising these products as pesticides, but had not registered them as required by FIFRA. Microbe Guard, Inc. will pay a penalty of \$28,000 to settle the violations, which represents the proposed penalty of \$36,400 reduced in light of Microbe Guard, Inc.'s willingness to settle the case.

Office of Regional Counsel Primary Contacts: Erik Olson, (312) 886-6829; Crissy Pellegrin, (312) 353-5263; Secondary Contact: Dea Zimmerman, (312) 886-7187

EPA Approves Minnesota Mercury Total Maximum Daily Load (TMDL).

On March 27, 2007, EPA Region 5 approved the Minnesota Pollution Control Agency's TMDL for mercury impaired waters pursuant to Section 303(d) of the Clean Water Act. Minnesota has over 1,200 impaired waters (820 lakes and 419 river reaches) due to mercury in fish tissue. The TMDL addresses 512 of these impaired waters. The TMDL estimates that 99% of the mercury load to these waters is from atmospheric deposition, with only 1% of the mercury load coming from direct point source water discharges. The mercury TMDL divides the state into two regions (the northeast and southwest), and establishes a statewide mercury reduction goal from anthropogenic emissions of 93% from 1990 levels. The TMDL is set at a level necessary to achieve a fish tissue mercury concentration of 0.2 ppm, which corresponds to the State's fish consumption advisory threshold of one meal per week for any segment of the population. The fish tissue target is a surrogate measure for the State's numeric water column standard. Minnesota has a number of implementation activities planned to address mercury loading from in-state air emissions to address these impaired waters.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870; Barbara Pace, OGC, (202) 564-0016; Julianne Socha, Water Division (312) 886-4436

Presiding Officer Grants In Part and Denies In Part EPA Region 5 Motion for Accelerated Decision on Liability In RCRA *Minnesota Metal Finishing, Inc.* Administrative Action; and Sets Schedule for Hearing On Undecided Claims and Penalty.

On January 9, 2007, Chief Administrative Law Judge Biro issued an Order granting accelerated decision that *Minnesota Metal Finishing, Inc.* (MMF) was liable under Minnesota's authorized hazardous waste regulations for failure to maintain hazardous waste training records, and for failure to obtain a hazardous waste storage permit, at its facility in Minneapolis, Minnesota. Chief Judge Biro denied accelerated decision that MMF was liable for failure to conduct, and have a required program for, hazardous waste training; failure to have a proper contingency plan; failure to minimize the risk of a release of hazardous waste; and failure to have an external emergency communication device in a process area at the facility. The Order confirms that Minnesota and federal regulations that apply to "new" hazardous waste storage facilities, apply to "new" generator facilities when such generator facilities fail to comply with the conditions for an exemption from the hazardous waste permitting requirements. In an accompanying Order, Judge Biro scheduled a hearing for May 22, 2007, on the undecided issues of

liability and penalty. The hearing will be in Minneapolis.

Office of Regional Counsel Contact: Michael McClary, (312) 886-7163

Consent Agreement and Final Order Filed Penalizing Failure of Newport-St. Paul Cold Storage Company to Immediately Notify National Response Center of Release of Ammonia.

On August 21, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order whereby Newport-St. Paul Cold Storage Company, of Newport, Minnesota, agreed to pay a civil penalty of \$11,223, for failing to immediately notify the National Response Center (NRC) of a release into the environment of approximately 950 pounds of ammonia. The company's facility from which the release occurred is located at 2233 Maxwell Avenue, Newport Minnesota 55055. The failure was a violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a).

Ammonia is categorized as a "hazardous substance" under Section 101(14) of CERCLA, and any release of 100 pounds or more of ammonia must be immediately reported to the NRC. At approximately 6:30 p.m. on June 4, 2005, a release into the air of approximately 950 pounds of ammonia occurred at the Newport-St. Paul Cold Storage facility. The facility did not report the release to the NRC until approximately 8:47 a.m. on June 6, 2005.

The Consent Agreement provides Newport-St. Paul Cold Storage 30 days from August 21, 2007, within which to pay the penalty.

Office of Regional Counsel Contact: Michael J. McClary, (312) 886-7163

Guilty Pleas In E. St. Louis Asbestos Renovation Case.

On July 12, 2007, Isaiah Newton pleaded guilty to conspiring to violate the Clean Air Act relating to the improper removal and disposal of asbestos from a building in 2002. According to documents filed in court, Newton was hired to supervise a work crew at a prominent building in downtown E. St. Louis known as the Spivey Building. Newton admitted that pipe insulation and other asbestos-containing materials were improperly removed without the use of any water to control emissions, and that the waste was improperly disposed of in dumpsters without warning the transporters that the waste contained asbestos, and that he had discussed with the man who hired him, Charles Powell, that the building contained asbestos. Powell pleaded guilty to related charges on June 15, 2007. A date for sentencing has not been set.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

EPA Issues Federal Inspector Credentials to Five Tribal Inspectors.

During September, 2006, Region 5 issued five federal inspector credentials to Tribal inspectors for the purpose of conducting storm water compliance inspections under the Clean Water Act. Three of the credentials were issued to inspectors from the Fond du Lac Band and two from the Mille Lacs Band. Both Bands are located in the State of Minnesota.

The Office of Enforcement and Compliance Assurance (OECA) issued “Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA” on September 30, 2004. This guidance outlined the requirements for issuing federal credentials to tribal inspectors, including: training requirements; tracking requirements; requirements for safeguarding the credentials; and a requirement that the Region and the Tribe enter into a Memorandum of Understanding (MOU) governing the use of federal credentials. OECA subsequently issued additional guidance outlining the procedures for processing requests for federal credentials.

The Region identified storm water enforcement as one of the areas where the presence of tribal inspectors with federal credentials could enhance environmental protection in Indian country. The Region has entered into a MOU with both Bands governing the use of the federal credentials. In addition to other requirements, the MOU describes the way in which EPA and the tribal inspectors will identify regulated facilities and determine appropriate facilities for inspection. The MOU also includes a Quality Assurance Plan which sets forth in detail how the inspections will be conducted in accordance with federal requirements. All of the tribal inspectors completed the training required in the OECA guidance, and also completed a three-day training program in Chicago in May of this year. EPA is funding the Bands for inspection activities under this program through Direct Implementation Tribal Cooperative Agreements (DITCAs).

Office of Regional Counsel Primary Contact: Rodger Field, (312) 353-8243; Secondary Contact: Jenny Davison, Water Division (312) 886-0184

Region 5 files Consent Agreement and Final Order with Laurence Reardon and Reardon Properties Limited Partnership.

On February 28, 2007, Region 5 and Laurence Reardon and Reardon Properties Limited Partnership, entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA’s claims alleging that Laurence Reardon and Reardon Properties Limited Partnership violated the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Lead-Based Paint Hazard Reduction Act”), 42 U.S.C. § 4852d *et seq.*, and Sections 409 and 16 of TSCA, 15 U.S.C. §§ 2689, 2615, and 40 C.F.R. §§ 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) by failing to make certain required disclosures in the leasing of sixty-seven (67) apartments. U.S. EPA filed its complaint in this matter on August 8, 2006, and sought a penalty of \$146, 630. At Respondents’ request, Region 5 agreed to participate in Alternative Dispute Resolution (ADR) discussions under Judge Gunning’s supervision. The parties have agreed to settle this case for a total of \$61,176, plus interest, in two installment payments. The penalty is being mitigated for litigation risk identified in the ADR process and for Respondents’ good faith attitude.

Office of Regional Counsel Contact: Jeffrey A. Cahn, (312) 886-6670 and Scott Cooper, (312) 866-1332

Court Enters Consent Decree for Section 1018 Lead-Based Paint Case in Minnesota.

On December 8, 2006, the District of Minnesota entered a consent decree between the Environmental Protection Agency, the Department of Housing and Urban Development, and the U.S. Attorney’s Office for the District of Minnesota with a Minneapolis landlord, Steven J. Meldahl, the owner of SJM Properties. This consent decree resolves his

violations of reporting and recordkeeping requirements regarding the disclosure of lead-based paint information. Meldahl has agreed to address all lead-based paint hazards in the 34 Minneapolis rental homes he owns and manages. In addition to making his rental units lead safe, Meldahl has paid a civil penalty of \$5,000 for violating Section 1018 of the Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations at 40 C.F.R. Section 745, Subpart F ("Lead Disclosure Rule"). The complaint and proposed consent decree were simultaneously filed on August 3, 2006.

This settlement is the sixth consent decree in Minnesota that requires landlords to abate all lead hazards in their rental units. Pursuant to the six consent decrees, nearly 5,000 rental units in Minneapolis and St. Paul will be made lead safe for tenants. Moreover, the landlords involved in these six settlements have paid civil penalties as well as provided over \$170,000 for local children's health projects, including funding a mobile lead poisoning screening vehicle called the "Leady Eddie Van." The "Leady Eddie Van" is now fully equipped and being used to screen children for lead poisoning throughout Minnesota.

Office of Regional Counsel Primary Contact: Mary McAuliffe, (312) 886-6237; Scott Cooper, additional contact, (312) 886-1332

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Spectro Alloys Corporation, Rosemount, Minnesota.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Spectro Alloys Corporation, for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, 40 CFR Part 63, Subpart RRR. The CAFO requires Spectro Alloys to pay a penalty of \$70,923. On February 9, 2007, Region 5 issued a Finding of Violation to Spectro Alloys for allegedly exceeding the emission rate limit for dioxin/furans and failing to maintain annual afterburner inspection records for 2003, 2004, 2005, 2006. Spectro Alloys subsequent retesting of the group 1 furnace demonstrated compliance with the dioxin/furan emission limits. Spectro contends it had a regular practice of conducting the afterburner inspections and is committed to maintaining the records on a going forward basis. Recognizing some litigation risk, Spectro Alloys' cooperation, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$96,713 to a settlement penalty of \$70,923.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

CAFO signed resolving violations of RCRA alleged against Star Acquisition, Inc.

On March 7, 2007, the Director of the Waste, Pesticides & Toxics Division signed a Consent Agreement and Final Order (CAFO) resolving violations identified in a pre-filing notice letter issued by Region 5, U.S. EPA, against Star Acquisition, Inc. (Star or Respondent), under Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation

or Suspension of Permits, 40 C.F.R. Part 22. Under the terms of this CAFO, Star shall pay a settlement amount of \$1,289 within 30 days of the effective date of the CAFO.

Respondent has signed the CAFO, certifying that it is currently in compliance with all applicable requirements of RCRA. Respondent has also remitted a check for payment of the penalty.

Office of Regional Counsel Contact: James Cha, (312) 886-0813

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Target Corporation.

Region 5 initiated prefiling discussions on this matter in July, 2007. The proposed penalty was \$45,500. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold the following unregistered pesticides: Antimicrobial Toilet Seat, Home Ultimate Full Mattress Pad, Home Ultimate Twin Mattress Pad, Home Ultimate King Mattress Pad, Home Ultimate Pillow, and Cleaner with Bleach. During settlement discussions, the Respondent agreed to pay a civil penalty of \$40,950.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-3387



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Ohio

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Ohio:

- Agrium U.S. Inc.
- A-L Processors (3)
- All Town and Country Septic, Inc.
- Allied-Ironton Site
- American Greetings Corporation
- APSCO, Inc.
- Barber Trucking
- BASF Construction Chemicals, LLC (2)
- Battison, Thomas
- Bunge North America, Inc.
- Chevron U.S.A., Inc.
- City of Cincinnati
- Clean Harbors
- Cognis Corporation
- Degussa Engineered Carbons, LP
- Detrex Corporation
- Dupont de Nemours & Co
- E.I. du Pont de Nemours & Company
- Flory, George L.
- King, Mark R.
- Kuzlick, Joseph (2)
- Lambda Bioremediation Systems, Inc.
- Multi-Service, Inc.
- Nacelle Land and Management Corporation
- New Albany Links Development Company, Ltd.
- Northeast Ohio Regional Sewer District
- Ohio Environmental Development Limited Partnership
- Ohio NPDES Program
- Owens Corning Corp.
- Pacholski, David L. (3)
- Parker, Ika and Patricia
- Premcor Refining Group Inc.
- Premium Agriculture Commodities, Inc.
- Rager Fertilizer Company
- Schott Metal Products, Inc.
- Sprayon Products
- STRIB Industries, Inc.
- Three Bond International
- Ulmer, Scot F. (2)
- Wakatomika Creek Watershed
- WCI Steel, Inc.
- Westhaven Group LLC
- Zaclon, Inc.

U.S. EPA Signs a Consent Decree with Agrium U.S. Inc. and Royster-Clark, Inc. Resolving Violations of the Clean Air Act.

On February 5, 2007, the United States simultaneously filed a Complaint and lodged a Consent Decree against Agrium U.S. Inc. and Royster-Clark, Inc. (collectively Defendants), under the Prevention of Significant Deterioration (PSD) provisions of the Clean Air Act (the Act), 42 U.S.C. §§ 7470-92, and the PSD regulations incorporated into the Ohio State Implementation Plan (Ohio SIP); the New Source Performance Standards (NSPS) of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. § 7661, *et seq.*, and Title V's implementing federal (40 C.F.R. Part 70) and Ohio regulations (OAC 3745-77, *et. seq.*); and the Ohio SIP General Permit provisions (OAC Chapter 3745-31) Permit to Install requirements (OAC 3745-31-02(A)).

The Consent Decree is the first settlement as part of the National New Source Review/Prevention of Significant Deterioration (NSR/PSD) Acid Plant Priority. It will require the installation of a selective catalytic reduction (SCR) system capable of reducing Nitrogen oxides (NO_x) emissions by at least 90%. The Consent Decree will set NO_x limits of 0.6 lbs/ton of 100% nitric acid produced, 365 day rolling average and 1.0 lbs/ton of 100% nitric acid produced 3 hour average. These emission limits are consistent with the lowest permitted emission rate of any nitric acid plant in the nation and meets the definition of Lowest Achievable Emission Rate (LAER). These limits will become effective 2 years after the Consent Decree is entered. Compliance with these emission limits will result in an emission reduction of approximately 200 tons of NO_x per year. The Consent Decree also requires installation of a state-of-the-art NO_x emission monitoring system to monitor compliance with these limits. Additionally, Agrium will pay a cash penalty of \$750,000.

Office of Regional Counsel Primary Contacts: Robert Thompson, (312) 353-6700; Joanna Glowacki, (312) 353-3757; secondary contact: Nathan Frank, ARD, (312) 886-3850

Consent Decree Entered in Cost Recovery Litigation; Stipulation and Settlement Agreement Entered in Related Fraudulent Transfer Litigation.

On July 9, 2007, Judge Rice of the Southern District of Ohio entered a Consent Decree in U.S. v. A-L Processors et al., which resolved the CERCLA liability of Burns Iron & Metal, Inc. at the United Scrap Lead Site in Troy, Ohio. Although the A-L Processors litigation was originally initiated in 1991, it has resulted in an RD/RA consent decree, and four cost recovery decrees, which includes the instant decree. Under the terms of this Consent Decree, Burns Iron & Metal, based upon an ability to pay determination, is to pay \$312,000 to the Hazardous Substance Superfund and an additional \$88,000 to the PRP group which performed the selected remedy at the United Scrap Lead Site. On July 6, 2007, Judge Rice entered a Stipulation, Settlement Agreement, and Order in U.S. v. Larry Katz, et al., litigation which is related to the A-L Processors litigation, and was filed against various parties to that litigation whom the United States alleges fraudulently transferred assets in violation of the Federal Debt Collection Procedures Act (FDCPA) and the Federal Priority Act (FPA), in order to avoid paying the government's claims. The Stipulation and Settlement Agreement resolves the United States claims against various principals related to Burns Iron and Metal, and provides that they will pay \$49,500 to the Hazardous Substance Superfund.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164; Deborah Garber, (312) 886-6610

Judge Appoints Receiver to Implement Institutional Controls and To Enable Sale of Abandoned NPL Site.

On July 6, 2007, Judge Rice of the Southern District of Ohio in U.S. v. A-L Processors et al., granted the United States' motion to appoint a receiver at the United Scrap Lead NPL Site in Troy, Ohio. In 1998, the United States had entered into a Remedial Design/ Remedial Action (RD/RA) decree which included the owners and operators of the Site, the United Scrap Lead Company and Charles Bailen. Included in their duties under the decree was the implementation of institutional controls. Proprietary controls, however, proved difficult to implement, because no party wanted to serve as a grantee of an

environmental easement or covenant. In December 2004, the Ohio General Assembly enacted the Uniform Environmental Covenants Act (UECA), which enabled EPA to implement controls running with the land without the need of a third party grantee. However, before a UECA covenant could be implemented at the Site, Charles Bailen, the sole surviving principal of the United Scrap Lead Company, Inc., passed away. The United States' motion requested the appointment of a receiver so that the RD/RA decree could be fully carried out, including any needed access on the part of EPA or the Respondent Group to implement five-year review or post-construction completion inspections. Under Judge Rice's Order, the Receiver is also empowered to sell the Site to WACO, a local aviation history museum located adjacent to the Site, to ensure Site security.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164; Deborah Garber, (312) 886-6610

Judge Grants U.S. Summary Judgment Motion for Costs in Cost Recovery Case.

On 9/20/07, Judge Rice of the Southern District of Ohio in U.S. v. A-L Processors et al., granted the United States' motion for summary judgment for costs at the United Scrap Lead site, finding that the U.S. is entitled to collect over \$5.3 million from the defendants remaining in the lawsuit. The judge had previously found that most of these defendants were jointly and severally liable to the United States. In its summary judgment filing, the United States did not seek the costs of the original, experimental 1988 ROD remedy, which was later abandoned, so there are additional costs which could be sought at trial, unless the defendants' available assets would be exhausted by the judgment. Judge Rice did not grant the United States' claim for pre-judgment interest, holding that the demand letters were not properly authenticated. This portion of our claim was worth almost \$2.5 million. This portion of our claim will be subject to subsequent briefing, and the enforcement team is optimistic about its chances for success here. Efforts are now underway to reach ability-to-pay settlements with the defendants against whom judgment was rendered, to ease collection efforts.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

Region 5 files Complaint/Consent Agreement and Final Order Settling Domestic Septage Application Recordkeeping Violations.

Region 5 initiated this enforcement action on September 20, 2004. On 05/09/2007, Region 5 filed a Complaint/Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against All Town and Country Septic, Inc. (All Town) of Norton, Ohio for alleged violations of the regulations promulgated at 40 C.F.R. Part 503. Region 5 alleged that All Town did not properly keep records of land application of domestic septage in violation of 40 C.F.R. Section 503.17(b)(4), (b)(5), (b)(7), and (b)(8). All Town will pay a \$35,500 penalty.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Valdis Aistars, (312) 886-0264

Region 5's Superfund Division Director signs the Record of Decision (ROD) for the Final Operable Unit (OU) at the Allied-Ironton Superfund Site in Ironton, Ohio.

On September 19, 2007, the Director of the Superfund Division, Region 5, signed the ROD for the cleanup of the former tar plant at the Allied Chemical/Ironton Coke Superfund site in Ironton, Ohio. The tar plant cleanup is the third operable unit at this site. Previously, the Goldcamp Disposal Area (OU1) and the Coke Plant and Lagoon Area (OU2) were cleaned up by the PRP, AlliedSignal, now Honeywell, under separate RODs through Administrative Orders on Consent. This third and final ROD addresses soil, soil vapor, and Ohio River sediment contaminated by the former tar plant. The plan includes covering contaminated soil with a cap that meets the design requirements of Ohio solid waste regulations, legal and administrative institutional controls to ensure the cap remains intact and protects people from the remaining contaminated soil and vapor, and a combination of dredging, off-site disposal and capping of contaminated sediment in the Ohio River adjacent to the tar plant loading dock. Site-wide groundwater contamination is being addressed through the OU2 ROD. The estimated cost of this remedy is \$10,175,000. EPA expects to negotiate a consent decree or administrative order with Honeywell to perform the Remedial Design and Remedial Action for this third OU.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Syed Quadri, RPM, (312) 886-5736

EPA enters Consent Agreement and Final Order with American Greetings Corporation resolving Clean Air Act violations.

On September 28, 2006, the Regional Administrator signed a Final Order resolving violations of the Clean Air Act by American Greetings Corporation (AG) which is headquartered in Cleveland, Ohio. Specifically, AG sold and/or distributed a product that contained class I or class II substances in violation of the Stratospheric Ozone Protection requirements of the Clean Air Act. AG withdrew the products from its shelves and has destroyed any of the remaining product. Under the Consent Agreement and Final Order, AG will pay a civil penalty of \$84,854.50 for these violations. The proposed penalty was \$84,854.50.

Office of Regional Counsel Primary Contact: Cynthia King, (312) 886-6831

Region 5 signs a Consent Agreement and Final Order with APSCO, Inc.

On May 31, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against APSCO, Incorporated, of Perry, Ohio. Region 5 alleges that APSCO violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) it processed during calendar year 2003. In settlement, APSCO will spend at least \$200,000 on a supplemental environmental project designed to substantially reduce the amount of lead used in APSCO's printed circuit board operations. In addition, APSCO will pay a civil penalty of \$5,483.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Tom Crosetto, Waste, Pesticides, and Toxics Division, (312) 886-6294

Judge Issues Favorable Decision in Clean Water Act Case Involving Wrongful Disposal of Sewage.

On May 11, 2007, Administrative Law Judge (ALJ) Gunning issued an 81-page Initial Decision finding Respondent, Roger Barber d/b/a/ Barber Trucking, liable for all counts alleged in the Complaint, and ordered Respondent to pay the full penalty of \$60,000 sought in the Complaint. Region 5 filed the Complaint in this matter in April 2005 alleging Respondent, over a two year period, land-disposed of sewage in violation of the Clean Water Act and its implementing regulations. A three-day hearing was held on this matter on April 25-27, 2006. ALJ Gunning found Respondent egregiously failed to comply with the regulations designed to protect human health and the environment from pathogens contained in sewage, and designed to protect the ground and surface waters from the nitrogen contained in sewage. The penalty sought was limited to Respondent's ability to pay. This was the first case nationally that adjudicated alleged violations of the Clean Water Act's sewage disposal regulations regarding the land application of sewage collected from residential septic tanks.

Office of Regional Counsel Primary Contact: Eaton Weiler, (312) 886-6041. Secondary contact: Valdis Aistars, Water Division (312) 886-0264

Region 5 files a Consent Agreement and Final Order to commence and conclude case against BASF Construction Chemicals, LLC, Cleveland, Ohio.

On July 3, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against BASF Construction Chemicals, LLC, formerly known as BASF Admixtures, Inc., formerly known as Degussa Admixtures, Inc., for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires BASF Construction Chemicals to pay a penalty of \$43,591. On October 31, 2006, Region 5 issued a Finding of Violation to BASF Admixtures for allegedly exceeding the VOC content limits for certain architectural coatings from 1999 until 2004. On February 28, 2006, prior to the issuance of the FOV, BASF Admixtures submitted past due exceedance fee and tonnage exemption reports along with \$137,381 in past due exceedance fees. These efforts remedied the violations. Also, in mid-2005, BASF Admixtures began describing, labeling, and marketing the coatings at issue in this case as recommended solely for shop application. As a result, BASF Admixtures was no longer subject to the Architectural Coatings regulations at 40 CFR Part 59, Subpart D. BASF Admixtures merged with BASF Construction Chemicals on December 31, 2006. As a result of BASF Construction Chemicals' cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$76,284 to a settlement penalty of \$43,591.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with BASF Corporation.

Region 5 initiated pre-filing discussions on this matter in June 2007. On August 9, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. §§136j(a)(1)(E). Specifically, the Respondent sold or distributed a misbranded pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact (312) 886-6322

Region 5 signs Consent Agreement and Final Order with Thomas Battison.

On September 24, 2007, Region 5 signed a consent agreement and final order with Thomas Battison of Girard, Ohio, commencing and resolving an administrative penalty action for alleged violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Mr. Battison owns a number of residential rental properties in and around Youngstown, Ohio. Region 5 initiated this enforcement action due to Mr. Battison's alleged failure to comply with lead paint disclosure requirements in several lease transactions, including a lease where children lived in the unit. Mr. Battison will pay a cash penalty of \$1,264 and perform a window replacement project costing at least \$11,371 at one of his properties to settle the violations.

Office of Regional Counsel Contact: Erik Olson, (312) 886-6829; primary technical contact, Estrella Calvo, (312) 353-8931

Region 5 Signs a Consent Decree with Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, "Bunge") that resolves violations of the Clean Air Act. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a signatory to the Consent Decree, and filed their Complaints and Motions-in-Intervention simultaneously. Upon entry, both State and Federal violations related to Bunge's eleven oilseed processing plants and one corn germ extraction plant will be resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge's plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the

settlement, Bunge will implement sweeping environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge's Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge's oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$14 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. This amount will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates, as follows:

Louisiana: \$83,335.00 to the Louisiana Department of Environmental Quality to fund the Mercury Removal/Education Program at LDEQ, spending no less than \$15,000.00, in St. Charles Parish. Based on the needs of the schools, the funds will be used to defray the costs of

(a) removing and disposing of present mercury, lead and/or asbestos contamination, and/or,

(b) eliminating the use of mercury instruments in local educational institutions.

Illinois

1. Alexander County Hazardous Materials Equipment and Training SEP: \$54,000.00 to the Alexander County Emergency Services and Disaster Agency for hazardous materials response equipment and training

2. Vermilion County Hazardous Materials Equipment and Training SEP: \$90,000.00 to the Vermilion County Emergency Management Agency for hazardous materials response equipment and training

3. Pulaski County Hazardous Materials Equipment and Training SEP: \$62,000.00 to the Pulaski County Emergency Services and Disaster Agency for hazardous materials response equipment and training

4. Lead Abatement SEP: \$294,000.00 to the City of Danville, Illinois, Department of Public Development, Division of Community Development for lead abatement projects at residential locations in Danville, Illinois

Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles

Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program

Kansas

1. Emporia School District Diesel Retrofit: \$22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253.
2. Southern Lyon County School District Diesel Retrofit: \$16,065.00 for a project retrofitting diesel vehicles owned and operated by the Southern Lyon County Unified School District No. 252.
3. KACEE Fund Contribution: \$44,630.00 to the Kansas Association for Conservation and Environmental Education to provide for environmental education within the State of Kansas.

Mississippi

1. Hancock County Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Hancock County Fire Department for hazardous materials response equipment and training
2. Long Beach Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Long Beach Fire Department for hazardous materials response equipment and training
3. Biloxi Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Biloxi Fire Department for hazardous materials response equipment and training
4. Pass Christian Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Pass Christian Fire Department for hazardous materials response equipment and training

Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa

Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

U.S. EPA signs Third and Final Consent Agreement for remediation of Chevron's Cincinnati Refinery. Chevron to clean groundwater, extract petroleum soil vapors under Hooven, Ohio, and protect the Great Miami River from refinery-related releases of petroleum hydrocarbons. Work to be performed by Chevron under all three agreements estimated to be worth \$100 million.

On November 1, 2006, U.S. EPA finalized a RCRA Section 3008(h) Corrective Measures Implementation Administrative Order on Consent (AOC) with Chevron U.S.A., Inc., for clean up of groundwater, prevention of releases of petroleum to the Great Miami River, and soil vapor extraction of petroleum hydrocarbon vapors in the Town of Hooven, Ohio.

The petroleum released to the environment is from Chevron's refinery in neighboring Cleves, Ohio. The AOC, In the Matter of: Chevron U.S.A. Inc., Cleves, Ohio, U.S. EPA Docket No. RCRA-05-2007-0001, embodies Chevron's commitment to continue to conduct soil vapor extraction to remove volatile petroleum constituents from the Light Non-Aqueous Phase Liquids (LNAPL) smear zone under the Town of Hooven, which lies directly to the west of the former refinery; to remediate a contaminated plume of groundwater underlying its former refinery and part of the Town of Hooven to U.S. Safe Drinking Water Act Maximum Contaminant Levels (MCLs); and to monitor the banks of the Great Miami River at the refinery and down-stream for releases of petroleum to the river or from the river bank, as well as to undertake engineered controls, as necessary, to stabilize the river bank to prevent further releases of petroleum. Chevron will conduct periodic high-grade pumping to remove LNAPL from the groundwater plume for up to 12 years. Monitored Natural Attenuation of the dissolved contaminant plume and LNAPL plume will go on for an additional 30 years, in order to achieve MCLs in the plume. If it appears the performance levels will not be met on a timely basis, U.S. EPA's August 2006 Final Decision, which Chevron will implement pursuant to this AOC, provides that Chevron must employ any number of technologies to remediate the plume within that timeframe.

The Chevron Cincinnati refinery covers approximately 250 acres, and is situated on the banks of the Great Miami River approximately 20 miles west of Cincinnati and 3 miles north of the Ohio River. The refinery produced various petroleum based fuels from before World War II until approximately 1987. The facility also includes a 5-acre landfarm situated on a hill above Hooven, Ohio, two islands in the Great Miami River, and five pipelines formerly used to convey petroleum products three miles south to Chevron's loading dock on the Ohio River. The Final Decisions and Agreements anticipate that adequate institutional controls will be put in place to allow for mixed used industrial and recreational development in the future. Oil had been released from the groundwater into the Great Miami River, precipitating the need to start the clean up of oil in groundwater. Chevron has removed via pump and treat over 3 million of a total estimated 5 million gallons of floating petroleum from the plume in the groundwater. Chevron's own modelling also showed that the well field for the Town of Cleves, on the bank of the river opposite the refinery, would be contaminated by migration of the Chevron oil plume under the river if Chevron ceased its pump and treat. This well field has since been moved from Cleves.

This Chevron case was precedential in that the 1993 AOC was believed to be the first time in the country where RCRA corrective action was used to obtain pump and treat of petroleum hydrocarbons from the groundwater. U.S. EPA asserted that the petroleum released during facility operations was not "product" as asserted by Chevron, but a "waste" subject to corrective action. This third and final AOC not only requires Chevron to implement U.S. EPA's August 2006 Final Decision, but to evaluate and implement additional measures if any further plume migration occurs. It is also unique in that this AOC requires Chevron to investigate and remediate any releases of petroleum or hazardous constituents that may be discovered in the future. The value of the work performed by Chevron pursuant to all three Agreements (1993, 2004, and 2006) is estimated to be worth \$100 million.

Office of Regional Counsel Contact: Jerome P. Kujawa, (312)-886-6731

Region 5 signs a Combined Complaint and Consent Agreement with the City of Cincinnati, Ohio.

Region 5 initiated this enforcement action in July 2006 when the Region sent a pre-filing notice letter to the City of Cincinnati notifying the city of violations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The notice stated that Cincinnati violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report a release of 11,276 pounds of aluminum sulfate to the National Response Center, the state emergency response commission and the local emergency planning committee and failing to send written follow-up notification within seven days to the state emergency response commission and local emergency planning committee. Cincinnati subsequently demonstrated that the release did not leave the facility and was therefore not in violation of EPCRA. On June 27, 2007, Region 5 filed a combined complaint and consent agreement with Cincinnati in settlement of the company's violations of CERCLA. Pursuant to the settlement, Cincinnati will pay a penalty of \$17,550.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ginger Jager, Superfund Division, (312) 886-0767

U.S. EPA reaches administrative settlement under TSCA for released substances.

Respondent, Clean Harbors, operates a facility that is permitted under TSCA to store, disassemble and decontaminate PCB items by solvent washing. Storm water from the facility discharges into a sewer line which leads into Strong Brook. Strong Brook is about 0.6 miles long and empties into the Ashtabula River at a point called Jack's Marine Slip. On March 20, 2007, U.S. EPA was notified that the Respondent may have improperly stored and/or disposed of polychlorinated biphenyls (PCBs) and those PCBs may have migrated off the facility into Strong Brook and the Ashtabula River. Based on this information, the U.S. EPA conducted an inspection of the facility on March 28, 2007, which included the taking of several soil samples on the facility. The samples showed levels of PCBs from 2.82 parts per million (ppm) to 926 ppm on the facility.

While U.S. EPA was inspecting the facility, the Respondent stopped the discharge and run-off of water into the sewer system which empties into Strong Brook. The Respondent has and is collecting this water for treatment off-site. In addition, the Respondent installed a boom and silt curtain in Jack's Marine Slip to contain the spread of any PCBs and/or oil that could be migrating down Strong Brook into Jack's Marine Slip. U.S. EPA and Respondent have entered into a Consent Agreement and Final Order (CAFO) which requires the Respondent to conduct an investigation of the extent of PCBs on its facility and remediate the PCBs pursuant to EPA's Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA), commonly referred to as EPA's PCB Spill Policy. In addition, the Respondent will conduct an assessment of the sewer system and Strong Brook to determine the extent of PCB contamination and will maintain, inspect and repair as necessary the oil boom and silt curtain that Respondent has placed in the Marine Slip area to control the release of PCBs in the River. The CAFO reserves the right of U.S. EPA to seek penalties for violations of TSCA at a later date.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Cognis Corporation Sentenced For Making Illegal Discharges To Mill Creek Causing The Death Of Migratory Birds; United States v. Cognis Corporation.

On March 14, 2007, Cognis Corporation (“Cognis”) was sentenced for illegal discharges into Mill Creek and causing the death of 12 migratory birds. Cognis was sentenced to three years of probation. During the term of probation Cognis will implement an environmental compliance plan. In addition, Cognis was fined \$215,000 and ordered to pay \$219,994.67 in restitution, for a total of \$434,994.67. Cognis, an Ohio corporation, operates specialty chemicals manufacturing facility located on the Mill Creek in Cincinnati, Ohio. This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources – Division of Wildlife, the Cincinnati Fire Department, the Cincinnati Metropolitan Sewer District, the U.S. Fish and Wildlife Service, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Degussa Engineered Carbons, LP Completes SEP Pursuant to Consent Agreement and Final Order resolving violations of the Clean Air Act.

On September 5, 2007, Region 5 formally accepted the SEP completion report filed by Degussa Engineered Carbons. The SEP complies with the terms of the January 18, 2006, CAFO. The SEP resulted in the replacement of 47 wood stoves with EPA certified high efficiency stoves in homes of low income individuals in Washington County, Ohio and Wood County, West Virginia. In addition, chimneys and flues were repaired or replaced as necessary. The wood stove changeouts are expected to reduce emissions of various air pollutants in these non-attainment areas by over 16 tons.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Brian Dickens, Air Division, (312) 886-6073

Northern District of Ohio enters Consent Decree resolving violations of the Clean Water Act by Detrex Corporation.

On November 21, 2006, the Northern District of Ohio entered a Consent Decree resolving Clean Water Act violations alleged to have been committed by Detrex Corporation. Because the Decree was lodged on November 15, 2006, the CD entry by the Court was premature because it did not allow for the thirty day comment period required by the Clean Water Act. After no comments were received in 30 days from the date of lodging, the Department of Justice and the Defendant agreed that the entry date, for purposes of determining compliance with the Decree, would be December 15, 2006, thirty days from the lodging of the Decree.

Specifically, the Complaint in the matter alleges violations of Detrex’s National Pollutant Discharge Elimination System (NPDES) issued pursuant to Section 402 of the Act. The violations occurred at a chemical manufacturing facility located in Ashtabula, Ohio. Because of Detrex’s inability to afford a penalty, the settlement requires Detrex is to pay a civil penalty of \$250,000 over four years. In addition, Detrex constructed and will operate a 5,000 gallon surge tank to correct effluent violations at the facility which will cause it to come into compliance with the CWA requirements cited in the Complaint.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Purita Angeles, secondary contact, (312) 353-5112

EPA Regions 3 and 5 enter into an Administrative Order on Consent with DuPont to lower action level for C-8 (PFOA) caused by Washington Works Facility.

On November 20, 2006, the Administrators for EPA Regions 3 and 5 signed an Order on Consent with E.I. DuPont de Nemours & Co. The Order requires treatment or provision of alternate drinking water to residents affected by DuPont's Washington Works facility, located near Parkersburg, West Virginia. The facility, which manufactures products using perfluorooctanoic acid (also known as PFOA or C8) – is located on the Ohio River and affects drinking water sources in both WV and Ohio.

The Order contains an action level of 0.50 ppb that triggers the offer of installation of drinking water treatment or offer of provision of an alternate source of drinking water, by DuPont. This Order replaces an Order on Consent signed by Regions 3 and 5 in 2002, which resulted in a temporary threshold level of 150 ppb.

Currently there is no consensus on the possible toxicity of C-8 to humans. However, recent results from experimental animal studies and new data on human blood serum levels of C-8 in residents living near the Washington Works facility raise concern for possible human health effects from C-8 in drinking water. This Order is a precautionary action based on an evaluation of these recent study results and the new data. More human health and experimental studies are in progress, but results will not be available for several more years. In the meantime, the new action level will reduce local exposure to C-8 from drinking water and reduce the possibility of adverse health effects. DuPont agreed to the site-specific action level of 0.50 ppb.

C-8 is used extensively in various manufacturing processes nationwide, including those for stain-resistant carpets and fabrics, stain-resistant paints, fire fighting foam, and oil- and grease-resistant food cartons and wrappers. Therefore, in developing this Order, EPA closely coordinated with the Office of Civil Enforcement, the Office of Water, the Office of Pollution Pesticides and Toxic Substances, and the states of Ohio and West Virginia. EPA also carefully developed a communications strategy in connection with the Order.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Charlene Denys, Water Division (312) 886-6206

Consent Decree Lodged in Dupont Global Sulfuric Acid Plant Initiative Case.

On July 20, 2007, a Consent Decree (CD) was lodged in the Southern District of Ohio resolving the E.I. du Pont de Nemours & Company (DuPont) global sulfuric acid plant case. This CD resolves a U.S. EPA Clean Air Act (CAA) Section 113(a)(1) and (3) enforcement action against DuPont at its sulfuric acid production facilities located in Ohio, Virginia, Louisiana, and Kentucky. The global resolution set forth in the CD also involves EPA Regions 3, 4 and 6, and three states: Ohio, Louisiana and Virginia. Region 5 initiated the investigations and negotiations leading to this Consent Decree, and acted as the "lead region" throughout the negotiations.

This case is part of EPA's national New Source Review and Prevention of Significant Deterioration Acid Plant Priority Sector, a national initiative originally initiated by

Region 5. Under this CD, DuPont will reduce sulfur dioxide emissions by approximately 13,600 tons annually from its four acid plants, through the installation of state-of-the-art controls at each plant. DuPont estimates the cost of this injunctive relief to be approximately \$68.5 million. DuPont will also pay \$4,125,000 in civil penalties to the Plaintiffs, including \$2,475,000 to the United States.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

Business Owner sentenced for spilling oil onto a tributary of the Great Miami River; United States v. George L. Flory.

On September 14, 2007, George L. Flory was sentenced for spilling oil onto a tributary of the Great Miami River. Mr. Flory was sentenced to three years of probation, of which the first six months must be served as home confinement. During the term of probation Mr. Flory is required to perform 100 hours of community service. In addition, Mr. Flory was ordered to pay \$260,948 in restitution. The restitution will be paid to the Coast Guard and the United States Environmental Protection Agency, the agencies who performed the clean up at the facility operated by Mr. Flory.

Mr. Flory was the owner and operator of Personal Touch Environmental (PTE), a company which specialized in the recycling of waste oil collected from Dayton area residences and facilities. Mr. Flory stored the waste oil in drums and storage tanks at the PTE facility which is bordered by an unnamed tributary of the Great Miami River. On February 16, 2004, there were approximately 700 drums and storage tanks at the PTE facility, many of which were leaking oil directly into the tributary bordering the facility. The information charged that on numerous days beginning on or about April 16, 2002 and continuing to on or about February 12, 2004, Mr. Flory knowing caused waste oil stored at the PTE facility to be discharged into and upon an unnamed tributary of the Great Miami River.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Coast Guard, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Region 5 Enters into Pre-filing Settlement with Mark R. King under the Residential Lead-Based Paint Hazard Reduction Act.

On April 26, 2007, Region 5 signed a combined complaint and consent agreement with Mark R. King (“Respondent”), to settle violations of the Lead Disclosure Rule, 40 C.F.R. Part 745, Subpart F, for his residential properties located in Youngstown, Ohio. The settlement will require Respondent to pay a penalty of \$7,610, and perform a supplemental environmental project at a cost of \$68,500 to be used to conduct lead-based paint hazard abatement of his residential properties over the next eighteen months.

U.S. EPA and the U.S. Department of Housing and Urban Development (“HUD”) have targeted our Section 1018 Residential Lead-Based Paint Hazard Reduction Act joint enforcement efforts in cities with a large number of children with elevated blood lead (“EBL”) levels. U.S. EPA and HUD work with the local departments of public health to

try to identify landlords and management companies with a history of children with EBLs, and then investigate those landlords and management companies. The Youngstown City Health District identified Mark King an appropriate landlord for our joint investigation.

Respondent had owned and managed over 230 properties, primarily single family dwellings, in Youngstown. He buys distressed properties, renovates them, and then rents them. He had received at least eight notices from the Youngstown City Health District related to lead hazards in his rental properties. In response to U.S. EPA's subpoena, Respondent provided documents demonstrating his failure to comply with the Lead Disclosure Rule for some of his rental properties.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Estrella Calvo, (312) 353-8931

Cleveland-Area Man Sentenced for Hate Crime; United States v. Joesph Kuzlik.

Joseph Kuzlik, of Cleveland, Ohio, was sentenced on February 21, 2007, to 27 months in federal prison and three years of supervised release for committing a racially-motivated crime which violated the federally protected civil rights of a Cleveland family. Kuzlik was also ordered to pay restitution to the U.S. Environmental Protection Agency (U.S. EPA) in the amount of \$23,000, \$767 to the Ohio EPA, and additional sums to the individual victims who suffered financial losses as a result of the offenses. At the sentencing hearing, Judge Patricia Anne Gaughan said, "The abusive and serious nature of this offense is obvious to anyone with a modicum of decency and morality. I cannot imagine the terror that was inflicted on these victims. A message must be sent loud and clear that this behavior will not be tolerated and will result in a punishment at the high end of the guideline range."

On November 27, 2006, Kuzlik pleaded guilty to conspiring to interfere with the federally protected housing rights of an interracial family because of their race, and for making false statements to federal investigators. Another Cleveland resident, David Fredericy, was sentenced on January 17, 2007, to serve 33 months in prison for his role in the crime.

Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate interracial residents in their neighborhood, including placing toxic mercury on the porch of a family with children for the purpose of intimidating them because one of the parents was African-American. As part of his guilty plea, Kuzlik admitted that he and Fredericy were attempting to intimidate the family and drive them from the neighborhood. In order to keep their unlawful actions secret, both Fredericy and Kuzlik lied to federal investigators from the EPA, the federal agency initially charged with cleaning up the mercury and investigating the incident.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Cleveland-Area Man Pleads Guilty to Hate Crime; United States v. Joesph Kuzlik.

A Cleveland-area man, Joseph Kuzlik, pleaded guilty today to conspiring to commit and for committing hate crimes targeting African-American residents of Cleveland, Ohio. Specifically, Kuzlik, who had been charged along with another individual, Cleveland

resident David Fredericy, pleaded guilty to conspiracy and interference with federally protected housing rights because of race. He also pleaded guilty to making false statements to federal investigators. Previously Fredericy pleaded guilty to all the counts of the indictment. The indictment in this case alleged that Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate African-American residents in their neighborhood. The indictment charged, among other acts, that the defendants placed a toxic substance, mercury, on the porch of an inter-racial family with children. As part of his guilty plea, Kuzlik admitted that he did so for the purpose of intimidating them because they were an inter-racial family. Kuzlik also admitted to lying to federal investigators from the Environmental Protection Agency, the federal agency that was initially charged with cleaning up the mercury and investigating the incident, for the purpose of keeping his unlawful actions secret. The maximum potential penalties for conviction on the conspiracy and civil rights charges is 10 years in prison, a \$250,000 fine, and three years of supervised release following any period of incarceration, per count. The maximum term of imprisonment for the false statements charge is five years. A sentencing hearing has been scheduled for February 21, 2007. This case was investigated, in a joint investigation, by the Federal Bureau of Investigation, the Ohio Environmental Protection Agency, the City of Cleveland Police Department, and the U.S. EPA CID, all members of the Northeast Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Lambda Bioremediation Systems, Inc. Columbus, Ohio.

On January 31, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, Lambda offered for sale and distributed a “microbial consortium” for pesticidal use that was not registered FIFRA. In response to a Notice of Intent to File letter, Lambda indicated a desire to work cooperatively to resolve this matter. Lambda presented financial information that reflected an inability to pay and an agency analysis of Lambda’s financial circumstances confirmed that Lambda had an ability to pay only a nominal penalty. The CAFO, in which Lambda agrees to comply with FIFRA, commences and concludes the case, and requires Lambda to pay a penalty of \$500.00.

Office of Regional Counsel Contact: Mary Fulghum, (312) 886-4683

Company President and Company Sentenced for Illegal Discharges to the Sewer System and a Hazardous Waste Violation; United States v. Melvin Tatman and Multi-Service, Inc.

On December 14, 2006, Melvin Tatman and Multi-Service, Inc. (“MSI”) were sentenced for illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman was sentenced to six months home confinement to be followed by 18 months of probation. Mr. Tatman was also ordered to serve 100 hours of community service and pay a \$5,000 fine. MSI was sentenced to two years of probation and ordered to pay a \$20,000 fine.

Previously, Mr. Tatman and MSI pled guilty to a four-count Information charging them with illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman is the owner and President of MSI, an Ohio corporation, which is a textile cleaning facility in Dayton, Ohio. The industrial laundering operation at the facility produces wastewater that includes heavy metals, waste oil, and organic chemicals.

The Information alleged that Mr. Tatman and MSI knowingly discharged wastewater with a pH below 5.0 into the Dayton sewer system in the first count, that Mr. Tatman and MSI negligently discharged ignitable wastewater into the Dayton sewer system in the second count, and that Mr. Tatman and MSI negligently bypassed the pretreatment system associated with the industrial laundering operation at MSI's facility in Dayton. In the last count, the Information alleged that MSI knowingly caused 3,500 gallons of ignitable hazardous waste to be transported without a manifest.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the City of Dayton, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Consent Decree Entered in the Northern District of Ohio for Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and the Estate of Joseph Berick.

On January 5, 2007, Judge Ann Aldrich, U.S. District Court, Northern District of Ohio, issued an order entering a consent decree resolving violations of Sections 311(b) and (j) of the CWA, 33 U.S.C. §§ 1321(b) and 1321(j) and defendants' liability for oil spill remediation costs. Under the terms of the consent decree, Lake Underground and Nacelle will pay \$200,000 to the Oil Spill Liability Trust Fund and \$100,000 to the general treasury as civil penalties.

On at least two occasions in 1996, the owners and operators of a brine storage facility, Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and Joseph Berick (the defendants), spilled oil and brine from a surface impoundment located in Painesville Township, Ohio, to a tributary to the Mentor Marsh, a State of Ohio designated reserve. Nacelle Land and Management Corporation and Lake Underground Storage Corporation were small closely held corporations which were primarily operated by and for the benefit of Joseph Berick. In addition to the oil spill violations, the defendants failed to prepare or implement a Spill Prevention, Control and Countermeasure (SPCC) Plan, and failed to submit a report for the spills. The defendants also violated a Clean Water Act § 309(a) Administrative Order which required them to cease all discharges from the brine impoundment.

After Region 5 submitted referrals to the U.S. Department of Justice, the impoundment which was the source of the problems associated with the brine, SPCC and OPA (Oil Pollution Act) violations, was closed as a result of an Oil Spill Liability Trust Fund emergency clean-up response/spill removal action that was funded through the U.S. Coast Guard. The cost of the OPA cleanup was \$2,642,352.57. In addition, Nacelle and

Joseph Berick, pursuant to a state administrative action, closed the Class II brine disposal well located at the site of the violations.

Joseph Berick passed away in December 2003, during pre-filing negotiations with the U.S. Department of Justice. Joseph Berick's widow Marion Berick passed away in 2005. The defendants and the Estate of Joseph Berick claimed an inability to pay both the response costs and past penalties and provided the U.S. Department of Justice with financial information which demonstrated the claimed inability to pay.

The consent decree entered on January 5, 2007, fully resolves the past penalty claims of U.S. EPA for violations of the discharge and Oil Pollution Act provisions of the Clean Water Act. The consent decree does not contain injunctive relief provisions because the corporations have ceased doing business.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

Region 5 Signs Consent Agreement and Final Order with New Albany Links Golf Company et al for Violations of Clean Water Act.

On October 17, 2006, Region 5 entered into a Consent Agreement and Final Order (CAFO) with New Albany Links Golf Company, New Albany Links Development Company, Ltd. and Joseph Ciminello (Respondents) simultaneously commencing and concluding an action pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. §1319(g). In creating a golf course and residential development in New Albany, Ohio, Respondents deposited fill material into 7.8 acres of wetlands adjacent to Sugar Run Creek and adjacent to an unnamed tributary of Sugar Run Creek without a Section 404 permit in violation of Section 301 of the CWA. Respondents also deposited fill material into portions of the 4,700 linear feet of these on-site waterways without a Section 404 permit. The unnamed tributary of Sugar Run Creek and the impacted adjacent wetlands along Sugar Run Creek flow into Sugar Run Creek which is a water of the United States and is a navigable water under the Act. These waterways are part of the larger Scioto River watershed.

The proposed penalty in this matter was \$157,500. In consideration of the Respondents' willingness to perform a Supplemental Environmental Project (SEP), which includes the creation of 20 acres of wetlands in the Scioto River watershed and the donation of these wetlands and a buffer zone of 67 acres to a third-party conservator, U.S. EPA mitigated the penalty to \$115,000. The cost of the SEP, excluding the cost of the land, is in excess of \$230,000. In addition, under Section 309(a) of the CWA, the Respondents are conducting partial on-site restoration of the impacted waterways and creating an additional 16 acres of mitigation wetlands at the same site as the SEP wetlands. These mitigation wetlands will be part of an overall 103 acre protected site which will be donated to a local conservator and preserved in perpetuity. Region 5 did not receive comments on the proposed settlement.

Office of Regional Counsel Primary Contact: Randa Bishlawi, (312) 886-0510;
Secondary Contact: David Schulenberg, Water Division, (312) 886-6680

United States files complaint against NEORS in the Northern District of Ohio citing violations of an information request issued under the Clean Water Act.

On January 5, 2007, the United States filed a complaint in the Northern District of Ohio alleging that the Northeast Ohio Regional Sewer District (NEORS) violated the Clean Water Act by failing to comply with an information request issued under Section 308 of the Act. EPA sought sampling of the District's combined sewer overflows, which cause the District's receiving streams to violate applicable water quality standards. The information request was issued in May of 2005.

For the last 18 months, EPA has attempted to resolve the request for a sampling program with the District, offering several avenues for settlement of the outstanding informational needs. NEORS refused all avenues of resolution. The filed complaint did not include the underlying water quality violations themselves, which the United States is still attempting to resolve through settlement talks.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Valdis Aistars, secondary contact, (312) 886-0264

Citizen Suit Filed to Restore Vehicle Inspection Programs in Cincinnati and Dayton, Ohio.

On October 11, 2006, an Ohio citizen named John P. Frank and an entity known as Ohio Environmental Development Limited Partnership filed an action in the U.S. District Court for the Southern District of Ohio seeking to re-instate the vehicle inspection programs known as "E-Check" in the Cincinnati and Dayton, Ohio ozone nonattainment areas. The plaintiffs claim that the Ohio Environmental Protection Agency violated the Clean Air Act when it halted the E-Check program which is still required in Ohio's federally-approved State Implementation Plan (SIP). The plaintiffs ask the Court to order immediate reinstatement of the program.

On April 15, 2005, U.S. EPA proposed in the Federal Register to approve, per the State of Ohio's request, to approve revisions aspects of the ozone SIP, including re-designation of the Cincinnati area to attainment and, among other things, converting the vehicle inspection programs to a contingency measure in the 1-hour ozone maintenance plan. The notice stated in relevant part that: "in response to comments, EPA is deferring action on conversion of E-Check to contingent status in the Cincinnati and Dayton areas. That is, EPA is approving a maintenance plan for the Cincinnati area in which E-Check remains an active measure for which Ohio takes no credit." Subsequently, Ohio ended its vehicle inspection program at the end of 2005. To date, no substitute measures have been approved by EPA.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

On January 9, 2007 Region 5 received a December 28, 2006 letter that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program.

On January 9, 2007 Region 5 received a December 28, 2006 letter (with enclosures) that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program. The revision involves a transfer of the program element for

Concentrated Animal Feeding Operations from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The rest of the Ohio NPDES program will remain with the OEPA. The submittal will be reviewed for completeness and then reviewed for content. After it is reviewed, a decision will be made by U.S. EPA on whether it can be approved.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Region 5 Executes CAFO with Owens Corning Corp., Resolving CERCLA Violations at its Facility in Granville, Ohio.

On June 27, 2007, the Region filed a Consent Agreement and Final Order resolving Owens Corning's liability for violating section 103(a) of CERCLA due to a release of over 800 pounds of trichloroethylene at a product testing and production facility in Granville, Ohio. Specifically, the Region alleged that Owens Corning failed to notify the National Response Center immediately upon learning of the release on October 12, 2006. The settlement requires Owens Corning to pay a cash penalty of \$3,000 and spend at least \$18,000 on a Supplemental Environmental Project (SEP) to replace the testing booth from which the trichloroethylene was released with another booth using another substance, one which is not listed as hazardous under 40 C.F.R. part 304.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; James Entzminger, alternate contact, (312) 886-4062

Technician at Oil Refinery Charged With Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On April 25, 2007, David L. Pacholski was charged in a one-count information with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

The information alleges that, pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

The information also alleges that Pacholski worked at the BP refinery in Oregon, Ohio. Pacholski was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charges that between June 18, 2003, and June 20, 2003, Pacholski did not check the refinery for leaks. Therefore, the monitoring data and certifications submitted by Pacholski for those days were false.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the

defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440)-250-1761

Technician at Oil Refinery Pleads Guilty to Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On May 4, 2007, David L. Pacholski pled guilty to a one-count information charging him with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Technician at oil refinery sentenced for making false statements in monitoring reports; United States v. David L. Pacholski.

On September 17, 2007, David L. Pacholski was sentenced for making false statements in connection with his employment at the BP refinery in Oregon, Ohio. Mr. Pacholski was sentenced to one year of probation. In addition, Mr. Pacholski was ordered to pay a \$500 fine. Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances. Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly. The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and

certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

A Region 5 1995 Wetland Consent Decree survives attack by the Rapanos Decision in the United States District Court For The Northern District of Ohio.

On May 18, 2007, the United States District Court for the Northern District of Ohio, Western Division, dismissed Defendants' (Ike and Patricia Parker) motion under Federal Rule of Civil Procedure 60(b) to set aside a Consent Decree based on the Rapanos Decision. The parties to the 1995 Consent Decree are the Parkers, the State of Ohio, and the Agency. The Supreme Court's decision in *Rapanos v. United States*, 126 S.Ct. 2208, 165 L.Ed. 2d 159 (2006) (*Rapanos*) modified the definition of a wetland under the Clean Water Act (CWA). By changing the definition, the *Rapanos* decision arguably narrowed the scope of wetlands enforcement under the CWA. This dismissal denying Defendants' motion involving that decision is therefore a victory for the EPA.

In 1991, the Department of Justice and the State of Ohio filed a Complaint against the Parkers for violation of Sections 310 & 404 of the CWA. The Parkers destroyed several acres of wetland when they attempted to develop their property. The Parkers placed fill in the wetland, thereby destroying it. The parties entered into a Consent Decree in 1995 in which the Parkers agreed to pay a \$1000 penalty and transfer the title to their property to the State of Ohio. The State was then required under the Consent Decree to create other wetlands on the property in mitigation for the wetland that the Parkers destroyed.

The Parkers argued in their motion that the Consent Decree should be set aside under 60(b) because their property no longer met the definition of a wetland under the CWA. The Court held that even if *Rapanos* modified the definition of wetlands under the CWA, *Rapanos* had no effect on State Law which was very much a part of the complaint. The Court did not address whether the Parkers would prevail under federal law alone. The Court further held that the Parkers' motion was not timely, and that the judgment requiring the transfer of the property in the Consent Decree was not a prospective application (on-going), another requirement of 60(b).

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631 and Dave Schulenberg, Water Division, (312) 886-6680

Department of Justice Files Complaint and Lodges Consent Decree Addendum with The Premcor Refining Group and The Lima Refining Company.

On August 16, 2007, the Department of Justice, the State of Ohio, and Memphis/Shelby County, Tennessee, simultaneously filed their Complaints and a proposed Consent Decree Addendum ("Addendum") with The Premcor Refining Group Inc., and the Lima Refining Company (collectively, "Premcor") for alleged environmental violations at petroleum refineries owned and operated by Premcor.

The original Consent Decree in this matter was lodged in June 2005 in the Western District of Texas against Valero Refining Company (“Valero”). Following the lodging of the original Consent Decree, Premcor was acquired by Valero Energy Corporation via the September 1, 2005 merger of Premcor Inc., with and into Valero Energy Corporation. Valero assumed ownership of and control over Premcor’s petroleum refineries in Lima, Ohio (“Lima Refinery”), Memphis, Tennessee, and Port Arthur, Texas.

Premcor is estimating that it will spend \$85 million to install and implement emission control technologies at the Lima Refinery. Upon completion of installation of controls and control measures, Premcor is estimating that it will reduce over 1,000 tons per year (“TPY”) of oxides of nitrogen, over 1,800 TPY of sulfur dioxide, and over 80 TPY of particulate matter.

Under the Addendum, Premcor will pay a total civil penalty of \$4,250,000 as follows: \$2,750,000 to the United States, of which \$40,000 will be a civil penalty paid to the EPA Hazardous Substances Superfund; \$800,000 to Plaintiff-Intervener, the State of Ohio; and \$700,000 to Plaintiff-Intervener, Memphis Shelby County Health Department.

Premcor has also agreed to perform supplemental environmental projects (“SEPs”). Premcor will perform three federal SEPs at a total cost of \$925,000, and will fund two State SEPs at a total cost of \$250,000. The three federal SEPs are as follows: (1) Premcor shall develop and implement a Traffic Signal Synchronization study to optimize traffic flow in the City of Lima to reduce emissions from preventable vehicle idling resulting from inefficient traffic flow; (2) Premcor shall install controls on unregulated and/or uncontrolled atmospheric relief vents at the Lima Refinery that will route emissions from such vents to a control device to eliminate or significantly reduce the potential for fugitive volatile organic compound (“VOC”) emissions; and (3) Premcor shall perform a SEP designed to demonstrate the use of infrared imaging equipment to identify emissions from leaking components and other sources of fugitive VOC emissions at the Lima Refinery.

The State SEPs for the Lima Refinery are: Premcor shall transfer \$200,000 to the Lake Michigan Air Directors Consortium to support PM 2.5 speciation monitoring and source sampling; and Premcor shall transfer \$50,000 to the Ohio Environmental Council for the installation of diesel retrofit technologies to reduce emissions of particulates and ozone precursors from municipal trucks and/or buses.

For the Lima refinery, the total value of the federal and State penalties and SEPs is \$2.565 million.

Office of Regional Counsel Contacts: Mary McAuliffe, (312) 886-6237, William Wagner, (312) 886-4684, Kathryn Siegel, Air and Radiation Division, (312) 353-1377, and James Entzminger, Waste, Pesticides and Toxics Division, (312) 886-4062.

Region 5 files FIFRA Consent Order concerning Premium Agricultural Commodities, Inc.

On November 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Premium Agricultural Commodities, Inc., (Premium). In the CAFO, EPA alleges that Premium produced pesticides in a Blanchester, Ohio, establishment which did not have a valid establishment registration number under

FIFRA. In the CAFO, EPA also alleges that Premium distributed those pesticides using labels that did not bear a valid establishment registration number. Premium has now returned to compliance with the requirements of FIFRA. In the CAFO, Premium agrees to pay a penalty of \$1,548. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact, (312) 886-6009

Ohio Bulk Fertilizer Storage Company Pleads Guilty To Knowingly Discharging Fertilizer Into Little Walnut Creek Without a Permit.

On July 9, 2007, Rager Fertilizer Company (RFC), appeared in the United States District Court for the Southern District of Ohio, in Columbus, Ohio, and pleaded guilty to a one-count information alleging that it knowingly discharged a pollutant through a point source to a water of the United States without a National Pollutant Discharge Elimination System (NPDES) permit, in violation of the Clean Water Act. RFC operated liquid bulk fertilizer storage, and fertilizer application, businesses. On June 1, 2007, the United States Attorney for the Southern District filed a one-count felony information alleging that on May 15, 2003, employees at FRS's facility at 160 Cedar Hill Road, Amanda, Ohio, knowingly discharged fertilizer containing ammonia nitrogen and phosphorus into Little Walnut Creek, which drains into Walnut Creek. Walnut Creek in turn is a tributary of the Scioto River.

The information alleged that when a gauge on a liquid fertilizer storage tank at the facility broke in April 2003, fertilizer leaked from a storage tank into a facility containment dike. The information alleged that RFC employees on May 15, 2003, used a pump and hose to drain the leaked fertilizer from the dike into a drainage tile basin. The information alleged that the tile basin drained the liquid fertilizer into underground drainage tile that directed the pollutants into the Little Walnut Creek. U.S. EPA's Criminal Investigation Division, the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation; and the Ohio EPA, Office of Special Investigations, jointly investigated this matter.

Office of Regional Counsel Contact: Michael McClary, (312) 886-7163

U.S. District Court in Ohio denies extension of time to serve complaint to enjoin RCRA 3013 order in Schott Metal Products, Inc. v. EPA et al.

On September 7, 2006, Schott Metal Products, Inc. and Samuel Schott filed a civil complaint in the U.S. District Court for the Northern District of Ohio seeking an order enjoining the EPA from enforcing a RCRA Section 3013 unilateral administrative order against them. The complaint named EPA and Region 5's Waste, Pesticides and Toxics Division Director as defendants. After 158 days passed without service, the United States moved to dismiss. The plaintiffs then filed a motion to extend the time for service, and filed a supplemental motion to extend on February 26, 2007. On March 6, 2007, the U.S. District Court for the Northern District of Ohio denied the motions for extension on the grounds that Schott and Schott Metals had not shown good cause for their delay.

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814

U.S. Circuit Court Grants Motion Dismissing the Petition in Sherwin Williams' Appeal of the Ohio SIP Approved by U.S. EPA Under the Clean Air Act.

The United States Court of Appeals for the Sixth Circuit has, on July 12, 2007, granted the motion of Petitioner, Diversified Brands f/k/a Sprayon Products, a Division of The Sherwin Williams Company, to voluntarily dismiss the petition in this case. The original petition in this matter was filed after promulgation of a final rule published and made effective on April 25, 1996. 61 Fed Reg 18,255 (1996). The rule established volatile organic compound reasonably available control technology (RACT) requirements for specific sources in Ohio, including the facility operated by petitioner in this case. After lengthy discussions, the parties reached agreements on technical changes to the operation of the facility subject to the regulation which was the subject of Petitioner's appeal. Sprayon agreed to install high efficiency incineration equipment to control its volatile organic compound (VOC) emissions. Ohio EPA drafted a site-specific regulation as a means to modify its State Implementation Plan and to incorporate the agreement in principle on technical issues among all the parties (Sprayon, Ohio EPA and US EPA). Ohio EPA proposed the new regulation to incorporate the parties' agreements into the State Implementation Plan. On December 5, 2006, US EPA published a notice in the Federal Register requesting public comment on the new regulation (71 Fed Reg 70699 (Dec. 6, 2006)). The comment period expired on January 5, 2007. The Agency has approved, published and promulgated the new Ohio SIP revision. 72 Fed Reg 15045 (March 30, 2007). At Sprayon's request, the Sixth Circuit has dismissed the petition for appeal. Sprayon is now the only aerosol can filling operation controlled with a high efficiency incinerator.

Contacts: Steve Rosenthal, 312-886-6052; Thomas C. Nash, 312-886-0552

Region 5 files a Consent Agreement and Final Order to commence and conclude case against STRIB Industries, Inc. (d/b/a Products Chemical Company), Cleveland, Ohio.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against STRIB Industries, Inc., doing business as Products Chemical Company, for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires Products Chemical Company to pay a penalty of \$33,911 in three installments with interest. On December 20, 2006, Region 5 issued a Finding of Violation to Products Chemical for allegedly failing to timely submit an initial notification report and exceeding the VOC content limits for certain architectural coatings from 1999 through 2005. On May 16, 2006, Products Chemical submitted an initial notification report. On February 28, 2007, Products Chemical submitted past due exceedance fee and tonnage exemption reports along with past due exceedance fees. These efforts remedied the violations. Also, Products Chemical has reformulated many of its products so that they are now below the VOC content limits. As a result of Products Chemical's cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$59,345 to a settlement penalty of \$33,911. The settlement payment will be made in installments due to an evaluation of Products Chemical's ability to pay.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Three Bond International's Self-Disclosure of Violation of TSCA Polymer Exemption Rule Meets Criteria Of Audit Policy.

On July 30, 2007, U.S. EPA Region 5 notified Three Bond International that its self-disclosure of a failure to file a report on the import of an exempt polymer as required by 40 C.F.R. 723.250(f) at its West Chester, Ohio facility met all nine criteria of EPA's audit Policy.

Office of Regional Counsel Contact: Gaylene Vasaturo, (312) 886-1811

Real Estate Company President Pleads Guilty to Conspiracy and Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 19, 2007, Scot F. Ulmer pled guilty to a two-count Information charging him with conspiracy and obstruction of justice. Mr. Ulmer was the President of the Westhaven Group LLC (“Westhaven”), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

In January 2004, the United States Environmental Protection Agency (“U. S. EPA”) sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven’s response to the information request, including copies of signed Lead Disclosure Forms.

The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Real Estate Company President sentenced for Conspiracy and Obstruction of Justice; United States v. Scot F. Ulmer.

On September 17, 2007, Scot F. Ulmer was sentenced for conspiracy and obstruction of justice related to a U.S. Environmental Protection Agency (U.S. EPA) investigation into his company, the Westhaven Group LLC (Westhaven). Mr. Ulmer was sentenced to five years of probation, the first 10 months of which must be served in a halfway house. In addition, Mr. Ulmer was ordered to pay a fine of \$20,000. Mr. Ulmer was the President of the Westhaven, a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

In January 2004, U. S. EPA sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Region 5 Approves Ohio TMDLs for Wakatomika Creek Watershed.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 28, 2006, the Region approved TMDLs submitted to U.S. EPA by Ohio Environmental Protection Agency to address *E. coli* and dissolved solids levels in the Wakatomika Creek watershed, an impaired water in central Ohio within Coshocton, Knox, Licking and Muskingum Counties. The TMDL establishes maximum daily loads for *E. coli* largely originating from livestock and septic tank sources and for salinity to address contamination from mining sources to ensure the Wakatomika Creek watershed will meet established Ohio water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jean Chruscicki, (312) 353-1435

RCRA Consent Decree Entered in WCI Steel 7003/Bankruptcy Matter.

On February 6, 2006, the United States District Court for the Northern District of Ohio, Eastern Division, entered a Consent Decree signed by the United States and WCI Steel, Inc. ("WCI"). The Consent Decree resolves a Resource Conservation and Recovery Act ("RCRA") Complaint filed by the United States on December 18, 2006, which sought injunctive relief (compliance with a RCRA 7003 Order which EPA issued to WCI) and penalties (for failure to comply with the RCRA 7003 Order). The Consent Decree also resolves claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties submitted in a predecessor WCI bankruptcy case (In re: WCI Steel, Inc., et. al., Case No. 05-81439 (Bankr. N.D. Ohio)).

In addition, under the Consent Decree, WCI is required to pay a civil penalty to the United States in the amount of \$620,000. This penalty will be paid through resolution of claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties relating to WCI's alleged violations of the Order previously

submitted in Debtor WCI's bankruptcy case in the United States Bankruptcy Court for the Northern District of Ohio (In re: WCI Steel, Inc., et. al., Case No. 05-81439).

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Program Contact: Michael Beedle, (312) 353-7922

Real Estate Company President Charged With Conspiracy and Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 2, 2007, Scot F. Ulmer was charged in a two-count Information with conspiracy and obstruction of justice. The information alleges that Ulmer was the President of the Westhaven Group LLC ("Westhaven"), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. The information states that sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a "Lead Disclosure Form."

The information alleges that in January 2004, the United States Environmental Protection Agency ("U. S. EPA") sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charges that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charges that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force. If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Environmental Appeals Board Grants Region's Second Motion for Extension of Time to File Notice of Appeal in Zaclon Inc Matter, RCRA Docket No. RCRA-05-2004-0019.

On August 21, 2007, the EAB granted Region 5's motion for a second extension of time in which to decide whether to appeal Judge Susan Biro decision in the Zaclon, Inc. matter. Judge Biro had issued a decision on June 4, 2007 that was not made public due to

Confidential Business Information claims raised by the Respondents during the hearing. The Region was granted an initial extension of time 30 days subsequent to the issuance of a redacted CBI decision. Judge Biro issued a redacted version on or about July 24, 2007. The EAB's Order signed by Judge Reich extends the period in which the Region must decide whether to appeal Judge Biro's decision to October 24, 2007.

Office of Regional Counsel Contact: Larry Kyte, (312) 886-4245



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the State of Wisconsin

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Wisconsin:

- Freeport Farm and Fleet, Inc.
- Gerke Excavating, Inc.
- Kohler Landfill
- Jones Dairy Farm, Inc.
- Lesaffre Yeast Corporation
- Memorandum of Agreement
- Milwaukee Metropolitan Sewage District
- Milwaukee Solvay Coke & Gas Site
- Sierra Club
- Stroh Die Casting Co, Inc.
- Waste Management of Wisconsin, Inc.
- Wisconsin Electric Power Company Settlement
- Wisconsin Public Service Corporation

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with Freeport Farm and Fleet, Inc.

Region 5 initiated pre-filing discussions on this matter in December, 2006. The proposed penalty was \$2,600. On January 25, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold a cancelled pesticide, Ortho Home Defense Ortho-Klor Insect & Termite Killer. During settlement discussions, the Respondent agreed to pay a civil penalty of \$2,600.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568

The Seventh Circuit Denies Motion to Clarify and Petition for Rehearing in *U.S. v. Gerke Excavating* CWA Section 404 Case.

In *United States v. Gerke Excavating, Inc.*, 464 F.3d 723 (7th Cir. 2006) the Seventh Circuit held that Justice Kennedy's significant nexus standard in the *Rapanos* decision would govern the further stages of the litigation (following *U.S. v. Marks* "narrowest ground" approach to Supreme Court decisions where there is no majority opinion). On September 29, 2006, plaintiff-appellee United States filed a motion to clarify this opinion of Seventh Circuit arguing that federal regulatory jurisdiction exists if either the plurality's standard or Justice Kennedy's significant nexus standard is satisfied. On October 5, 2006, defendant-appellant Gerke filed a petition for rehearing with suggestion for rehearing *en banc*, and on November 2, 2006, the United States filed an answer to the petition. In an order dated December 1, 2006, the court denied the motion and the petition. U.S. EPA is not a party to the proceedings. The Corps of Engineers is the lead enforcement agency for the case.

Office of Regional Counsel Contact: Ignacio Arrázola, (312) 886-7152

CERCLA Kohler Landfill, WI Five Year Review.

On September 20, 2007, EPA Region 5 signed a Five-Year Review Report for the Kohler Company Landfill Site located in Kohler, Wisconsin. The Five Year Review determined that the landfill cap and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the rate at which the landfill was being brought to final grade would allow the landfill to remain open until 2011, under a State permit. At that time, the remaining 20% of the landfill cap will be installed. Given the private ownership of the landfill and the surrounding land, an IC study will be done for the site. The study will evaluate the surrounding land use and existing groundwater use restrictions to determine if institutional controls will be necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Jones Dairy Farm, Inc., Fort Atkinson, Wisconsin.

On June 27, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Jones Dairy Farm, Inc. for allegedly violating CERCLA § 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center 3 hours and 10 minutes after a release of approximately 2,805 pounds of ammonia, which has a reportable quantity of 100 pounds, took place. Jones Dairy Farm also allegedly violated EPCRA § 304(b), 42 U.S.C. § 11004(b), by notifying the State Emergency Response Commission (SERC) 3 hours and 11 minutes after the release, and EPCRA § 304(c), 42 U.S.C. § 11004(c), by not providing the SERC with written follow up emergency notice as soon as practicable after the release. Region 5 calculated a proposed penalty in this matter of \$114,735. Based on Jones Dairy Farm's cooperation, willingness to settle, and other facts raised during negotiations, Region 5 deemed adequate a total settlement value of \$60,000. The CAFO requires Jones Dairy Farm to pay a penalty of \$36,060 and implement a Supplemental Environmental Project. The Supplemental Environmental Project, valued at \$29,925, requires the installation of ammonia sensors in the compressor room that will be linked into an alarm in a guard house manned 24 hours per day.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715

Region 5 Settles Clean Air Act Matter with Lesaffre Yeast Corporation.

On June 21, 2007, Region 5 issued a Consent Agreement and Final Order ("CAFO") settling Clean Air Act (CAA) violations by Lesaffre Yeast Corporation. On December 15, 2006, U.S. EPA filed a complaint against Respondent Lesaffre Yeast Corporation ("Lesaffre" or "Respondent"). The complaint alleges that Lesaffre violated Nonattainment New Source Review Requirements contained in the Act and in the Wisconsin State Implementation Plan ("SIP") (Count I) as well as emission limitations contained in Lesaffre's Title V permit and the Wisconsin SIP (Count II) at its facility in Milwaukee, Wisconsin. That facility closed in December 2005. This CAFO settles the complaint. EPA made a penalty reduction based on the degree of cooperation by the Respondent and potential litigation risk. The CAFO settles the matter for \$202,500 (the

complaint proposed a penalty for Count I of \$488,080). Additionally, under the CAFO, the Respondent agrees that: (1) any emission reduction resulting from the activities which are the subject of the Complaint shall not be considered as a creditable contemporaneous emission decrease for purposes of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs; (2) emission reductions resulting from activities which are the subject of the Complaint shall not be used or sold in any emission trading or marketing program of any kind; and (3) the shutdown of the facility on December 22, 2005, was a "permanent shutdown" as defined by the United States Environmental Protection Agency Reactivation Policy.

Office of Regional Counsel Contacts: Catherine Garypie, (312) 886-5825; Jeff Cahn, (312) 886-6670; Manojkumar Patel, Air & Radiation Division, (312) 353-3565

Wisconsin Memorandum of Agreement (MOA) Signed.

EPA and the State of Wisconsin have now signed the "One Cleanup Program Memorandum of Agreement" (MOA). This MOA provides the framework for the State of Wisconsin to use a single, consolidated approach to the cleanup of a wide range of types of sites through its N.R. 700 rules rather than utilizing a range of separate programs with conflicting approaches and cleanup standards. The MOA also clarifies the relationship between EPA and the State of Wisconsin in providing for cleanups in Wisconsin; in particular, the MOA delineates the "enforcement comfort" to be given by EPA to sites Wisconsin addresses through its program.

The MOA is nationally significant in that it is the first MOA to address cleanup requirements across several environmental media, including CERCLA, RCRA, TSCA and LUST. EPA and the State of Wisconsin believe this MOA will result in an improved ability to achieve cleanup and redevelopment of contaminated properties in Wisconsin.

Office of Regional Counsel Contacts: Leverett Nelson, (312) 886-6666; Karen Peaceman, (312) 353-5751

Region 5 investigating improper disposal of PCBs by the Milwaukee Metropolitan Sewerage District.

On July 20, 2007, it was brought to Region 5's attention that approximately 40 tons of PCB-contaminated fertilizer had been donated by the Milwaukee Metropolitan Sewerage District to Milwaukee County. Approximately seven tons of the contaminated fertilizer was spread over four county parks and more than 30 schools received the fertilizer. At least one sample of the fertilizer contained 85ppm of PCBs. Working in consultation with the Wisconsin Department of Natural Resources, regional staff from the Superfund, Land and Chemicals, and Water Divisions have visited the impacted sites and collected samples to determine the extent of contamination. While awaiting the sampling results, the Region is evaluating enforcement and clean-up options.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248

U.S. EPA Region 5 enters Administrative Settlement Agreement and Order on Consent for the Milwaukee Solvay Coke & Gas Superfund Site in Milwaukee, Wisconsin.

On January 26, 2007, the Region 5 Superfund Division Director signed an administrative settlement agreement and order on consent (AOC), for a remedial investigation and feasibility study (RI/FS), at a former coke and gas facility in Milwaukee, Wisconsin. The Milwaukee Coke and Gas Site covers 46 acres in close proximity to the City of Milwaukee and Harbor. Industrial activity, including a large coking operation, occurred at the Site between 1866 and 1983. The coking operation not only supplied coke for the steel industry, but was a primary source of coke gas for residential and commercial use in the City of Milwaukee until the introduction of natural gas in the 1940s. Five Respondents have entered into the AOC to determine the nature and extent of contamination identify and evaluate remedial alternatives, and to reimburse U.S. EPA for oversight costs. It is anticipated that the Site will be redeveloped after the cleanup, and will help revitalize the mostly industrial area surrounding the Site.

Office of Regional Counsel Primary Contact: Craig Melodia, (312) 353-8870, and secondary contact: Denise Boone, (312) 886-6217

Department of Justice Lodges Consent Decree in Clean Air Act Matter.

On August 23, 2007, the U.S. Department of Justice lodged with the U.S. District Court for the Western District of Wisconsin a consent decree settling Sierra Club v. EPA. Sierra Club alleged in a March 19, 2007 complaint that U.S. EPA had failed to respond timely to petitions to object to operating permits that the Wisconsin Department of Natural Resources proposed to issue to the University of Wisconsin – Madison and Louisiana Pacific Corp. in Tomahawk, Wisconsin under Title V of the Clean Air Act. The consent decree provides that U.S. EPA will respond to Sierra Club's petitions on the permits within 10 days of entry.

Office of Regional Counsel Contact: Jane Woolums, (312) 886-6720; Air and Radiation Division contacts: Susan Siepkowski, (312) 353-2654 and Danny Marcus, (312) 353-8781

Region 5 signs a Consent Agreement and Final Order with Stroh Die Casting Co, Inc.

Region 5 initiated this enforcement action in September 2006 when the Region filed an administrative complaint against Stroh Die Casting Co., Inc. for violations of the secondary aluminum production NESHAP, 40 C.F.R. Part 63, Subpart RRR and Section 112 of the Clean Air Act, 42 U.S.C. § 7412. On August 1, 2007, Region 5 filed a consent agreement and final order in resolution of the violations alleged in the complaint. Pursuant to the settlement, Stroh Die Casting will pay a penalty of \$20,000. The settlement penalty amount was based on the company's financial documentation in support of its claim of inability to pay the proposed penalty, good faith effort to comply with the NESHAP, and the extent of the violations.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Tanya Hurlburt, Air and Radiation Division, (312) 353-4145

Federal District Court enters CERCLA remedial design and remedial action consent decree.

On September 27, 2007, United States District Court Judge Barbara Crabb entered the consent decree in *United States of America v. Waste Management of Wisconsin, Inc.*, Civil Action Docket No. 07-C-0424. The Consent Decree was lodged in the United States District Court for the Western District of Wisconsin. Pursuant to the terms of the Consent Decree, the settling defendant will (1) reimburse future costs incurred by EPA and the Department of Justice (“DOJ”), and (2) continue to perform studies and response work that previously was undertaken under the terms of CERCLA Section 106 unilateral administrative orders (“UAOs”). In addition, the Consent Decree will serve as a vehicle to reimburse settling defendant for \$1,525,306.84 in response costs that it incurred in connection with the remedial action. The amount that Waste Management of Wisconsin (“Waste”) is receiving reflects the net proceeds from the sale of Uniroyal Technology Corp. stock that Waste is eligible to receive.

As background, in 1993, pursuant to a bankruptcy settlement agreement and stipulated order involving various Uniroyal-related entities, in Case No. 91-32791, U.S. Bankruptcy Court, Northern District of Indiana, the United States received shares of Uniroyal Technology Corp. stock. The bankruptcy settlement agreement and stipulated order required EPA to credit the proceeds of the sale of that stock to various sites for which the Uniroyal entities were allegedly liable, including the Hagen Farm Site, thereby reducing the liability of other parties potentially responsible for those Sites. EPA has determined that \$1,525,306.84 is available to reduce the liability of other potentially responsible parties in connection with the Hagen Farm Site as required by the bankruptcy settlement agreement and stipulated order. The proceeds of the stock sale attributable to the Hagen Farm Site, after offset for unrecovered EPA costs for the Site, will be deposited in a special account for the Site. Based on certifications made by Waste concerning unrecovered costs incurred at the site, EPA will disburse, in accordance with the Consent Decree, the special account funds to Waste. Put simply, the Uniroyal settlement stipulated that settlement proceeds be used to "reduce the liability" of the other PRPs, Waste performed all of the RD/RA work at the Hagen site under UAOs and is, therefore, eligible to receive the Uniroyal proceeds net of U.S. EPA's unreimbursed response costs.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; Shiela Sullivan, additional contact, (312) 886-5251

Wisconsin Electric Power Company Settlement.

The consent decree between the United States Environmental Protection Agency and Wisconsin Electric Power Company resolving Clean Air Act New Source Review claims against the company for violating New Source Review regulations was entered on September 30, 2007. The parties filed a Motion to Enter the consent decree on October 24, 2003. Shortly thereafter, the State of Michigan, Clean Wisconsin, Sierra Club, and the Citizens' Utility Board intervened in the law suit and proposed modifications to the consent decree.

In granting the United States' Motion to Enter, the judge stated that “there is no dispute that BACT controls would achieve greater reductions [at two plants that did not receive controls under the decree]. Yet requiring BACT at all units would not be a settlement – it would be more akin to a judgment against one party. The court . . . believes that the

proposed decree provides a significant reduction in pollutants for the citizens of both states.”

Under the decree, WEPCO will spend \$600 million to install four scrubbers and four selective catalytic converters to reduce 72,300 tons per year of SO₂ and 32,600 tons per year of NO_x, respectively. The settlement covers WEPCO’s entire system, which includes 23 units at five power plants. WEPCO has agreed to pay a civil penalty of \$3.1 million and mitigation costs totaling at least \$20 million. The \$20 million will finance an environmental project demonstrating a new technology, TOXECON, designed to achieve a 90% removal of mercury.

Office of Regional Counsel Contact: Sabrina Argentieri, (312) 353-5485

Region 5 files an Administrative Order on Consent with Wisconsin Public Service to conduct RI/FS at the Campmarina Site in Sheboygan, Wisconsin.

On February 5, 2007, Region 5 filed an Administrative Order on Consent (AOC), Docket Number V-W-07-C-862, for Wisconsin Public Service Corporation (WPSC) to do a remedial investigation/feasibility study (RI/FS) for the Campmarina site in Sheboygan, Wisconsin. The Campmarina work is being done under the Superfund Alternative Site (SAS) program and is part of a package of sites that WPSC is addressing with the region. The Campmarina site was a former manufactured gas plant (MGP) along the banks of the Sheboygan River. Wastes and by-products from the MGP remain on the former plant site and in the adjacent river. The contaminants of concern are polyaromatic hydrocarbons and other organic hydrocarbons. The RI/FS will determine the nature and extent of the contamination and provide a set of remedial alternatives for the two operable units.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Clean Air Act (CAA)

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

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CAA:

- Agrium U.S. Inc.
- American Greetings Corporation
- American Iron Oxide Company
- Anchor Glass Container Corp.
- BASF Construction Chemicals, LLC
- Bunge North America, Inc. (2)
- CEMEX, Inc.
- CertainTeed Corporation
- Cinergy Corp. (2)
- Degussa Engineered Carbons, LP
- Del's Metal Co.
- E.I. du Pont de Nemours & Company
- Equistar Chemical, Lp
- Flavorchem Corporation
- Grief Industrial Packaging & Services, LLC
- Illinois Attorney General
- Indeck-Elwood LLC
- Kramer, H.
- Lesaffre Yeast Corporation
- MAPEI Inc.
- Meijer, Inc.
- Ohio Environmental Development Limited Partnership
- PennTex Resources Illinois, Inc. (2)
- Prairie State Generating Company, LLC
- Premcor Refining Group Inc.
- Rhodia Inc.
- Rolls Royce Corporation
- Scott Brass, Inc.
- Sierra Club (3)
- Smurfit-Stone Container Enterprises
- Spectro Alloys Corporation
- Sprayon Products
- Steel Dynamics, Inc.
- STRIB Industries, Inc.
- Stroh Die Casting Co, Inc.
- Tate & Lyle Ingredients Americas, Inc.
- Wisconsin Electric Power Company Settlement
- Wisconsin Public Service Corporation

U.S. EPA Signs a Consent Decree with Agrium U.S. Inc. and Royster-Clark, Inc. Resolving Violations of the Clean Air Act.

On February 5, 2007, the United States simultaneously filed a Complaint and lodged a Consent Decree against Agrium U.S. Inc. and Royster-Clark, Inc. (collectively Defendants), under the Prevention of Significant Deterioration (PSD) provisions of the Clean Air Act (the Act), 42 U.S.C. §§ 7470-92, and the PSD regulations incorporated into the Ohio State Implementation Plan (Ohio SIP); the New Source Performance Standards (NSPS) of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. § 7661, *et seq.*, and Title V's implementing federal (40 C.F.R. Part 70) and Ohio regulations (OAC 3745-77, *et. seq.*); and the Ohio SIP General Permit provisions (OAC Chapter 3745-31) Permit to Install requirements (OAC 3745-31-02(A)).

The Consent Decree is the first settlement as part of the National New Source Review/Prevention of Significant Deterioration (NSR/PSD) Acid Plant Priority. It will require the installation of a selective catalytic reduction (SCR) system capable of

reducing Nitrogen oxides (NOx) emissions by at least 90%. The Consent Decree will set NOx limits of 0.6 lbs/ton of 100% nitric acid produced, 365 day rolling average and 1.0 lbs/ton of 100% nitric acid produced 3 hour average. These emission limits are consistent with the lowest permitted emission rate of any nitric acid plant in the nation and meets the definition of Lowest Achievable Emission Rate (LAER). These limits will become effective 2 years after the Consent Decree is entered. Compliance with these emission limits will result in an emission reduction of approximately 200 tons of NOx per year. The Consent Decree also requires installation of a state-of-the-art NOx emission monitoring system to monitor compliance with these limits. Additionally, Agrium will pay a cash penalty of \$750,000.

Office of Regional Counsel Primary Contacts: Robert Thompson, (312) 353-6700; Joanna Glowacki, (312) 353-3757; ARD secondary contact: Nathan Frank, (312) 886-3850

EPA enters Consent Agreement and Final Order with American Greetings Corporation resolving Clean Air Act violations.

On September 28, 2006, the Regional Administrator signed a Final Order resolving violations of the Clean Air Act by American Greetings Corporation (AG) which is headquartered in Cleveland, Ohio. Specifically, AG sold and/or distributed a product that contained class I or class II substances in violation of the Stratospheric Ozone Protection requirements of the Clean Air Act. AG withdrew the products from its shelves and has destroyed any of the remaining products. Under the Consent Agreement and Final Order, AG will pay a civil penalty of \$84,854.50 for these violations. The proposed penalty was \$84,854.50.

Office of Regional Counsel Primary Contact: Cynthia King, (312) 886-6831

Northern District of Indiana enters Consent Decree resolving violations of the Clean Air Act by American Iron Oxide Company and Magnetics, International, Inc.

On November 28, 2006, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by American Iron Oxide Company (Amrox) and Magnetics International, Inc. (Magnetics) at three facilities in Indiana. Specifically, the Complaint in the matter alleged that Amrox and Magnetics had failed to comply with the hydrochloric acid and chlorine emission requirements, as well as the recordkeeping and reporting requirements of the Steel Pickling National Emission Standards for Hazardous Air Pollutants (Steel Pickling NESHAP), Subpart CCC. The settlement addresses violations at Amrox's Portage and Rockport, Indiana facilities, and Magnetics facility in Burns Harbor, Indiana. Under the settlement, Amrox and Magnetics will implement changes at the facilities to come into compliance with the Steel Pickling NESHAP. In addition, Amrox will perform two Supplemental Environmental Projects at the Portage facility. Amrox and Magnetics will pay a penalty of \$100,000 which is based on a finding that the companies had an inability to pay a greater penalty.

Office of Regional Counsel Primary Contact: Cynthia A. King, (312) 886-6831, Sara Dauk, secondary contact, (312) 886-0243

EPA receives adverse ruling in Bankruptcy Matter.

On February 21, 2007, the U.S. Bankruptcy Court for the Middle District of Florida, Tampa Division, in an oral ruling from the Bench, ruled that the United States' claim in the Anchor Glass Container Corporation bankruptcy case will be disallowed. The Judge ruled in response to an objection filed by the debtor's trustee in which the trustee requested that the court disallow EPA's claim because it is a claim for penalties. The United States had responded that the objection was without merit in that it misstated the pertinent provisions of the debtor's reorganization plan and applicable case law. Current case law holds that bankruptcy courts may not categorically disallow penalty claims. EPA asserted a general unsecured claim based on a \$96,901 penalty agreed to by EPA and Anchor Glass Container Corp. in an Administrative Consent Agreement and Final Order (CAFO) which was submitted as part of the proof of claim submitted by the U.S. in the bankruptcy case. In the CAFO, the parties specifically agreed that the penalty would be deemed an allowed claim in the bankruptcy case. The Department of Justice plans to appeal this adverse ruling by filing a Notice of Appeal with the United States District Court.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121

Region 5 files a Consent Agreement and Final Order to commence and conclude case against BASF Construction Chemicals, LLC, Cleveland, Ohio.

On July 3, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against BASF Construction Chemicals, LLC, formerly known as BASF Admixtures, Inc., formerly known as Degussa Admixtures, Inc., for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires BASF Construction Chemicals to pay a penalty of \$43,591. On October 31, 2006, Region 5 issued a Finding of Violation to BASF Admixtures for allegedly exceeding the VOC content limits for certain architectural coatings from 1999 until 2004. On February 28, 2006, prior to the issuance of the FOV, BASF Admixtures submitted past due exceedance fee and tonnage exemption reports along with \$137,381 in past due exceedance fees. These efforts remedied the violations. Also, in mid-2005, BASF Admixtures began describing, labeling, and marketing the coatings at issue in this case as recommended solely for shop application. As a result, BASF Admixtures was no longer subject to the Architectural Coatings regulations at 40 CFR Part 59, Subpart D. BASF Admixtures merged with BASF Construction Chemicals on December 31, 2006. As a result of BASF Construction Chemicals' cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$76,284 to a settlement penalty of \$43,591.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Court Enters Consent Decree Between United States, Eight States, and Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On January 16, 2007, the United States District Court for the Central District of Illinois entered a Consent Decree between the United States, eight States, and Bunge North

America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively, “Bunge”) that resolves violations of the Clean Air Act, certain State violations and reporting violations. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a Plaintiff-Intervenor and a signatory to the Consent Decree.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States in which Bunge operates a plant filed their Complaints and Motions-in-Intervention simultaneously. We received no comments during the public comment period. Upon entry of the Consent Decree, both State and Federal violations related to Bunge’s eleven oilseed processing plants and one corn germ extraction plant are resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge’s plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge’s Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge’s oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$12 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. The civil penalties will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Region 5 Signs a Consent Decree with Bunge North America, Inc., Bunge North America, L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., Resolving Violations of the Clean Air Act.

On October 26, 2006, the United States simultaneously filed a Complaint and lodged a Consent Decree with Bunge North America, Inc., Bunge North America (East), L.L.C., Bunge North America (OPD West), Inc., and Bunge Milling, Inc., (collectively,

“Bunge”) that resolves violations of the Clean Air Act. Regions 4, 5, 6 and 7 signed the Consent Decree. Each of the eight States (Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama) in which Bunge operates a plant is a signatory to the Consent Decree, and filed their Complaints and Motions-in-Intervention simultaneously. Upon entry, both State and Federal violations related to Bunge’s eleven oilseed processing plants and one corn germ extraction plant will be resolved by the joint Consent Decree.

The resulting settlement addresses volatile organic compounds (VOCs), including the hazardous air pollutant n-hexane, carbon monoxide (CO), oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), at all twelve of Bunge’s plants in eight states. Eleven of these plants produce products from soybeans, including vegetable oil and meal that is used as animal feed. The other plant produces the same type of products, but from corn germ. Under the settlement, Bunge will implement sweeping environmental improvements at each of its plants that will result in a reduction of more than 1,400 tons of actual air pollution a year, as follows: 525 tons per year (tpy) of VOCs; 350 tpy of SO₂; 275 tpy of NO_x; and 255 tpy of CO. The reduction in allowable air pollution is approximately 2,200 tpy. These reductions include a pilot technology at Bunge’s Cairo, Illinois coal boiler to reduce SO₂ and NO_x emissions. In addition, Bunge’s oilseed extraction plants are taking industry-leading solvent loss ratios for Conventional Oilseed extraction on a schedule that will put them ahead of the oilseed plants addressed in the settlements with Archer Daniels Midland and Cargill, Inc. Finally, Bunge will engage in corrective permitting to ensure that all of its permits are reflective of these new limits. Bunge has estimated that it will spend approximately \$14 million in capital expenditures to achieve these emission reductions.

The Consent Decree requires Bunge to pay civil penalties of \$625,000, with \$361,000 of that amount to be paid as a federal penalty, and the remaining \$264,000 to be divided on a per plant basis among the States. This amount will be paid in full within 30 days of entry of the Consent Decree.

In addition, the Consent Decree requires Bunge to expend approximately \$1,250,000 to implement a number of State supplemental environmental projects in each of the eight States in which it operates, as follows:

Louisiana: \$83,335.00 to the Louisiana Department of Environmental Quality to fund the Mercury Removal/Education Program at LDEQ, spending no less than \$15,000.00, in St. Charles Parish. Based on the needs of the schools, the funds will be used to defray the costs of

(a) removing and disposing of present mercury, lead and/or asbestos contamination, and/or,

(b) eliminating the use of mercury instruments in local educational institutions.

Illinois

1. Alexander County Hazardous Materials Equipment and Training SEP: \$54,000.00 to the Alexander County Emergency Services and Disaster Agency for hazardous materials response equipment and training

2. Vermilion County Hazardous Materials Equipment and Training SEP: \$90,000.00 to the Vermilion County Emergency Management Agency for hazardous materials response equipment and training

3. Pulaski County Hazardous Materials Equipment and Training SEP: \$62,000.00 to the Pulaski County Emergency Services and Disaster Agency for hazardous materials response equipment and training

4. Lead Abatement SEP: \$294,000.00 to the City of Danville, Illinois, Department of Public Development, Division of Community Development for lead abatement projects at residential locations in Danville, Illinois

Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles

Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program

Kansas

1. Emporia School District Diesel Retrofit: \$22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253.

2. Southern Lyon County School District Diesel Retrofit: \$16,065.00 for a project retrofitting diesel vehicles owned and operated by the Southern Lyon County Unified School District No. 252.

3. KACEE Fund Contribution: \$44,630.00 to the Kansas Association for Conservation and Environmental Education to provide for environmental education within the State of Kansas.

Mississippi

1. Hancock County Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Hancock County Fire Department for hazardous materials response equipment and training

2. Long Beach Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Long Beach Fire Department for hazardous materials response equipment and training

3. Biloxi Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Biloxi Fire Department for hazardous materials response equipment and training

4. Pass Christian Fire Department Hazardous Materials Equipment and Training SEP: \$20,843.75 to the Pass Christian Fire Department for hazardous materials response equipment and training

Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa

Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Morgan Jencius, ARD, (312) 886-2407

Western District of Michigan enters Consent Decree resolving violations of the Clean Air Act by CEMEX, Inc., St. Mary's Cement, Inc. and St. Barbara Cement, Inc.

On December 12, 2006, the Western District of Michigan entered a Consent Decree resolving Clean Air Act violations alleged to have been committed by CEMEX, Inc., St. Mary's Cement, Inc., and St. Barbara Cement, Inc. Specifically, the Complaint in the matter alleges violations of the following requirements of the Act: Standards of Performance for New Stationary Sources, Section 111 of the Act, and regulations promulgated thereunder, at 40 CFR Part 60, Subpart F; and Hazardous Air Pollutants, Section 112 of the Act, and regulations promulgated thereunder, at 40 CFR Part 63, Subpart LLL, for the Portland Cement Manufacturing Industry. The Complaint also alleged violations of the Michigan CAA implementation plan, approved by the Administrator under Section 110 of the Act. The violations occurred at a Portland cement manufacturing facility located in Charelvoix, Michigan, which was owned and operated by CEMEX prior to March 31, 2005, and owned by St. Barbara and operated by St. Mary's on and after March 31, 2005. Under the settlement CEMEX is to pay a civil penalty of \$1,359,422, and St. Mary's has committed to undertaking remedial action at the facility which will cause it to come into compliance with the CAA requirements cited in the Complaint. In addition, St. Mary's is subject to reporting requirements, and is to perform Supplemental Environmental Projects at the facility.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947; Farro Assadi, secondary contact (312) 886-1424

Region 5 Settles Clean Air Act Matter with CertainTeed Corporation.

On May 23, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) settling Clean Air Act (CAA) violations by CertainTeed Corporation. The violations were voluntarily disclosed by CertainTeed to EPA in letters dated March 25, 2004 and December 14, 2004. In July 2005, EPA determined that CertainTeed had not met several of the criteria in EPA's [Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations](#) (EPA Audit Policy), so no penalty reduction was warranted. At that time, EPA also informed CertainTeed that the Agency intended to file an enforcement action. In a complaint filed on August 29, 2006, EPA alleged that CertainTeed was operating two pieces of equipment without a permit and was operating a third piece of equipment in violation of the facility's CAA Title V permit. Two of the violations lasted for a period of several years. After the complaint was filed, CertainTeed submitted written and verbal information to EPA which allowed the Agency to revisit and reverse its earlier determination regarding the application of the EPA Audit Policy. Ultimately, EPA determined that CertainTeed satisfied eight of the nine Audit Policy criteria, resulting in a 75% reduction in the proposed penalty. EPA also reduced the penalty based on the seriousness of the violation, and CertainTeed's good faith efforts to comply. The CAFO settles the matter for a total of \$13,750, plus the performance of a supplemental environmental project costing at least \$41,250 (the complaint proposed a

penalty of \$272,140). The supplemental environmental project consists of CertainTeed permanently retiring SO₂ or NO_x emission credits.

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Charmagne Ackerman, Environmental Engineer, (312) 886-0448

S.D. Indiana Court in U.S. et al. v. Cinergy Corp. et al. Rules in Favor of the Plaintiffs on Summary Judgment for RMRR and Fair Notice.

On June 18, 2007, Judge McKinney of the S.D. of Indiana lifted the stay on the U.S. v. Cinergy PSD/New Source Review case and ruled on several pending motions, including deciding in favor of the Plaintiffs on the Plaintiffs' motions for summary judgment on routine maintenance, repair and replacement (RMRR) and fair notice. Each decision is discussed separately.

The U.S. initiated a lawsuit against Cinergy Corp. alleging that Cinergy violated new source review (NSR) provisions of the CAA when it made physical changes to units at various power plants that constitute modifications as that term is defined by 42 U.S.C. 7411(a)(4). The Plaintiffs moved for partial summary judgment that certain projects were not within the narrow range of activities that qualify for an exclusion from NSR as routine maintenance, repair or replacement under the CAA Section 111(a)(4) and 40 CFR 52.21(b)(2)(iii). In a 71 page decision, Judge McKinney ruled in favor of the Plaintiffs on each of the projects.

At the outset, the Court noted that Cinergy failed to comply with Local Rule 56.1 which required Cinergy to specifically indicate which of Plaintiffs' designated facts it disputes. Instead of doing this, Cinergy set out its own material facts in dispute. Accordingly, for purposes of this order, the Court accepted as true Plaintiffs' assertions.

The Court stated that the proper standard to apply to determine whether a project was routine and therefore within the RMRR exclusion is the standard it noted in *U.S. v. SIEGO*, 245 F. Supp. 994, 1008 (S.D. Ind. 2003). The Court went on to state:

The RMRR analysis is a common sense approach that involves a fact intensive inquiry, on a case-by-case basis, of several factors such as a project's nature and extent, its purpose, the frequency of the repair or replacement, and the project's cost. . . . The frequency factor includes a consideration of how frequently a type of repair or replacement is done at a particular unit as well as how frequently it is done within the industry.

The Court noted the fact that a project was a capital expenditure is an important consideration, as is the fact that outside contractors were used for a project. Also, significant to the Court is the fact that the projects were costly when compared to annual maintenance costs for the unit at issue and the fact that the costs were high enough to require high-level management approval.

One of the affirmative defenses Cinergy raised to the Plaintiffs' lawsuit was that it did not have fair notice of (1) the legal standards to apply to determine whether the RMRR provisions of the CAA is applicable to a given project and (2) the legal standards for determining whether a given project will cause a significant net emissions increase for purposes of NSR.

A. Fair Notice of legal standards concerning RMRR

For projects Cinergy undertook after September 1988, the Court reiterated its position from *SIGECO* that the 1988 Don Clay memorandum “explicitly notified the regulated community that the EPA considered routine maintenance to be a narrow exemption.” The Court went on to say that the Clay memorandum and the 7th Circuit decision in *WEPCO* put the regulated community on notice that the routine maintenance exemption was a multifactor test and that no single factor was dispositive. So, Cinergy had fair notice of EPA’s interpretation of the standards for the RMRR exclusion for all of its projects that began after the Clay memo.

For the projects begun prior to 1988, the Court found that the plain language of the CAA and its regulations, the EPA’s official statements and prior interpretations, and Cinergy’s failure to make any inquiry prior to construction (such as an applicability determination), reveal that Cinergy did have fair notice of the interpretation of the RMRR exclusion even prior to the 1988 Clay memo. An additional factor supporting the court’s conclusion was evidence showing that Cinergy had actual knowledge of EPA’s interpretation.

B. Fair Notice of the Standard for Determining Emissions

The Court first dismissed Cinergy argument that it did not have fair notice of the precise calculation methodology. The Court concluded that as long as Cinergy was aware of the regulatory standards for determining whether a project may result in significant increases in emissions, its understanding of the exact mathematical formula is irrelevant. The Court then found that Cinergy “certainly had fair notice of the standards after the *WEPCO* decision and for projects it began thereafter.”

For projects begun prior to *WEPCO*, the Court concluded that Cinergy had fair notice of the standards for determining significant emission increases based on the plain language of the regulations. In addition, the Court found that Cinergy either had actual knowledge or should have been aware of the standards based on deposition testimony and the 1987 Casa Grande copper mining and processing applicability determination. The Court noted that the Casa Grande determination applied the wrong standard; actual to potential, but that this was harmless error. Cinergy’s own witness acknowledged that the actual to potential test was more likely to result in a finding that a PSD permit was required, than the correct actual to future actual test.

Office of Regional Counsel Contacts: Gaylene Vasaturo, (312) 886-1811; Ignacio Arrazola, (312) 886-7152; Tom Williams, (312) 886-0814; Charles Mikalian, (312) 886-2242 and Timothy Thurlow, (312) 886-6623

U.S. District Court Denies Leave to File Additional Summary Judgment Motions and Re-schedules *United States v. Cinergy, Inc. et al*, (Clean Air Act) for Trial.

The United States District Court for the Southern District of Indiana, Magistrate Judge Magnus-Stinson presiding, convened a status conference in the *United States v. Cinergy* new source review case on July 11, 2008. The conference followed the court’s order lifting a stay of proceedings that had been in place pending appellate resolution of a dispute over the applicable emissions test. At the conference, the plaintiffs moved for leave to file additional motions for partial summary judgment on Cinergy’s “routine maintenance” defense on nine contested projects, the court having granted an earlier

motion on all the other projects on June 18th, and on a legal issue involving the baseline to apply for calculating emissions resulting from several of the projects. Cinergy did not object to the request for leave to file an additional RMRR motion, but objected to the request related to emissions calculation baseline. The court took the matter under advisement, and scheduled trial to begin on May 5, 2008, with a final pretrial conference on April 11, 2008. According to the Magistrate, the Judge has set aside the month of May for the trial. On July 17, 2007, the Court issued a written order confirming the dates and denying plaintiffs' motion for leave to file additional summary judgment motions.

Office of Regional Counsel Contacts: Gaylene Vasaturo, (312) 886-1811; Ignacio Arrazola, (312) 886-7152; Tom Williams, (312) 886-0814; Chuck Mikalian, (312) 886-2242; Timothy Thurlow, (312) 886-6623

Degussa Engineered Carbons, LP Completes SEP Pursuant to Consent Agreement and Final Order resolving violations of the Clean Air Act.

On September 5, 2007, Region 5 formally accepted the SEP completion report filed by Degussa Engineered Carbons. The SEP complies with the terms of the January 18, 2006, CAFO. The SEP resulted in the replacement of 47 wood stoves with EPA certified high efficiency stoves in homes of low income individuals in Washington County, Ohio and Wood County, West Virginia. In addition, chimneys and flues were repaired or replaced as necessary. The wood stove changeouts are expected to reduce emissions of various air pollutants in these non-attainment areas by over 16 tons.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Brian Dickens, Air Division, (312) 886-6073

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order to conclude case against Del's Metal Co., Rock Island, Illinois.

On January 3, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) concluding an administrative penalty action against Del's Metal Co. (Del's Metal), Rock Island, Illinois for violations of the Clean Air Act (CAA), 42 U.S.C. §7401, *et seq.*, and regulations concerning the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at its facility in Rock Island, Illinois. The CAFO requires Del's Metal pay a penalty of \$40,000. On September 27, 2006, EPA filed an administrative penalty order against Del's Metal for not complying with the regulations concerning the operation of its two furnaces. Del's Metal has discontinued the operation of its furnaces which will result in fewer pollutants being released to the environment. The proposed penalty in this matter was \$100,548.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Consent Decree Lodged in Dupont Global Sulfuric Acid Plant Initiative Case.

On July 20, 2007, a Consent Decree (CD) was lodged in the Southern District of Ohio resolving the E.I. du Pont de Nemours & Company (DuPont) global sulfuric acid plant case. This CD resolves a U.S. EPA Clean Air Act (CAA) Section 113(a)(1) and (3) enforcement action against DuPont at its sulfuric acid production facilities located in Ohio, Virginia, Louisiana, and Kentucky. The global resolution set forth in the CD also involves EPA Regions 3, 4 and 6, and three states: Ohio, Louisiana and Virginia. Region

5 initiated the investigations and negotiations leading to this Consent Decree, and acted as the “lead region” throughout the negotiations.

This case is part of EPA’s national New Source Review and Prevention of Significant Deterioration Acid Plant Priority Sector, a national initiative originally initiated by Region 5. Under this CD, DuPont will reduce sulfur dioxide emissions by approximately 13,600 tons annually from its four acid plants, through the installation of state-of-the-art controls at each plant. DuPont estimates the cost of this injunctive relief to be approximately \$68.5 million. DuPont will also pay \$4,125,000 in civil penalties to the Plaintiffs, including \$2,475,000 to the United States.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

United States Lodges Consent Decree Requiring Equistar Chemical, Lp To Spend \$125 Million To Reduce Pollution.

The Department of Justice filed a Complaint and Consent Decree resolving a myriad of air, water and hazardous waste violations at seven of Equistar Chemical’s petrochemical plants in Texas, Illinois, Iowa and Louisiana. The Consent Decree, lodged in the Northern District of Illinois on July 18, 2007, requires Equistar to invest in comprehensive control and operational measures expected to significantly reduce air, water and hazardous waste pollution from the seven manufacturing facilities. The violations were primarily identified during NEIC inspections of Equistar’s Morris, Illinois, and Channelview, Texas, olefin production facilities. The total cost of the injunctive relief required under the Consent Decree is estimated at \$125 million. In addition to the injunctive relief, Equistar will pay a civil penalty of \$2.5 million in cash (to be divided among the federal government and participating states including Illinois) and spend \$6.56 million on federal and state supplemental environmental projects. Region 5 was actively involved in the negotiations of the Consent Decree which requires \$225,000 for state community-based supplemental environmental projects in Illinois including: \$70,000 to the Minooka, Illinois, Community School District to fund the purchase of a new school bus that is biodiesel fuel compatible; \$105,000 to the Illinois EPA Clean School Bus Program to be used within Grundy, Kendall, Kankakee, Livingston, or LaSalle counties to reduce emissions from diesel-powered school buses by installing EPA certified oxidation reduction catalysts, particulate filters, or anti-idling technologies; and \$50,000 to the Grundy County Emergency Management Agency – Hazmat Team to fund the purchase of emergency response equipment.

Office of Regional Counsel Contact: Susan Prout, (312) 353-1029

EPA Region 5 Signs a Consent Agreement and Final Order with Flavorchem Corporation in Downers Grove, Illinois.

On May 16, 2007, EPA, Region 5, and Flavorchem Corporation (Flavorchem) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Clean Air Act at Flavorchem’s manufacturing plant in Downers Grove, DuPage County, Illinois. Flavorchem produces flavoring extracts, syrups and food colorings at its facility. Flavorchem has operated several emission sources of volatile organic compounds including a north wet mix area and coffee press, a south wet mix area and cocoa press, a spray dryer, a dry mix room with small mixers, a dry mix room with a mega-mixer, a fragrance room, a packaging room, a bean dryer and

vanilla concentrator at the facility. DuPage County was designated as a severe nonattainment area for the 1-hour ozone standard from 1992 until EPA designated DuPage County as a moderate nonattainment area for the 8-hour ozone standard effective June 15, 2004 and revoked the 1-hour ozone standard effective June 15, 2005. The CAFO alleges that Flavorchem failed to obtain construction and operating permits for the emission sources at its facility in violation of the Illinois State Implementation Plan, failed to submit a Title V permit application, and operated without a Title V operating permit in violation of Sections 502 and 503 of the Act, 42 U.S.C. 7661a and 7661b. Flavorchem submitted a complete permit application to Illinois EPA on October 10, 2006 and will be in full compliance with the permitting requirements upon issuance of a permit. EPA calculated a preliminary civil penalty of \$125,042 for these violations and notified Flavorchem of this amount in a pre-filing and opportunity to confer letter. In consideration of the facts of this case, Flavorchem's cooperation with U.S. EPA and Flavorchem's good faith efforts to comply, EPA determined and Flavorchem agreed that the appropriate civil penalty to settle this action is \$75,025.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Tanya Hurlburt, additional contact (312) 353-4145

Region 5 signs a pre-filing Consent Agreement and Final Order with Greif Industrial Packaging & Services, LLC and Greif, Inc. (Greif), Alsip, Illinois, resolving Clean Air Act violations.

On September 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commencing and concluding, under Section 113 of the Clean Air Act, 42 U.S.C. § 7413, alleged violations of the regulations at 40 C.F.R. Part 63, Subpart Q, related to the use of chromium-based chemicals in two industrial process cooling towers constructed prior to 1994, at Greif's plant in Alsip, Illinois. The chromium-based water treatment chemicals were used as corrosion inhibitors in the cooling towers. Greif stopped using the chromium-based water treatment chemicals shortly after U.S. EPA inspected the plant. Under the terms of the CAFO, Greif has agreed to pay \$120,000 as a penalty.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237 and Kathryn Siegel, Air Enforcement and Compliance Assurance Branch, (312) 353-1377

Illinois Attorney General Files Petitions for Review of U.S. EPA's Orders Denying Petitions to Object to Clean Air Act Operating Permits.

On November 25, 2005 and April 5, 2006, U.S. EPA received petitions from the Illinois Attorney General (IAG) requesting that the Administrator object to Clean Air Act Title V operating permits which the Illinois Environmental Protection Agency (IEPA) proposed to issue to various Midwest Generation coal-fired utilities. The IAG alleged that, because the proposed permits did not include schedules to bring the facilities into compliance with opacity emissions limits, and IEPA did not obtain in the permit applications sufficient information to determine whether the sources were subject to new source review, the proposed permits did not comply with the Clean Air Act and 40 C.F.R. part 70. On June 14 and 20, 2007, the Administrator signed orders denying the petitions. In Petitions for Review filed September 14, 2007, the IAG requested that the United States Court of Appeals for the Seventh Circuit review U.S. EPA's orders.

Office of Regional Counsel Contact: Jane Woolums, (312)886-6720; Genevieve Damico, Air and Radiation Division, (312) 353-4761

EAB denies review in part and remands in part PSD permit for Indeck, Elwood, Illinois.

On September 27, 2006, the Environmental Appeals Board (EAB) issued an order remanding to Illinois Environmental Protection Agency (IEPA) a PSD permit issued to Indeck-Elwood, LLC (Indeck) for the construction of a 660-megawatt coal-fired steam electric generating station in Elwood, Illinois, adjacent to the Midewin National Tallgrass Prairie, a national prairie preserve, on the grounds that 1) the permit includes a condition which allows Indeck to construct a power plant with less capacity than addressed by the permit application; 2) IEPA and Indeck failed to conduct a proper assessment of impairment to soils and vegetation that would occur as a result of the proposed facility; 3) the permit provision exempting all shutdown, startup, and malfunction events from short-term emission limits is unlawful; and 4) Indeck's proposed particulate matter emissions limit does not reflect Best Available Control Technology (BACT). In addition to these grounds, Petitioners, the Sierra Club and other environmental groups, had challenged the permit on the following grounds, of which the EAB denied review: 1) the permit's sulfur dioxide limits do not reflect BACT because Indeck did not credibly consider the use of low-sulfur coal; 2) the permit unlawfully allows Indeck to burn any solid fuel without defining such term or considering alternative fuels in its BACT analysis; 3) the permit's nitrogen oxide limit does not reflect BACT; 4) IEPA unlawfully failed to set a BACT limit for fluorides; and 5) IEPA erroneously concluded that it has no obligation to consider alternative locations for the proposed facility. In addition, Petitioners raised several challenges relating to the Endangered Species Act (ESA), *inter alia*, that EPA's consultation with U.S. Fish and Wildlife Services generated significant new information about the proposed facility, and that the administrative record should be opened and the public should be afforded to opportunity to comment on this new information. The EAB accepted EPA's position that the ESA, the Clean Air Act and relevant regulations do not provide for public participation or comment on the ESA consultation process as part of a PSD permit proceeding. However, the EAB noted that it may "be prudent" for EPA "to move the ESA consultation process further up in the permit development chain where there is more flexibility to make and implement any ESA-related permit modifications."

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Region 5 and H. Kramer Enter Into An Amendment to Consent Agreement and Final Order.

On June 1, 2007, Region 5 and H. Kramer entered into an amendment to the Consent Agreement and Final Order (CAFO) originally filed on March 30, 2006. The original CAFO simultaneously commenced and concluded an action for Clean Air Act violations at H. Kramer's secondary brass and bronze production plant in Chicago, Illinois. In addition to paying a penalty, the CAFO requires H. Kramer to perform a supplemental environmental project (SEP). The SEP requires H. Kramer to modify its baghouse collection system to improve the capture and control of fugitive emissions from two rotary furnaces. Currently, the fugitive emission lines from these furnaces converge and are directed to one baghouse. A second baghouse serves as a backup to handle the combined emissions if the first baghouse fails. The original SEP would connect each

furnace to one of the baghouses by installing a separate flue line from each furnace to one of the baghouses.

H. Kramer has requested a modification to the SEP which would allow it to install a baghouse that the company purchased through a bankruptcy sale as a replacement for the backup baghouse that it agreed to connect to one of its two rotary furnaces. The replacement baghouse has a greater flow rate than the backup baghouse and includes four compartments whereas the old backup baghouse includes one compartment. The new baghouse is expected to improve the ability to control fugitive emissions from the furnace and will be easier to maintain because of its multi-compartment design. The cost of the SEP will increase from \$500,000 to \$780,000. The additional costs include the purchase price of the replacement baghouse, the cost to dismantle, clean and transport the baghouse to the H. Kramer facility, the demolition and disposal of the old backup baghouse, and the erection and connection of the new replacement baghouse. The schedule to complete the SEP will be extended by approximately four months from May 2007 to September 2007. The additional time is required to obtain the necessary permits, demolish the old backup baghouse, and install and test the new baghouse.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670;
Kushal Som, additional contact: (312) 353-5792

Region 5 Settles Clean Air Act Matter with Lesaffre Yeast Corporation.

On June 21, 2007, Region 5 issued a Consent Agreement and Final Order ("CAFO") settling Clean Air Act (CAA) violations by Lesaffre Yeast Corporation. On December 15, 2006, U.S. EPA filed a complaint against Respondent Lesaffre Yeast Corporation ("Lesaffre" or "Respondent"). The complaint alleges that Lesaffre violated Nonattainment New Source Review Requirements contained in the Act and in the Wisconsin State Implementation Plan ("SIP") (Count I) as well as emission limitations contained in Lesaffre's Title V permit and the Wisconsin SIP (Count II) at its facility in Milwaukee, Wisconsin. That facility closed in December 2005. This CAFO settles the complaint. EPA made a penalty reduction based on the degree of cooperation by the Respondent and potential litigation risk. The CAFO settles the matter for \$202,500 (the complaint proposed a penalty for Count I of \$488,080). Additionally, under the CAFO, the Respondent agrees that: (1) any emission reduction resulting from the activities which are the subject of the Complaint shall not be considered as a creditable contemporaneous emission decrease for purposes of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs; (2) emission reductions resulting from activities which are the subject of the Complaint shall not be used or sold in any emission trading or marketing program of any kind; and (3) the shutdown of the facility on December 22, 2005, was a "permanent shutdown" as defined by the United States Environmental Protection Agency Reactivation Policy.

Office of Regional Counsel Contacts: Catherine Garypie, (312) 886-5825; Jeff Cahn, (312) 886-6670; Manojkumar Patel, Air & Radiation Division, (312) 353-3565

Region 5 files a Consent Agreement and Final Order to commence and conclude case against MAPEI Inc., West Chicago, Illinois.

On June 15, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against

MAPEI Inc. of West Chicago, Illinois, for alleged violations of § 113 of the Clean Air Act and the Illinois SIP. MAPEI's alleged violations stemmed from two instances of failing to obtain a construction permit prior to commencing construction on an emission source. In each case, MAPEI had filed a permit application, but had not received a construction permit until after they began construction. In settlement, MAPEI has agreed to pay U.S. EPA's proposed penalty of \$5,240, and will undertake a pollution prevention Supplemental Environmental Project (SEP) valued at \$34,000. In its SEP MAPEI will reformulate two products, resulting in a projected reduction of hazardous air pollutants (HAPs) of .86 tons per year.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Meijer, Inc.

Region 5 initiated pre-filing discussions on this matter in August 2006. The proposed penalty amount was \$48,000. On July 12, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding to settle violations of Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68 with Meijer, Inc. concerning the Meijer Kitchen facility (a minor non-Title V facility) in Middlebury, Indiana. The Respondent failed to have documentation concerning required training and failed to update certain information in the risk management plan for the anhydrous ammonia refrigeration process at the facility. Based on Meijer's cooperation and new information relating to the length of time of the violations, the parties agreed to resolve this matter by Meijer, Inc.'s payment of a civil penalty of \$25,000.

Office of Regional Counsel Contacts: Jan Carlson, ORC, 312-886-6059; Ann Coyle, (312) 886-2248; Monika Chrzaszcz, technical contact, (312) 886-0181

Citizen Suit Filed to Restore Vehicle Inspection Programs in Cincinnati and Dayton, Ohio.

On October 11, 2006, an Ohio citizen named John P. Frank and an entity known as Ohio Environmental Development Limited Partnership filed an action in the U.S. District Court for the Southern District of Ohio seeking to re-instate the vehicle inspection programs known as "E-Check" in the Cincinnati and Dayton, Ohio ozone nonattainment areas. The plaintiffs claim that the Ohio Environmental Protection Agency violated the Clean Air Act when it halted the E-Check program which is still required in Ohio's federally-approved State Implementation Plan (SIP). The plaintiffs ask the Court to order immediate reinstatement of the program.

On April 15, 2005, U.S. EPA proposed in the Federal Register to approve, per the State of Ohio's request, to approve revisions aspects of the ozone SIP, including re-designation of the Cincinnati area to attainment and, among other things, converting the vehicle inspection programs to a contingency measure in the 1-hour ozone maintenance plan. The notice stated in relevant part that: "in response to comments, EPA is deferring action on conversion of E-Check to contingent status in the Cincinnati and Dayton areas. That is, EPA is approving a maintenance plan for the Cincinnati area in which E-Check remains an active measure for which Ohio takes no credit." Subsequently, Ohio ended its vehicle inspection program at the end of 2005. To date, no substitute measures have been approved by EPA.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

United States and the State of Illinois File Complaint and Consent Decree Against PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively, Defendants) by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking.

Beginning in June 2006, U.S. EPA and ATSDR collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern.

The proposed Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants' key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled. With respect to Defendants' Other Gathering Facilities (gathering facilities that are not identified as Key Gathering Facilities), if at any time, valid monitoring conducted within a one mile radius of one of the Other Gathering Facilities shows an H₂S exceedance of 70 ppb averaged over thirty minutes, or if there is no valid monitoring data for that Other Gathering Facility, then U.S. EPA, after consultation with the Illinois EPA (IEPA), will determine whether any control measures are necessary to adequately protect human health and welfare and the environment after consideration of Defendants' reports, the results of any valid monitoring and other investigation performed by U.S. EPA and/or IEPA, and in consideration of (i) the impact of the emission source and the potential control measure (i.e., proximity, emission contribution); and (ii) technical and practical feasibility of the potential control measures.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division technical contacts: Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA contact: Cary Secrest, (202) 564-8661; DOJ attorney: Michael Zoeller, (202) 305-1478

United States District Court Enters Consent Decree Between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp.

Following the close of the public comment period, on June 6, 2007, the United States District Court for the Southern District of Illinois entered a Consent Decree between the United States and the State of Illinois with PennTex Resources Illinois, Inc., and Rex Energy Operating Corp. (collectively “Defendants”). On April 4, 2007, the United States and the State of Illinois filed a joint federal-state Complaint and simultaneously lodged a Consent Decree with the Defendants by which the United States covenants not to sue Defendants under Section 303 of the Clean Air Act (CAA), 42 U.S.C. § 7603, for their emissions of hydrogen sulfide (H₂S) in Lawrence County, Illinois that occurred prior to the date of lodging of the Consent Decree in consideration of the actions that Defendants are taking to reduce H₂S emissions. In addition, the State of Illinois covenants not to sue Defendants under 415 ILCS 5/42(e) for airborne emissions of H₂S from their oil production facilities in Lawrence County, Illinois prior to the date of lodging of the Consent Decree, again in consideration of the emissions reductions projects Defendants are undertaking. No comments were submitted regarding the proposed settlement.

The Consent Decree is the result of expedited negotiations between the United States, the State of Illinois and Defendants. Beginning in June 2006, in response to local citizens’ complaints, U.S. EPA and the Agency for Toxic Substances and Disease Registry collected ambient air concentrations of H₂S with monitors located at five residences, an elementary school, and two parks in Bridgeport and Petrolia, Illinois. This monitoring measured concentrations of H₂S at levels of concern. The highest five minute average concentration was 873 parts per billion by volume (ppb) at a residence in Petrolia, Illinois. At the same location, the highest hourly concentration was 417 ppb, with maximum hourly values often over 200 ppb. At least one monitor detected concentrations over 1,000 ppb, over a 1-minute averaging time. The highest readings were recorded in the evening to morning hours, when most people are at home. ATSDR has established an acute inhalation minimal risk level (MRL) at 70 ppb based on a 30-minute exposure.

The Consent Decree provides for control measures designed to reduce H₂S emissions from eight of the Defendants’ key gathering facilities and their associated wells that are closest in proximity to residents in the Bridgeport and Petrolia areas. Defendants are in the process of installing elevated flares at six gathering facilities, specifically Newell, Robins, Johnson, Boyd, Westall and Cummins facilities (hereinafter “Key Gathering Facilities”). Elevated flares are designed to destroy H₂S emissions from wells, tanks, oil truck loading operations and emergency pits. Since lodging of the Consent Decree, Defendants have installed a vapor collection system at each of the Key Gathering Facilities to collect vapors displaced from tanks, cisterns and other vessels and direct these vapors to a flare. Defendants have installed an automated electric kill system, designed to automatically shut off electricity to pumps on all oil wells to prevent any overflow of brine water to an emergency pit, for all active oil wells tied to the Newell, Robins, Johnson and Boyd gathering facilities. Based on the effectiveness of the floating cover system and the automated electric kill system, U.S. EPA will evaluate the need to install addition floating cover systems and/or automated electric kill systems.

Defendants will conduct initial emissions monitoring upon installation of the control measures. The Defendants also agreed to a procedure for evaluating the effectiveness of

the control measures being installed at the Key Gathering Facilities as well as determining whether other gathering facilities also need to be controlled.

During this time, U.S. EPA is continuing to monitor the ambient air for H₂S at four sites, three at residences and one site at the elementary school in the Bridgeport and Petrolia areas. One of the sites is located in the southern half of the Lawrence Wellfield at a residence in close proximity to two other gathering facilities that are not among the Key Gathering Facilities. In addition, U.S. EPA is monitoring sulfur dioxide at two of the three residential sites.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Air and Radiation Division technical contacts: Kathryn Siegel, (312) 353-1377; Bonnie Weinbach, (312) 886-0258; and Scott Hamilton, (312) 353-4775; OECA contact: Cary Secrest, (202) 564-8661; DOJ attorney: Michael Zoeller, (202) 305-1478

Environmental groups appeal EAB's decision denying petition for review of PSD permit for coal-powered electricity generating plant in Washington County, Illinois.

On October 25, 2006, the Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch filed with the 7th Circuit a Petition for Review of the Environmental Appeals Board's (EAB) decision of August 24, 2006, which denied review of a Prevention of Significant Deterioration (PSD) permit issued by the Illinois Environmental Protection Agency (IEPA), which has a delegated PSD program, to Prairie State Generating Company, LLC, authorizing the construction of a 1500-megawatt pulverized coal-fuel powered electricity generating plant in southern Illinois. The petitioners, in their appeal to the EAB, had challenged IEPA's determinations of the "best available control technology" emission limits for sulfur dioxide, nitrogen oxides, and particulate matter, taking issue, in particular, with the relatively high-sulfur coal from the mine that will be co-located with the electric generating plant. Petitioners also challenged IEPA's analysis of the facility's air quality impacts, contended that a review of environmental impacts under NEPA was warranted, and argued that IEPA violated environmental justice obligations. The EAB accepted IEPA's position that compelling the use of low-sulfur coal would redefine the facility's basic design or purpose. The EAB also rejected the rest of Petitioners' arguments, finding that Petitioners had failed to meet their burden of demonstrating that IEPA's determinations were either factually or legally "clearly erroneous" or otherwise warranted review.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273

Department of Justice Files Complaint and Lodges Consent Decree Addendum with The Premcor Refining Group and The Lima Refining Company.

On August 16, 2007, the Department of Justice, the State of Ohio, and Memphis/Shelby County, Tennessee, simultaneously filed their Complaints and a proposed Consent Decree Addendum ("Addendum") with The Premcor Refining Group Inc., and the Lima Refining Company (collectively, "Premcor") for alleged environmental violations at petroleum refineries owned and operated by Premcor.

The original Consent Decree in this matter was lodged in June 2005 in the Western District of Texas against Valero Refining Company (“Valero”). Following the lodging of the original Consent Decree, Premcor was acquired by Valero Energy Corporation via the September 1, 2005 merger of Premcor Inc., with and into Valero Energy Corporation. Valero assumed ownership of and control over Premcor’s petroleum refineries in Lima, Ohio (“Lima Refinery”), Memphis, Tennessee, and Port Arthur, Texas.

Premcor is estimating that it will spend \$85 million to install and implement emission control technologies at the Lima Refinery. Upon completion of installation of controls and control measures, Premcor is estimating that it will reduce over 1,000 tons per year (“TPY”) of oxides of nitrogen, over 1,800 TPY of sulfur dioxide, and over 80 TPY of particulate matter.

Under the Addendum, Premcor will pay a total civil penalty of \$4,250,000 as follows: \$2,750,000 to the United States, of which \$40,000 will be a civil penalty paid to the EPA Hazardous Substances Superfund; \$800,000 to Plaintiff-Intervener, the State of Ohio; and \$700,000 to Plaintiff-Intervener, Memphis Shelby County Health Department.

Premcor has also agreed to perform supplemental environmental projects (“SEPs”). Premcor will perform three federal SEPs at a total cost of \$925,000, and will fund two State SEPs at a total cost of \$250,000. The three federal SEPs are as follows: (1) Premcor shall develop and implement a Traffic Signal Synchronization study to optimize traffic flow in the City of Lima to reduce emissions from preventable vehicle idling resulting from inefficient traffic flow; (2) Premcor shall install controls on unregulated and/or uncontrolled atmospheric relief vents at the Lima Refinery that will route emissions from such vents to a control device to eliminate or significantly reduce the potential for fugitive volatile organic compound (“VOC”) emissions; and (3) Premcor shall perform a SEP designed to demonstrate the use of infrared imaging equipment to identify emissions from leaking components and other sources of fugitive VOC emissions at the Lima Refinery.

The State SEPs for the Lima Refinery are: Premcor shall transfer \$200,000 to the Lake Michigan Air Directors Consortium to support PM 2.5 speciation monitoring and source sampling; and Premcor shall transfer \$50,000 to the Ohio Environmental Council for the installation of diesel retrofit technologies to reduce emissions of particulates and ozone precursors from municipal trucks and/or buses.

For the Lima refinery, the total value of the federal and State penalties and SEPs is \$2.565 million.

Office of Regional Counsel Contacts: Mary McAuliffe, (312) 886-6237, William Wagner, (312) 886-4684, Kathryn Siegel, Air and Radiation Division, (312) 353-1377, and James Entzminger, Waste, Pesticides and Toxics Division, (312) 886-4062

Northern District Of Indiana Enters Consent Decree Resolving Violations Of The Clean Air Act By Rhodia Inc.

On July 23, 2007, the Northern District of Indiana entered a Consent Decree resolving Clean Air Act violations by Rhodia Inc. at six sulfuric acid plants. Specifically, the Complaint in the matter alleged that Rhodia had failed to comply with the Prevention of Significant Deterioration regulations, Title V permitting requirements, and the New Source Performance Standards (NSPS) applicable to sulfuric acid plants. The global

settlement addresses violations at all of Rhodia's sulfuric acid plants, including its plants in California, Indiana, Texas and Louisiana. The City of Hammond, Indiana, Indiana, Louisiana, and California were Plaintiff-Intervenors in this matter. Under the settlement, Rhodia will install control equipment to achieve emission limits for sulfur dioxide, will apply for proper permits and will comply with the NSPS requirements at its plants. In addition, Rhodia will pay a \$2 million penalty that will be shared amongst the United States and the Plaintiff-Intervenors.

Office of Regional Counsel Primary Contact: Cynthia A. King, (312) 886-6831, Nathan Frank, secondary contact, (312) 886-3850

Region 5 files CAFO to commence and conclude case against Rolls Royce Corporation, Indianapolis, Indiana.

On March 30, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously commencing and resolving an administrative penalty action against Rolls Royce Corporation for alleged violations of the Stratospheric Ozone Standards, found at 42 C.F.R. Part 82. Rolls Royce's alleged violations stemmed from failing to follow proper repair and recordkeeping procedures pertaining to three pieces of industrial process refrigerant equipment which contained R-22, an HCFC. Rolls Royce discovered the violations through an internal audit and disclosed the violations to Region 5. In addition, they replaced all three appliances in a timely fashion. Region 5 calculated, and Rolls Royce has agreed to pay, a penalty of \$18,329.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912

Region 5 enters a CAA Consent Agreement and Final Order requiring Scott Brass, Inc., to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411 and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00.

On April 17, 2007, Region 5 and Scott Brass, Inc. (Respondent) entered into a Consent Agreement and Final Order requiring Respondent to comply with section 111 of the Clean Air Act, 42 U.S.C. § 7411, and to pay to the Treasurer, United States of America, a civil penalty in the amount of \$10,000.00. On April 17, 2007, the Region also issued to Respondent an Administrative Consent Order requiring it to submit to the Indiana Department of Environmental Management within 180 days a complete Title V Permit Application for its facility, pursuant to section 111 of the Clean Air Act, 42 U.S.C. § 7411, the regulation at 40 C.F.R. Part 70, and the provision at 326 Indiana Administrative Code 2-7 of the Indiana State Implementation. On September 28, 2006, the Region issued a Complaint and Notice of Opportunity for Hearing which alleged that Respondent constructed a facility in 1997 but: 1) failed to apply for a Part 70 Permit before the date of construction, in violation of 326 Indiana Administrative Code 2-7; 2) failed to provide EPA written notice of the date of commencement of construction of its four electric induction furnaces, in violation of 40 C.F.R. § 60.7(a)(1); 3) failed to provide EPA written notice of the actual date of initial start-up, in violation of 40 C.F.R. § 60.7(a)(3); 4) failed to provide EPA written notice of its initial Method 9 Visible Emission Test in violation of 40 C.F.R. § 60.7(a)(6); 5) failed to conduct a Method 9 Visible Emission Test, in violation of the regulations at 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2); and violated section 111 of the Act, 42 U.S.C. § 7411. The Complaint proposed a civil penalty of \$42,470.00. On March 9, 2007, the Region amended the Complaint and alleged Respondent operated its facility from December 12, 2002, to November 15, 2005,

without a permit, in violation of section 111 of the Act, 42 U.S.C. § 7411. The Region reduced the proposed civil penalty due to a reduction in the number of days of alleged violation and other factors.

Office of Regional Counsel Contact: Jeffery M. Trevino, (312) 886-6729; additional contact: Kushal Som, (312) 353-5792

7th Circuit to hear oral argument in *Sierra Club et al. v. U.S. EPA on PSD permit appeal.*

On May 31, 2007, at 9:30 a.m., the U.S. Court of Appeals for the Seventh Circuit will hear oral argument in the PSD permit appeal of *Sierra Club, the American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, and Valley Watch*, Petitioners, v. *United States Environmental Protection Agency*, Respondent, and *Prairie State Generating Company, LLC*, Intervenor-Respondent. The issues on appeal are 1) Did the Environmental Appeals Board (EAB) reasonably construe the CAA and the record in this case when it ruled that the Illinois EPA was not required to evaluate, as part of the BACT analysis for the Prairie State Generating Company (Prairie State) PSD permit, the energy, environmental and economic impacts of importing low-sulfur coal to fuel a proposed electricity generating plant, where this control option would fundamentally change the design of the facility proposed by Prairie State to use a 30-year on-site supply of coal; and 2) Did the EAB reasonably find that the proposed facility would not contribute to violation of the recently-adopted 8-hour ozone NAAQS in the neighboring St. Louis air quality area, and that Illinois EPA's use of the 1-hour ozone modeling as a surrogate for the newer 8-hour standard was not inappropriate.

On August 24, 2006, the EAB denied Petitioners' request for review of a PSD permit issued to Prairie State for construction of a proposed 1500-megawatt pulverized coal-fuel powered electricity generating plant to be located in Washington County, Illinois. The facility would be located at the mouth of a new mine, also developed by Prairie State, which would provide the principal source of coal fuel used at the facility. Petitioner originally challenged the permit on 16 grounds, but is appealing only the above-mentioned two issues.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

7th Circuit finds in favor of EPA in CAA case.

In *Sierra Club, et al. v. U.S. Environmental Protection Agency and Prairie State Generating Company, LLC*, No. 06-3907 (August 24, 2007) the Seventh Circuit upheld the EAB's ruling that the Illinois Environmental Protection Agency (IEPA) did not unreasonably exclude the use of low sulfur coal from its BACT analysis for a power plant to be built at the mouth of a mine that will only produce high-sulfur coal. Petitioners had claimed that the IEPA improperly rejected consideration of low-sulfur coal as a method for controlling emissions of SO₂ from the proposed facility at Step 1 of its BACT analysis, that the IEPA had improperly treated low-sulfur coal as "redefining" the source, and that the IEPA violated the statutory requirement to consider "clean fuels." The EAB found that because the project consisted of both the construction of a power plant and a mine at the mouth of the power plant, which would supply coal to the plant for the

approximate 30-year expected life of the plant, IEPA did not err in its view that requiring Prairie State to use low-sulfur coal from the western states would “redefine the source.” The 7th Circuit agreed, noting, in particular, that the EAB correctly found that it was not the burning of low-sulfur coal, but receiving it from a distant mine that required reconfiguring the plant (*i.e.* replacing a half-mile long conveyor belt with a rail spur and facilities for unloading coal from rail cars). *Note:* Illinois is a delegated state for PSD, and thus U.S. EPA was the Respondent in this action. The court also upheld the EAB’s rejection of the Sierra Club’s request for review of IEPA’s method of determining the facility’s compliance with the NAAQS for ozone stated in the new 8-hour standard, by relying on the 1-hour modeling formula as a surrogate, pending EPA’s development of a modeling formula specific to the 8-hour standard.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Constantine Blathrus, (312) 886-0671

Department of Justice Lodges Consent Decree in Clean Air Act Matter.

On August 23, 2007, the U.S. Department of Justice lodged with the U.S. District Court for the Western District of Wisconsin a consent decree settling *Sierra Club v. EPA*. Sierra Club alleged in a March 19, 2007 complaint that U.S. EPA had failed to respond timely to petitions to object to operating permits that the Wisconsin Department of Natural Resources proposed to issue to the University of Wisconsin – Madison and Louisiana Pacific Corp. in Tomahawk, Wisconsin under Title V of the Clean Air Act. The consent decree provides that U.S. EPA will respond to Sierra Club’s petitions on the permits within 10 days of entry.

Office of Regional Counsel Contact: Jane Woolums, (312) 886-6720; Air and Radiation Division Contacts: Susan Siepkowski, (312) 353-2654; Danny Marcus, (312) 353-8781

Clean Air Act Consent Decree Entered in U.S. v. Smurfit (N.D. Ill).

On February 7, 2007, the United States District Court for the Northern District of Illinois entered a Clean Air Act consent decree requiring Smurfit-Stone Container Enterprises (Smurfit) to comply with the Illinois State Implementation Plan at the company’s Schaumburg, Illinois printing facility. Smurfit will pay a civil penalty of \$325,000, half of which will go to the State of Illinois, a plaintiff-intervenor in the case.

The decree specifically requires Smurfit to comply with applicable Volatile Organic Compound (VOC) emission limits by continuing to operate its new regenerative thermal oxidizer at the facility’s flexographic and rotogravure printing lines. The decree also requires Smurfit to comply with the Illinois Emissions Reduction Market System regulations, which establish an emission cap-and-trading program for major sources of VOC. The company spent over one million dollars in complying with the injunctive portions of the agreement.

Office of Regional Counsel Contact: Louise Gross, (312) 886-6844

Commence and conclude case against Spectro Alloys Corporation, Rosemount, Minnesota.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against

Spectro Alloys Corporation, for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, 40 CFR Part 63, Subpart RRR. The CAFO requires Spectro Alloys to pay a penalty of \$70,923. On February 9, 2007, Region 5 issued a Finding of Violation to Spectro Alloys for allegedly exceeding the emission rate limit for dioxin/furans and failing to maintain annual afterburner inspection records for 2003, 2004, 2005, 2006. Spectro Alloys subsequent retesting of the group 1 furnace demonstrated compliance with the dioxin/furan emission limits. Spectro contends it had a regular practice of conducting the afterburner inspections and is committed to maintaining the records on a going forward basis. Recognizing some litigation risk, Spectro Alloys' cooperation, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$96,713 to a settlement penalty of \$70,923.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

U.S. Circuit Court Grants Motion Dismissing the Petition in Sherwin Williams' Appeal of the Ohio SIP Approved by U.S. EPA Under the Clean Air Act.

The United States Court of Appeals for the Sixth Circuit has, on July 12, 2007, granted the motion of Petitioner, Diversified Brands f/k/a Sprayon Products, a Division of The Sherwin Williams Company, to voluntarily dismiss the petition in this case. The original petition in this matter was filed after promulgation of a final rule published and made effective on April 25, 1996. 61 Fed Reg 18,255 (1996). The rule established volatile organic compound reasonably available control technology (RACT) requirements for specific sources in Ohio, including the facility operated by petitioner in this case. After lengthy discussions, the parties reached agreements on technical changes to the operation of the facility subject to the regulation which was the subject of Petitioner's appeal. Sprayon agreed to install high efficiency incineration equipment to control its volatile organic compound (VOC) emissions. Ohio EPA drafted a site-specific regulation as a means to modify its State Implementation Plan and to incorporate the agreement in principle on technical issues among all the parties (Sprayon, Ohio EPA and US EPA). Ohio EPA proposed the new regulation to incorporate the parties' agreements into the State Implementation Plan. On December 5, 2006, US EPA published a notice in the Federal Register requesting public comment on the new regulation (71 Fed Reg 70699 (Dec. 6, 2006)). The comment period expired on January 5, 2007. The Agency has approved, published and promulgated the new Ohio SIP revision. 72 Fed Reg 15045 (March 30, 2007). At Sprayon's request, the Sixth Circuit has dismissed the petition for appeal. Sprayon is now the only aerosol can filling operation controlled with a high efficiency incinerator.

Office of Regional Counsel Contact: Thomas C. Nash, (312) 886-0552; Steve Rosenthal, 312-886-6052

Region 5 signs Consent Agreement and Final Order and Administrative Consent Order resolving CAA violations with Steel Dynamics, Inc., Butler, Indiana.

On September 21, 2007, Region 5 signed a Consent Agreement and Final Order (CAFO) and an Administrative Consent Order (ACO) with Steel Dynamics, Inc. (SDI), in settlement of a Notice and Finding of Violation (NOV) issued to SDI on September 28, 2006. The NOV alleged that SDI violated the Standards of Performance for Steel Pants:

Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, at C.F.R. Part 60, Subpart AAa at its Butler, Indiana facility (facility). Specifically, the NOV alleged that between 2003 and 2006, SDI's emissions from its Butler, Indiana facility equaled or exceeded 3%, in violation of 40 C.F.R. § 60.272a(a)(2) and Section 111(e) of the Clean Air Act (Act) and 326 IAC 2-3-3(1); that Respondent failed to properly report these exceedances in violation of 40 C.F.R. § 60.276a(b) and Section 111(e) of the Act; and that Respondent failed to use good pollution control practice for minimizing emissions, in violation of 40 C.F.R. § 60.11(d). The ACO sets forth specific measures to bring SDI into compliance. The CAFO, which simultaneously initiates and concludes this matter, includes a provision for SDI to perform a SEP worth over \$133,000. The SEP involves the installation of a compartment leak detection system as an additional control to the COM on its baghouse. In addition, SDI will pay a civil penalty of \$13,540.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Joseph Ulfig, ARD, (312) 353-8205

Region 5 files a Consent Agreement and Final Order to commence and conclude case against STRIB Industries, Inc. (d/b/a Products Chemical Company), Cleveland, Ohio.

On September 21, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against STRIB Industries, Inc., doing business as Products Chemical Company, for violations of the National VOC Emissions Standards for Architectural Coatings, 40 CFR Part 59, Subpart D. The CAFO requires Products Chemical Company to pay a penalty of \$33,911 in three installments with interest. On December 20, 2006, Region 5 issued a Finding of Violation to Products Chemical for allegedly failing to timely submit an initial notification report and exceeding the VOC content limits for certain architectural coatings from 1999 through 2005. On May 16, 2006, Products Chemical submitted an initial notification report. On February 28, 2007, Products Chemical submitted past due exceedance fee and tonnage exemption reports along with past due exceedance fees. These efforts remedied the violations. Also, Products Chemical has reformulated many of its products so that they are now below the VOC content limits. As a result of Products Chemical's cooperation, good faith, and other factors as justice may require, Region 5 determined that it was appropriate and consistent with the penalty policy to mitigate its planned proposed penalty of \$59,345 to a settlement penalty of \$33,911. The settlement payment will be made in installments due to an evaluation of Products Chemical's ability to pay.

Office of Regional Counsel Contact: Mony Chabria, (312) 886-6842

Region 5 signs a Consent Agreement and Final Order with Stroh Die Casting Co, Inc.

Region 5 initiated this enforcement action in September 2006 when the Region filed an administrative complaint against Stroh Die Casting Co., Inc. for violations of the secondary aluminum production NESHAP, 40 C.F.R. Part 63, Subpart RRR and Section 112 of the Clean Air Act, 42 U.S.C. § 7412. On August 1, 2007, Region 5 filed a consent agreement and final order in resolution of the violations alleged in the complaint. Pursuant to the settlement, Stroh Die Casting will pay a penalty of \$20,000. The

settlement penalty amount was based on the company's financial documentation in support of its claim of inability to pay the proposed penalty, good faith effort to comply with the NESHAP, and the extent of the violations.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Tanya Hurlburt, Air and Radiation Division, (312) 353-4145

EPA enters Consent Agreement and Final Order and Administrative Order on Consent with Tate & Lyle Ingredients Americas, Inc., resolving violations of the Clean Air Act.

On September 13, 2007, the Regional Administrator signed a Final Order resolving Clean Air Act (CAA) violations by Tate & Lyle Ingredients Americas, Inc. (Tate & Lyle) at its plant located in Lafayette, Indiana (the South Plant). Specifically, Tate & Lyle installed a gluten dryer at the South Plant without obtaining a proper permit or installing best available control technology for carbon monoxide as required by the Prevention of Significant Deterioration requirements of the Act. Under the Consent Agreement and Final Order (CAFO), Tate & Lyle will pay a civil penalty of \$188,100. Under a separate Administrative Consent Order, Tate & Lyle has agreed to apply for proper permits at the South Plant that will include best available control technology emission limits for volatile organic compounds and carbon monoxide for all of its dryers at the South Plant.

Office of Regional Counsel Contact: Cynthia A. King, (312) 886-6831; secondary contact: Erik Hardin, (312) 886-2043

Wisconsin Electric Power Company Settlement.

The consent decree between the United States Environmental Protection Agency and Wisconsin Electric Power Company resolving Clean Air Act New Source Review claims against the company for violating New Source Review regulations was entered on September 30, 2007. The parties filed a Motion to Enter the consent decree on October 24, 2003. Shortly thereafter, the State of Michigan, Clean Wisconsin, Sierra Club, and the Citizens' Utility Board intervened in the law suit and proposed modifications to the consent decree.

In granting the United States' Motion to Enter, the judge stated that "there is no dispute that BACT controls would achieve greater reductions [at two plants that did not receive controls under the decree]. Yet requiring BACT at all units would not be a settlement – it would be more akin to a judgment against one party. The court . . . believes that the proposed decree provides a significant reduction in pollutants for the citizens of both states."

Under the decree, WEPCO will spend \$600 million to install four scrubbers and four selective catalytic converters to reduce 72,300 tons per year of SO₂ and 32,600 tons per year of NO_x, respectively. The settlement covers WEPCO's entire system, which includes 23 units at five power plants. WEPCO has agreed to pay a civil penalty of \$3.1 million and mitigation costs totaling at least \$20 million. The \$20 million will finance an environmental project demonstrating a new technology, TOXECON, designed to achieve a 90% removal of mercury.

Office of Regional Counsel Contact: Sabrina Argentieri, (312) 353-5485

Region 5 files an Administrative Order on Consent with Wisconsin Public Service to conduct RI/FS at the Campmarina Site in Sheboygan, Wisconsin.

On February 5, 2007, Region 5 filed an Administrative Order on Consent (AOC), Docket Number V-W-07-C-862, for Wisconsin Public Service Corporation (WPSC) to do a remedial investigation/feasibility study (RI/FS) for the Campmarina site in Sheboygan, Wisconsin. The Campmarina work is being done under the Superfund Alternative Site (SAS) program and is part of a package of sites that WPSC is addressing with the region. The Campmarina site was a former manufactured gas plant (MGP) along the banks of the Sheboygan River. Wastes and by-products from the MGP remain on the former plant site and in the adjacent river. The contaminants of concern are polycyclic aromatic hydrocarbons and other organic hydrocarbons. The RI/FS will determine the nature and extent of the contamination and provide a set of remedial alternatives for the two operable units.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Comprehensive Environmental Response, Compensation, and Liability Act “Superfund” (CERCLA)

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You can view them sorted by name, state or statute.

CERCLA:

- A-L Processors (3)
- Allied Waste Industries, Inc.
- Allied-Ironton Site
- Alpha, Inc.
- ARG Corporation
- ArvinMeritor, Inc.
- Calumet Containers
- Capital Tax Corporation
- Carl's Tire Retreading Site
- Colors, Inc.
- Commonwealth Edison
- Crystal Valley Cooperative
- Dow Chemical Company
- Electro-Voice Superfund Site
- Ekberg, Glen
- General Motors Corporation
- Hondo Incorporated d/b/a Coca-Cola Company
- Honeywell International Corporation
- John R. Sand & Gravel Company
- Johns Manville (2)
- Jones Dairy Farm, Inc.
- Kohler Landfill
- Masterwear Corp.
- Millennium Holdings, LLC
- Milwaukee Metropolitan Sewage District
- Milwaukee Solvay Coke & Gas Site
- National Lacquer and Paint
- National Lead Industries
- Newport-St. Paul Storage
- North American Galvanizing & Coating, Inc.
- North Shore Gas
- Owens Corning Corp.
- Peoples Gas
- Rapier, Naomi L.
- Raybestos Products Company (2)
- Sahli Enterprises, Inc.
- Sherwin-Williams Company
- Underground Warehouses, Inc.
- Wash King Laundry
- Waste Management of Wisconsin, Inc.

Judge Appoints Receiver to Implement Institutional Controls and To Enable Sale of Abandoned NPL Site.

On July 6, 2007, Judge Rice of the Southern District of Ohio in *U.S. v. A-L Processors et al.*, granted the United States' motion to appoint a receiver at the United Scrap Lead NPL Site in Troy, Ohio. In 1998, the United States had entered into a Remedial Design/ Remedial Action (RD/RA) decree which included the owners and operators of the Site, the United Scrap Lead Company and Charles Bailen. Included in their duties under the decree was the implementation of institutional controls. Proprietary controls, however,

proved difficult to implement, because no party wanted to serve as a grantee of an environmental easement or covenant. In December 2004, the Ohio General Assembly enacted the Uniform Environmental Covenants Act (UECA), which enabled EPA to implement controls running with the land without the need of a third party grantee. However, before a UECA covenant could be implemented at the Site, Charles Bailen, the sole surviving principal of the United Scrap Lead Company, Inc., passed away. The United States' motion requested the appointment of a receiver so that the RD/RA decree could be fully carried out, including any needed access on the part of EPA or the Respondent Group to implement five-year review or post-construction completion inspections. Under Judge Rice's Order, the Receiver is also empowered to sell the Site to WACO, a local aviation history museum located adjacent to the Site, to ensure Site security.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164; Deborah Garber, (312) 886-6610

Consent Decree Entered in Cost Recovery Litigation; Stipulation and Settlement Agreement Entered in Related Fraudulent Transfer Litigation.

On July 9, 2007, Judge Rice of the Southern District of Ohio entered a Consent Decree in U.S. v. A-L Processors et al., which resolved the CERCLA liability of Burns Iron & Metal, Inc. at the United Scrap Lead Site in Troy, Ohio. Although the A-L Processors litigation was originally initiated in 1991, it has resulted in an RD/RA consent decree, and four cost recovery decrees, which includes the instant decree. Under the terms of this Consent Decree, Burns Iron & Metal, based upon an ability to pay determination, is to pay \$312,000 to the Hazardous Substance Superfund and an additional \$88,000 to the PRP group which performed the selected remedy at the United Scrap Lead Site. On July 6, 2007, Judge Rice entered a Stipulation, Settlement Agreement, and Order in U.S. v. Larry Katz, et al., litigation which is related to the A-L Processors litigation, and was filed against various parties to that litigation whom the United States alleges fraudulently transferred assets in violation of the Federal Debt Collection Procedures Act (FDCPA) and the Federal Priority Act (FPA), in order to avoid paying the government's claims. The Stipulation and Settlement Agreement resolves the United States claims against various principals related to Burns Iron and Metal, and provides that they will pay \$49,500 to the Hazardous Substance Superfund.

Office of Regional Counsel Contacts: Sherry Estes, (312) 886-7164; Deborah Garber, (312) 886-6610

Judge Grants U.S. Summary Judgment Motion for Costs in Cost Recovery Case.

On 9/20/07, Judge Rice of the Southern District of Ohio in U.S. v. A-L Processors et al., granted the United States' motion for summary judgment for costs at the United Scrap Lead site, finding that the U.S. is entitled to collect over \$5.3 million from the defendants remaining in the lawsuit. The judge had previously found that most of these defendants were jointly and severally liable to the United States. In its summary judgment filing, the United States did not seek the costs of the original, experimental 1988 ROD remedy, which was later abandoned, so there are additional costs which could be sought at trial,

unless the defendants' available assets would be exhausted by the judgment. Judge Rice did not grant the United States' claim for pre-judgment interest, holding that the demand letters were not properly authenticated. This portion of our claim was worth almost \$2.5 million. This portion of our claim will be subject to subsequent briefing, and the enforcement team is optimistic about its chances for success here. Efforts are now underway to reach ability-to-pay settlements with the defendants against whom judgment was rendered, to ease collection efforts.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

Federal District Court enters CERCLA cost recovery Consent Decree.

On May 16, 2007, United States District Court Judge Suzanne B. Conlon entered the consent decree in United States of America v. Allied Waste Industries, Inc., f/k/a/ Browning Ferris Industries, Inc., and Waste Management of Illinois, Inc., Civil Action Docket No. 06-C-5245. This consent decree is for a past cost recovery settlement for the Tri-County/Elgin Landfill Superfund Site in Kane County, Illinois (the "Site"), and resolves the remaining claims of the United States for costs incurred in taking remedial response actions at the Site. The settling defendants are Allied Waste Industries, Inc., (f/k/a/ Browning Ferris Industries of Illinois ("BFI"))("Allied") (owner of part of the Elgin Landfill portion of the Site); and Waste Management of Illinois, Inc. ("WMII") (owner of the Elgin-Wayne Disposal part of the Tri-County Landfill portion of the Site). Allied and WMII are also past owners and operators at the Site.

As of November 30, 2006, the unrecovered Site costs totaled \$1,760,729.14, with prejudgment interest on that amount of \$593,974.57 (accrued since the date of demand made February 27, 1998), for a total of \$2,354,703.71. Under the consent decree, the settling defendants will reimburse \$2,120,000.00 in past response costs and prejudgment interest incurred by the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ"). This represents a recovery of 90% of EPA's and U.S. DOJ's costs with prejudgment interest. Allied and WMII will pay future oversight costs, and will continue to perform remedial action work at the Site, under the terms of the final unilateral administrative orders issued to each on November 3, 1999, under authority of 42 U.S.C. § 9606 ("UAOs"). This settlement concludes EPA's cost recovery efforts for the Site.

U.S. DOJ initiated this litigation by filing a complaint on September 27, 2006, to recover the remaining unreimbursed response costs incurred by EPA in connection with the Site.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; John Fagiolo, additional contact: (312) 886-0800

Region 5's Superfund Division Director signs the Record of Decision (ROD) for the Final Operable Unit (OU) at the Allied-Ironton Superfund Site in Ironton, Ohio.

On September 19, 2007, the Director of the Superfund Division, Region 5, signed the ROD for the cleanup of the former tar plant at the Allied Chemical/Ironton Coke Superfund site in Ironton, Ohio. The tar plant cleanup is the third operable unit at this

site. Previously, the Goldcamp Disposal Area (OU1) and the Coke Plant and Lagoon Area (OU2) were cleaned up by the PRP, AlliedSignal, now Honeywell, under separate RODs through Administrative Orders on Consent. This third and final ROD addresses soil, soil vapor, and Ohio River sediment contaminated by the former tar plant. The plan includes covering contaminated soil with a cap that meets the design requirements of Ohio solid waste regulations, legal and administrative institutional controls to ensure the cap remains intact and protects people from the remaining contaminated soil and vapor, and a combination of dredging, off-site disposal and capping of contaminated sediment in the Ohio River adjacent to the tar plant loading dock. Site-wide groundwater contamination is being addressed through the OU2 ROD. The estimated cost of this remedy is \$10,175,000. EPA expects to negotiate a consent decree or administrative order with Honeywell to perform the Remedial Design and Remedial Action for this third OU.

Office of Regional Counsel Contact: John Tielsch, (312) 353-7447; Syed Quadri, RPM, (312) 886-5736

Consent Agreement and Final Order with Alpharma, Chicago Heights, Illinois.

U.S. EPA and Alpharma, Inc. have entered into a Consent Agreement and Final Order to settle an administrative enforcement action. For failing to immediately notify the National Response Center of a release of a reportable quantity of sulfuric acid from its Chicago Heights facility, Alpharma has agreed to perform two supplemental environmental projects valued at \$24,737 and pay a civil penalty of \$5,000.

On October 31, 2005, at 9 am, two employees of Alpharma discovered a release of sulfuric acid from a storage tank. The release sprayed out of a "pin hole" leak approximately 6 feet above the base of the tank over the secondary containment wall surrounding the tank to the ground. Approximately 13, 277 pounds of sulfuric acid, more than 13 times the reportable quantity was released. The person in charge of the facility did not notify the National Response Center until 3:58 pm, nearly 7 hours after the release occurred.

After receiving a notice of intent to file an administrative complaint, Alpharma engaged in pre-filing settlement discussions with U.S. EPA. Alpharma was cooperative and willing to resolve the matter before the agency filed the complaint. Alpharma is performing two SEPs which U.S. EPA's PROJECT program values at \$24,737. The SEPs will replace the facility's current underground sulfuric acid piping with above ground, acid resistant piping and install a remote monitor and alarm system for the sulfuric acid tank. These SEPs will help prevent a future release in this environmental justice area. In addition, Alpharma is updating its Emergency Response Plan per the Agency's recommendations.

U.S. EPA filed the fully-executed CAFO on December 20, 2006. Alpharma submitted payment for the penalty on January 11, 2007 and submitted its updated Emergency Response Plan to the Agency on January 19, 2007.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

EPA issues a Unilateral Administrative Order to ARG Corporation and Norbert Toubes pursuant to Section 106 of CERCLA (Docket No. V-W-07-C-873).

On July 5, 2007, Region 5 issued a Unilateral Administrative Order (“UAO”) to ARG Corporation and Norbert Toubes for the South Bend Lathe Superfund Site in South Bend, Indiana. Region 5’s Site Assessment identified a number of hazardous substances in drums, pails, underground storage tanks, a pit, and electrical transformer reservoirs at the former lathe manufacturing facility. The UAO requires the Respondents, among other things, to properly dispose of the hazardous substances, properly dispose of friable asbestos that pose a threat to the health and safety of cleanup workers, and conduct post-removal sampling to verify completion of the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Ken Theisen, OSC, (312) 886-1959

United States Lodges Consent Decree for CERCLA Cost Recovery for the Rockwell International Site, Allegan, MI.

On July 30, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Western District of Michigan a civil Consent Decree regarding the Rockwell International Superfund Site in Allegan, Michigan. Under the decree, ArvinMeritor, Inc, corporate successor to Rockwell International’s Automotive Division, will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs.

The Rockwell International Superfund Site is a former automotive manufacturing facility occupying approximately 30 acres along the Kalamazoo River in Allegan, Michigan. A consulting report generated by a corporate predecessor to ArvinMeritor concluded that the manufacturer has generated oily wastewater on-Site which was discharged to the Kalamazoo River, burned off waste oils that were held in an on-Site retention pond, and used transformers and capacitors with oils containing PCBs. The Site was listed on the National Priorities List in 1987. U.S. EPA issued an Administrative Order on Consent to Rockwell calling for Rockwell to conduct a Remedial Investigation and Feasibility Study (RI/FS) in 1988; U.S. EPA subsequently took over RI/FS development in 1998. In 2001, U.S. EPA issued a Record of Decision (ROD) and a Unilateral Administrative Order (UAO) directing ArvinMeritor to design and implement the remedy contained in the ROD. ArvinMeritor complied with the UAO. The Consent Decree calls for the payment of \$3,475,000 in past costs and payment of U.S. EPA’s future costs.

Office of Regional Counsel Contact: Kathleen Schnieders, (312) 353-8912; Superfund Division Contact: Mazin Enwyia, (312) 353-8414

U.S. EPA Region 5 Issues CERCLA Administrative Cashout Settlement.

On November 18, 2006, U.S. EPA issued a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) administrative cashout agreement concerning the [Calumet Containers Superfund Site](#) located in Hammond, Indiana. The settlement requires 51 former customers of the Calumet Containers facility to make cash

payments totaling \$1,664,967 to resolve potential civil liability under Sections 106 and 107 of CERCLA and under Section 7003 of (the Resource Conservation and Recovery Act) RCRA. In exchange, the settling parties will receive a full covenant not to sue from U.S. EPA concerning the Site. The Site formerly housed a factory where drums containing various chemicals, paints and inks were emptied, cleaned and repainted. The Agency investigated the Site and determined that a cleanup was necessary due to widespread soil contamination. Following the cleanup of the Site, the land was turned into a conservation area.

Office of Regional Counsel Contact: Rich Murawski, (312) 886-6721; Verneta Simon, Superfund Division (312) 886-3601

U.S. District Court dismisses 106 Pattern and Practice Counterclaim in National Lacquer and Paint CERCLA cost recovery case.

On February 8, 2007 the U.S. District Court for the Northern District of Illinois dismissed Defendant Capital Tax Corporation's 106 patterns and practice counterclaim at the National Lacquer and Paint site in Chicago Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004, EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) penalties for noncompliance with unilateral administrative orders (UAOs) under Section 106 of CERCLA, punitive damages under Section 107 of CERCLA, and penalties against the operator for failure to answer EPA's information request. One of the Defendant's, Capital Tax Corporation filed a 3 count counterclaim against the EPA alleging that Section 106 was unconstitutional on its face, as applied by EPA, and that the CERCLA 107 lien provision is unconstitutional. All counterclaims alleged the unconstitutionality was based upon the fact that no judicial hearing is available prior to receiving a UAO and prior to having a lien placed on a person's property. The court earlier dismissed Defendant's counterclaim that Section 106 is unconstitutional on its face. In this decision, the court found that given the fact that Section 106 allows a party to comply with a UAO and then seek reimbursement, and that the EPA must go to court to collect its penalties and treble damages, that as applied Section 106 of CERCLA is not unconstitutional.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

Department of Justice Files cost recovery action against parties that arranged for the disposal of tires or transported tires to Carl's Tire Retreading Fire Site in Grawn, Michigan.

On November 14, 2006, the U.S. Department of Justice filed a cost recovery action against 15 Potentially Responsible Parties for response costs incurred at the Carl's Tire Retreading Site in Grawn, Grand Traverse County, Michigan. The Department of Justice

also obtained tolling agreements from 10 additional Potentially Responsible Parties (PRPs).

On December 29, 1995, shredded tire material at the Carl's Retreading site caught fire and burned for 23 days. The burning tires and shredded tire material released a large quantity of pyrolytic oil containing benzene, ethylbenzene, styrene, toluene, xylenes, zinc and other hazardous substances. At the time of the fire, Carl's Retreading was owned by 3 partners, Mr. Steven D. Hubert, Mr. David A. Hubert, and Mr. Michael B. Grant. The facility was located at 5175 Sawyer Wood Drive in Grawn, Michigan from 1993 until sometime around 1997. U.S. EPA's initial response at the site was limited as the State of Michigan took the lead both in extinguishing the fire and in conducting a subsequent removal action. The State later, however, requested U.S. EPA's assistance in mitigating the releases of hazardous substance to soils and groundwater at the Site. U.S. EPA's response costs at the Site are approximately \$3 million.

Each of the 3 partners of Carl's Retreading, as well as a corporation formed in 1997 by Mr. Steven Hubert to own and operate the Site, filed for and was discharged from bankruptcy between 1999 and 2001.

This action seeks to recover costs from parties that either transported or arranged for the disposal of tires at the Site prior to the fire. The tires that the generators sent to Carl's were typically whole scrap tires that generators paid Carl's to pick up. Often Carl's dropped off trailers at a generator's site and later picked up those trailers after the generators filled them with whole scrap tires.

Office of Regional Counsel Primary Contact: Crissy L. Pellegrin, (312) 353-5263

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Colors, Inc., Indianapolis, Indiana.

On October 2, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Colors, Inc. for allegedly violating Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center eight days after a release of approximately 45,906 pounds of sulfuric acid, which has a reportable quantity of 1,000 pounds, took place. The CAFO requires Colors to pay a penalty of \$19,214. Region 5 calculated a proposed penalty in this matter of \$29,707. As part of a streamlined enforcement action, Region 5 offered Colors a 35% reduction based on Colors attitude during the settlement process (25% based on Colors' cooperation and 10% based on Colors' willingness to settle).

Office of Regional Counsel Primary Contact: Stephen Thorn, (312) 353-9715

Administrative Settlement Agreement and Order On Consent executed for CERCLA Removal Action.

On June 11, 2007, the Superfund Division Director executed a CERCLA Administrative Settlement Agreement and Order on Consent (AOC) under Sections 106, 107 and 122 of

the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding the Southwestern Site area that is adjacent to the Johns Manville NPL Site located in Waukegan, Illinois. Asbestos-contaminated soils and waste have been discovered in areas identified as Sites 3, 4, 5 and 6 on property owned by Commonwealth Edison that is adjacent to the southern and western property lines of Johns Manville former asbestos manufacturing facility in Waukegan, Illinois. The settling parties are Johns Manville and Commonwealth Edison. Under the terms of the AOC, the settling parties have agreed to: a) conduct an Engineering Evaluation Cost Analysis Study (EECA) of the southwestern site area; b) conduct U.S. EPA's selected removal action in an Action Memorandum or other decision document after public comment; c) reimburse 100% of EPA's past costs at the southwestern site area; and d) reimburse future response costs including the costs of overseeing the work at the southwestern site area.

Office of Regional Counsel Contact: Janet R. Carlson, (312) 886-6059; Brad Bradley, Superfund (312) 886-4742

Region 5 Enters into a Consent Agreement and Final Order Resolving A Violation of Section 103 of CERCLA by Crystal Valley Cooperative, Lake Crystal, Minnesota.

On October 13, 2006, the Regional Administrator, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under CERCLA Section 103 pursuant to which Crystal Valley Cooperative agrees to pay a civil penalty of \$18,789. The CAFO was filed with the Regional Hearing Clerk on October 13, 2006. Crystal Valley Cooperative experienced a release of 2,200 pounds of ammonia on April 16, 2005, when a bolt broke on the front running gear of an ammonia nurse tank while the tank was being transported by a Crystal Valley Coop employee. The tank rolled over into a ditch, causing the cage around the valve to break off and the valve to open. Crystal Valley Cooperative failed to promptly notify the National Response Center of the release of 2,200 pounds of ammonia. The initial penalty calculated for the CERCLA violation was \$28,907. For settlement purposes, this number was mitigated down to \$18,789 based on a 10% reduction for quick settlement and a 25% reduction for good faith and cooperation. Under the settlement, Crystal Valley Cooperative will pay a cash civil penalty of \$18,789.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

EPA and the Dow Chemical Company enter into three CERCLA settlement agreements and orders on consent for the critical removal actions for cleanup of dioxin in, and along, the Tittabawassee River in Midland County, Michigan.

On July 12, 2007, the United States Environmental Protection Agency (U.S. EPA) and The Dow Chemical Company ("Dow") entered into three separate Administrative Settlement Agreements and Orders on Consent under the authority of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA). The Administrative Settlement Agreements and Orders provide for CERCLA time critical removal actions to clean up dioxin-contaminated bottom deposits, sediments, and/or soils in, or along, the Tittabawassee River in Midland County, Michigan.

The first Administrative Settlement Agreement and Order on Consent (“AOC”) provides for the performance of removal actions by Dow to cleanup approximately 14,000 cubic yards of dioxin-contaminated bottom deposits and sediments at (and the reimbursement of response costs incurred by the United States at or in connection with) the area known as Reach D, which is located at and in the vicinity of an historic flume situated along the northeast bank of the Tittabawassee River, within The Dow Chemical Company Midland Plant property.

Under the second AOC, Dow agrees to perform a removal action at an area known as Reach J-K, which is located in overbank areas on the northeast side of the Tittabawassee River, approximately 3.6 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers. Under this AOC, Dow will remove a dioxin-contaminated naturally occurring levee, as well as cap one dioxin-contaminated upland area and fence off another dioxin-contaminated wetland area. Dow will also reimburse response costs incurred by the United States. This Site is located within Dow's property bounded to the northeast by a wetland with Saginaw Road to the northeast beyond the wetland, the Caldwell boat launch to the South, and to the west by the east channel bank of the Tittabawassee River, in Midland County, Michigan.

Under the third AOC, Dow agrees to perform a removal action at an area known as Reach O of the Tittabawassee River, an approximately 1,300 foot-long point bar extending approximately 50 to 100 feet into the Tittabawassee River and situated parallel to the northeast bank of the Tittabawassee River, approximately 6.1 miles downstream of the confluence of the Chippewa and Tittabawassee Rivers and located within, or immediately adjacent to, Dow property located to the south of North Saginaw Road in Midland County, Michigan. Under this AOC, Dow will remove dioxin-contaminated sediments in three designated locations of the point bar. Dow will also reimburse response costs incurred by the United States. Each of these three performance based removal action are to be begin no later than August 15, 2007, and must be completed by December 15, 2007.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; James Augustyn, additional contact: (440) 250-1742

CERCLA ElectroVoice, MI Five Year Review and IC Implementation.

On September 20, 2006, EPA Region 5 signed a Five-Year Review Report for the Electro-Voice Superfund Site located in Buchanan, Michigan. The Five Year Review determined that the hazardous waste cap and soil cleanup were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy may not be functioning as intended because there were Trichloroethylene (TCE) exceedances of the Maximum Contaminant Level (MCL) at downgradient wells that previously did not have exceedances. The Five-Year Review Report recommended contingency actions to address the groundwater issues.

As part of the Five-Year Review, the Region implemented an Institutional Control (IC) study for the Site. As part of the IC study, EPA Region 5 worked with the PRPs to

develop a restrictive covenant under Part 201 of the Michigan NREPA for the Site to implement the following restrictions on the Electro-Voice property: a) prohibit interference with the hazardous waste cap over former lagoon area; b) prohibit interference with limited industrial area (former drywell area); c) prohibit residential use; d) prohibit groundwater use; and e) prohibit interference with monitoring wells. The PRPs surveyed the hazardous waste cap and limited soil industrial use areas, which was incorporated into the restrictive covenant. The owner provided the Region with a title commitment and copies of recorded encumbrances that demonstrated that: a) the owner had authority to execute the restrictive covenant; and b) prior in time recorded encumbrances did not appear to interfere with the land and groundwater restrictions. The owner recorded the restrictive covenant with the county recorder's office on September 12, 2006. The restrictive covenant is enforceable by the PRPs, the State of Michigan pursuant to Part 201 of the Michigan NREPA and U.S. EPA as a third party beneficiary.

As part of the Five Review process, the Region reviewed an existing City of Buchanan, MI ordinance that prohibited residents from using the contaminated groundwater at the Site. The Region reviewed the City Ordinance. As a result of this review, the Region sent the City an updated groundwater contamination map and requested that the City to designate the revised area as a restricted groundwater use area.

Office of Regional Counsel Contact: Jan Carlson, (312) 886-6059

U.S. EPA Signs Release of CERCLA 107(l) Lien on PRP/Defendant-Owned Portion of the Southeast Rockford Groundwater Contamination Superfund Site-Source Area 7.

On August 1, 2007, USEPA signed a release of a CERCLA 107(l) lien on property owned by Mr. Glen Ekberg, an owner-operator at Source Area 7 of the SE Rockford Superfund (SER) Site in Rockford, Illinois. The Release of Lien is in fulfillment of a USEPA obligation pursuant to an August 2006 cost recovery Consent Decree (CD) in U.S. v. Glen Ekberg, No. 01-C-50457, N.D. IL-Western Div. Under the CD, the defendant was obligated to pay U.S. EPA \$1,231,125 (plus interest) in two (2) installments between September 2006 and July 1, 2007. In the CD at paragraph 34, the United States agreed that upon full payment by Mr. Ekberg, an existing federal CERCLA 107(l) lien placed on his property in 2003 would be released. Mr. Ekberg completed his (full and complete) payment on June 29, 2007. The SER Site is an approximately 10 square-mile area where groundwater is contaminated (primarily) by VOCs above 10 parts-per-billion. The Site was placed on the NPL in March 1989. A series of removal actions, remedial studies and development of a final source control ROD occurred between 1989 and 2002. The United States settled response work, and past and future costs with the City of Rockford, IL and a number of other generator and owner parties between 1998 and 2000. Source Area 7 is in the southeastern portion of the SER Site. Mr. Ekberg's property is located within Source Area 7. Mr. Ekberg, as an owner of a portion of the SER Site, was given general notice in 1998, and asked to participate in settlement negotiations. Mr. Ekberg refused. In December 2001, the United States sued Mr. Ekberg for past and future costs associated with Source Area 7. In March and April 2003, U.S. EPA perfected a CERCLA 107(l) lien on Mr. Ekberg's property. The August 2006 CD resolves all cost recovery against Mr. Ekberg.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Superfund Division contact: Russ Hart, RPM, (312) 886-4484

United States Lodges Consent Decree for CERCLA Cost Recovery for the Lakeland Disposal Site, Kosciusko County, MI.

On May 21, 2007, the U.S. Department of Justice, on behalf of U.S. EPA Region 5, lodged in the U.S. District Court for the Northern District of Indiana a civil Consent Decree regarding the Lakeland Disposal Superfund Site in Kosciusko County, Michigan. Under the decree, General Motors Inc., Da-Lite Screen Company, Inc., Morton International Owens-Illinois, Inc., Robertshaw Controls Company, Warsaw Black Oxide Inc., United Technologies Corp., CTS Corp., Dalton Corp., Johnson Controls, Inc., Kosciusko County, Indiana, Leco Corp., McGill Manufacturing Company Inc., R.R. Donnelley & Sons Company, and Uniroyal, Inc., will reimburse U.S. EPA for past CERCLA response costs, and will pay future response costs. In a related action with respect to the Site, a separate Consent Decree was also lodged on May 21, 2007, fully resolving violations alleged in the related civil action against Mr. David Lindsey, former owner and operator of the Site.

The Lakeland Disposal Superfund Site is a former landfill occupying approximately 39 acres approximately 3-1/2 miles northwest of Claypool, Indiana. Sloan Ditch, an agricultural drainage ditch, forms the boundary of the eastern and northern edges of the Site. Wooded areas are located east of the landfill along Sloan Ditch and the adjacent wetlands. Several wetland areas exist along Sloan Ditch and on the landfill itself.

At least 18,000 drums of waste materials were deposited at the Site. In addition, approximately 8,900 tons of plating sludge and more than 2 million gallons of plating waste containing various hydroxide sludges of aluminum, cadmium, chromium, copper, lead, nickel, tin, selenium, and zinc were disposed of on the Site. Other wastes reportedly disposed of there include spent filter sand, wastewater treatment sludge containing copper, nickel and chromium, sewage sludge, and cyanide, zinc and chrome plating liquids. The Remedial Investigation/Feasibility Study (RI/FS), Pre-Design Study for the Lakeland Site was conducted by four parties: Dana Corporation, General Motors Corporation, United Technologies Automotive Inc., and Warsaw Black Oxide, Inc..

The remedial design and remedial action (RD/RA) work was performed by five parties: Dana, Eaton, General Motors Corporation, UTA, and Warsaw Black Oxide, pursuant to a Unilateral Administrative Order (UAO). The UAO respondents have completed the RD/RA work satisfactorily, and the Site is currently in Operation and Maintenance. U.S. EPA approved the RI/FS and has overseen the RD/RA work conducted by the ACO and UAO Parties. U.S. EPA completed the Site's CERCLA Section 121 (c) Five Year Remedy Review on August 14, 2005.

The Consent Decree calls for the payment of \$1,391,195.02 in past costs and payment of U.S. EPA's future costs. U.S. EPA will receive \$1,125,000.00 to be deposited in a Lakeland Special Account within the U.S. EPA Hazardous Substances Superfund to be retained and used to conduct or finance response actions at the Site.

Office of Regional Counsel Contact: Luis Oviedo, (312) 353-9538; Superfund Division Contact: Scott Hansen, (312) 886-1999

U.S. EPA reaches administrative settlement for violation of the CERCLA regarding notification requirements for released substances.

Hondo Incorporated d/b/a/ Coca-Cola Bottling Company of Chicago operates a business that stores and uses hazardous substances, such as anhydrous ammonia. On March 20, 2006, there was a release of approximately 563 pounds of anhydrous ammonia from the facility due to a leak from one of its storage tanks. Though Hondo immediately addressed and remedied the leak, it did not report the release to the National Response Center for a little over three hours.

On October 16, 2006, U.S. EPA filed an administrative complaint against the Respondent for violations of CERCLA. Specifically, Respondent failed to immediately notify the National Response Center of a release of a reportable quantity of anhydrous ammonia from its facility. After receiving the complaint, the parties entered in to settlement negotiations and the parties were able to reach a settlement. The Respondent agreed to sign a Consent Agreement and Final Order (CAFO) which requires the Respondent to assure that it is now in compliance and pay a civil penalty of \$10,478. The CAFO was signed by the Region 5 Regional Administrator on January 19, 2007 and filed with the Regional Hearing Clerk on January 22, 2007.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

United States Lodges Consent Decree for CERCLA Remedial Action, Cost Recovery and Natural Resource Damages for Woodstock Municipal Landfill, Woodstock, IL.

On August 1, 2007, the U.S. Department of Justice, on behalf of EPA Region 5 and the U.S. Department of Interior, lodged in the U.S. District Court for the Northern District of Illinois a civil Consent Decree regarding the Woodstock Municipal Landfill Site in Woodstock, Illinois. Under the Decree, the two settling parties, City of Woodstock and Honeywell International Corporation, will reimburse EPA for all CERCLA past and future response costs and complete the remedial action at the Site and also pay an amount in natural resource damages.

The Woodstock Municipal Landfill is a former publicly-owned solid waste landfill that received various municipal and industrial wastes through the 1950s and 1960s, allegedly including heavy metals-containing sludge from a former "Autolite" plant owned by a Honeywell International predecessor. EPA issued a ROD for the Site in 1993 identifying a cap and pump-and-treat remedy, which the responsible parties declined to implement; they petitioned the agency for a ROD amendment. Following review, EPA issued an Amended ROD in 1998 and again invited the PRPs to implement the revised remedy; again they declined to do so voluntarily and EPA issued a UAO for remedial action. The PRPs generally complied with the UAO except for the requirement that they pay all EPA's oversight costs. EPA then made demand for all unpaid costs, and engaged the

Justice Department when the PRPs did not respond. The Consent Decree calls for the payment of \$567,000 in past costs, payment of “interim” response costs incurred during the pendency of negotiations, and payment of EPA’s future costs, in addition to payment of \$400,000 to the Department of Interior as natural resource damages. The Decree also calls for completion of the remedial action, which now generally consists of wetlands restoration, monitoring of groundwater contaminant attenuation, and review of institutional controls.

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814; Superfund Division Contact: Brad Bradley, (312) 886-4742

U.S. Court of Appeals for the Federal Circuit denies Request for Rehearing En Banc on Taking Claim.

On November 30, 2006, the United States Court of Appeals for the Federal Circuit denied petitioner’s request for a rehearing en banc. The Court had originally issued an opinion on August 9, 2006 requiring the lower Court to dismiss the taking claim that had been filed against the government. The Appellate Court found that the plaintiff, John R. Sand and Gravel Company, had not filed its claim within the applicable statute of limitation. The Appellate Court ordered the case remanded to the lower Court for dismissal of the complaint. Thus, the plaintiff was awarded no damages or attorney fees.

The Metamora Landfill Superfund Site is located in Lapeer County, Michigan. The landfill began operations in 1955 as a privately owned, unregulated open dump utilized by residents of the Village of Metamora. The operator, Russell Parrish, began illegally accepting drums of liquid industrial wastes during the mid-1960s. This continued through the 1970s. At no point was it ever licensed to accept liquid industrial wastes.

In 1969, the Plaintiff, John R. Sand & Gravel Company, entered into a 50-year lease with Parrish which granted it the exclusive right to mine sand and gravel on the Parrish property. At the time plaintiff entered into the lease, the landfill was in existence and operating as a landfill.

In September 1984, the Site was placed on the NPL. A RI/FS was conducted and two RODs were issued: one requiring the excavation and disposal of more than 30,000 drums at the Site, and the second requiring the remediation of contaminated groundwater and the closure and capping of the landfill. Both of these RODs were implemented by the PRPs. In the area covered by the landfill cap, EPA required that institutional controls be put in place to preclude activities, including mining, that could disturb the cap.

In June 2002, Plaintiff filed a complaint alleging that the environmental remediation of the Site that excluded Plaintiff from a portion of the Site caused a physical taking of a portion of its sand and gravel mining lease. The United States filed several pre-trial motions, one which was for summary judgment based on the statute of limitation. The lower Court found that the taking claim was timely filed and denied the motion.

After a trial on liability, the lower Court ruled in the United States' favor that there was no taking and thus awarded the plaintiff no damages or attorney fees. The lower Court's

decision stated that the plaintiff lacked a compensable property interest because it took the mining lease subject to the existence of the landfill and allowed the landfill to continue to operate in an area that was subject to the lease. The lower Court also went on to rule that any mining in the area of the landfill cap could impact the existing groundwater remediation and endangering the public health and safety, thereby creating a public nuisance. Since the mining would be a public nuisance, preventing the plaintiff from mining would not be a compensable interest.

On appeal, the United States did not brief the issue of the statute of limitation. However, in a 2-1 decision, the Appellate Court, based on an amicus brief filed by the PRP group doing the work at the Site and *sua sponte*, considered the issue of the applicable statute of limitation. The Appellate Court disagreed with the lower Court and found that the taking claim had accrued more than six years prior to the filing of the complaint. Thus, the taking claim was time barred. The Appellate Court vacated the lower Court's decision and remanded the case with instruction that the lower Court dismiss the plaintiff's complaint. The plaintiff petitioned for a rehearing by the full Court, which was denied on November 30, 2006. The dissenting opinion, while finding that the taking claim was timely filed, stated it would have affirmed the lower Court ruling that there was no taking because the plaintiff took its mining lease subject to the existing landfill.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Consent Decree Lodged Requiring Reimbursement of Response Costs at the Johns Manville Site 2 (Former Shooting Range) Superfund Site.

On August 26, 2007, the United States lodged with the United States District Court for the Northern District of Illinois a CERCLA consent decree resolving the liability of four parties and the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. The United States has incurred approximately \$4,500,000 in site costs. The consent decree is subject to a 30-day public comment period before the Court will hear a motion to enter. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games. Waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, (312) 886-6235

Consent Decree Entered Requiring Reimbursement of Response Costs at the Johns Manville, Site 2 (Former Shooting Range) Site.

On September 17, 2007, the United States District Court for the Northern District of Illinois entered a CERCLA 107 consent decree resolving the liability of four parties and

the Department of Defense at the Johns Manville, Site 2 (Former Shooting Range) site. The consent decree requires the four settling defendants, Johns Manville, the City of Waukegan, Commonwealth Edison (formerly Public Service Company of Northern Illinois), and Midwest Generation to reimburse \$3,014,000 of costs incurred for the site, and requires the Department of Defense to reimburse \$741,000, for a total recovery of \$3,755,000. Through this settlement, the United States is recovering approximately 83 percent of the \$4,523,000 in costs incurred for the site. The Johns Manville, Site 2, was constructed in approximately 1958 as a shooting range for the 1959 PanAm Games and waste asbestos containing material (ACM) was used to construct the shooting range berms. In 1998, Illinois notified U.S. EPA of ACM at the site. The parties were unable to reach an agreement for a voluntary cleanup and U.S. EPA conducted a removal action, which was completed on October 2, 2002.

Office of Regional Counsel Contact: Stuart P. Hersh, (312) 886-6235

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Jones Dairy Farm, Inc., Fort Atkinson, Wisconsin.

On June 27, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Jones Dairy Farm, Inc. for allegedly violating CERCLA § 103(a), 42 U.S.C. § 9603(a), by notifying the National Response Center 3 hours and 10 minutes after a release of approximately 2,805 pounds of ammonia, which has a reportable quantity of 100 pounds, took place. Jones Dairy Farm also allegedly violated EPCRA § 304(b), 42 U.S.C. § 11004(b), by notifying the State Emergency Response Commission (SERC) 3 hours and 11 minutes after the release, and EPCRA § 304(c), 42 U.S.C. § 11004(c), by not providing the SERC with written follow up emergency notice as soon as practicable after the release. Region 5 calculated a proposed penalty in this matter of \$114,735. Based on Jones Dairy Farm's cooperation, willingness to settle, and other facts raised during negotiations, Region 5 deemed adequate a total settlement value of \$60,000. The CAFO requires Jones Dairy Farm to pay a penalty of \$36,060 and implement a Supplemental Environmental Project. The Supplemental Environmental Project, valued at \$29,925, requires the installation of ammonia sensors in the compressor room that will be linked into an alarm in a guard house manned 24 hours per day.

Office of Regional Counsel Contact: Stephen Thorn, (312) 353-9715

CERCLA Kohler Landfill, WI Five Year Review.

On September 20, 2007, EPA Region 5 signed a Five-Year Review Report for the Kohler Company Landfill Site located in Kohler, Wisconsin. The Five Year Review determined that the landfill cap and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the rate at which the landfill was being brought to final grade would allow the landfill to remain open until 2011, under a State permit. At that time, the remaining 20% of the landfill cap will be installed. Given the private ownership of the landfill and the surrounding land, an IC study will be done for the site. The study will evaluate the surrounding land use and existing groundwater use restrictions to determine if institutional controls will be

necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Comprehensive Environmental Response, Compensation, and Liability Act Consent Decree Entered 5/25/2007 in U.S. v. Masterwear Corp., et al.

On May 25, 2007, Judge John Daniel Tinder of the Southern District of Indiana, Indianapolis Division, signed an order entering a consent decree in the case of U.S. v. Masterwear Corp., et al, No. 1:05-cv-00373-JDT-WTL.

Masterwear was a former industrial laundry and dry cleaning business that operated in downtown Martinsville, Indiana. U.S. EPA conducted a site inspection on four separate dates from late 2003 to early 2004 and found perchloroethylene vapors in homes and businesses in the area that exceeded the Indiana Department of Environmental Management sub-chronic action level. On April 20, 2004, U.S. EPA issued a Unilateral Administrative Order (“UAO”) pursuant to Section 106 of CERCLA to William Cure and Jim Reed to conduct a removal action at the Masterwear Site. DOJ, on behalf of U.S. EPA, later filed a complaint for cost recovery against Masterwear Corp., William and Elizabeth Cure, and Jim and Linda Lou Mull Reed pursuant to Section 107 of CERCLA.

Per the consent decree, the Settling Defendants, through their insurance companies, will continue conducting the removal action as required by the UAO and will pay \$380,000 to reimburse U.S. EPA for past response costs and some future response costs for the removal action.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; secondary contact: Ken Theisen, On-Scene Coordinator, (312) 886-1959. Department of Justice contact: Tom Benson, (202) 514-5261

Region 5 signs two Administrative Settlement Agreements and Orders on Consent for the Kalamazoo River Superfund Site.

On February 21, 2007, Region 5 signed two Administrative Settlement Agreements and Orders on Consent (AOCs) for CERCLA response work at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site (the “Site”). Region 5, the State of Michigan, and two potentially responsible parties, Millennium Holdings LLC, and Georgia-Pacific LLC (the “PRPs”), signed an AOC to perform a \$20-25 million time-critical removal action in an area of the Kalamazoo River called the Plainwell Impoundment area (Removal AOC). As part of the removal settlement, U.S. EPA contributed \$1 million from a previous bankruptcy settlement at the Site; the Michigan Department of Natural Resources (MDNR) contributed \$500,000 in cash; and the Michigan Department of Environmental Quality (MDEQ) forgave \$1.5 million in past costs. An AOC for Supplemental Remedial Investigation/Feasibility Study (SRI/FS) was also signed among Region 5 and the PRPs (SRI/FS AOC). The PRPs will provide financial assurances in the amount of \$15 million for the SRI/FS work for the entire river. The two AOCs are the result of over two years of mediated settlement negotiations between Respondents and several government partners, including: Region 5; MDEQ; MDNR; the Michigan Department of Attorney General; the

National Oceanic and Atmospheric Administration; and the U.S. Fish and Wildlife Service. The U.S. Department of Justice participated in several mediation sessions. The mediation successfully facilitated resolution of significant differences among the participants that were delaying cleanup of the river.

The time-critical removal action will include dredging and/or excavating approximately 132,000 cubic yards of wastes (4,400 lbs. of PCBs) from in-stream sediments, river banks, and floodplain soils. Disposal will occur at an on-Site landfill owned by Millennium Holdings. The PRPs intend to remove a portion of the Plainwell Dam in order to construct a water control structure, which will serve to de-water the impoundment area and facilitate excavation in the “dry.” As a result of the dam removal, the river will be restored to its original channel. Region 5 and MDEQ will both oversee the work and have approved the engineering design plan for the action.

The SRI/FS AOC requires the Respondents to conduct additional sampling throughout the Kalamazoo River, which will supplement existing data. Region 5 has approved, with support from MDEQ and the Natural Resource Trustees, a work plan for the supplemental sampling in select locations within the first reach of the river. The Region intends to issue Records of Decision (RODs) for the river reaches in an upstream to downstream pattern.

Office of Regional Counsel Contacts: Eileen Furey, (312) 886-7950; Jacqueline Clark, (312) 353-4191; Program Contacts: Shari Kolak (RPM), (312) 886-6004; Sam Borries (OSC), (312) 353-8360

Region 5 investigating improper disposal of PCBs by the Milwaukee Metropolitan Sewerage District.

On July 20, 2007, it was brought to Region 5’s attention that approximately 40 tons of PCB-contaminated fertilizer had been donated by the Milwaukee Metropolitan Sewerage District to Milwaukee County. Approximately seven tons of the contaminated fertilizer was spread over four county parks and more than 30 schools received the fertilizer. At least one sample of the fertilizer contained 85ppm of PCBs. Working in consultation with the Wisconsin Department of Natural Resources, regional staff from the Superfund, Land and Chemicals, and Water Divisions have visited the impacted sites and collected samples to determine the extent of contamination. While awaiting the sampling results, the Region is evaluating enforcement and clean-up options.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248

U.S. EPA Region 5 enters Administrative Settlement Agreement and Order on Consent for the Milwaukee Solvay Coke & Gas Superfund Site in Milwaukee, Wisconsin.

On January 26, 2007, the Region 5 Superfund Division Director signed an administrative settlement agreement and order on consent (AOC), for a remedial investigation and feasibility study (RI/FS), at a former coke and gas facility in Milwaukee, Wisconsin. The Milwaukee Coke and Gas Site covers 46 acres in close proximity to the City of

Milwaukee and Harbor. Industrial activity, including a large coking operation, occurred at the Site between 1866 and 1983. The coking operation not only supplied coke for the steel industry, but was a primary source of coke gas for residential and commercial use in the City of Milwaukee until the introduction of natural gas in the 1940s. Five Respondents have entered into the AOC to determine the nature and extent of contamination, identify and evaluate remedial alternatives, and to reimburse U.S. EPA for oversight costs. It is anticipated that the Site will be redeveloped after the cleanup, and will help revitalize the mostly industrial area surrounding the Site.

Office of Regional Counsel Primary Contact: Craig Melodia, (312) 353-8870, and secondary contact: Denise Boone, (312) 886-6217

U.S. District Court enters Summary Judgment on liability in National Lacquer and Paint CERCLA cost recovery case.

On January 4, 2007 the U.S. District Court for the Northern District of Illinois granted U.S. EPA's Summary Judgment Motion on liability at the National Lacquer and Paint Site in Chicago, Illinois.

The National Lacquer and Paint site is a one block long abandoned paint factory located in Chicago, Illinois. From August of 2003 until June of 2004 EPA conducted an emergency removal action at the site. To date, EPA has spent over two million dollars in response costs at the site. In June of 2004, EPA filed suit against the two owners and the operator of the site. In its lawsuit, EPA sought cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), penalties for noncompliance with Unilateral Administrative Orders (UAOs) under Section 106 of CERCLA, and penalties against the operator for failure to answer EPA's information request. This decision grants EPA summary judgment on liability under Section 107 of CERCLA. EPA's Motion for Summary Judgment as to costs and penalties has yet to be ruled upon by the Court.

Office of Regional Counsel Contact: Connie Puchalski, (312) 886-6719

U.S. District Court for the Southern District of Indiana grants Motion for Access.

On December 20, 2006, the United States District Court for the Southern District of Indiana, Indianapolis Division, granted the United States' motion, filed on behalf of the United States Environmental Protection Agency, for an Immediate Order in Aid of Access. The order allows U.S. EPA, and its representatives, access to a number of properties in Indianapolis, Indiana that need to be sampled for lead contamination and if necessary have the contaminated soil removed.

The former American Lead facility is located at 2102 Hillside Avenue, Indianapolis, Indiana. American Lead operated a lead reclamation smelter from 1946 to 1965. In 1965, National Lead Industries (NL) acquired the American Lead facility and became the owner and operator of the facility. In 1971, NL had several buildings and the slag piles removed from the property. The property remained vacant until 1985, when Central Concrete Company (CCC) purchased the property. In 1990, CCC sold the property to

Irving Materials Inc. who is the current owner of the former smelter and uses the facility primarily for the storage of concrete products. During the period of lead smelting operations, lead fumes and dust were released from the facility as a point and fugitive sources. These operations contributed to lead contamination at the facility and the surrounding areas.

In October 1995, the Indiana Department of Environmental Management (IDEM) collected samples on the facility. Lead concentrations ranged from 47 ppm to 6,400 ppm. In August 1995, the Marion County Health Department collected 17 composite samples of soil within a .5 mile radius of the facility. The results from these samples showed lead contamination ranging from 128 ppm to 17,200 ppm. In August 1998, IDEM and NL entered into an agreement for NL to conduct an investigation of the extent of contamination on and off the facility. Based on the results of the investigation and due to an existing concrete cover on the facility, it was determined that no action on the facility was needed. However, the results of the investigation documented possible exposure to lead in the area surrounding the facility that presented potential risks to human health and the environment. Thus, following the study, the parties entered into negotiations for NL to conduct removal work in the area surrounding the facility. Negotiations continued between IDEM and NL until March 2003, when IDEM requested assistance from the EPA Region 5 Emergency Response Branch for a removal assessment/removal action due to the concentrations of lead contamination, and failed negotiations with NL.

After the matter was referred to the EPA, EPA entered into negotiations with NL for it to conduct a time-critical removal at certain areas surrounding the Site. EPA and NL reached an agreement and on January 31, 2005, EPA signed an Administrative Order on Consent (Order) with NL. Pursuant to the terms of the agreement, NL would investigate properties within the area depicted in the Order and excavate and properly dispose of lead contaminated soil.

Pursuant to the Order, NL agreed to use its best efforts to obtain access agreements to sample and if necessary excavate contaminated soil. While generally successful in obtaining such agreements, NL was unable to obtain access to a number of properties. Many of the properties in questions were vacant lots, abandoned or otherwise unoccupied. NL notified EPA of its inability to obtain access to all of the potentially affected properties within the area depicted in the Order. On April 13, 2006, EPA wrote to the listed property owners, requesting that access be granted. Of the original 25 properties for which access was needed, EPA was able to obtain access to seven more properties. However, for the remaining 18, access was still not granted. For 13 of the properties, the April letter was returned as undeliverable while EPA received no response from the other five. On June 15, 2006, EPA mailed an Access Order to the 18 remaining properties. While it was not anticipated that this would lead to more access agreements, EPA wanted to exhaust all administrative options before seeking judicial intervention. NL was able to obtain access agreements for two of these properties. Therefore, there remained 16 properties for which access was needed. EPA filed a referral with the Department of Justice requesting that a motion be filed in aid of access. A complaint was filed and after allowing time for service by publication, a motion for access was filed that was granted by the Court on December 20, 2006.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Consent Agreement and Final Order Filed Penalizing Failure of Newport-St. Paul Cold Storage Company to Immediately Notify National Response Center of Release of Ammonia.

On August 21, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order whereby Newport-St. Paul Cold Storage Company, of Newport, Minnesota, agreed to pay a civil penalty of \$11,223, for failing to immediately notify the National Response Center (NRC) of a release into the environment of approximately 950 pounds of ammonia. The company's facility from which the release occurred is located at 2233 Maxwell Avenue, Newport Minnesota 55055. The failure was a violation of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a).

Ammonia is categorized as a "hazardous substance" under Section 101(14) of CERCLA, and any release of 100 pounds or more of ammonia must be immediately reported to the NRC. At approximately 6:30 p.m. on June 4, 2005, a release into the air of approximately 950 pounds of ammonia occurred at the Newport-St. Paul Cold Storage facility. The facility did not report the release to the NRC until approximately 8:47 a.m. on June 6, 2005.

The Consent Agreement provides Newport-St. Paul Cold Storage 30 days from August 21, 2007, within which to pay the penalty.

Office of Regional Counsel Contact: Michael J. McClary, (312) 886-7163

Seventh Circuit finds that there is a cause of action under Section 107(a) of CERCLA for responsible parties against other responsible parties when they have undertaken voluntary response actions and do not have a cause of action in contribution available under Section 113(f).

On January 17, 2007, the Seventh Circuit Court of Appeals held in Metropolitan Water Reclamation District of Greater Chicago v North American Galvanizing & Coatings, Inc. that a liable party who undertook a cleanup has a cause of action under Section 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against other liable parties when it has undertaken a voluntary response action and does not have a cause of action for contribution available under Section 113(f) of CERCLA. The U.S. government was not a party in this case but had filed an amicus brief. Four Circuit Courts have now opined on whether Section 107(a) provides potentially liable parties with a cause of action to seek contribution for response costs from other liable parties since the Supreme Court's decision in Cooper Industries v. Aviall Services, Inc., 543 U.S. 157 (2004). The 7th Circuit case is in accord with Consolidated Edison Co. v. UGI Utilities, 423 F.3d 90 (2d Cir. 2005), and Atlantic Research Corp. v. United States, 459 F.3d 827 (8th Cir., August 11, 2006). A contrary position was issued by the Third Circuit in E.I DuPont De Nemours & Co. v. United States, 460 F.3d 515 (3d Cir. 2006). Petitions for certiorari review by the Supreme Court have been filed for all 3 of these

other cases. On January 19, 2007, the Supreme Court granted certiorari for review of the Atlantic Research Corporation decision.

Office of Regional Counsel Contact: Lawrence Kyte, (312) 886-4245

U.S. EPA enters into Administrative Order on Consent with North Shore Gas for an RI/FS at two sites in Waukegan, Illinois.

North Shore Gas operated manufacture gas plants (MGP) in Waukegan, Illinois. Two of these locations were: the North Plant Site located at 849 Pershing Road, Waukegan, Lake County, Illinois and the South Plant Site located at 2 North Pershing Road and 1 South Pershing Road, Waukegan, Lake County, Illinois. Both properties covered by the agreement are relatively close to Lake Michigan. MGPs produced gas from coal from the mid-19 th through the mid-20 th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, North Shore Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater. Groundwater flow is toward Lake Michigan. On July 23, 2007, the U.S. EPA signed an Administrative Order on Consent with North Shore Gas. Pursuant to the terms of the AOC, the North Shore Gas agreed to conduct a Remedial Investigation and Feasibility Study (RI/FS) at each Site and to pay oversight costs incurred by the U.S. EPA at each Site. Neither Site is on the National Priorities List but both are considered sites under the Superfund Alternative Site Program. Following the completion of the RI/FS, a final cleanup determination will be made for each site by U.S. EPA, in consultation with Illinois EPA, the City of Waukegan and area residents.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

Region 5 Executes CAFO with Owens Corning Corp., Resolving CERCLA Violations at its Facility in Granville, Ohio.

On June 27, 2007, the Region filed a Consent Agreement and Final Order resolving Owens Corning's liability for violating section 103(a) of CERCLA due to a release of over 800 pounds of trichloroethylene at a product testing and production facility in Granville, Ohio. Specifically, the Region alleged that Owens Corning failed to notify the National Response Center immediately upon learning of the release on October 12, 2006. The settlement requires Owens Corning to pay a cash penalty of \$3,000 and spend at least \$18,000 on a Supplemental Environmental Project (SEP) to replace the testing booth from which the trichloroethylene was released with another booth using another substance, one which is not listed as hazardous under 40 C.F.R. part 304.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; James Entzminger, alternate contact: (312) 886-4062

U.S. EPA enters into Administrative Order on Consent with Peoples Gas for removal work at three sites in Chicago, Illinois.

Peoples Gas operated a number of manufacture gas plants (MGP) in various locations throughout Chicago, Illinois. Three of these locations were: the 22nd Street Station, located at 2200 South Racine Avenue, Chicago, Illinois; the Hough Place Station, located at 2500 S. Corbett St., Chicago, Illinois; and the Pitney Court Station, located at 3052 Pitney Court, Chicago, Illinois. All of the properties covered by the agreement are relatively close to the Chicago River, which was a transportation route when the MGP facilities operated. MGPs produced gas from coal from the mid-19th through the mid-20th centuries. After World War II, coal gas was phased out and replaced with natural gas for cooking and heating. At each of these sites, Peoples Gas produced coal gas. Waste from MGP operations includes tar, oil, cinders, coke (coal residue), metals (including arsenic, chromium, lead, silver, and selenium), BTEX, and a number of PAHs. This waste material was disposed of in the soil on the sites and leached to the groundwater and adjoining Chicago River. Removal work was undertaken and is on-going at each of these sites under the Illinois Site Remediation Program.

On June 5, 2007, the U.S. EPA signed an Administrative Order on Consent with Peoples Gas. Pursuant to the terms of the AOC, the Respondent agreed to continue the on-going removal work at the three sites under U.S. EPA oversight and to pay the oversight costs incurred by the U.S. EPA at the sites.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

U.S. EPA enters into Administrative Order on Consent (AOC) with Raybestos Products Company for removal work in Reach 4 of Shelly Ditch in Crawfordsville, Indiana.

On February 22, 2007, the U.S. EPA signed an Administrative Order on Consent with Raybestos. Pursuant to the terms of the AOC, the Respondent agreed to remove contaminated sediment from Reach 4 of Shelly Ditch and to pay oversight costs incurred by the U.S. EPA at the Site. Though signed in February 2007, the AOC was not effective until May 15, 2007, as the AOC was part of a negotiated settlement that also included a Consent Decree that addressed past costs incurred at Shelly Ditch and Raybestos' potential liability at Sugar Creek. It was agreed that the effective date of the AOC would be delayed until the motion for entry was filed. The Department of Justice has filed a motion for entry regarding the Consent Decree and the motion is pending before the court.

The Shelly Ditch is an intermittent stream that accepts surface runoff that discharges into Sugar Creek. Sugar Creek is designated as a "full-body contact" water body and as an "expected use" stream by the Indiana Department of Natural Resources. Three culverts or outfalls located on the west perimeter of the Raybestos' facility at 1204 Darlington Avenue in Crawfordsville, Indiana empty into Shelly Ditch. The facility, established in 1951, manufactures friction plates for automatic transmissions. During its operation, there was a release of PCBs from the Raybestos facility into Shelly Ditch. On February 28, 1997, the Indiana Department of Environmental Management (IDEM) and Raybestos

entered into an agreement concerning the investigation and cleanup of PCBs in Shelly Ditch. However, IDEM was unable to reach an agreement with Raybestos on a cleanup for the Ditch. IDEM then referred the matter to U.S. EPA. On December 6, 2000, U.S. EPA issued a unilateral administrative order (UAO) to Raybestos to remove PCBs over 10 ppm from Reaches 1 to 3 of the Ditch. Reaches 4 and 5 were not addressed by the UAO. Raybestos complied with the UAO and completed the work in July 2003.

In May 2003, U.S. EPA and Raybestos entered into negotiations to address Raybestos' potential liability for the Sugar Creek Remedial Site, which included Reaches 4 and 5 of Shelly Ditch. During this time, Raybestos conducted sampling in Reaches 4 and 5, as well Sugar Creek, to determine the extent and levels of PCB and lead contamination in the two Reaches and the impact, if any, of the Reaches on Sugar Creek.

Office of Regional Counsel Primary Contact: Robert Smith, (312) 886-0765

U.S. District Court enters consent decree for recovery of past costs incurred at the Shelly Ditch Site in Crawfordsville, Indiana.

On May 24, 2007, the United States District Court for the Southern District of Indiana, Indianapolis Division entered a Consent Decree for the Shelly ditch, Sugar Creek and Calumet Container Site. Pursuant to the terms of the Consent Decree, the Settling Defendant, Raybestos Products Company will agree to pay \$119,519.18 of United States Environmental Protection Agency's (U.S. EPA) past costs incurred at the Shelly Ditch Site. In addition, pursuant to a May 15, 2007 Administrative Order on Consent between U.S. EPA and Raybestos, the Settling Defendant has agreed to implement a removal action in Reach 4 of Shelly Ditch and pay U.S. EPA's costs in overseeing this work. Under the Consent Decree, the Settling Defendant will receive a release for liability for costs incurred at Shelly Ditch, except those covered by the Administrative Order on Consent, and a release from liability for the Sugar Creek and Calumet Container Sites.

Office of Regional Counsel Contact: Robert Smith, (312) 886-0765

Richmond, Indiana newspaper runs story on Laurel Stone Church Road Site Complaint.

On May 19, 2007, the Richmond, Indiana Palladium Newspaper published a story about the pending Federal law suit for the Laurel Stone Church Road Superfund Site.

U.S. EPA referred the Laurel Church Road Superfund to the Department of Justice on June 20, 2006 for cost recovery, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). U.S. EPA seeks to recover funds expended, from October 10, 2002 to August 15, 2003, while conducting CERCLA emergency removal activities at the Site. During the action, topsoil was excavated and partially buried and subsurface drums were removed and placed into roll-off boxes for off-site disposal. Once excavation was completed, the areas were backfilled and graded. A portion of the road that was damaged by the heavy disposal trucks was removed and replaced. A total of 5,656 drums and 5,256 tons of contaminated soil and other wastes were transported off-site for disposal.

A complaint was filed in U.S. District Court in this matter on November 25, 2006, seeking \$2,381,429.21 in past costs, in addition to pre-judgment interest. The named defendants to the complaint are the current owners, Mr. and Mrs. Daniel R. and Naomi Lynn Rapiere and the past operator of the Site, Franklin County. The Rapiere added Mr. and Mrs. Gale and Juanita Hornsby in a countersuit. It is suspected that either the Rapiere or the Franklin County Commissioner brought this matter to the attention of the Richmond, Indiana newspaper.

Office of Regional Counsel Contact: Nola Hicks, (312) 886-7949 and Ruth Woodfork, Superfund (312) 353-6431

The United States files a complaint against the operators of the Crescent Plating Superfund Site.

On June 6, 2007, the Department of Justice filed a CERCLA complaint in the Northern District of Illinois, Eastern Division, on behalf of U.S. EPA and against Paul Carr and James Saporito. The complaint is for cost recovery pursuant to Section 107(a) and for penalties for unreasonably failing to comply with an information request pursuant to Section 104(e). The complaint alleges that Paul Carr and James Saporito are liable for response costs as operators of the facility at the time of disposal. The complaint also alleges Paul Carr unreasonably failed to comply with an information request and therefore should pay a civil penalty of \$32,500 per day from August 15, 2005. U.S. EPA conducted a time-critical removal action at the former plating facility between December 2003 and June 2004 and has incurred almost \$1 million in un-reimbursed response costs as of June 22, 2006.

The United States settled with Mike Sahli and Sahli Enterprises, Inc. to resolve their liability at the Site on May 22, 2006. The Settling Defendants paid \$225,000 in exchange for contribution protection, a covenant not to sue, and the release of a federal lien on the property.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Steven Faryan, (312) 353-9351 and Department of Justice Contact: Jennifer Lukas-Jackson, (202) 305-2332

Court enters a Consent Decree for recovery of response costs at the Cross Brothers Pail Recycling Superfund Site in Kankakee, Illinois.

On October 24, 2006, the District Court for the Central District of Illinois entered a Consent Decree between U.S. EPA and three responsible parties that were named by U.S. EPA as defendants in a cost recovery complaint: the Sherwin-Williams Company, the Glidden Company, and Specialty Coatings, Inc. Under the terms of the Consent Decree the Defendants are required to pay \$200,000 into a site-specific special account. On September 9, 1983, the Cross Brothers Site was added to the National Priorities List, and on September 28, 1989, U.S. EPA issued a Record of Decision that required installation of a soil flushing system, and extraction and treatment of contaminated groundwater to attain identified cleanup standards. The Defendants performed a remedial design and remedial action of the selected remedy under a Unilateral Administrative Order pursuant

to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). On February 29, 2000, the Department of Justice filed a complaint for response costs against the Defendants.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Terese Vandonsel, (312) 353-6564

EPA enters Consent Agreement and Final Order with Underground Warehouses, Inc., resolving CERCLA reporting violations.

On September 29, 2006, the Regional Administrator signed a Final Order resolving a violation of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by Underground Warehouse, Inc. (UWI) at its facility located in Quincy, Illinois. Specifically, UWI failed to immediately notify the National Response Center of a release of anhydrous ammonia on August 26, 2005. Under the Consent Agreement and Final Order, UWI will pay a civil penalty of \$14,170 for this violation.

Office of Regional Counsel Primary Contact: Cynthia King, (312) 886-6831

CERCLA Wash King Laundry, MI Five Year Review.

On September 28, 2006, EPA Region 5 signed a Five-Year Review Report for the Wash King Laundry Superfund Site located in Baldwin, Michigan. The Five-Year Review determined that the soil-vapor extraction and the groundwater pump and treat systems were constructed and functioning as intended. The Five Year Review Report determined that the off-property groundwater remedy was taking longer than anticipated and could require adjustments. The Five-Year Review Report recommended contingency actions to address the groundwater issues and an IC study.

Because the groundwater capture wells are encountering low extraction rates, the projected length of time required for the groundwater remedy to reach unrestricted use of the groundwater has been extended. While many of the local homeowners in this rural area are hooked into a water-supply system, some are not and, therefore, an IC study will be done for the site. The study will evaluate the current groundwater concentrations in areas where homes still use private wells and evaluate the existing groundwater use restrictions to determine if institutional controls will be necessary. The IC study should be completed in the next 6 months.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Federal District Court enters CERCLA remedial design and remedial action consent decree.

On September 27, 2007, United States District Court Judge Barbara Crabb entered the consent decree in United States of America v. Waste Management of Wisconsin, Inc., Civil Action Docket No. 07-C-0424. The Consent Decree was lodged in the United States District Court for the Western District of Wisconsin. Pursuant to the terms of the Consent Decree, the settling defendant will (1) reimburse future costs incurred by EPA and the Department of Justice ("DOJ"), and (2) continue to perform studies and response work

that previously was undertaken under the terms of CERCLA Section 106 unilateral administrative orders (“UAOs”). In addition, the Consent Decree will serve as a vehicle to reimburse settling defendant for \$1,525,306.84 in response costs that it incurred in connection with the remedial action. The amount that Waste Management of Wisconsin (“Waste”) is receiving reflects the net proceeds from the sale of Uniroyal Technology Corp. stock that Waste is eligible to receive.

As background, in 1993, pursuant to a bankruptcy settlement agreement and stipulated order involving various Uniroyal-related entities, in Case No. 91-32791, U.S. Bankruptcy Court, Northern District of Indiana, the United States received shares of Uniroyal Technology Corp. stock. The bankruptcy settlement agreement and stipulated order required EPA to credit the proceeds of the sale of that stock to various sites for which the Uniroyal entities were allegedly liable, including the Hagen Farm Site, thereby reducing the liability of other parties potentially responsible for those Sites. EPA has determined that \$1,525,306.84 is available to reduce the liability of other potentially responsible parties in connection with the Hagen Farm Site as required by the bankruptcy settlement agreement and stipulated order. The proceeds of the stock sale attributable to the Hagen Farm Site, after offset for unrecovered EPA costs for the Site, will be deposited in a special account for the Site. Based on certifications made by Waste concerning unrecovered costs incurred at the site, EPA will disburse, in accordance with the Consent Decree, the special account funds to Waste. Put simply, the Uniroyal settlement stipulated that settlement proceeds be used to "reduce the liability" of the other PRPs, Waste performed all of the RD/RA work at the Hagen site under UAOs and is, therefore, eligible to receive the Uniroyal proceeds net of U.S. EPA's unreimbursed response costs.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670; Shiela Sullivan, additional contact: (312) 886-5251



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Criminal

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

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You can view them sorted by name, state or statute.

Criminal:

- Boisture, Timothy A. (2)
- Cognis Corporation
- Comprehensive Environmental Solutions, Inc.
- Curry Office Supply, Inc. (2)
- Eco Finishing
- Flory, George L.
- Hydromet Environmental (USA), Inc. (2)
- Kircher, David
- Kuzlick, Joseph (2)
- Midwest Sheets Company (2)
- Miller Environmental Co., Inc.
- Multi-Service, Inc.
- Newton, Isaiah
- Northwestern Plating Works, Inc.
- Pacholski, David L. (3)
- Powell, Charles
- Ronald Mark Davenport
- Terre Haute
- Tester, Larry
- Ulmer, Scot F. (2)
- Ursitti, Victoria
- Westhaven Group LLC

Jury convicts former environmental cleanup contractor of mail fraud.

On October 17, 2006, a federal jury convicted Timothy A. Boisture of two counts of mail fraud arising from an oil well plugging project in Southern Indiana, following a two-week trial. Boisture was a partner in Environmental Consulting and Engineering Co., Inc., an environmental clean-up firm, which was hired by Indiana Department of Environmental Management (IDEM) to clean up an inactive oil production facility and plug approximately 50 oil and injection wells. Many of the wells were leaking oil and other contaminants and threatened a local pond and the Ohio River. Boisture was convicted on Counts One and Two of a five-count Indictment. Count One alleged that he defrauded IDEM by submitting false invoices charging over \$44,000 for equipment that was never installed and services that were not billed by his subcontractor. Count Two alleged that Boisture defrauded his partner by inducing three other subcontractors to pay him over \$140,000 in kickbacks. At Boisture's direction, the subcontractors submitted inflated invoices to Environmental Consulting, which Boisture approved. Once the inflated bills were paid by Environmental Consulting, the subcontractors then paid Boisture the bulk of the inflated amounts. The maximum sentence for mail fraud is 20 years on each count, although the judge is required to take into account federal sentencing guidelines which will likely call for less than the maximum sentence. Boisture may also be fined up to \$250,000 on each count. Boisture was acquitted of one other mail fraud charge, a count of money laundering and one count of making a false statement to investigators. Sentencing was set for January 23, 2007. The case was prosecuted by Assistant United States Attorney (AUSA) Steve DeBrotta and Special AUSA David Taliaferro.

Office of Regional Counsel Primary Contact: David M. Taliaferro, (312) 886-9872

Environmental contractor receives 5 year prison term.

Timothy A. Boisture, 47, a former partner in an environmental clean-up firm, was sentenced March 6, 2007 to serve five years of imprisonment on each of the two counts of mail fraud on which he was convicted by a jury. The sentences will run concurrently. Boisture's sentence was the longest sentence to date for any crime investigated by the Indiana Inter-Agency Environmental Crimes Task Force.

Boisture's firm was hired in 1999 by the Indiana Department of Environmental Management (IDEM) to properly close 51 abandoned and leaking oil and injection wells in Vanderburgh County, IN. Leakage from the wells and associated equipment had contaminated a pond and a tributary of the Ohio River. Boisture was convicted of fraudulently charging the State of Indiana \$44,824.80 for nonexistent equipment and services and for obtaining more than \$150,000 in kickbacks from subcontractors Boisture hired. Boisture was also ordered to serve three years of supervised release following his prison term and to pay \$492,571 in restitution, of which more than \$330,000 will be made payable to the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

In related cases, former Indiana Department of Natural Resources Oil and Gas Division inspector Donald G. Veatch, age 58, of Francisco, IN, Carl F. Hanisch, age 72, of Mt. Carmel, IL, and Bi-State Pipe Co., Inc. were also sentenced following their earlier guilty pleas to making false statements. Veatch additionally pleaded guilty to bank fraud. Veatch was the state inspector assigned to the Vanderburgh County well closing project, and Hanisch and Bi-State Pipe Co., Inc. were sub-contractors. All three admitted knowingly making false statements about the equipment used to plug the wells. In addition, Veatch admitted that a company he owned received over \$110,000 from Boisture's firm purportedly for wastewater disposal. Veatch then paid Boisture kickbacks of over \$100,000 out of the funds his company received.

Veatch received one day in jail and three years of supervised release, of which 12 months must be served on home detention. Veatch was also ordered to pay restitution of more than \$385,000. Hanisch was placed on probation for 12 months and also ordered to pay restitution. Bi-State Pipe Co., Inc. (Bi-State Pipe) was placed on probation for one year. IDEM was reimbursed for the well plugging project from federal Oil Spill Liability Trust Fund, established under the Clean Water Act.

The case was prosecuted by Assistant U.S. Attorney Steven DeBrotta and Special Assistant U.S. Attorney David Taliaferro. The case was investigated by EPA CID Special Agent Jeff Denny, in a joint investigation with the Indiana Department of Natural Resources, Law Enforcement Division, the Internal Revenue Service CID and the Federal Bureau of Investigation.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Cognis Corporation Sentenced For Making Illegal Discharges To Mill Creek Causing The Death Of Migratory Birds; United States v. Cognis Corporation.

On March 14, 2007, Cognis Corporation ("Cognis") was sentenced for illegal discharges into Mill Creek and causing the death of 12 migratory birds. Cognis was sentenced to

three years of probation. During the term of probation Cognis will implement an environmental compliance plan. In addition, Cognis was fined \$215,000 and ordered to pay \$219,994.67 in restitution, for a total of \$434,994.67. Cognis, an Ohio corporation, operates a specialty chemicals manufacturing facility located on the Mill Creek in Cincinnati, Ohio. This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources – Division of Wildlife, the Cincinnati Fire Department, the Cincinnati Metropolitan Sewer District, the U.S. Fish and Wildlife Service, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Waste Treatment Facility and Four Former Officials Indicted for Illegally Discharging Untreated Industrial Wastes.

On January 24, 2007, in Detroit in the Eastern District of Michigan, a grand jury issued a 12-count indictment alleging that Comprehensive Environmental Solutions, Inc. (CESI); CESI's former President, Michael G. Panyard; CESI's former CEO, Bryan Mallindine; and CESI's former plant manager, Charles Long, were in a criminal conspiracy to violate the Clean Water Act, to make false statements to government officials and to obstruct justice. The indictment further alleged that the defendants knowingly bypassed treatment equipment when discharging, violating the Clean Water Act; that defendants CESI and Panyard added water to CESI discharge samples and also discharged water to render DWSD sampling devices inaccurate, all violating the Clean Water Act; in seven counts that defendants CESI and Panyard gave falsified documents to and made oral and written false statements to government officials; and that defendants CESI and Mallindine obstructed justice by ordering a floor drain to be cemented over during an investigation.

According to the indictment, in parts of 2002 CESI operated a waste treatment facility at 6011 Wyoming Ave., Dearborn, Michigan. The facility's tank farm had over 10 million gallons of storage capacity. CESI lacked adequate treatment processes and the facility's storage tanks were at or near capacity. But CESI continued to accept waste that it could not adequately treat. To make room for incoming wastes and to save treatment costs, CESI and the defendants often bypassed treatment processes and discharged untreated wastes directly to the Detroit sewer system. The defendants' false statements and obstruction of justice worked to conceal the defendants' misconduct. If convicted of the most serious charges, Mallindine faces imprisonment for up to ten years; the other defendants face imprisonment for up to five years; and all defendants face a criminal fine of up to \$50,000 per day of violation. A defendant is presumed innocent until proven guilty. U.S. EPA's Criminal Investigation Division, the Federal Bureau of Investigation, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the United States Coast Guard jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Trucking Company Pleads Guilty to Negligently Discharging Boron Contaminated Water Without a Permit.

On January 11, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and pled guilty to a January 4, 2007, one-count information alleging that Curry Office Supply negligently discharged a pollutant to a water of the United

States without an NPDES permit, in violation of the Clean Water Act. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

The indictment alleged that beginning in 2001, coal combustion ash in a large excavation at the Curry facility contaminated several million gallons of ponded rainwater in that excavation with excessive boron levels. The indictment also alleged that between March and May 2003 and on Lippold's orders, the Curry facility discharged a substantial portion of the boron ash wastewater into an unnamed tributary of the Sangamon River using sprayer trucks, a hose and a buried discharge pipe. The indictment also alleged that Lippold ordered this discharge after IEPA told Curry Ready Mix and Curry Ice & Coal that IEPA would not issue an NPDES permit to discharge the boron ash wastewater and after IEPA refused to issue a provisional variance to allow the Curry facility to discharge the boron ash wastewater in violation of water quality standards. The information alleged that defendant Curry Office Supply was negligent in supervising an agent at the Curry facility. In the plea agreement, defendant Curry Office Supply agreed to pay a \$50,000 criminal fine and serve three years of probation. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois State Police jointly investigated this matter.

Office of Regional Counsel Primary Contact: Kris Vezner, (312) 886-6827

Trucking Company Sentenced For Negligently Discharging Boron Contaminated Water Without a Permit.

On June 25, 2007, Curry Office Supply, Inc., appeared in Springfield in the Central District of Illinois and was sentenced to a \$50,000 criminal fine and three years probation for negligently discharging a pollutant to a water of the United States without an NPDES permit, in violation of the Clean Water Act. Curry Office Supply had pled guilty on January 11, 2007, to a January 4, 2007, one-count information alleging this crime. Employees and agents of Curry Office Supply worked at a bulk hauling facility at 3600 N. Dirksen Pkwy. in Springfield, Illinois (the Curry facility). On January 4, 2005, a grand jury in Springfield in the Central District of Illinois issued a one-count felony indictment alleging that Curry Ready Mix, Curry Ice & Coal, Lippold & Arnett and Gerald Lippold knowingly discharged a pollutant to a water of the United States without an NPDES permit in violation of the Clean Water Act. Curry Ready Mix & Builders' Supply, Inc., was a bulk hauling and concrete-mixing company in Carlinville, Illinois, and an owner and operator of the Curry facility. Curry Ice & Coal of Springfield, Inc., and Lippold & Arnett, Inc., were bulk hauling companies, subsidiaries of Curry Ready Mix and also operators of the Curry facility. Gerald Lippold was a former owner of Lippold & Arnett, Inc., and a consultant to Curry Ready Mix who exercised substantial authority over the operations of the Curry facility.

The indictment alleged that beginning in 2001, coal combustion ash in a large excavation at the Curry facility contaminated several million gallons of ponded rainwater in that excavation with excessive boron levels. The indictment also alleged that between March and May 2003 and on Lippold's orders, the Curry facility discharged a substantial portion of the boron ash wastewater into an unnamed tributary of the Sangamon River using sprayer trucks, a hose and a buried discharge pipe. The indictment also alleged that Lippold ordered this discharge after IEPA told Curry Ready Mix and Curry Ice & Coal that IEPA would not issue an NPDES permit to discharge the boron ash wastewater and after IEPA refused to issue a provisional variance to allow the Curry facility to discharge the boron ash wastewater in violation of water quality standards. The information alleged that defendant Curry Office Supply was negligent in supervising an agent at the Curry facility. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois State Police jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

President of Plating Firm in Minnesota Charged.

On August 22, 2007, Keith David Rosenblum, Eco Finishing's Chief Executive Officer and President, and Martin Wayne Meister, Eco Finishing's Plant Manager, were indicted by a Federal Grand Jury in Minneapolis on eleven felony counts of violating the Clean Water Act stemming from Eco Finishing's metal finishing operations. The charges include alleged violations of discharge limits for cyanide, pH, chromium and zinc, failing to submit analytic results, failing to report violations, and conspiracy. In addition, Keith Rosenblum was charged with four additional counts involving tampering with monitoring methods, failing to submit reports, and failing to report violations. Eco Finishing, an electroplating firm located in Fridley, Minnesota, was indicted earlier for Clean Water Act violations in related charges. On February 15, 2007, Eco Finishing was sentenced following its plea to the charges. Eco Finishing was required to pay the amount of \$250,000, consisting of a fine of \$225,000 and \$25,000 in extraordinary restitution to be paid to the Federal Transport Program. In addition, the company was placed on 3 years probation. Ted Gibbons, Eco Finishing's former chemist, was also sentenced to 18 months imprisonment for violating the Clean Water Act and tampering with environmental testing equipment. An indictment is only an accusation, and all defendants are entitled to a fair trial at which the government must prove guilt beyond reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Business Owner sentenced for spilling oil onto a tributary of the Great Miami River; United States v. George L. Flory.

On September 14, 2007, George L. Flory was sentenced for spilling oil onto a tributary of the Great Miami River. Mr. Flory was sentenced to three years of probation, of which the first six months must be served as home confinement. During the term of probation Mr. Flory is required to perform 100 hours of community service. In addition, Mr. Flory was ordered to pay \$260,948 in restitution. The restitution will be paid to the Coast Guard and the United States Environmental Protection Agency, the agencies who performed the clean up at the facility operated by Mr. Flory.

Mr. Flory was the owner and operator of Personal Touch Environmental (PTE), a company which specialized in the recycling of waste oil collected from Dayton area residences and facilities. Mr. Flory stored the waste oil in drums and storage tanks at the PTE facility which is bordered by an unnamed tributary of the Great Miami River. On February 16, 2004, there were approximately 700 drums and storage tanks at the PTE facility, many of which were leaking oil directly into the tributary bordering the facility. The information charged that on numerous days beginning on or about April 16, 2002 and continuing to on or about February 12, 2004, Mr. Flory knowingly caused waste oil stored at the PTE facility to be discharged into and upon an unnamed tributary of the Great Miami River.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the Coast Guard, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Hazardous Waste Reclamation Company Officials Sentenced For a Hazardous Waste Conspiracy.

On March 9, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental (USA), Inc., plant manager John Pugh and former Hydromet warehouse supervisor Ronald Martin were sentenced for their roles in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency (IEPA). Pugh received nine months' imprisonment, nine months' home confinement and two years' probation for the crime of conspiracy; and Martin received one year of probation for making a false statement to IEPA. On February 28, 2007, former Hydromet chemist Douglas Bennett was also sentenced, to two years of probation for the crime of conspiracy. Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; William A. Morgan, its former CEO; Pugh; Julianna H. Bauter, its former environmental compliance official; Bennett; and Martin, with the conspiracy. The defendants were also variously charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Hazardous Waste Reclamation Company Official Sentenced For a Hazardous Waste Conspiracy.

On June 1, 2007, in federal court in Urbana, Illinois, former Hydromet Environmental, Inc., environmental compliance official Julianna Bauter was sentenced to 30 days of home confinement, a \$3,000 fine and one year of probation for her role in a 1999-2003 conspiracy to (1) illegally transport, store and dispose of hazardous wastes in violation of RCRA; and (2) make false statements to the Illinois Environmental Protection Agency (IEPA). Hydromet and five of its former officers and employees were indicted in 2006. The indictment charged Hydromet; Bauter; William A. Morgan, its former CEO; John Pugh, its former plant manager; Douglas Bennett, its former chemist; and Ronald Martin, a former warehouse supervisor, with the conspiracy. The defendants were also variously

charged with making false statements to IEPA and illegally transporting hazardous waste without a manifest. Pugh, Bauter, Bennett and Martin later pled guilty to one count each.

According to the indictment, Hydromet owned and operated an unsuccessful hazardous waste reclamation facility in Newman, Illinois. To continue operation and avoid the costs of safely disposing of hazardous wastes, the defendants stored hazardous wastes in a dilapidated warehouse in East Chicago, Indiana; hid other hazardous wastes on-site from the IEPA, then disposed of the wastes by falsely declaring them to be non-hazardous materials, including by sending them to a non-hazardous landfill in Indianapolis, Indiana; and falsely told IEPA that the Newman facility was fully operational and ready to receive hazardous wastes when in fact many necessary components and items of equipment were missing, broken or inoperable. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Ypsilanti Landlord Convicted of Substantial Endangerment for Discharging Untreated Sewage to Water.

In 2004, David Kircher owned the Eastern Highlands apartment complex in Ypsilanti, Michigan. On June 29, 2005, the Michigan Attorney General filed a two-count felony complaint against Kircher alleging that Kircher knowingly and unlawfully discharged a substance into the Huron River and that this discharge posed a substantial endangerment to the public health, safety or welfare. Kircher's bench trial began October 2, 2006, in Washtenaw County Circuit Court before Judge Archie Brown. On October 12, 2006, Judge Brown issued his verdict, finding Kircher guilty on both counts. Kircher will be sentenced on December 6, 2006. Kircher faces a potential prison term of five years and a potential criminal fine of not less than \$1 million, plus \$2,500-\$25,000 for each violation and up to \$25,000 for each day of violation.

The complaint alleged that on October 12-14, 2004, Kircher and people under his direction pumped about 25,000-100,000 gallons of untreated sewage from Eastern Highlands to a storm drain flowing directly into the Huron River. At least three children were exposed to the untreated sewage during this discharge, including two minors who ingested some of the sewage.

The Southeast Michigan Environmental Crimes Task Force including U.S. EPA's Criminal Investigation Division, the Michigan Department of Environmental Quality's Office of Criminal Investigation and the Michigan Attorney General jointly investigated this matter.

Office of Regional Counsel Contact:Kris Vezner, (312) 886-6827

Cleveland-Area Man Sentenced for Hate Crime; United States v. Joesph Kuzlik.

Joseph Kuzlik, of Cleveland, Ohio, was sentenced on February 21, 2007, to 27 months in federal prison and three years of supervised release for committing a racially-motivated crime which violated the federally protected civil rights of a Cleveland family. Kuzlik was also ordered to pay restitution to the U.S. Environmental Protection Agency (U.S. EPA) in the amount of \$23,000, \$767 to the Ohio EPA, and additional sums to the individual victims who suffered financial losses as a result of the offenses. At the sentencing hearing, Judge Patricia Anne Gaughan said, "The abusive and serious nature

of this offense is obvious to anyone with a modicum of decency and morality. I cannot imagine the terror that was inflicted on these victims. A message must be sent loud and clear that this behavior will not be tolerated and will result in a punishment at the high end of the guideline range.”

On November 27, 2006, Kuzlik pleaded guilty to conspiring to interfere with the federally protected housing rights of an interracial family because of their race, and for making false statements to federal investigators. Another Cleveland resident, David Fredericy, was sentenced on January 17, 2007, to serve 33 months in prison for his role in the crime.

Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate interracial residents in their neighborhood, including placing toxic mercury on the porch of a family with children for the purpose of intimidating them because one of the parents was African-American. As part of his guilty plea, Kuzlik admitted that he and Fredericy were attempting to intimidate the family and drive them from the neighborhood. In order to keep their unlawful actions secret, both Fredericy and Kuzlik lied to federal investigators from the EPA, the federal agency initially charged with cleaning up the mercury and investigating the incident.

Office of Regional Counsel Contact: Brad Beeson (440) 250-1761

Cleveland-Area Man Pleads Guilty to Hate Crime; United States v. Joseph Kuzlik.

A Cleveland-area man, Joseph Kuzlik, pleaded guilty today to conspiring to commit and for committing hate crimes targeting African-American residents of Cleveland, Ohio. Specifically, Kuzlik, who had been charged along with another individual, Cleveland resident David Fredericy, pleaded guilty to conspiracy and interference with federally protected housing rights because of race. He also pleaded guilty to making false statements to federal investigators. Previously Fredericy pleaded guilty to all the counts of the indictment. The indictment in this case alleged that Fredericy and Kuzlik engaged in a series of acts intended to threaten and intimidate African-American residents in their neighborhood. The indictment charged, among other acts, that the defendants placed a toxic substance, mercury, on the porch of an inter-racial family with children. As part of his guilty plea, Kuzlik admitted that he did so for the purpose of intimidating them because they were an inter-racial family. Kuzlik also admitted to lying to federal investigators from the Environmental Protection Agency, the federal agency that was initially charged with cleaning up the mercury and investigating the incident, for the purpose of keeping his unlawful actions secret. The maximum potential penalties for conviction on the conspiracy and civil rights charges is 10 years in prison, a \$250,000 fine, and three years of supervised release following any period of incarceration, per count. The maximum term of imprisonment for the false statements charge is five years. A sentencing hearing has been scheduled for February 21, 2007. This case was investigated, in a joint investigation, by the Federal Bureau of Investigation, the Ohio Environmental Protection Agency, the City of Cleveland Police Department, and the U.S. EPA CID, all members of the Northeast Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Tipton, Indiana Business Charged with Environmental Crimes.

On January 11, 2007, the United States Attorney's Office, Southern District of Indiana filed a criminal information against Midwest Sheets Company (MWS) of Tipton, Indiana for 3 violations of the Clean Water Act (CWA). MWS owned an operated a corrugated cardboard sheet manufacturing facility who allegedly negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. Furthermore, MWS is alleged to have failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges allegedly caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of more than 2,000 fish in Cicero Creek. MWS and the government also filed a plea agreement that, if accepted by the court, requires that MWS will plead guilty to 3 violations of the CWA and pay a criminal fine of \$600,000 (\$150,000 suspended during the one year probation). In addition, MWS agreed to pay approximately \$23,000 in restitution to the Tipton POTW and the state of Indiana for their response costs. The plea agreement also requires the company to make specific changes in its training policies to prevent further illegal discharges. The defendant is presumed innocent until and unless convicted at trial or following a guilty plea accepted by the court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Tipton, Indiana Business Convicted and Sentenced for Environmental Crimes.

On September 6, 2007, Midwest Sheets Company (MWS) of Tipton, Indiana pleaded guilty and was sentenced for three criminal violations of the Clean Water Act (CWA) in United States District Court, Southern District of Indiana. MWS owned an operated a corrugated cardboard sheet manufacturing facility that negligently discharged approximately 1,497 gallons of a caustic soda solution to the City of Tipton publicly owned treatment plant (POTW) as the result of overfilling a storage tank, as well as discharging 320 gallons of more caustic solution following the overflow event. MWS failed to immediately notify the POTW about these discharges in violation of the City of Tipton local ordinance. These discharges caused interference in the POTW operations, resulting in the pass through of pollutants to Cicero Creek and resulting in the demise of approximately 2,000 fish. MWS cooperated with the criminal investigation, paid full restitution for the damages caused by the discharges, and pleaded guilty to three negligence violations under the CWA. MWS was sentenced to: 1) pay a criminal fine of \$600,000 (\$150,000 suspended during a one-year probation period); 2) implement an employee training program for environmental compliance; 3) implement a corporate environmental compliance program; 4) conduct an environmental audit; 5) comply with all environmental laws; and 6) make a public apology in the local Tipton, Indiana newspaper as well as a trade journal.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Oil Reclamation Company and Owner Charged With Illegal Sewer Discharges.

On July 9, 2007, in Indianapolis, Indiana, the United States Attorney for the Southern District of Indiana filed an information charging Miller Environmental Co., Inc., and its owner Anthony McCullough, each with three counts of knowingly making unlawful

discharges at three Miller Environmental facilities in Shelbyville, Indiana, and Rushville, Indiana. The Miller Environmental facilities reclaimed and re-processed used oil; manufactured and blended chemicals; and degreased and derusted parts. The information charged that on at least 34 occasions between July 2002 and November 2003, the defendants discharged wastewaters containing oily residue, waste chemicals, acids, caustics, biocides and degreasing and derusting chemicals into local sanitary sewers in violation of the Clean Water Act. Conviction on each count carries a potential prison term of up to three years and criminal fines of up to \$50,000 per day of violation. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division jointly investigated this matter with other members of the Indiana Inter-Agency Environmental Crimes Task Force for the Southern District of Indiana, including the Federal Bureau of Investigation, the Indiana Department of Environmental Management and the Indiana Department of Natural Resources.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Company President and Company Sentenced for Illegal Discharges to the Sewer System and a Hazardous Waste Violation; United States v. Melvin Tatman and Multi-Service, Inc.

On December 14, 2006, Melvin Tatman and Multi-Service, Inc. ("MSI") were sentenced for illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman was sentenced to six months home confinement to be followed by 18 months of probation. Mr. Tatman was also ordered to serve 100 hours of community service and pay a \$5,000 fine. MSI was sentenced to two years of probation and ordered to pay a \$20,000 fine.

Previously, Mr. Tatman and MSI pled guilty to a four-count Information charging them with illegally discharging industrial wastewater into the Dayton sewer system and for a hazardous waste violation. Mr. Tatman is the owner and President of MSI, an Ohio corporation, which is a textile cleaning facility in Dayton, Ohio. The industrial laundering operation at the facility produces wastewater that includes heavy metals, waste oil, and organic chemicals.

The Information alleged that Mr. Tatman and MSI knowingly discharged wastewater with a pH below 5.0 into the Dayton sewer system in the first count, that Mr. Tatman and MSI negligently discharged ignitable wastewater into the Dayton sewer system in the second count, and that Mr. Tatman and MSI negligently bypassed the pretreatment system associated with the industrial laundering operation at MSI's facility in Dayton. In the last count, the Information alleged that MSI knowingly caused 3,500 gallons of ignitable hazardous waste to be transported without a manifest.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, the City of Dayton, and the U.S. EPA CID, all members of the Southwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Guilty Pleas In E. St. Louis Asbestos Renovation Case.

On July 12, 2007, Isaiah Newton pleaded guilty to conspiring to violate the Clean Air Act relating to the improper removal and disposal of asbestos from a building in 2002. According to documents filed in court, Newton was hired to supervise a work crew at a prominent building in downtown E. St. Louis known as the Spivey Building. Newton admitted that pipe insulation and other asbestos-containing materials were improperly removed without the use of any water to control emissions, and that the waste was improperly disposed of in dumpsters without warning the transporters that the waste contained asbestos, and that he had discussed with the man who hired him, Charles Powell, that the building contained asbestos. Powell pleaded guilty to related charges on June 15, 2007. A date for sentencing has not been set.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Owner of Former Metal Finishing Company Indicted on Environmental and Labor Embezzlement Charges.

On August 21, 2007, the owner of a former metal finishing business was arrested on federal environmental and labor charges. The defendant, David Jacobs, was the president and owner of the former Northwestern Plating Works, Inc. (NPW), located at 3114 South Kolin Avenue, Chicago, Illinois. NPW used cyanides, acid, corrosives, brass, copper, zinc and nickel in its electroplating business. The defendant was charged in an indictment returned by a federal grand jury on August 16, 2007, with one count of improperly storing and handling hazardous wastes under the Resource Conservation and Recovery Act. He was also charged with one count of embezzling more than \$830,000 from an employee pension plan. The indictment is an allegation only, and the defendant is presumed innocent of these charges unless proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Technician at Oil Refinery Charged With Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On April 25, 2007, David L. Pacholski was charged in a one-count information with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

The information alleges that, pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

The information also alleges that Pacholski worked at the BP refinery in Oregon, Ohio. Pacholski was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charges that between June 18, 2003, and June 20, 2003, Pacholski did not check the refinery for leaks. Therefore, the monitoring data and certifications submitted by Pacholski for those days were false.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Technician at Oil Refinery Pleads Guilty to Making False Statements in Monitoring Reports; United States v. David L. Pacholski.

On May 4, 2007, David L. Pacholski pled guilty to a one-count information charging him with making false statements in connection with his employment at the BP refinery in Oregon, Ohio.

Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic chemicals and other hazardous substances.

Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly.

The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Technician at oil refinery sentenced for making false statements in monitoring reports; United States v. David L. Pacholski.

On September 17, 2007, David L. Pacholski was sentenced for making false statements in connection with his employment at the BP refinery in Oregon, Ohio. Mr. Pacholski was sentenced to one year of probation. In addition, Mr. Pacholski was ordered to pay a \$500 fine. Pursuant to the Clean Air Act, BP is required to check its refinery in Oregon, Ohio for vapor leaks. Vapor leaks can occur in valves, pumps, compressors and other piping connections. Failure to find these leaks may cause the emission of volatile organic

chemicals and other hazardous substances. Pacholski worked at the BP refinery in Oregon, Ohio and was employed to check components at the refinery for leaks. As part of checking for leaks Pacholski would also file his monitoring data and sign a certification that the monitoring was conducted properly. The information charged that between June 18, 2003, and June 20, 2003, Pacholski submitted false monitoring data and certifications. The monitoring data and certifications were false because Pacholski did not check the refinery for leaks on those days.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Charges filed in E. St. Louis asbestos renovation.

On January 19, 2007, Charles Powell and Isaiah Newton were charged with 7 felony violations of the Clean Air Act and one count of conspiracy arising from the improper removal and disposal of asbestos from a building in East St. Louis, IL. According to the Indictment, in 2002, Powell hired Newton to supervise a work crew at the Spivey Building. Pipe insulation, floor tile and transite paneling in the building contained asbestos. Powell and Newton are charged with knowingly failing to notify the Illinois EPA about the project, failing to remove the asbestos before commencing the renovation, removing the asbestos without a trained representative present, removing the asbestos without adequately wetting it, as well as violations of asbestos disposal requirements. Each count carries a potential penalty of 5 years imprisonment and/or a fine of up to \$250,000. Criminal defendants are presumed innocent of the charges unless proven guilty beyond a reasonable doubt.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Decatur Man Imprisoned For Illegal Dumping into the Sangamon River.

Ronald Mark Davenport, of Decatur, Illinois, was sentenced January 19, 2007 to 3 months in prison following his plea to the charge of illegally dumping toxic pollutants into the Sangamon River in violation of the federal Clean Water Act. In addition, Federal District Judge Michael McCuskey required Davenport to serve 90 days on home confinement and 12 months on supervised release. Davenport, an employee and partner of Able One Sealcoating of Decatur, previously pleaded guilty to charges that he stopped at the Decatur Bulk Watering Station on September 19, 2004, to purchase water to clean tar and chemicals from his tank truck. The company used a 1,000 gallon tank mounted on a pickup truck known as "Big Sue" to haul waterproof coatings to work sites. Davenport admitted that he had pumped more than 250 gallons of water into the tank, then opened the tank drain and discharged at least 50 gallons of wastewater containing toxic pollutants into the water station's drain. At that time, the tank contained an unknown quantity of tar and other toxic chemicals. The water station's drain was designed to direct water to the Sangamon River, approximately 100 yards from the water station.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Terre Haute, Indiana Business and its President Convicted for Environmental Crimes.

On May 24, 2007, a federal jury in Indianapolis, Indiana, found Derrik Hagerman of Terre Haute, Indiana, and Wabash Environmental Technologies, LLC, guilty of ten felony counts of false statements under the Clean Water Act. Wabash was a waste water treatment facility in Terre Haute, Indiana that discharged to the Wabash River under a Clean Water Act permit. The indictment alleged that from on or about January 2004 and continuing to on or about October 2004, Hagerman and Wabash periodically reviewed bench sheets from Wabash's lab listing analytical results for waste water discharge samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit that showed Wabash to be in violation of effluent limitations in its permit for Ammonia, BOD5, Copper, Zinc and Phenol. Hagerman and Wabash knowingly failed to report to the Indiana Department of Environmental Management lab results showing these violations, but instead reported results that were in compliance with Wabash's Clean Water Act permit. As part of a scheme to conceal the false statements, Defendants Hagerman and Wabash knowingly created false bench sheets showing few if any violations, and purporting to be analytical results of waste water samples taken at Wabash for purposes of compliance with Wabash's Clean Water Act permit. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management, as part of the Indiana Inter-Agency Environmental Crime Task Force for the Southern District of Indiana.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Emissions Tester admitted making false pollution reports, banned from air testing for two years.

On Friday, November 17, 2006, Larry Tester, current owner of Genesis Air, Inc., a smokestack emissions testing firm, was charged in Michigan state court with one count of submitting a false statement in a report required under Michigan law. Tester admitted in court that he had falsified data in an air emissions test report sent both to his client and the Michigan DEQ which made the test appear to have been validly conducted. In fact, Tester admitted he knew the test was not valid. Tester pleaded guilty to the charge in accordance with a plea agreement with the government, and was sentenced the same day to serve 2 years probation and to pay \$12,890 in restitution to his former client. As a part of his probation, Tester is prohibited from being involved in the stack testing business for the term of his probation, and is required to publish a public apology in a trade journal explaining what he did and the repercussions.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Real Estate Company President Pleads Guilty to Conspiracy and Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 19, 2007, Scot F. Ulmer pled guilty to a two-count Information charging him with conspiracy and obstruction of justice. Mr. Ulmer was the President of the Westhaven Group LLC ("Westhaven"), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-

based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

In January 2004, the United States Environmental Protection Agency (“U. S. EPA”) sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven’s response to the information request, including copies of signed Lead Disclosure Forms. The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Real Estate Company President sentenced for Conspiracy and Obstruction of Justice; United States v. Scot F. Ulmer.

On September 17, 2007, Scot F. Ulmer was sentenced for conspiracy and obstruction of justice related to a U.S. Environmental Protection Agency (U.S. EPA) investigation into his company, the Westhaven Group LLC (Westhaven). Mr. Ulmer was sentenced to five years of probation, the first 10 months of which must be served in a halfway house. In addition, Mr. Ulmer was ordered to pay a fine of \$20,000. Mr. Ulmer was the President of the Westhaven, a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. Sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a “Lead Disclosure Form.”

In January 2004, U. S. EPA sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven’s response to the information request, including copies of signed Lead Disclosure Forms.

The information charged that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charged that Ulmer directed the submission of false forms to the U.S. EPA.

This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761

Environmental Compliance Official Charged With Negligence Related to Fish Kill.

On July 10, 2007, in Urbana, Illinois, the United States Attorney for the Central District of Illinois filed a three-count information charging Victoria Ursitti with negligent conduct

relating to a July 11, 2002, discharge of ammonia-laden wastewater into the Urbana-Champaign sanitary sewer. Ursitti was an environmental compliance official with the University of Illinois at Urbana-Champaign. According to the charges filed, in spring 2002 the University undertook a boiler-cleaning project that generated thousands of gallons of wastewater with elevated ammonia concentrations. Ursitti was responsible for the project's environmental compliance, but was allegedly negligent in overseeing the discharges. The wastewater contained too much ammonia for the treatment plant to handle, resulting in the wastewater being discharged into a tributary of the Vermillion River. According to the charges filed, the discharged wastewater caused a substantial fish kill as it flowed approximately 40 miles downstream to the Vermillion River. Conviction on each count carries a potential prison term of up to one year and criminal fines of up to \$100,000. An information is only an accusation and the law presumes that a defendant is innocent unless convicted at trial. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and IEPA jointly investigated this matter.

Office of Regional Counsel Contact: Kris Vezner, (312) 886-6827

Real Estate Company President Charged With Conspiracy And Obstruction Of Justice; United States v. Scot F. Ulmer.

On April 2, 2007, Scot F. Ulmer was charged in a two-count Information with conspiracy and obstruction of justice. The information alleges that Ulmer was the President of the Westhaven Group LLC ("Westhaven"), a real estate investment company located in Toledo, Ohio. Westhaven bought, sold, and rented residential properties primarily in the greater-Toledo area. The information states that sellers of pre-1978 dwellings are required to disclose known lead-based paint hazards, or, in the alternative, to certify that they have no knowledge of such hazards. This disclosure is often referred to as a "Lead Disclosure Form."

The information alleges that in January 2004, the United States Environmental Protection Agency ("U. S. EPA") sent Westhaven an information request concerning Westhaven's compliance with the Lead Disclosure Rule. The information request specifically asked Westhaven to produce copies of all Lead Disclosure Forms. In late April 2005, the U.S. EPA received Westhaven's response to the information request, including copies of signed Lead Disclosure Forms.

The information charges that between January 23, 2004, and April 29, 2005, Ulmer directed the creation of forged and backdated Lead Disclosure forms. The information further charges that Ulmer directed the submission of false forms to the U.S. EPA. This case was investigated, in a joint investigation, by the Ohio Bureau of Criminal Identification and Investigation, the Ohio Environmental Protection Agency, and the U.S. EPA CID, all members of the Northwest Ohio Environmental Crimes Task Force. If convicted, the defendant's sentence will be determined by the Court after review of factors unique to this case, including the defendant's prior criminal record, if any, the defendant's role in the offense and the characteristics of the violation. In all cases the sentence will not exceed the statutory maximum and in most cases it will be less than the maximum.

An Information is only a charge and is not evidence of guilt. A defendant is entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

Office of Regional Counsel Contact: Brad Beeson, (440) 250-1761



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Clean Water Act (CWA)

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state, statute, or date.

CWA:

- All Town and Country Septic, Inc.
- Barber Trucking
- Berry Drain
- Crawfordville, Indiana
- Deer Creek Tributary
- Detrex Corporation
- Don Prow and Rochester Topsoil
- Fabian, R.
- Gerke Excavating, Inc.
- Indianapolis, IN
- Lake Zurich, IL
- Michigan Department of Environmental Quality
- Minnesota Mercury Total Maximum Daily Load
- Nacelle Land and Management Corporation
- New Albany Links Development Company, Ltd.
- Northeast Ohio Regional Sewer District
- Office of Enforcement and Compliance Assurance (OECA)
- Parker, Ika and Patricia
- Rager Fertilizer Company
- State Of Indiana
- Wakatomika Creek Watershed

Region 5 files Complaint/Consent Agreement and Final Order Settling Domestic Septage Application Recordkeeping Violations.

Region 5 initiated this enforcement action on September 20, 2004. On 05/09/2007, Region 5 filed a Complaint/Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against All Town and Country Septic, Inc. (All Town) of Norton, Ohio for alleged violations of the regulations promulgated at 40 C.F.R. Part 503. Region 5 alleged that All Town did not properly keep records of land application of domestic septage in violation of 40 C.F.R. Section 503.17(b)(4), (b)(5), (b)(7), and (b)(8). All Town will pay a \$35,500 penalty.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary Contact: Valdis Aistars, (312) 886-0264

Judge Issues Favorable Decision in Clean Water Act Case Involving Wrongful Disposal of Sewage.

On May 11, 2007, Administrative Law Judge (ALJ) Gunning issued an 81-page Initial Decision finding Respondent, Roger Barber d/b/a/ Barber Trucking, liable for all counts alleged in the Complaint, and ordered Respondent to pay the full penalty of \$60,000 sought in the Complaint. Region 5 filed the Complaint in this matter in April 2005 alleging Respondent, over a two year period, land-disposed of sewage in violation of the

Clean Water Act and its implementing regulations. A three-day hearing was held on this matter on April 25-27, 2006. ALJ Gunning found Respondent egregiously failed to comply with the regulations designed to protect human health and the environment from pathogens contained in sewage, and designed to protect the ground and surface waters from the nitrogen contained in sewage. The penalty sought was limited to Respondent's ability to pay. This was the first case nationally that adjudicated alleged violations of the Clean Water Act's sewage disposal regulations regarding the land application of sewage collected from residential septic tanks.

Office of Regional Counsel Primary Contact: Eaton Weiler, (312) 886-6041 and
Secondary contact: Valdis Aistars, Water Division (312) 886-0264

Region 5 approves TMDL for Berry Drain, Michigan.

On September 27, 2006, Region 5 approved a Total Maximum Daily Load (TMDL) for total suspended solids for Berry Drain, which is located in Sanilac County, Michigan. Excessive levels of Total Suspended Solids Concentration (TSS) from point and nonpoint source discharges near the Sandusky wastewater treatment plant (WWTP) have resulted in levels of dissolved oxygen below the applicable water quality standard. Michigan has committed to imposing wasteload allocations on the point and nonpoint sources, and has entered into a consent order under which the Sandusky WWTP is upgrading its facilities to eliminate DO effluent discharge violations by October 2007. Additionally, the Sanilac County Conservation District is applying for a CWA 319 watershed planning grant to develop best management practices and control measures that will minimize excessive TSS runoff in the Berry Drain watershed.

Office of Regional Counsel Primary Contact: Jane Woolums, (312) 886-6720; Secondary Contact: Erin Newman, (312) 886-4587

Region 5 enters into a Consent Agreement and Final Order resolving violations of the Clean Water Act (CWA), by the City of Crawfordsville, Indiana.

On January 4, 2007, Region 5 entered into a Consent Agreement and Final Order (CAFO) that resolves claims against the City of Crawfordsville, Indiana (City). The CAFO charged the City with violations of its NPDES permit under Section 301 of the CWA. Specifically, the Agency alleges that from September 2004, until May 2005, the City exceeded its daily and monthly limits for ammonium and copper in the permit. The Agency proposed an appropriate penalty of \$35,000. The City agreed to pay the \$35,000 penalty, and to also install an ultraviolet purifier and to clean its filters, all of which will improve the quality of its discharges. The Agency agreed to accept the proposal. The City is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631

Region 5 Approves Michigan *E. Coli* TMDL for the Deer Creek Tributary of the North Branch of the Clinton River.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 22, 2006, the Region approved the TMDL submitted to U.S. EPA by Michigan Department of Environmental Quality to address *E. coli* levels in the Deer

Creek Tributary of the North Branch of the Clinton River, an impaired water in southeast Michigan largely within Macomb County northeast of Detroit. The TMDL establishes the maximum daily load of *E. coli* coming from point and non-point sources to ensure Deer Creek will meet the established Michigan water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jeanette Marrero, (312) 886-6543

Northern District of Ohio enters Consent Decree resolving violations of the Clean Water Act by Detrex Corporation.

On November 21, 2006, the Northern District of Ohio entered a Consent Decree resolving Clean Water Act violations alleged to have been committed by Detrex Corporation. Because the Decree was lodged on November 15, 2006, the CD entry by the Court was premature because it did not allow for the thirty day comment period required by the Clean Water Act. After no comments were received in 30 days from the date of lodging, the Department of Justice and the Defendant agreed that the entry date, for purposes of determining compliance with the Decree, would be December 15, 2006, thirty days from the lodging of the Decree.

Specifically, the Complaint in the matter alleges violations of Detrex's National Pollutant Discharge Elimination System (NPDES) issued pursuant to Section 402 of the Act. The violations occurred at a chemical manufacturing facility located in Ashtabula, Ohio. Because of Detrex's inability to afford a penalty, the settlement requires Detrex is to pay a civil penalty of \$250,000 over four years. In addition, Detrex constructed and will operate a 5,000 gallon surge tank to correct effluent violations at the facility which will cause it to come into compliance with the CWA requirements cited in the Complaint.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Purita Angeles, secondary contact: (312) 353-5112

Joint Motion for Modification of Consent Decree in U.S. v. Don Prow and Rochester Topsoil entered by Minnesota District Court.

U.S. EPA and the Army Corps of Engineers entered into a Consent Decree with Defendants Don Prow and Rochester Topsoil on April 21, 2006. The Decree settled violations of the Section 404 of the Clean Water Act. Under the consent decree, Defendants were ordered to pay a \$250,000 civil penalty; fully restore Willow Creek and altered wetlands within one year; and mitigate their violations by creating and protecting new wetlands at an off-site location known as Rock Dell Farms. Details of the injunctive requirements were described in the Consent Decree in a narrative restoration and mitigation work plan with the locations for restoration and mitigation depicted on maps. Defendants paid the \$250,000 civil penalty and began and finished most (although not all) of the required restoration work on time. Based upon a review of the completed work, Region 5 and the Corps proposed five limited changes to the consent decree and Work Plan to clarify Defendants' remaining obligations and to avoid any potential confusion which could arise should enforcement be necessary. The five changes were: 1. creation of New Vegetation Sampling Zone H; 2. identification of Vegetation Sampling Zones; 3. deletion of Obsolete Text in Work Plan Appendix; 4. modification of Construction Compliance Schedule, and 5. modification of Legal Description for Conservation

Easement. The District Court granted the Joint Motion to Modify the Decree on July 10, 2007.

Office of Regional Counsel Primary Contact: Sandra M. Lee, (312) 886-6841

Federal Court in CWA Section 404 wetlands case, U.S. v. Fabian No. 2:02CF495, grants United States Motion for Summary Judgment on Liability applying the Justice Kennedy-Test from Rapanos v. U.S., 126 S.Ct. 2208 (2006).

On March 29, 2007, the Federal District Court (N.D. IN) ruled on the parties' cross-Motions for Summary Judgment. The court granted the United States' motion with respect to liability and denied defendant's Motions for Summary Judgment and Oral Argument. The court held that the United States proved CWA Section 404 wetlands jurisdiction, on the facts presented, sufficient to meet the test established by Justice Kennedy in the Rapanos decision. The court denied the United States' motions for summary judgment on penalty and injunctive relief (restoration) with leave to refile to better establish facts of record that the court deemed important. A Status Conference is set for April 20, 2007.

In March 1998, Mr. R. Fabian, the owner of an approximately 30-acre parcel of land primarily in Lake County, Indiana, performed an unpermitted filling of approximately 10 acres of wetland property that is adjacent and hydrologically connected to the Little Calumet River, a federal navigable waterway. Mr. Fabian did not request or secure a permit from the U.S. Army Corps of Engineers. And, Mr. Fabian had previously (in February 1998) been made aware of the wetlands status of the property in question and need for a permit for any filling activities. Mr. Fabian also ignored 1998 and 1999 U.S. EPA administrative compliance orders concerning the property. After referral of the case, a December 2002 complaint was filed. After preliminary activities and attempted negotiations, the district court originally set an August 2005 briefing schedule due date for cross-Motions for Summary Judgment. The court stayed proceedings for further attempted mediation in December 2005 and further (post- Rapanos) briefing in August 2006. The court's March 29, 2007 finding of liability against Mr. Fabian notes that the United States' brief and evidence offered sufficient factual proof under the test from Rapanos established by Justice Kennedy to show acceptable adjacency between the wetlands in question and a federal navigable in fact body of water (Little Calumet River).

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; Greg Carlson, Water Division (312) 886-0124

The Seventh Circuit Denies Motion to Clarify and Petition for Rehearing in U.S. v. Gerke Excavating CWA Section 404 Case.

In *United States v. Gerke Excavating, Inc.*, 464 F.3d 723 (7th Cir. 2006) the Seventh Circuit held that Justice Kennedy's significant nexus standard in the *Rapanos* decision would govern the further stages of the litigation (following *U.S. v. Marks* "narrowest ground" approach to Supreme Court decisions where there is no majority opinion). On September 29, 2006, plaintiff-appellee United States filed a motion to clarify this opinion of Seventh Circuit arguing that federal regulatory jurisdiction exists if either the plurality's standard or Justice Kennedy's significant nexus standard is satisfied. On October 5, 2006, defendant-appellant Gerke filed a petition for rehearing with suggestion for rehearing *en banc*, and on November 2, 2006, the United States filed an answer to the petition. In an order dated December 1, 2006, the court denied the motion and the

petition. U.S. EPA is not a party to the proceedings. The Corps of Engineers is the lead enforcement agency for the case.

Office of Regional Counsel Contact: Ignacio Arrázola, (312) 886-7152

Clean Water Act Consent Decree Lodged in Indianapolis Sewer Overflow Case.

On October 4, 2006, the United States Department of Justice (DOJ) lodged a Clean Water Act consent decree on EPA's behalf in federal court in Indianapolis, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The State of Indiana is a co-plaintiff in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year—down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The City of Indianapolis will also pay a penalty of \$1,117,800, which will be divided evenly between the DOJ and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the City of Indianapolis can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems. The decree will be subject to a 30-day public comment period and subsequent judicial approval and is available on the DOJ website.

Office of Regional Counsel Primary Contact: Gary Prichard, (312) 886-0570; Susan Perdomo, additional contact: (312) 886-0557

Stormwater Finding of Violation Issued to the Village of Lake Zurich, IL.

On September 10, 2007, Region 5 issued a Finding of Violation and Order for Compliance to the Village of Lake Zurich, IL for violations of its Municipal Separate Storm Sewer (MS4) permit. Pursuant to 33 U.S.C. §§1318 and 1319(a), Region 5 ordered the Village to address total suspended solids violations from a stormwater outfall to the southeastern end of Lake Zurich.

Road construction in the Village is contributing excessive sediment loads to the sewer system. The Village maintains a retention pond that requires regular maintenance to trap sediments in the stormwater. The Order requires the Village to maintain this pond and sewer lines in order to properly intercept the sediments entering the system. The Region has also issued a compliance order to the Illinois Department of Transportation to use best management practices at their road construction site.

Office of Regional Counsel Contact: Richard Nagle, (312) 353-8222

Ex-Parte Warrant issued for 4180 Luna Pier, Luna Pier, Michigan, Eastern District of Michigan.

On January 17, 2007, Judge Zatkoff, Eastern District of Michigan, issued a warrant which allows U.S. EPA, its contractors and accompanying federal, state and local

authorities, to conduct inspection and removal activities related to oil spills at 4180 Luna Pier Road, Luna Pier, Michigan. Under the terms of the warrant issued under Sections 311(b), (c), (e) and (m) of the Clean Water Act, 33 U.S.C. § 311(b), (c), (e) and (m), U.S. EPA can access the site to investigate and to remove soil and groundwater contamination which poses and imminent and substantial threat to the public health, welfare and environment. The warrant was served by On-Scene-Coordinators to a facility representative on January 17, 2007.

U.S. EPA will work with MDEQ to curtail the imminent and substantial threat to public health, welfare and the environment. The warrant provides U.S. EPA with access for sixty (60) days.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

EPA Approves Minnesota Mercury Total Maximum Daily Load (TMDL).

On March 27, 2007, EPA Region 5 approved the Minnesota Pollution Control Agency's TMDL for mercury impaired waters pursuant to Section 303(d) of the Clean Water Act. Minnesota has over 1,200 impaired waters (820 lakes and 419 river reaches) due to mercury in fish tissue. The TMDL addresses 512 of these impaired waters. The TMDL estimates that 99% of the mercury load to these waters is from atmospheric deposition, with only 1% of the mercury load coming from direct point source water discharges. The mercury TMDL divides the state into two regions (the northeast and southwest), and establishes a statewide mercury reduction goal from anthropogenic emissions of 93% from 1990 levels. The TMDL is set at a level necessary to achieve a fish tissue mercury concentration of 0.2 ppm, which corresponds to the State's fish consumption advisory threshold of one meal per week for any segment of the population. The fish tissue target is a surrogate measure for the State's numeric water column standard. Minnesota has a number of implementation activities planned to address mercury loading from in-state air emissions to address these impaired waters.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870; Barbara Pace, OGC, (202) 564-0016; Julianne Socha, Water Division (312) 886-4436

Consent Decree Entered in the Northern District of Ohio for Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and the Estate of Joseph Berick.

On January 5, 2007, Judge Ann Aldrich, U.S. District Court, Northern District of Ohio, issued an order entering a consent decree resolving violations of Sections 311(b) and (j) of the CWA, 33 U.S.C. §§ 1321(b) and 1321(j) and defendants' liability for oil spill remediation costs. Under the terms of the consent decree, Lake Underground and Nacelle will pay \$200,000 to the Oil Spill Liability Trust Fund and \$100,000 to the general treasury as civil penalties.

On at least two occasions in 1996, the owners and operators of a brine storage facility, Nacelle Land and Management Corporation, Lake Underground Storage Corporation, and Joseph Berick (the defendants), spilled oil and brine from a surface impoundment located in Painesville Township, Ohio, to a tributary to the Mentor Marsh, a State of Ohio designated reserve. Nacelle Land and Management Corporation and Lake Underground Storage Corporation were small closely held corporations which were primarily operated by and for the benefit of Joseph Berick. In addition to the oil spill violations, the

defendants failed to prepare or implement a Spill Prevention, Control and Countermeasure (SPCC) Plan, and failed to submit a report for the spills. The defendants also violated a Clean Water Act § 309(a) Administrative Order which required them to cease all discharges from the brine impoundment.

After Region 5 submitted referrals to the U.S. Department of Justice, the impoundment which was the source of the problems associated with the brine, SPCC and OPA (Oil Pollution Act) violations, was closed as a result of an Oil Spill Liability Trust Fund emergency clean-up response/spill removal action that was funded through the U.S. Coast Guard. The cost of the OPA cleanup was \$2,642,352.57. In addition, Nacelle and Joseph Berick, pursuant to a state administrative action, closed the Class II brine disposal well located at the site of the violations.

Joseph Berick passed away in December 2003, during pre-filing negotiations with the U.S. Department of Justice. Joseph Berick's widow Marion Berick passed away in 2005. The defendants and the Estate of Joseph Berick claimed an inability to pay both the response costs and past penalties and provided the U.S. Department of Justice with financial information which demonstrated the claimed inability to pay.

The consent decree entered on January 5, 2007, fully resolves the past penalty claims of U.S. EPA for violations of the discharge and Oil Pollution Act provisions of the Clean Water Act. The consent decree does not contain injunctive relief provisions because the corporations have ceased doing business.

Office of Regional Counsel Contact: Deirdre Flannery Tanaka, (312) 886-6730

Region 5 Signs Consent Agreement and Final Order with New Albany Links Golf Company et al for Violations of Clean Water Act.

On October 17, 2006, Region 5 entered into a Consent Agreement and Final Order (CAFO) with New Albany Links Golf Company, New Albany Links Development Company, Ltd. and Joseph Ciminello (Respondents) simultaneously commencing and concluding an action pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. §1319(g). In creating a golf course and residential development in New Albany, Ohio, Respondents deposited fill material into 7.8 acres of wetlands adjacent to Sugar Run Creek and adjacent to an unnamed tributary of Sugar Run Creek without a Section 404 permit in violation of Section 301 of the CWA. Respondents also deposited fill material into portions of the 4,700 linear feet of these on-site waterways without a Section 404 permit. The unnamed tributary of Sugar Run Creek and the impacted adjacent wetlands along Sugar Run Creek flow into Sugar Run Creek which is a water of the United States and is a navigable water under the Act. These waterways are part of the larger Scioto River watershed.

The proposed penalty in this matter was \$157,500. In consideration of the Respondents' willingness to perform a Supplemental Environmental Project (SEP), which includes the creation of 20 acres of wetlands in the Scioto River watershed and the donation of these wetlands and a buffer zone of 67 acres to a third-party conservator, U.S. EPA mitigated the penalty to \$115,000. The cost of the SEP, excluding the cost of the land, is in excess of \$230,000. In addition, under Section 309(a) of the CWA, the Respondents are conducting partial on-site restoration of the impacted waterways and creating an additional 16 acres of mitigation wetlands at the same site as the SEP wetlands. These mitigation wetlands will be part of an overall 103 acre protected site which will be

donated to a local conservator and preserved in perpetuity. Region 5 did not receive comments on the proposed settlement.

Office of Regional Counsel Primary Contact: Randa Bishlawi, (312) 886-0510;
Secondary Contact: David Schulenberg, Water Division, (312) 886-6680

United States files complaint against NEORSD in the Northern District of Ohio citing violations of an information request issued under the Clean Water Act.

On January 5, 2007, the United States filed a complaint in the Northern District of Ohio alleging that the Northeast Ohio Regional Sewer District (NEORSD) violated the Clean Water Act by failing to comply with an information request issued under Section 308 of the Act. EPA sought sampling of the District's combined sewer overflows, which cause the District's receiving streams to violate applicable water quality standards. The information request was issued in May of 2005.

For the last 18 months, EPA has attempted to resolve the request for a sampling program with the District, offering several avenues for settlement of the outstanding informational needs. NEORSD refused all avenues of resolution. The filed complaint did not include the underlying water quality violations themselves, which the United States is still attempting to resolve through settlement talks.

Office of Regional Counsel Primary Contact: Nicole Cantello, (312) 886-2870; Valdis Aistars, secondary contact: (312) 886-0264

EPA Issues Federal Inspector Credentials to Five Tribal Inspectors.

During September, 2006, Region 5 issued five federal inspector credentials to Tribal inspectors for the purpose of conducting storm water compliance inspections under the Clean Water Act. Three of the credentials were issued to inspectors from the Fond du Lac Band and two from the Mille Lacs Band. Both Bands are located in the State of Minnesota.

The Office of Enforcement and Compliance Assurance (OECA) issued "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA" on September 30, 2004. This guidance outlined the requirements for issuing federal credentials to tribal inspectors, including: training requirements; tracking requirements; requirements for safeguarding the credentials; and a requirement that the Region and the Tribe enter into a Memorandum of Understanding (MOU) governing the use of federal credentials. OECA subsequently issued additional guidance outlining the procedures for processing requests for federal credentials.

The Region identified storm water enforcement as one of the areas where the presence of tribal inspectors with federal credentials could enhance environmental protection in Indian country. The Region has entered into a MOU with both Bands governing the use of the federal credentials. In addition to other requirements, the MOU describes the way in which EPA and the tribal inspectors will identify regulated facilities and determine appropriate facilities for inspection. The MOU also includes a Quality Assurance Plan which sets forth in detail how the inspections will be conducted in accordance with federal requirements. All of the tribal inspectors completed the training required in the OECA guidance, and also completed a three-day training program in Chicago in May of

this year. EPA is funding the Bands for inspection activities under this program through Direct Implementation Tribal Cooperative Agreements (DITCAs).

Office of Regional Counsel Primary Contact: Rodger Field, (312) 353-8243; Secondary Contact: Jenny Davison, Water Division (312) 886-0184

A Region 5 1995 Wetland Consent Decree survives attack by the Rapanos Decision in the United States District Court For The Northern District of Ohio.

On May 18, 2007, the United States District Court for the Northern District of Ohio, Western Division, dismissed Defendants' (Ike and Patricia Parker) motion under Federal Rule of Civil Procedure 60(b) to set aside a Consent Decree based on the Rapanos Decision. The parties to the 1995 Consent Decree are the Parkers, the State of Ohio, and the Agency. The Supreme Court's decision in *Rapanos v. United States*, 126 S.Ct. 2208, 165 L.Ed. 2d 159 (2006) (*Rapanos*) modified the definition of a wetland under the Clean Water Act (CWA). By changing the definition, the *Rapanos* decision arguably narrowed the scope of wetlands enforcement under the CWA. This dismissal denying Defendants' motion involving that decision is therefore a victory for the EPA.

In 1991, the Department of Justice and the State of Ohio filed a Complaint against the Parkers for violation of Sections 310 & 404 of the CWA. The Parkers destroyed several acres of wetland when they attempted to develop their property. The Parkers placed fill in the wetland, thereby destroying it. The parties entered into a Consent Decree in 1995 in which the Parkers agreed to pay a \$1000 penalty and transfer the title to their property to the State of Ohio. The State was then required under the Consent Decree to create other wetlands on the property in mitigation for the wetland that the Parkers destroyed.

The Parkers argued in their motion that the Consent Decree should be set aside under 60(b) because their property no longer met the definition of a wetland under the CWA. The Court held that even if *Rapanos* modified the definition of wetlands under the CWA, *Rapanos* had no effect on State Law which was very much a part of the complaint. The Court did not address whether the Parkers would prevail under federal law alone. The Court further held that the Parkers' motion was not timely, and that the judgment requiring the transfer of the property in the Consent Decree was not a prospective application (on-going), another requirement of 60(b).

Office of Regional Counsel Contact: Joseph Williams, (312)886-6631 and Dave Schulenberg, Water Division, (312) 886-6680

Ohio Bulk Fertilizer Storage Company Pleads Guilty To Knowingly Discharging Fertilizer Into Little Walnut Creek Without a Permit.

On July 9, 2007, Rager Fertilizer Company (RFC), appeared in the United States District Court for the Southern District of Ohio, in Columbus, Ohio, and pleaded guilty to a one-count information alleging that it knowingly discharged a pollutant through a point source to a water of the United States without a National Pollutant Discharge Elimination System (NPDES) permit, in violation of the Clean Water Act. RFC operated liquid bulk fertilizer storage, and fertilizer application, businesses. On June 1, 2007, the United States Attorney for the Southern District filed a one-count felony information alleging that on May 15, 2003, employees at FRS's facility at 160 Cedar Hill Road, Amanda, Ohio, knowingly discharged fertilizer containing ammonia nitrogen and phosphorus into Little Walnut Creek, which drains into Walnut Creek. Walnut Creek in turn is a tributary of the Scioto River.

The information alleged that when a gauge on a liquid fertilizer storage tank at the facility broke in April 2003, fertilizer leaked from a storage tank into a facility containment dike. The information alleged that RFC employees on May 15, 2003, used a pump and hose to drain the leaked fertilizer from the dike into a drainage tile basin. The information alleged that the tile basin drained the liquid fertilizer into underground drainage tile that directed the pollutants into the Little Walnut Creek. U.S. EPA's Criminal Investigation Division, the Ohio Attorney General's Office, Bureau of Criminal Identification and Investigation; and the Ohio EPA, Office of Special Investigations, jointly investigated this matter.

Office of Regional Counsel Contact: Michael McClary, (312) 886-7163

Clean Water Act Consent Decree Entered in Indianapolis Sewer Overflow Case.

On December 19, 2006, the United States District Court for the Southern District of Indiana entered a Clean Water Act consent decree, requiring the City of Indianapolis to make \$1.86 billion in sewer improvements over 20 years to resolve longstanding problems with its combined sewer and sanitary sewer overflows. The United States and the State of Indiana are co-plaintiffs in this case. When completed, the improvements will reduce overflow occurrences—which currently occur approximately 60 times per year--down to 4 or fewer times per year, and reduce overflow volumes by a total of 7.2 billion gallons per year. The city will also pay a penalty of \$1,117,800, which will be divided evenly between the United States and Indiana, and spend \$2 million on a supplemental environmental project to eliminate failing septic systems.

The decree specifically requires Indianapolis to implement a Long Term Control Plan (LTCP) designed to greatly reduce overflows from its combined sewer system (CSOs), implement another plan designed to eliminate overflows from its sanitary sewer system (SSOs), and perform various other remedial measures. The decree also provides that the city can reduce the portion of the penalty to be paid to the state by undertaking further reductions in the number of failing septic systems.

Office of Regional Counsel Primary Contacts: Gary Prichard, (312) 886-0570 and Susan Perdomo, (312) 886-0557

Region 5 Approves Ohio TMDLs for Wakatomika Creek Watershed.

In an effort to achieve the Clean Water Act goal of fishable, swimmable waters, Section 303(d) of the Act and U.S. EPA's implementing regulations at 40 C.F.R. Part 130 require states to develop Total Maximum Daily Loads (TMDLs) for pollutants in impaired waters. On September 28, 2006, the Region approved TMDLs submitted to U.S. EPA by Ohio Environmental Protection Agency to address *E. coli* and dissolved solids levels in the Wakatomika Creek watershed, an impaired water in central Ohio within Coshocton, Knox, Licking and Muskingum Counties. The TMDL establishes maximum daily loads for *E. coli* largely originating from livestock and septic tank sources and for salinity to address contamination from mining sources to ensure the Wakatomika Creek watershed will meet established Ohio water quality standards. U.S. EPA Region 5's review ensures that the TMDL and its supporting documentation meet statutory and regulatory requirements.

Office of Regional Counsel Primary Contact: Robert S. Guenther, (312) 886-0566;
Secondary Contact: Jean Chruscicki, (312) 353-1435



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Emergency Planning and Community Right-to-Know Act (EPCRA)

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

EPCRA:

- Accu-Tronics Manufacturing, Inc.
- APSCO, Inc.
- BTW, Inc.
- C.B.D. Inc.
- Circom, Inc.
- EBW Electronics, Inc
- Electronic Industries, Inc.
- Five Star Laundry
- HA International LLC
- Hospital Laundry Services
- Kastalon, Inc.
- L&M Radiator, Inc.
- Mercury Displacement Industries, Inc.
- Ohio NPDES Program
- Plaspros, Inc.
- Snappy Apple Farms, Inc.
- Water Saver Faucet Co.

Region Resolves ECPRA Section 313 Case Against Accu-Tronics Manufacturing, Inc. (St. Paul, Minnesota).

On November 7, 2006, the Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which Accu-Tronics Manufacturing, Inc. (Accu-Tronics) agreed to pay a penalty of \$2,000 for a violation of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023, at its facility in St. Paul, Minnesota. Specifically, Region 5 alleged that Accu-Tronics failed to timely file its calendar year 2004 Toxic Chemical Release Inventory Form R, for lead that it processes at its facility, with EPA and the State of Minnesota by July 1, 2005, as required by Section 313 of EPCRA. Respondent filed its calendar year 2004 Form R on November 2, 2005. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on November 9, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Terence Bonace, secondary contact, WPTD, (312) 886-3387

Region 5 signs a Consent Agreement and Final Order with APSCO, Inc.

On May 31, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against APSCO, Incorporated, of Perry, Ohio. Region 5 alleges that APSCO violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) it processed during calendar

year 2003. In settlement, APSCO will spend at least \$200,000 on a supplemental environmental project designed to substantially reduce the amount of lead used in APSCO's printed circuit board operations. In addition, APSCO will pay a civil penalty of \$5,483.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Tom Crosetto, Waste, Pesticides, and Toxics Division, (312) 886-6294

On April 16, 2007 Region 5 filed a Consent Agreement and Final Order to commence and conclude case against BTW, Inc., Coon Rapids, Minnesota.

On April 16, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against BTW, Inc. (BTW) for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Coon Rapids, Minnesota. The CAFO required BTW to pay a penalty of \$13,763. BTW made its payment on May 15, 2007. BTW failed to submit to U.S. EPA and to the State of Minnesota a Form R for lead for the calendar year 2004 by July 1, 2005. After an inspection of the facility by U.S. EPA, BTW came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$22,939. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 immediately after the site inspection, its cooperation, and its significant subsequent investments in reducing its lead solder usage (to the point where it wasn't required to file a Form R for 2006).

Office of Regional Counsel Primary Contact: Thomas Krueger, (312) 886-6837; program contact, Terence Bonace, (312) 886-3387

On May 18, 2007 Region 5 filed a Consent Agreement and Final Order to commence and conclude case against Circom, Inc., Bensenville, Illinois.

On May 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and concluding an administrative penalty action against Circom, Inc. (Circom), for violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11001, *et seq.*, at its facility in Bensenville, Illinois. The CAFO requires Circom to pay a penalty of \$1397. Circom failed to submit to the Administrator of U.S. EPA and to Illinois a Form R for lead for the calendar year 2005 by July 1, 2006. After an inspection of the facility by U.S. EPA, Circom came into compliance with the disclosure rule. This will result in accurate records of the quantity of lead, a toxic chemical of special concern, being used by the facility. The proposed penalty in this matter was \$6,500. The penalty was mitigated, pursuant to the penalty policy, in consideration of the Respondent's filing of form R for 2005 within 51 days of its due date, its cooperation and, and the fact the company is a small business.

Office of Regional Counsel Primary Contact: Michael Berman, (312) 886-6837

EPA Settles C.B.D. Inc. EPCRA Reporting Matter.

On June 5, 2007, EPA issued a Consent Agreement and Final Order (CAFO) under EPCRA Section 325 resolving claims for civil penalties for violations of EPCRA Section 313 reporting requirements by the C.B.D. Inc. facility located at 1185 Jansen Farm Court,

Elgin, Illinois. The CAFO simultaneously commences and concludes EPA's action for EPCRA Section 313 violations regarding the Form R reporting of lead not contained in stainless steel, brass or bronze alloy for calendar year 2004. Under the CAFO, Respondent will pay a penalty of \$3,500. EPA conducted an inspection at the facility on June 22, 2006, and the forms were submitted on June 28, 2006. The CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630

U.S. EPA Region 5 enters Consent Agreement and Final Order with EBW Electronics, Inc., Including a Supplemental Environmental Project to Abate Lead-Based Paint Hazards in Holland, Michigan.

On September 24, 2007, the Region 5 Regional Administrator signed a Final Order concluding an administrative action against EBW Electronics, Inc., under Section 325(c) of EPCRA. The Consent Agreement alleged that during calendar year 2004, EBW Electronics processed 1,400 pounds of lead, and violated Section 313 of EPCRA by failing to timely submit a Form R. A civil penalty of \$15,345 was calculated, which includes a 30% reduction for cooperation and compliance. EBW Electronics will pay \$3,836 to settle this action. In addition to the penalty, EBW Electronics will fund a SEP project valued at \$11,509, which will be monitored by the Michigan Department of Community Health, Lead and Healthy Homes Section (Michigan DCH), and conducted by a qualified lead abatement contractor, to abate and/or mitigate lead-based paint hazards in three residential housing units located in Holland, Michigan.

Office of Regional Counsel Contact: Craig Melodia, (312) 353-8870, and Tom Crosetto (312) 886-6294

Region 5 signs a Consent Agreement and Final Order with Electronic Industries, Inc.

On May 29, 2007, Region 5 filed a Consent Agreement and Final Order with the Regional Hearing Clerk simultaneously commencing and concluding a Complaint against Electronic Industries, Incorporated, of Vadnais Heights, Minnesota. Region 5 alleges that Electronic Industries violated Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and implementing regulations at 40 C.F.R. § 372.30, by failing to timely file a Form R for lead (CASRN 7439-92-1) and lead compounds it processed, manufactured, or otherwise used during calendar year 2004. In settlement, Electronic Industries will pay a civil penalty of \$4,150.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Terry Bonace, Waste, Pesticides, and Toxics Division, (312) 886-3387

Region 5 enters an administrative Consent Agreement and Final Order (CAFO) resolving alleged EPCRA 312 violations at Five Star Laundry in Chicago, Illinois.

On September 19, 2006, Region 5 filed a four-count Administrative Complaint alleging that Five Star Laundry had violated Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) by failing to submit an Emergency and Hazardous Chemical Inventory form for sulfuric acid for each of calendar years 2003, 2004 and 2005. The Complaint cited one violation each for missing forms for 2003 and 2004, and two violations for late-filed forms for 2005, resulting in a total proposed

penalty of \$43,298. The Complaint arose out of a May 2006 inspection where U.S. EPA determined that Five Star Laundry had over 700 pounds of sulfuric acid at its facility on at least one occasion in 2003 and over 2,900 pounds of sulfuric acid in 2004 and 2005. Sulfuric acid is an extremely hazardous substance under EPCRA with a minimum reporting threshold level of 500 pounds.

On February 23, 2007, Region 5 issued a CAFO resolving the alleged EPCRA 312 violations. Under the terms of the CAFO, in consideration of Five Star Laundry's quick return to compliance, cooperation, and the facts and circumstances of the case, including Five Star Laundry's substantial reduction in the amounts of sulfuric acid used at the facility, Region 5 reduced the civil penalty from \$ 43,298 to \$19,000.

Office of Regional Counsel Contact: Reginald A. Pallesen, (312) 886-0555; additional contact: James Entzminger, (312) 886-4062

Final Order Ratifying Terms of a Consent Agreement with HA International LLC.

On September 14, 2007, a Final Order ratifying the terms of a Consent Agreement and Final Order was signed. The Final Order directs the Respondent to pay a civil penalty in the amount of Eighteen Thousand And Seven Hundred And Sixty-Three (\$18,763.00) dollars. The Region's initial demand was Thirty Two Thousand And Two Hundred and Seventy-Two (\$32,272) dollars.

Section 313 of the Emergency Planning and Community Right To Know Act (EPCRA) requires certain facilities to file Toxics Release Inventory (TRI) forms. HA International LLC operates a facility in Oregon, Illinois, and failed to file timely a Form R for calendar years 2002, 2003 and 2004 to document and report its emissions of ammonia. The Respondent exceeded the 60 days requirement for curing the violations but did not secure an economic benefit from its non-compliance.

The Region initially calculated a penalty in the amount of \$64,544. Consistent with the applicable guidance policies, the Region proposed initially a penalty in the amount of \$32,272, a 50% reduction. In the course of negotiations, the Region reduced the penalty an additional 20% in consideration of "other factors as justice may require." Respondent has agreed to pay a civil penalty in the amount of \$18,763.

Office of Regional Counsel Primary Contact: Steven P. Kaiser, (312) 353-38047

Consent Agreement and Final Order executed in EPCRA Administrative Action.

On May 29, 2007, the Regional Administrator executed a Consent Agreement and Final Order (CAFO) in an enforcement action, resolving an Administrative Complaint filed against Hospital Laundry Services (HLS), under the Emergency Planning and Community Right-to-Know Act (EPCRA). The CAFO provides for payment of a \$41,242 civil penalty by Respondent for violations of Section 312 of EPCRA, 42 U.S.C. § 11022.

Office of Regional Counsel Primary Contact: Richard R. Wagner, (312) 886-7947

Region 5 files Consent Agreement and Final Order with Kastalon, Inc. of Alsip, Illinois.

On August 8, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against Kastalon, Inc. (Kastalon), 4100 West 124 th Place, Alsip, Illinois, for alleged violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023, and the regulations set forth at 40 C.F.R. §§ 372.22 and 372.30. Region 5 alleged that Kastalon failed to file toxic chemical release inventory forms (Form Rs) for 4,4'-Methylenebis (N,N-dimethyl)benzenamine and trichloroethylene for the calendar year 2001 in a timely manner. Region 5 calculated a proposed penalty of \$3,092. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under the CAFO, Kastalon must pay a civil penalty of \$2,164. The penalty represents a substantial sanction against Kastalon, and will deter future violations of Section 313 of EPCRA.

Office of Regional Counsel Primary Contact: Kevin Chow, (312) 353-6181; Additional Contact: Kenneth Zolnierczyk, (312) 353-9687

Region 5 files a Consent Agreement and Final Order to commence and conclude case against L&M Radiator, Inc., Hibbing, Minnesota.

On November 15, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for two violations of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, L&M allegedly failed to timely file Form Rs with the U.S. EPA and the State of Minnesota for Copper and Lead in calendar year 2002. L&M processed these toxic chemicals above the regulatory thresholds and, therefore, was required to file the Form Rs by July 1, 2003. L&M did not file until September 24, 2003. Region 5 calculated a proposed penalty in this matter of \$29,684. In response to a Notice of Intent to File letter, L&M indicated a desire to resolve this matter. Region 5 offered and L&M accepted a 30% reduction for cooperation and efforts to comply. The agreed upon CAFO commences and concludes the case, and requires L&M to pay a penalty of \$20,779.

Office of Regional Counsel Primary Contact: Mony Chabria, (312) 886-6842

Region 5 signs a Consent Agreement and Final Order with the Mercury Displacement Industries, Inc.

Region 5 initiated this enforcement action in January 2007. On September 27, 2007, Region 5 filed a Consent Agreement and Final Order with Mercury Displacement Industries, Inc., in Edwardsburg, Michigan. The Region alleged that Mercury Displacement Industries, Inc. failed to timely submit Form Rs to the Administrator for both lead and mercury for the 2005 calendar year, as required by Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c). Mercury Displacement Industries, Inc. agreed to resolve this matter prior to the issuance of an administrative complaint with a payment of a civil penalty amount of \$ 1,984.00. The total calculated Category II, Level 4 penalty for the alleged violations was \$ 2,834.00; however, this penalty was reduced approximately 30% in accordance with mitigating factors delineated in the Enforcement Response Policy for Section 313 of EPCRA.

Office of Regional Counsel Contact: James Morris, (312) 886-6632; Kenneth Zolnierczyk, primary contact, (312) 353-9687

On January 9, 2007 Region 5 received a December 28, 2006 letter that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program.

On January 9, 2007 Region 5 received a December 28, 2006 letter (with enclosures) that Ohio Governor Taft sent to Region 5 asking for approval of a revision to the Ohio NPDES program. The revision involves a transfer of the program element for Concentrated Animal Feeding Operations from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The rest of the Ohio NPDES program will remain with the OEPA. The submittal will be reviewed for completeness and then reviewed for content. After it is reviewed, a decision will be made by U.S. EPA on whether it can be approved.

Office of Regional Counsel Contact: Michael Berman, (312) 886-6837

Region settles EPCRA 313 Reporting Case against Plaspros, Inc.

On September 29, 2006, Region 5 filed a combination Complaint/Consent Agreement and Final Order (CAFO) resolving an administrative case under Section 313 of EPCRA, 42 U.S.C. 11023, against Plaspros, Incorporated (Respondent), located in McHenry, Illinois. The Region alleged that the Respondent failed, as required, to submit to the U.S. EPA and to the State of Illinois a Form R for Toluene for the 2002 calendar year, on or before July 1, 2003. The Region's inspection of the Plaspros facility revealed that during the calendar year 2002, Respondent as defined by 40 C.F.R. 372.3, the toxic chemical toluene, listed at 40 C.F.R. 372.65, in quantities exceeding the 10,000 pound threshold for reporting set forth at Section 313(f) and at 40 C.F.R. 372.25, but that no Form R had been filed for the chemical. The Respondent has subsequently come into compliance by submitting the required Form R. The proposed civil amount for the violation of \$18,700 was reduced in the CAFO to \$14,000 in recognition of Respondent's good faith and co-operation.

Office of Regional Counsel Primary Contact: Andre Daugavietis, (312) 886-6663

Region 5 signs Consent Agreement and Final Order with Snappy Apple Farms, Inc.

On 05/22/2007, Region 5 signed a consent agreement and final order with Snappy Apple Farms, Inc. of Casnovia, Michigan, to settle violations of Section 312 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11022. Section 312 of EPCRA, and its implementing regulations at 40 CFR Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act to prepare or have available a material safety data sheet for a hazardous chemical, to submit to the state emergency response commission, appropriate local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter an Emergency and Hazardous Chemical Inventory Form. The form must contain the information required by Section 312(d) of EPCRA, covering all extremely hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 5,000 pounds. The maximum quantity at any one time of anhydrous ammonia at the facility for the calendar years 2002-2004 is 8,000 pounds. Anhydrous ammonia is an extremely hazardous substance under EPCRA.

The facility exceeded the reporting threshold by 16 times and the facility never submitted the Emergency and Hazardous Chemical Inventory Forms. Due to an inability-to-pay the full proposed penalty of \$74,483.07 and other mitigating factors, Snappy Apple Farms will pay a penalty of \$7,919 and will perform a Supplemental Environmental Project valued at \$4,581. The SEP will consist of purchasing hazardous materials response equipment for the local fire department.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591. Secondary contact: James Entzminger, (312) 866-4062

EPA Region 5 Signs a Consent Agreement and Final Order with Water Saver Faucet Co. in Chicago, Illinois.

On September 25, 2007, EPA, Region 5, and Water Saver Faucet Co. (Water Saver) entered into a Consent Agreement and Final Order simultaneously commencing and concluding an action for violations of the Section 313 of the Emergency Planning and Community Right-to-Know Act at Water Saver's manufacturing plant in Chicago, Illinois. The CAFO alleges that Water Saver failed to submit timely Form R reports for copper and lead for calendar year 2004. The Form R reports were due on July 1, 2005. Water Saver submitted the forms on July 15, 2005. EPA calculated a preliminary civil penalty of \$21,928 for these violations and notified Water Saver of this amount in a pre-filing and opportunity to confer letter. In consideration of the facts of this case, Water Saver's cooperation with U.S. EPA and good faith efforts to comply, EPA determined and Water Saver agreed that the appropriate civil penalty to settle this action is \$15,350. To further mitigate the penalty, Water Saver developed a SEP proposal which the Region did not accept because it is a profitable project. The project involves extraction of metals, primarily copper and nickel, from the solid waste generated by Water Saver. This eliminates the need for disposal of hazardous waste. Water Saver informed EPA that it will implement the project even though it is not acceptable as a SEP. Once implemented, the project will totally eliminate the hazardous waste generated by Water Saver, i.e., approximately 18 gross tons of F006 plating waste per year.

Office of Regional Counsel Primary Contact: Christine Liszewski, (312) 886-4670; Tony Silvasi, additional contact, (312) 886-6878



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

FIFRA:

- Agro-K Corporation
- Albemarle Corporation
- BASF Construction Chemicals, LLC
- BP Products North America, Inc
- Chemical Technologies, Inc.
- CHS, Inc.
- Claire-Sprayway, Inc.
- D & D Garden Products, Inc.
- Fairway International Corp.
- Freeport Farm and Fleet, Inc.
- Gallagher Farm Service
- Henry W Peabody, Inc.
- Jackson-Jennings Farm Bureau Coop (2)
- Lambda Bioremediation Systems, Inc.
- Microbe Guard, Inc. (2)
- Midland-Impact
- Premium Agriculture Commodities, Inc.
- SLI Corporation
- Star Distributors Incorporated
- Target Corporation
- Tri-Ag Distributors, Inc.
- United Phosphorus, Inc.
- Valspar Corporation
- W.J. Hagerty & Sons Ltd, Inc.

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Agro-K Corporation.

Region 5 initiated prefiling discussions on this matter in September, 2006. The proposed penalty was \$54,600. On January 18, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold unregistered pesticides, Vigor-Cal and Vigor-Cal-Phos on twelve separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$39,680.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; secondary contact: Terry Bonace, (312) 886-3387

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Albemarle Corporation.

Region 5 initiated prefiling discussions on this matter in June 2007. On July 9, 2007 Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of two

pesticide products. Additionally, the containers of each of these pesticide products did not have any labeling them in accordance with FIFRA and its regulations. During settlement discussions, the Respondent agreed to pay a civil penalty of \$26,000.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, technical contact, (312) 886-6322

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with BASF Corporation.

Region 5 initiated pre-filing discussions on this matter in June 2007. On August 9, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. §§136j(a)(1)(E). Specifically, the Respondents old or distributed a misbranded pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

Region 5 files FIFRA Consent Order concerning BP Products North America, Inc.

On December 6, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under 40 C.F.R. Part 22 concerning BP Products North America, Inc., (BP). In the CAFO, EPA alleges that BP violated Section 103 of CERCLA by failing to immediately notify the National Response Center (NRC) of a 660 pound leak of ammonia at BP's facility in Whiting Indiana. BP reported the release, which occurred on December 8, 2004, to the NRC almost nine and one half hours after it occurred. In the CAFO, BP agrees to pay a penalty of \$13,203.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; Ruth McNamara, secondary contact, (312) 353-3193

Region 5 files FIFRA Consent Order concerning Diversified Chemical Technologies, Inc.

On November 30, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Diversified Chemical Technologies, Inc., (Diversified). In the CAFO, EPA alleges that Diversified produced pesticides in a Detroit, Michigan, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Diversified distributed those pesticides using labels that did not bear a valid establishment registration number. Diversified has now returned to compliance with the requirements of FIFRA. In the CAFO, Diversified agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact, (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Respondent CHS, Inc. Grand Meadow, MN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced four pesticides in an unregistered establishment located at 73057 State Highway 16, Grand Meadow, Minnesota, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. The Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 signs a Consent Agreement and Final Order with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company.

On April 11, 2007, Region 5 signed a CAFO with Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company (Respondent) that both initiates and fully resolves the FIFRA Section 14, 7 U.S.C. 136l(a), administrative action. In July 2006, Region 5 sent Respondent a pre-filing notice letter informing Respondent that it violated Sections 12(a)(1)(C) of FIFRA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$4,400 for violations which originated when Respondent's supplemental distributor, Murphy Supply Company, sold and distributed one pesticide product whose composition differed from its composition as described in the statement required in connection with the pesticide's registration. In consideration of the Respondent's attitude and good faith efforts to comply with FIFRA, Region 5 agreed to reduce the civil penalty to \$3960.00 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joseph Lukascyk, (312) 886-6233

Region 5 signs Consent Agreement and Final Order with D & D Garden Products, Inc.

On April 12, 2007, Region 5 signed a CAFO with D & D Garden Products, Inc. (D & D), Lombard, Illinois, in settlement of a complaint that EPA filed on June 22, 2006, which alleged that D & D had violated Section 12(a)(1)(A) of FIFRA by selling and distributing the pesticide product Shoo-fly Hornet Jet Bomb, the registration of which had been cancelled. The complaint proposed a \$45,000 penalty. Region 5 mitigated the penalty to \$1,000 based on documentation indicating D & D's inability to pay the penalty and continue in business, as well as its good faith and cooperation.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; Terence Bonace, (312) 886-3387

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Fairway International Corp.

Region 5 initiated prefiling discussions on this matter in March, 2007. The proposed penalty was \$43,320. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide. During settlement discussions, the Respondent agreed to pay a civil penalty of \$1,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-6322

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with Freeport Farm and Fleet, Inc.

Region 5 initiated prefiling discussions on this matter in December, 2006. The proposed penalty was \$2,600. On January 25, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136j(a)(1)(A). Specifically, the Respondent distributed or sold a cancelled pesticide, Ortho Home Defense Ortho-Klor Insect & Termite Killer. During settlement discussions, the Respondent agreed to pay a civil penalty of \$2,600.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; secondary contact: Terry Bonace, (312) 886-3387

Region 5 signs Consent Agreement and Final Order with Gallagher Farm Service.

On March 29, 2007, Region 5 signed a CAFO with Gallagher Farm Service (Gallagher), Belding, Michigan, in settlement of a complaint that EPA filed on September 21, 2006, alleging violations of FIFRA. The complaint alleged violations of Section 12(a)(1)(C), for selling a registered pesticide, the composition of which differed at the time of sale from the composition described in its registration; of Section 12(a)(1)(E) by selling a misbranded pesticide; and of Section 12(a)(2)(L) for failing to file a true and accurate Pesticide Report for Pesticide-Producing and Device-Producing Establishments for calendar year 2002. The complaint proposed a \$24,200 penalty. In consideration of the gravity of the violation, Gallagher's good faith efforts to comply and cooperation, Region 5 mitigated the penalty to \$15,000, payable in two installments.

Region 5 enters into a Consent Agreement and Final Order resolving FIFRA violations by Henry W. Peabody, Inc. (Peabody), Lynnfield, MA.

On May 24, 2007 Region 5 entered into a Consent Agreement and Final Order that resolves claims against Henry W. Peabody, Inc., Lynnfield, MA. U.S. EPA filed a civil administrative action against Peabody, commenced and concluded pursuant to the Act and 40 C.F.R. § 22.18 on May 24, 2007. The action charged that the company violated

Section 12(a) of the Act and 40 C.F.R. § 152.15 by distributing or selling an unregistered pesticide.

After Region 5 received a trade complaint regarding Peabody (which is located in Massachusetts), the Region discussed the matter with Headquarters and Region 2 enforcement. Thereafter Region 2 deferred the enforcement case to Region 5. Specifically, the Agency alleged that from March 2005 to December 2005, when Region 5 issued a stop sale order, the company distributed or sold burlap, jute and hessian cloth that had been treated with copper ammonium sulfate and copper sulfate, which had a pesticidal purpose and for which Peabody made pesticidal claims. The company distributed or sold the product without first registering the product, in violation of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Originally, the Agency sought the statutory maximum penalty but after negotiations, discussions with Headquarters, and evaluating litigation considerations, the Agency agreed to accept respondents' proposal of \$52,500 as an appropriate penalty. The company is presently in compliance.

Office of Regional Counsel Contact: Joseph Williams, (312) 886-6631, Dave Star, WPTD, (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Corydon, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Corydon, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 signs Consent Agreement and Final Order with Respondent Jackson-Jennings Farm Bureau Coop Association, Salem, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On October 6, 2006, Region 5 signed a CAFO with respondent, resolving claims for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced fourteen pesticides in an unregistered establishment located in Salem, Indiana, in violation of Section 7(a) of FIFRA, 7 U.S.C.

§ 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 files a Consent Agreement and Final Order to commence and conclude case against Lambda Bioremediation Systems, Inc. Columbus, Ohio.

On January 31, 2007 Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against L&M Radiator, Inc., for violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, Lambda offered for sale and distributed a "microbial consortium" for pesticidal use that was not registered FIFRA. In response to a Notice of Intent to File letter, Lambda indicated a desire to work cooperatively to resolve this matter. Lambda presented financial information that reflected an inability to pay and an agency analysis of Lambda's financial circumstances confirmed that Lambda had an ability to pay only a nominal penalty. The CAFO, in which Lambda agrees to comply with FIFRA, commences and concludes the case, and requires Lambda to pay a penalty of \$500.00.

Office of Regional Counsel Contact: Mary Fulghum, (312) 886-4683

FIFRA Administrative Warrants Executed To Access Franchises of Microbe Guard, Inc., in Minnesota.

On September 22, 2006, the United States Attorney General's Office (United States) at the District of Minnesota obtained, on behalf of EPA, administrative warrants to access five franchises of Microbe Guard, Inc., in various locations in Minnesota. These warrants are authorized under Section 9(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The United States obtained these warrants to allow inspectors to access the franchise facilities because EPA had reason to believe that these facilities held evidence of sales or distributions of unregistered pesticides, which are violations of FIFRA. EPA sought these warrants because, on September 5, 2006, one of the Microbe Guard, Inc. franchise owners revoked voluntary access to its facility for an inspector of the Minnesota Department of Agriculture, who was in the process of inspecting the facility at that time. The inspector was conducting the inspection on behalf of EPA as part of an effort to determine the credibility of certain defenses Microbe Guard, Inc., had made in an EPA administrative FIFRA enforcement proceeding against it. The inspector had observed Microbe Guard, Inc. products which were possible unregistered pesticides at the franchise facility, but was asked to leave before completing the inspection or collecting any labels or other evidence concerning the Microbe Guard, Inc. products. FIFRA authorizes the issuance of administrative warrants by federal magistrate courts to allow access to inspectors acting on behalf of EPA to investigate possible FIFRA noncompliance.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829 or Mark Palermo, (312) 886-6082

Region 5 signs Consent Agreement and Final Orders with Microbe Guard, Inc.

On October 3, 2006, Region 5 signed a consent agreement and final order with Microbe Guard, Inc. of Maple Grove, Minnesota, to settle violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j. Microbe Guard, Inc. distributes antimicrobial pesticides for use in mold prevention and mold remediation, primarily in the new construction industry. Region 5 initiated this enforcement action by filing an administrative complaint in February of 2006, alleging that Microbe Guard, Inc. unlawfully distributed and sold multiple unregistered pesticides. The complaint included violations alleging the sale or distribution of Microbe Guard Mold Blast, Microbe Guard BioBlast, and Microbe Guard Duralast. At the time of the sale or distributions alleged in the complaint, Microbe Guard was labeling and/or advertising these products as pesticides, but had not registered them as required by FIFRA. Microbe Guard, Inc. will pay a penalty of \$28,000 to settle the violations, which represents the proposed penalty of \$36,400 reduced in light of Microbe Guard, Inc.'s willingness to settle the case.

Office of Regional Counsel Contacts: Erik Olson, (312) 886-6829; Crissy Pellegrin, (312) 353-5263; Secondary Contact: Dea Zimmerman, (312) 886-7187

Region 5 signs Consent Agreement and Final Order with Respondent Midland-Impact, Rockville, IN.

In September 2005, Region 5 initiated this enforcement action under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. §§ 136 et seq., as part of a Region 5 enforcement initiative focusing on unregistered pesticide-producing establishments out of compliance with FIFRA. On December 27, 2006, Region 5 signed a CAFO, resolving claims against respondent for civil penalties pursuant to Section 14(a) of FIFRA, 42 U.S.C. § 136 l(a)(1), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35. The CAFO alleges that respondent produced five pesticides in an unregistered establishment located in Rockville, Indiana in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The CAFO also alleges that respondent distributed or sold pesticides with labels that did not bear a valid establishment registration number, which constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). On January 4, 2007, Region 5 filed the CAFO with the Regional Hearing Clerk. Respondent has returned to compliance with FIFRA's requirements and agreed to pay a penalty of \$2,074 under the CAFO.

Office of Regional Counsel Primary Contact: Diana Embil, (312) 886-7889; David Star, secondary contact, (312) 886-6009

Region 5 files FIFRA Consent Order concerning Premium Agricultural Commodities, Inc.

On November 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under [40 C.F.R. Part 22](#) against Premium Agricultural Commodities, Inc., (Premium). In the CAFO, EPA alleges that Premium produced pesticides in a Blanchester, Ohio, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Premium distributed those pesticides using labels that did not bear a valid establishment registration number. Premium has now returned to compliance with the requirements of FIFRA. In the CAFO, Premium agrees to pay a penalty of \$1,548. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Chuck Mikalian, (312) 886-2242; David Star, secondary contact, (312) 886-6009

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding a Proceeding with SLI Corporation *a.k.a.* PMO, Inc.

Region 5 initiated prefiling discussions on this matter in March, 2007. The proposed penalty was \$18,058. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold five different unregistered pesticides. During settlement discussions, the Respondent agreed to pay a civil penalty of \$8,000. The penalty was mitigated to this amount because Respondent demonstrated an inability to pay a higher penalty.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-6322

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Star Distributors Incorporated.

Region 5 initiated prefiling discussions on this matter in March, 2007. The proposed penalty was \$4,550. On June 14, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Power Moth Balls**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$3,640.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terry Bonace, additional contact, (312) 886-3387

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with Target Corporation.

Region 5 initiated prefiling discussions on this matter in July, 2007. The proposed penalty was \$45,500. On September 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold the following unregistered pesticides: Antimicrobial Toilet Seat, Home Ultimate Full Mattress Pad, Home Ultimate Twin Mattress Pad, Home Ultimate King Mattress Pad, Home Ultimate Pillow, and Cleaner with Bleach. During settlement discussions, the Respondent agreed to pay a civil penalty of \$40,950.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terence Bonace, additional contact, (312) 886-3387

Region 5 files FIFRA Consent Order concerning Tri-Ag Distributors, Inc.

On November 20, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 42 U.S.C. § 136 l(a), and 40 C.F.R. §§ 22.1(a)(1), 22.13, 22.18, and 22.35, resolving claims for civil penalties against Tri-Ag Distributors, Inc., (Tri-Ag). The

CAFO simultaneously commenced and concluded EPA's action for the alleged violations of FIFRA. In the CAFO, EPA alleges that Tri-Ag produced pesticides in a Farina, Illinois, establishment which did not have a valid establishment registration number under FIFRA. In the CAFO, EPA also alleges that Tri-Ag distributed or sold those pesticides using labels that did not bear a valid establishment registration number.

Tri-Ag has now returned to compliance with the requirements of FIFRA. Under the CAFO, Tri-Ag agrees to pay a penalty of \$2,074. This case is part of the recent Region 5 enforcement initiative focusing on unregistered FIFRA establishments.

Office of Regional Counsel Primary Contact: Maria Gonzalez, (312) 886-6630; David Star, secondary contact, (312) 886-6009

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with United Phosphorus, Inc.

Region 5 initiated prefilings discussions on this matter in March, 2007. The proposed penalty was \$6,500. On June 20, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(2)(N) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(2)(N). Specifically, the Respondent failed to file a Notice of Arrival prior to the arrival of a shipment of a pesticide product. During settlement discussions, the Respondent agreed to pay a civil penalty of \$6,500.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with The Valspar Corporation.

Region 5 initiated prefilings discussions on this matter in March, 2007. The proposed penalty was \$40,500. On September 11, 2007, Region 5 filed a Consent Agreement and Final Order commencing and concluding a proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide on eight separate occasions. During settlement discussions, the Respondent agreed to pay a civil penalty of \$32,400.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Joseph Lukascyk, additional contact, (312) 886-6322

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with W.J. Hagerty & Sons Ltd, Inc.

Region 5 initiated prefilings discussions on this matter in March, 2007. The proposed penalty was \$13,650. On June 10, 2007, Region 5 filed a Consent Agreement and Final Order Commencing and Concluding a Proceeding with the Respondent to settle violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Specifically, the Respondent distributed or sold an unregistered pesticide, **Hagerty Anti-Mite**. During settlement discussions, the Respondent agreed to pay a civil penalty of \$10,920.

Office of Regional Counsel Primary Contact: Nidhi O'Meara, (312) 886-0568; Terry Bonace, additional contact, (312) 886-3387



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Multi-Media

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

We encourage you to sign up for our [listserv](#), which will inform you via email of new summaries as we post them on our site.

You can view them sorted by name, state or statute.

Multi-Media:

- AgroKey LLC.
- Aldi, Inc.
- CBS Corporation
- C.G. & S. Provision Company
- City of Cincinnati
- Department of Transportation
- Detroit Edison Company
- Kemps, LLC
- Memorandum of Agreement

Region 5 signs a Combined Complaint and Consent Agreement with AgroKey LLC.

Region 5 initiated this enforcement action in August 2006 when the Region sent a pre-filing notice letter to AgroKey LLC (AgroKey) notifying the company of violations of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The violations stemmed from vandalism at the AgroKey facility resulting in release of anhydrous ammonia from the facility in May 2005. AgroKey violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report the release to the National Response Center, the state emergency response commission and the local emergency planning committee. On May 9, 2007, Region 5 signed a combined complaint and consent agreement with AgroKey in settlement of the company's violations of CERCLA and EPCRA. Pursuant to the settlement, AgroKey will pay a penalty of \$37,623. Prior to the settlement, the company installed valve locks on 419 tanks at all of its facilities, in addition to the 40 valve locks installed at the facility which was the subject of this enforcement action.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ruth McNamara, Superfund Division, (312) 353-3193

Region 5 signs Consent Agreement and Final Order with Aldi, Inc.

On January 29, 2007, a CAFO was signed with Aldi, Inc. (Aldi), Dwight, Illinois, in settlement of an administrative action that EPA filed on July 5, 2006, regarding a release that occurred at Aldi's facility on August 22, 2005. The complaint alleged that Aldi had violated Section 103(a) of CERCLA by failing to immediately notify the National Response Center of the release; Section 304(a) of EPCRA by failing to immediately notify the SERC and the LEPC of the release; Section 304(c) of EPCRA, by failing to provide a written follow-up emergency notice to the Illinois SERC and the LEPC as soon as practicable after the release occurred; and Section 312(a) of EPCRA, by

failing to submit to the Illinois SERC, LEPC and local fire department a completed Emergency and Hazardous Chemical Inventory Form for calendar years 2003 and 2004, by the March 1 deadline. The complaint proposed a penalty of \$93,433. Pursuant to the CAFO Aldi will complete a SEP designed to protect the environment or public health by purchasing and donating emergency response turnout equipment to the Dwight Fire Department at a cost of not less than \$23,150. In consideration of Aldi's willingness to perform the SEP, its cooperation, as well as certain litigation considerations, Region 5 agreed to a civil penalty, in addition to the SEP, of \$23,150.

Office of Regional Counsel Contact: Susan Tennenbaum, 312 886-0273; James Entzminger, (312) 886-4062

U.S. District Court issues Order on EPA's Motion to Dismiss Citizen Suit Claims Challenging Bloomington, Indiana, CERCLA PCB Cleanups.

On September 29, 2006, the U.S. District Court for the Southern District of Indiana issued its "Entry on Defendants' Motions To Dismiss," dismissing all of Plaintiffs' non-Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) based claims. Plaintiffs (Sarah Frey, Kevin Enright, and Protect Our Woods) filed a first amended complaint against U.S. EPA and CBS Corporation (CBS)(successor to Westinghouse Electric Corporation) in 2003 alleging that CERCLA "source control" Polychlorinated Biphenyls (PCB) cleanups selected by U.S. EPA and implemented by CBS at three National Priorities List (NPL) sites were inadequate. These three cleanups are part of the CERCLA PCB remedial actions undertaken in Bloomington, Indiana, and were selected and implemented as alternatives to the incinerator remedy memorialized in a 1985 federal Consent Decree.

Specifically, Plaintiff's alleged that the cleanups were inadequate under Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), and the Clean Water Act (CWA); and that EPA had failed to follow the requirements of National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS). Plaintiff's also alleged that U.S. EPA failed to follow the requirements of CERCLA by failing to prepare a Remedial Investigation/Feasibility Study (RI/FS), by failing to comply with CERCLA public participation requirements, and by failing to memorialize the alternative cleanups in a new, or modified federal consent decree. In dismissing the claims under RCRA, TSCA, the CWA, and NEPA, the district court held that CERCLA Section 113(h) provided the sole basis for review of a CERCLA remedial action, and that CERCLA superseded or made inapplicable the requirements of NEPA as regards the cleanup at issue.

As background, in 1985, U.S. EPA, the Indiana Department of Environmental Management (IDEM), Monroe County, and the City of Bloomington (as plaintiffs) entered into a Consent Decree with Westinghouse Electric Corporation (Westinghouse) for the clean-up of six PCB contaminated sites located in, and around, Bloomington, Indiana. The remedial actions were selected in an enforcement decision document (EDD) issued by U.S. EPA on August 3, 1984. The Consent Decree (and EDD) called for the excavation of nearly 650,000 cubic yards of PCB-contaminated material and the incineration of those materials in a dedicated, two-train, garbage-fired, TSCA-permitted incinerator to be built and operated by Westinghouse - the sole potentially responsible party (PRP) responsible as a generator for the PCB contamination. Four of the sites covered by the Consent Decree are NPL sites.

After entry of the Consent Decree public opposition to the incinerator rose. Applications of the necessary permits to design and build the incinerator were submitted by Westinghouse in 1991. Legislation enacted by the State of Indiana, however, prevented IDEM from processing the permit applications. Accordingly, in February of 1994, the Consent Decree parties agreed to explore potential alternative to incineration.

Alternative source control cleanups (to be followed with groundwater/spring water cleanups and stream sediment cleanup) were selected and implemented at Lemon Lane Landfill, Neal's Landfill, and Bennett's Dump in 1999 and 2000.

Plaintiff's filed their original complaint in this matter, challenging these source control cleanups on April 20, 2000. On August 27, 2003, the District Court entered summary judgment on behalf of U.S. EPA holding that, because cleanup work remained (despite completion of source control operable units at the three sites) the fact that work remained precluded review under CERCLA's Section 113 (h)(4) citizen suit provision which allows judicial review where the remedial action "taken" was allegedly in violation of CERCLA.

Plaintiff's appealed this dismissal to the 7th Circuit, which reversed and remanded the matter stating that there must be an "objective indicator that allows for an external evaluation, with reasonable target completion dates, of the required work for the site." Thus, in light of the long period of time since the start of the cleanup (1985), and the long period of study still ahead, Plaintiffs were "finally entitled to their day in court."

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670;
Secondary Contact: Tom Alcamo, (312) 886-7278

Region 5 signs a Combined Complaint and Consent Agreement with C.G. & S. Provision Company.

Region 5 began pre-filing discussions in this matter in April, 2006. On July 19, 2007, Region 5 filed a complaint and consent agreement and final order that initiates and concludes proceedings with C.G. & S. Provision Company to settle violations of both Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and violations of Sections 304(a) and 312(a) of the Emergency Planning and Community Right to Know Act (EPCRA). The specific violations were failure to immediately notify the National Response Center and the State Emergency Response Commission (SERC) of an August 11, 2005 release of anhydrous ammonia from this facility and failing to submit completed Emergency and Hazardous Chemical Inventory forms to the SERC and the local fire department for the 2002-2005 calendar years by March 1 of the relevant year. C.G. & S. Provision Company is currently in compliance with Section 312 of EPCRA; the settlement will require C.G. & S. Provision Company to pay a penalty of \$27,000 broken into eighteen monthly payments with interest. This penalty includes a reduction for inability to pay, a reduction for cooperation and a reduction for quick settlement.

Office of Regional Counsel Contact: Padmavati Bending, (312) 353-8917

Region 5 signs a Combined Complaint and Consent Agreement with the City of Cincinnati, Ohio.

Region 5 initiated this enforcement action in July 2006 when the Region sent a pre-filing notice letter to the City of Cincinnati notifying the city of violations of the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA). The notice stated that Cincinnati violated Section 103 of CERCLA and Section 304 of EPCRA by failing to immediately report a release of 11,276 pounds of aluminum sulfate to the National Response Center, the state emergency response commission and the local emergency planning committee and failing to send written follow-up notification within seven days to the state emergency response commission and local emergency planning committee. Cincinnati subsequently demonstrated that the release did not leave the facility and was therefore not in violation of EPCRA. On June 27, 2007, Region 5 filed a combined complaint and consent agreement with Cincinnati in settlement of the company's violations of CERCLA. Pursuant to the settlement, Cincinnati will pay a penalty of \$17,550.

Office of Regional Counsel Contact: Deborah Carlson, (312) 353-6121; Ginger Jager, Superfund Division, (312) 886-0767

Citizen Suit Filed Challenging Approval of I-69 Highway Project in Indiana.

On October 2, 2006, several citizen groups and citizens filed a court challenge seeking to block further implementation of the I-69 Highway project. The project is a proposed 142 mile highway project from Indianapolis to Evansville, Indiana which is a segment of the proposed North American Free Trade Highway project. The complaint was brought against the U.S. Department of Transportation, the Federal Highway Administration, the U.S. Department of Interior, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers, the Indiana Department of Transportation, and various officials affiliated with these agencies. The suit seeks to overturn the Federal Highway Administration's Record of Decision approving a Tier 1 Environmental Impact Statement for the project which was issued on March 24, 2004 and ancillary decisions by the FWS and the Corps in support of this Record of Decision. In the complaint, the plaintiffs allege the Defendants violated the National Environmental Policy Act and Section 4(f) of the Department of Transportation Act through the issuance of the Record of Decision. They allege the Defendants violated Section 7 of the Endangered Species Act by failing to take into consideration impacts to the endangered Indiana Bat and improperly issuing an incidental take permit for the project. Finally, they allege the Defendants violated Section 404 of the Clean Water Act by failing to consider implementation of the least environmentally damaging practicable alternative for the project.

Office of Regional Counsel Contact: Thomas J. Kenney, (312) 886-0708

Region 5 files Consent Agreement and Final Order with the Detroit Edison Company.

On January 31, 2007, Region 5 and the Detroit Edison Company, (Detroit Edison) entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that Detroit Edison violated Section 103 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of Emergency Planning and Community Right-to-Know Act (EPCRA) when it failed to give immediate notice of a release of a reportable quantity of sodium hydroxide to the National Response Center, the Michigan State Emergency Response Commission (SERC), and the Local Emergency Planning Committee (LEPC), and when it failed to provide written follow up to the SERC and the LEPC. The initial proposed penalty in the complaint filed on October 26, 2006 was \$144,412.67. Based on Detroit Edison's cooperation, willingness

to quickly resolve this matter, and new information relevant to determining when there was knowledge of a release that left the facility, and new information on how risk to the environment has been stopped, the parties agreed to resolve this matter by Detroit Edison's payment of a civil penalty of \$52,333.35.

Office of Regional Counsel Primary Contact: Jeffrey A. Cahn, (312) 886-6670;
secondary contact: James Entzminger, (312) 886-4062

Region 5 executes CAFO with Kemps, LLC, resolving CERCLA/EPCRA Violations at its facilities in Rochester and Farmington, Minnesota.

On February 7, 2007, the Region filed a Consent Agreement and Final Order resolving an Administrative Complaint originally filed on August 14, 2006. The Complaint sought penalties associated with a release of ammonia at its ice cream production facility in Rochester, Minnesota, under section 103(a) of CERCLA and section 304(a) of EPCRA. Specifically, the Complaint alleges that Respondent failed to notify the National Response Center and the Minnesota SERC immediately upon learning of the release. During settlement negotiations, Respondent offered to resolve liability for a second ammonia release at a Kemps cottage cheese production facility in Farmington, Minnesota, for which the Region had already issued an information request and received a response. Consequently, we amended the Complaint to include counts for failure to immediately notify the NRC and Minnesota SERC of the Farmington release and another count for failure to provide prompt written follow up notification to the SERC. Kemps will implement two SEPs to mitigate the penalty proposed in the Amended Complaint of \$128,231, one SEP to install intermediate pressure relief valves in the refrigeration system at its Farmington facility and to install seven emergency ammonia detection sensors at its Rochester facility. Kemps will pay a civil penalty of \$50,290.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566

Wisconsin Memorandum of Agreement (MOA) Signed.

EPA and the State of Wisconsin have now signed the "One Cleanup Program Memorandum of Agreement" (MOA). This MOA provides the framework for the State of Wisconsin to use a single, consolidated approach to the cleanup of a wide range of types of sites through its N.R. 700 rules rather than utilizing a range of separate programs with conflicting approaches and cleanup standards. The MOA also clarifies the relationship between EPA and the State of Wisconsin in providing for cleanups in Wisconsin; in particular, the MOA delineates the "enforcement comfort" to be given by EPA to sites Wisconsin addresses through its program.

The MOA is nationally significant in that it is the first MOA to address cleanup requirements across several environmental media, including CERCLA, RCRA, TSCA and LUST. EPA and the State of Wisconsin believe this MOA will result in an improved ability to achieve cleanup and redevelopment of contaminated properties in Wisconsin.

Office of Regional Counsel Contacts: Leverett Nelson, (312) 886-6666; Karen Peaceman, (312) 353-5751



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Resource Conservation and Recovery Act (RCRA)

Every week we post a set of summaries for cases with significant developments on our [home page](#). We've compiled these summaries by fiscal year (October 1 to September 30).

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RCRA:

- [AlSCO Inc.](#)
- [Apex Oil Company \(2\)](#)
- [Ashland, Inc. \(2\)](#)
- [Babbit, Michael L.](#)
- [C&D Technologies, Inc.](#)
- [Chevron U.S.A., Inc.](#)
- [Crane Composites, Inc.](#)
- [Crest Industries, Ltd.](#)
- [Dana Container, Inc.](#)
- [EMCO Chemical Distributors, Inc.](#)
- [Franklin County Powers of IL](#)
- [General Motors Corporation](#)
- [Hassan Barrel Company, Inc.](#)
- [Hutton Auto Body, Inc.](#)
- [Hydromet Environmental \(USA\), Inc.](#)
- [Lakeshore Foundry, Inc.](#)
- [Minnesota Metal Finishing, Inc.](#)
- [Musser, James G.](#)
- [North American EN, Inc.](#)
- [Port Stop Citgo](#)
- [Redeen Engraving Company](#)
- [Reece, Richard D.](#)
- [Schott Metal Products, Inc.](#)
- [Star Acquisition, Inc.](#)
- [TCI Manufacturing, Inc.](#)
- [Trilla Steel Drum Corp.](#)
- [Vertellus Agriculture & Nutrition Specialties LLC](#)
- [Warsaw Chemical Company, Inc.](#)
- [WCI Steel, Inc.](#)
- [Zaclon, Inc.](#)

Region 5 files Consent Agreement and Final Order with AlSCO Inc.

On September 19, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) simultaneously instituting and settling an action against AlSCO Inc., which owned or operated an industrial laundry and linen supply facility located at 2221 West Oakdale Avenue, Chicago, Illinois 60618, for alleged violations of Section 3005(a) of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. § 6925(a). AlSCO Inc. is a large quantity generator of hazardous waste who allegedly failed to meet certain conditions for an exemption from obtaining a permit for the storage of hazardous waste. AlSCO Inc. allegedly failed to: meet hazardous waste training requirements for its employees; have a contingency plan; familiarize local officials and hospitals with the hazardous waste generation at the facility; meet hazardous waste recordkeeping and data management requirements; minimize the possibility of hazardous waste releases; maintain proper spill control and decontamination equipment; label hazardous waste storage containers with the date of accumulation or with the words "Hazardous Waste"; properly manage such storage containers or to keep them closed; maintain proper aisle space in storage areas; and inspect storage areas weekly or to

maintain an inspection log. By violating its duty to obtain a permit, AlSCO Inc. became subject to civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Region 5 calculated a proposed penalty of \$311,764. The parties agreed to settle this matter prior to the filing of a complaint or answer. Under this CAFO, AlSCO Inc. agrees to pay \$280,587 in civil penalties. This amount represents a substantial sanction against AlSCO Inc., and will deter future violations.

Office of Regional Counsel Primary Contact: Kevin Chow, (312) 353-6181; Additional Contact: Brad Grams, Land & Chemicals Division, (312) 886-7747

Court Denies United States Motion for Summary Judgment Against Apex Oil Company.

On March 15, 2007, the United States District Court for the Southern District of Illinois denied the United States motion for summary judgment on count one of a two count complaint against the Apex Oil Company. In count one of the complaint, the United States alleges that Apex Oil released gasoline which has contributed to a large plume of petroleum-based substances located under the Village of Hartford, Illinois. Among other things, the United States alleges that vapors from the plume present an imminent and substantial endangerment to human health and the environment. The court held that “[g]iven the nature of this case and the specialized knowledge that the facts entail, the Court is not in a position to make factual findings at this stage.” As a result, this case will likely proceed to trial this year.

Office of Regional Counsel Primary Contact: Brian Barwick, (312) 886-6620

Court Sets Trial Date in United States v. Apex Oil Company.

On May 24, 2007, the United States District Court for the Southern District of Illinois set aside up to five weeks starting on January 7, 2008, for trial in United States v. Apex Oil Company. In its April 2005 Complaint under Section 7003 of RCRA, the United States alleges that Apex Oil released gasoline that has commingled with other responsible parties releases and resulted in a large plume of refined petroleum substances beneath the Village of Hartford, Illinois. Among other things, vapors from the plume have migrated into homes in Hartford causing fires, explosions, and evacuations and, therefore, present an imminent and substantial endangerment to human health and the environment.

EPA entered into an Administrative Order on Consent with four of the other responsible parties requiring interim measures, an investigation of the plume, and development of a cleanup plan. The United States’ complaint seeks injunctive relief requiring Apex Oil to cooperate and participate with other responsible parties in the cleanup of the plume.

Office of Regional Counsel Primary Contact: Brian Barwick, (312) 886-6620

Region 5 signs Administrative Order on Consent with Ashland, Inc. requiring corrective action under RCRA in Willow Springs, Illinois.

On August 9, 2007, Region 5 signed an Administrative Order on Consent (AOC) pursuant to Section 3008(h) of RCRA, requiring Ashland Inc. (Ashland) to perform correction action at its chemical distribution center. Ashland’s 32-acre facility was

formerly owned and operated by the Department of Defense (DOD) and General Motors as a jet-engine testing facility in the 1950s. The property changed ownership several times before Ashland acquired it in 1971 for use as a chemical distribution facility and for use as an oil distribution facility for Valvoline, a division of Ashland. Although DOD closed in place its USTs, used for fuel storage at its 18 test cells, in 1996, it may have left underground piping associated with each tank. VOCs were found in the groundwater at the facility and, subsequently, Ashland Inc. entered into a Notice of Agreement with the Illinois EPA, which required groundwater monitoring and operation of a groundwater collection and treatment system. The AOC requires Ashland to investigate and remediate all hazardous wastes or constituents at or from the facility. Ashland is pursuing a separate settlement with DOD.

Office of Regional Counsel Contact: Susan Tennenbaum, (312) 886-0273; John Nordine, ARD, (312) 353-1243

Region 5 signs a Consent Agreement and Final Order with Ashland Inc., Calumet City, Illinois.

On September 29, 2006, Region 5 signed a Consent Agreement and Final Order (CAFO) with FONIA International, Incorporated (Respondent) that both initiates and fully resolves both Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CAA) violations. On September 22, 2005, Region 5 issued a Notice of Violation (NOV) under the CAA to Respondent for failing to obtain construction and operating permits, in violation of the Illinois State Implementation Plan (SIP) and Section 110 of the CAA, 42 U.S.C. § 7410. On February 2, 2006, Region 5 issued a NOV to Respondent for various RCRA violations including failure to retain copies of manifests for hazardous waste generated.

Representatives from EPA and Respondent met in October of 2005 to discuss the CAA NOV. In May of 2006, the RCRA Division issued a pre-filing notice of opportunity to confer to Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$59,440.00. The Air Division also issued a notice of intent to file a civil administrative complaint against Respondent, informing Respondent that EPA planned to file a complaint with a proposed penalty of \$104,759.00. In July of 2006, the parties meet to discuss both the RCRA and Air violations.

In consideration of the Respondent's cooperation, attitude, and other factors as justice may require, Region 5 agreed to reduce the civil penalty to \$70,000 in settlement of the case.

Office of Regional Counsel Primary Contact: Cathleen Martwick, (312) 886-7166;
Secondary Contacts: Diane Sharrow, (312) 886-6199 and Donald Law, (312) 886-6024

Former Michigan Business Operator Charged With Illegal Storage and Disposal of Hazardous Waste.

On June 14, 2007, a federal grand jury charged Michael Lee Babbitt, age 58, with illegal storage and disposal of hazardous waste under RCRA. According to the Indictment, Babbitt operated a furniture and metal parts stripping business in Grand Rapids, MI, from 1987 until 2004. The business regularly generated hazardous spent solvents, including toluene and methylene chloride, and wastes which were contaminated with lead. Little if

any of the wastes were shipped off-site for proper disposal, and when the business closed its doors in 2004, numerous drums and tanks of hazardous waste were left behind. The wastes were eventually safely disposed of at a landfill under the supervision of the Michigan DEQ. The charge against Babbitt carries a maximum punishment of up to five years imprisonment and a fine of up to \$50,000 per day of violation. An indictment is only an accusation and all defendants are presumed innocent until and unless proven guilty in a court of law. The case was investigated by EPA CID, in a joint investigation with the Michigan DEQ's Office of Criminal Investigations.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Administrative Order on Consent with C&D Technologies, Inc., Attica, Indiana.

U.S. EPA and C&D Technologies, Inc. (C&D) have entered into a "streamlined" Resource Conservation and Recovery Act (RCRA) Section 3008(h) Administrative Order on Consent (AOC) that requires C&D to identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from its facility.

C&D owns and operates a 12.5 acre battery manufacturing plant bordering the Wabash River Attica, Indiana. Residential and commercial properties surround the remaining sides of the facility. Constituents of concern include volatile organic compounds and lead. In addition to an active battery manufacturing area, the facility contains a former landfill and riverbank property. The city of Attica's municipal drinking water well field is located approximately 0.25 miles south of the facility.

U.S. EPA filed the AOC with the Regional Hearing Clerk on January 18, 2007. C&D must submit a Current Conditions Report to U.S. EPA by March 2, 2007. C&D also must submit an Environmental Indicators Report by July 30, 2008, demonstrating that all current human exposures to contamination at or from the facility are under control and migration of contaminated groundwater at or from the facility is stabilized. C&D must propose to U.S. EPA by August 1, 2009, the final corrective measures necessary to protect human health and the environment from all current and reasonably expected future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility.

Office of Regional Counsel Primary Contact: Mary Fulghum, (312) 886-4683

U.S. EPA signs Third and Final Consent Agreement for remediation of Chevron's Cincinnati Refinery. Chevron to clean groundwater, extract petroleum soil vapors under Hooven, Ohio, and protect the Great Miami River from refinery-related releases of petroleum hydrocarbons. Work to be performed by Chevron under all three agreements estimated to be worth \$100 million.

On November 1, 2006, U.S. EPA finalized a RCRA Section 3008(h) Corrective Measures Implementation Administrative Order on Consent (AOC) with Chevron U.S.A., Inc., for clean up of groundwater, prevention of releases of petroleum to the Great Miami River, and soil vapor extraction of petroleum hydrocarbon vapors in the Town of Hooven, Ohio. The petroleum released to the environment is from Chevron's refinery in neighboring Cleves, Ohio. The AOC, In the Matter of: Chevron U.S.A. Inc., Cleves, Ohio, U.S. EPA Docket No. RCRA-05-2007-0001, embodies Chevron's commitment to continue to conduct soil vapor extraction to remove volatile petroleum constituents from the Light

Non-Aqueous Phase Liquids (LNAPL) smear zone under the Town of Hooven, which lies directly to the west of the former refinery; to remediate a contaminated plume of groundwater underlying its former refinery and part of the Town of Hooven to U.S. Safe Drinking Water Act Maximum Contaminant Levels (MCLs); and to monitor the banks of the Great Miami River at the refinery and down-stream for releases of petroleum to the river or from the river bank, as well as to undertake engineered controls, as necessary, to stabilize the river bank to prevent further releases of petroleum. Chevron will conduct periodic high-grade pumping to remove LNAPL from the groundwater plume for up to 12 years. Monitored Natural Attenuation of the dissolved contaminant plume and LNAPL plume will go on for an additional 30 years, in order to achieve MCLs in the plume. If it appears the performance levels will not be met on a timely basis, U.S. EPA's August 2006 Final Decision, which Chevron will implement pursuant to this AOC, provides that Chevron must employ any number of technologies to remediate the plume within that timeframe.

The Chevron Cincinnati refinery covers approximately 250 acres, and is situated on the banks of the Great Miami River approximately 20 miles west of Cincinnati and 3 miles north of the Ohio River. The refinery produced various petroleum based fuels from before World War II until approximately 1987. The facility also includes a 5-acre landfarm situated on a hill above Hooven, Ohio, two islands in the Great Miami River, and five pipelines formerly used to convey petroleum products three miles south to Chevron's loading dock on the Ohio River. The Final Decisions and Agreements anticipate that adequate institutional controls will be put in place to allow for mixed use industrial and recreational development in the future. Oil had been released from the groundwater into the Great Miami River, precipitating the need to start the clean up of oil in groundwater. Chevron has removed via pump and treat over 3 million of a total estimated 5 million gallons of floating petroleum from the plume in the groundwater. Chevron's own modelling also showed that the well field for the Town of Cleves, on the bank of the river opposite the refinery, would be contaminated by migration of the Chevron oil plume under the river if Chevron ceased its pump and treat. This well field has since been moved from Cleves.

This Chevron case was precedential in that the 1993 AOC was believed to be the first time in the country where RCRA corrective action was used to obtain pump and treat of petroleum hydrocarbons from the groundwater. U.S. EPA asserted that the petroleum released during facility operations was not "product" as asserted by Chevron, but a "waste" subject to corrective action. This third and final AOC not only requires Chevron to implement U.S. EPA's August 2006 Final Decision, but to evaluate and implement additional measures if any further plume migration occurs. It is also unique in that this AOC requires Chevron to investigate and remediate any releases of petroleum or hazardous constituents that may be discovered in the future. The value of the work performed by Chevron pursuant to all three Agreements (1993, 2004, and 2006) is estimated to be worth \$100 million.

Office of Regional Counsel Contact: Jerome P. Kujawa, ORC (312)-886-6731

Region 5 files a Consent Agreement and Final Order to conclude case against Crane Composites, Inc., Channahon, Illinois.

On January 18, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crane Composites, Inc. (Crane) for

allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On July 5, 2006, Region 5 filed an administrative complaint, with a proposed penalty of \$78,484, against Crane based on the following alleged violations: failure to label containers of hazardous waste, failure to close containers of hazardous waste, failure to control air emissions from containers of hazardous waste, failure to include all the necessary components of a contingency plan (no emergency equipment descriptions and no evacuation plan) and failure to submit the contingency plan to the local police department, and failure to conduct and document annual hazardous waste training. Crane has agreed to pay a penalty of \$50,000. This reduction reflects information submitted by Crane after the complaint was filed and a 10% reduction based on expedited settlement.

Office of Regional Counsel Contact: Stephen Thorn

Region 5 files a Consent Agreement and Final Order to conclude case against Crest Industries, Ltd., New Lenox, Illinois.

On June 1, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Crest Industries, Ltd. (Crest) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On September 30, 2005, Region 5 filed an administrative complaint against Crest based on alleged violations at Crest's 1066 Industry Road, New Lenox, Illinois facility. The alleged violations at facility included: failure to have written tank assessments that were professionally reviewed and certified; failure to provide adequate secondary containment for its hazardous waste storage tanks, failure to equip its hazardous waste storage tanks with a fixed roof, closure device or closed vent system; failure to implement a hazardous waste training program and keep employee training records; failure to maintain a contingency plan; and failure to apply for a hazardous waste management facility and storage permit as required by failing to meet the above generator exemption conditions and storing hazardous waste in excess of 90 days. Crest has agreed to pay a penalty in installments over a term of 25 months totaling \$200,000. This reduction reflects information submitted by Crest after the complaint was filed and other considerations.

Office of Regional Counsel Contacts: Stephen Thorn and Luis Oviedo, (312) 353-9538

Region 5 files a Consent Agreement and Final Order to conclude case against Dana Container, Inc., Detroit, Michigan.

On September 29, 2006, Region 5 filed a Consent Agreement and Final Order (CAFO) resolving an administrative penalty action against Dana Container, Inc. (Dana) for allegedly violating Section 3008(a) of the Solid Waste Disposal Act. On December 22, 2005, Region 5 filed an administrative complaint, with a proposed penalty of \$381,730, against Dana based on alleged violations at Dana's 1551 Caniff Street facility and 11430 Russell Street facility. The alleged violations at the 1551 Caniff Street facility included: failure to label hazardous waste; failure to conduct inspections of the 90-day storage area; failure to meet design requirements for the 90-day storage area; failure to implement a hazardous waste training program and keep training records; failure to provide safety equipment and provide required aisle space; failure to maintain a contingency plan; and failure to label a container storing used oil. The alleged violations at Dana's 11430 Russell Street facility included: failure to label hazardous waste; failure to make a hazardous waste determination; failure to keep hazardous waste containers closed; failure to include the required elements of a training program; failure to keep records

documenting job experience required for a position and any training provided; failure to equip the facility with a device capable of summoning emergency assistance; and failure to have a contingency plan. Dana has agreed to pay a penalty of \$151,000. This reduction reflects information submitted by Dana after the complaint was filed that warranted the complete removal of proposed penalties for four counts and a 10% reduction based on expedited settlement.

Office of Regional Counsel Primary Contact: Stephen Thorn

Region 5 Settles RCRA Transporter Case with EMCO Chemical Distributors, Inc. of North Chicago, IL.

On September 27, 2007, Region 5 filed a Consent Agreement and Final Order settling an administrative Complaint and Compliance Order that was issued to EMCO Chemical Distributors on March 21, 2007. The Complaint alleged that EMCO Chemical, a transporter of hazardous waste: (1) stored 20 shipments of hazardous waste at its North Chicago facility beyond the ten days permitted by the RCRA regulations; (2) improperly accepted the return of a shipment of hazardous waste after the disposal facility rejected the shipment; and (3) failed to label ten drums of hazardous waste with the accumulation start date or the words "Hazardous Waste." EPA was seeking a civil penalty of \$328,705 for these violations. The compliance order addressed concerns that there may have been spills or other releases in the areas where the drums of hazardous waste were stored for more than ten days.

EMCO agreed, as a supplemental environmental project, to replace their underground piping system which connects the chemical loading/unloading area to the 80 tanks in their tank farm, with an aboveground piping system. This aboveground piping system will cost at least \$200,000 to design and install. EMCO has also agreed to pay a civil penalty of \$52,000, and will retain a consultant to sample, analyze and cleanup, if necessary, the area where the hazardous waste was stored for more than ten days.

Office of Regional Counsel Contact: Terry Stanuch, (312) 886-8044 and Judith Kriz, (312) 353-6057, technical contact

U.S. District Court for Southern District of Illinois Grants Motion for Summary Judgment in Prevention of Significant Deterioration Permit Expiration Case.

On October 17, 2006, the United States District Court for the Southern District of Illinois ruled on cross-motions filed by the Sierra Club and defendant power companies concerning the proper interpretation of 40 C.F.R. §§52.21(b)(9) (commence as applied to construction) and 52.21(b)(11) (begin actual construction). *Sierra Club v. Franklin County Power of Illinois et al.*, Case No. 05-cv-4095-JPG. Specifically, the Court determined that the defendants had neither begun a continuous program of actual on-site construction nor entered into a binding agreement to undertake a program of actual construction within 18 months of receipt of their Prevention of Significant Deterioration (PSD) permit. As a result, the Court granted Sierra Club's motion for summary judgment, enjoined the defendants to stop actual construction until they have obtained a valid PSD permit and directed the parties to submit further briefing on penalties.

At the outset, the Court dismissed the defendants' jurisdictional arguments by finding that: 1) the fact that no agency had explicitly determined that defendants' permit had expired was irrelevant to their cause of action objection, as this was not a challenge to a

final agency action but rather a citizen suit to compel action; 2) permit shields are relevant only for Title V permits; and 3) Sierra Club had established sufficient injury-in-fact to provide standing for at least one of its members. The Court similarly dismissed the defendants' constitutional objections, noting that their Due Process concerns were "nonsensical" (slip op. at 17) and their Separation of Powers argument was "schizophrenic" (slip op. at 18).

In its discussion on the merits, the Court provided a well-reasoned and detailed analysis of the specific facts to determine that the defendants' activities "were simply not the kind of continuous or on-going construction activities of a permanent nature" listed in the regulations and EPA guidance (slip op. at 23). The Court also found that the construction agreements did not provide a "binding commitment to build" (slip op. at 27).

Office of Regional Counsel Primary Contact: Louise Gross, (312) 886-6844

U.S. EPA issues a RCRA 3008h Administrative Order on Consent for Corrective Action at the Center Point Business Campus in Pontiac, Michigan.

On May 24, 2007, U.S. EPA and General Motors Corporation (GMC) entered into an Administrative Order for Corrective Action at the Center Point Business Campus (formerly the Pontiac Truck Group facility) in Pontiac, Michigan. The Order requires GMC to complete Corrective Action by, among other things, operating and maintaining a multi-phase extraction system, imposing institutional controls where necessary, and maintaining financial assurance for the costs of Corrective Action. GMC has removed soils contaminated with benzene, toluene, ethylbenzene, and xylene (BTEX), polynuclear aromatics (PNA's), lead, solvents, and paint. In addition, GMC is recovering light non-aqueous phase liquid (LNAPL) from groundwater.

GMC's Pontiac facility encompasses approximately 400 acres of land. From 1927 through 1990, GMC produced medium and heavy duty trucks and buses at the facility. Between 1991 and 1995, all buildings were demolished and the area was redeveloped as the Centerpoint Business Campus. Presently, the Centerpoint Business Campus includes a Truck Engineering Center, the Pontiac Assembly Center, the GM Truck Product Center, a wastewater treatment plant and two stormwater retention ponds.

Office of Regional Counsel Contact: Brian Barwick, (312) 886-6620 and Dan Patulski, RCRA Corrective Action Section, (312) 886-0656

Fort Wayne, Indiana Business and Owner Charged with Environmental Crime.

On June 27, 2007, Alan Hersh and Hassan Barrel Company, Inc., were indicted in United States District Court, Northern District of Indiana, Fort Wayne Division, for one (1) felony violation of the federal Resource Conservation and Recovery Act (RCRA). The indictment alleges unlawful storage and disposal of RCRA hazardous waste at the Hassan Barrel Company, Inc. facility located in Fort Wayne, Indiana. Hersh was arrested in North Carolina on July 2, 2007. The criminal charges arose from a criminal investigation jointly undertaken by the Criminal Investigation Division of the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management, Office of Criminal Investigation, which are part of the Northern District of Indiana Environmental Crimes Task Force. The Indictment is merely an allegation and all persons charged are presumed innocent until and unless proven guilty in court.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Region 5 enters into a Consent Agreement and Final Order Resolving Violations of Section 3008 RCRA by Hutton Auto Body, Inc., Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body, located in Streamwood, Illinois.

On January 25, 2007, the Director of Waste, Pesticides and Toxics Division, U.S. EPA Region 5, signed a Consent Agreement and Final Order (CAFO) under RCRA Section 3008 pursuant to which Hutton Auto Body, Inc; Bernice Hutton, individually and doing business as Hutton Auto Body; and Jimmie Hutton, individually and doing business as Hutton Auto Body agreed to pay a civil penalty of \$100. The CAFO was filed with the Regional Hearing Clerk on January 31, 2007. U.S. EPA initially calculated a proposed a penalty of \$21,175 against Hutton Auto Body, Inc. and a penalty of \$6,875 against Bernice Hutton and Jimmie Hutton, for a total combined penalty of \$28,050. For settlement purposes, this number was mitigated down to \$100 based on financial documentation that supported a significant inability to pay a penalty.

Office of Regional Counsel Contact: Robert H. Smith, (312) 886-0765

Fourth Official of Defunct Hazardous Waste Reclamation Firm Pleads Guilty.

On January 26, 2007, Julianna H. Bauter, the former environmental compliance officer for Hydromet Environmental (USA), Inc., pleaded guilty to making a false statement to the Illinois EPA concerning the prior disposal of wastes from the Hydromet facility in Newman, IL. The company and five of its former officers and employees have variously been charged with making false statements to Illinois EPA, illegally transporting hazardous waste without a manifest, and conspiracy. Three former Hydromet employees pleaded guilty previously. The former President of Hydromet has not returned to the U.S. to answer the charges, and is currently considered a fugitive. Hydromet was a hazardous waste reclamation firm which shut down operations in 1988, and then attempted to re-open and obtain a new RCRA permit in 2001. According to the indictment, after Hydromet shut its doors, Illinois EPA obtained a court order requiring existing hazardous wastes to be treated or disposed of properly. Instead, Hydromet employees shipped tons of hazardous waste containing lead, cadmium and selenium to a dilapidated warehouse in East Chicago, Indiana and hid cyanide-bearing hazardous wastes on-site. When the cyanide-bearing wastes started eating through the storage tanks, Hydromet employees disposed of the wastes by falsely declaring them to be non-hazardous. Hydromet employees then falsely told Illinois EPA that the Newman facility was fully operational and ready to receive hazardous wastes, when in fact many necessary components and items of equipment were missing, broken or inoperable. Under a plea agreement entered in court, Bauter faces a maximum sentence of two years of probation, a fine of \$3,000 and up to 90 days home confinement. U.S. EPA's Criminal Investigation Division, the Illinois Department of Natural Resources and Illinois EPA jointly investigated this matter. Sentencing was set for May 10, 2007.

Office of Regional Counsel Contact: David Taliaferro, (312) 886-0815

U.S. EPA issues RCRA 3008h Administrative Corrective Action Order in Lakeshore Foundry, Inc. of Waukegan, Illinois.

On November 7, 2006, an Agreed Administrative Corrective Action Order in Lakeshore Foundry, Inc., was issued. The Order requires the Lake Shore Foundry (LSF) facility to address hazardous waste contamination (principally lead) above acceptable Federal and Illinois background levels in soil and other effected media; and to provide requisite proof of financial ability to properly perform and/or fund the activities subject to the Order.

The Resource Conservation and Recovery Act (RCRA) § 3008h Order will respond to findings of lead and potentially other hazardous substances at the active metals foundry operated by LSF. The 3008h Order requires LSF to perform a RCRA Interim Measures action and create an accompanying report; create a Description of Current Conditions demonstrating a facility-wide assessment of risks and proposed responses under RCRA; help develop a proposal of final corrective measures with a Statement of Basis; and, implement all appropriately determined final corrective measures at the facility.

The LSF facility is an active metal foundry located at 653 Market Street, Waukegan, Lake County, Illinois. LSF physically borders on the shore of Lake Michigan. The LSF facility property has a 100-plus year history of heavy industrial uses, and LSF has operated in its current capacity and location for at least 50 years. The United States Environmental Protection Agency (EPA) and the Illinois Environmental Protection Agency (ILEPA) sampling inspections at LSF in 2003 and 2004 found toxicity characteristic leaching procedure (TCLP) lead concentrations in foundry sand above the regulatory limit of [40 CFR 261.24](#), as well as indications of other hazardous wastes and constituents pursuant to [40 CFR Part 261](#) EXIT Disclaimer. During 2004-2005, negotiations ensued between EPA and LSF. After internal EPA determinations concerning administrative penalty issues and enforcement approach, a RCRA 3008h Agreed Order was negotiated and issued.

Office of Regional Counsel Contact: Tom Turner, (312) 886-6613; and Jill Groboski, RCRA Compliance Section, (312) 886-3890

Presiding Officer Grants In Part and Denies In Part EPA Region 5 Motion for Accelerated Decision on Liability In RCRA *Minnesota Metal Finishing, Inc.* Administrative Action; and Sets Schedule for Hearing On Undecided Claims and Penalty.

On January 9, 2007, Chief Administrative Law Judge Biro issued an Order granting accelerated decision that *Minnesota Metal Finishing, Inc.* (MMF) was liable under Minnesota's authorized hazardous waste regulations for failure to maintain hazardous waste training records, and for failure to obtain a hazardous waste storage permit, at its facility in Minneapolis, Minnesota. Chief Judge Biro denied accelerated decision that MMF was liable for failure to conduct, and have a required program for, hazardous waste training; failure to have a proper contingency plan; failure to minimize the risk of a release of hazardous waste; and failure to have an external emergency communication device in a process area at the facility. The Order confirms that Minnesota and federal regulations that apply to "new" hazardous waste storage facilities, apply to "new" generator facilities when such generator facilities fail to comply with the conditions for an exemption from the hazardous waste permitting requirements. In an accompanying Order, Judge Biro scheduled a hearing for May 22, 2007, on the undecided issues of

liability and penalty. The hearing will be in Minneapolis.

Office of Regional Counsel Contact: Michael McClary

Former President of Michigan Business Charged with Environmental Crimes.

On March 2, 2006, James G. Musser, was arraigned and pleaded not guilty to an indictment filed on December 13, 2006 in United States District Court, Eastern District of Michigan, Northern Division, Bay City, Michigan. The indictment charges James G. Musser with 3 criminal counts under the Resource Conservation and Recovery Act ("RCRA"), for storage and disposal of hazardous waste at the Hoskins Manufacturing facility in Mio, Michigan and the disposal of hazardous waste at the Hoskins Manufacturing facility in Hamburg, Michigan. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

RCRA Complaint Filed Against North American EN, Inc.

On September 27, 2007, Region 5 filed an administrative complaint under RCRA against North American EN, Inc. in Elk Grove, Illinois for illegal storage of hazardous waste. A large quantity generator who accumulated waste on-site, North American EN is alleged to have failed in its obligation to have a contingency plan for its facility, and to provide necessary training in emergency procedures to its personnel. Because it failed to comply with the above conditions for exemption from a permit and it had never obtained a permit or interim status, Region 5 alleged that its storage of hazardous waste was illegal. The Respondent North American EN further failed to complete a necessary waste analysis. The complaint seeks a penalty of \$55,748 for the violations.

Office of Regional Counsel Contact: Sherry Estes, (312) 886-7164

Region 5 signs Consent Agreement and Final Orders with Port Stop Citgo.

On January 19, 2007, Region 5 signed a consent agreement and final order with Robert Magnuson, owner of the Port Stop Citgo station in LaPorte, Indiana, to settle violations of Section 9003 of the Solid Waste Disposal Act (SWDA), 42 U.S.C. § 6991b, and EPA's Underground Storage Tank regulations, 40 C.F.R. Part 280. The Port Stop facility has three 10,000 gallon steel underground storage tanks for holding gasoline prior to sale to the public. In order to ensure that steel tanks like those belonging to Port Stop do not rust through and release their contents to the environment, such tanks are equipped with corrosion protection systems. Region 5 initiated this enforcement action by filing an administrative complaint in March of 2006, alleging that Port Stop Citgo failed to test and to maintain its tanks' corrosion protection system as required by law. Port Stop Citgo will pay a penalty of \$25,000 to settle the violations, which represents the proposed penalty of \$48,775 reduced in light of Port Stop's willingness to settle the case and other factors as justice may require.

Office of Regional Counsel Primary Contact: Erik Olson, (312) 886-6829; Sandra Siler, additional contact (312) 886-7187

Muncie, Indiana Businessman Criminally Charged with Illegal Hazardous Waste Transportation, Storage and Disposal.

On March 20, 2007, Richard D. Reece was charged by a federal grand jury with violating the Resource Conservation and Recovery Act (“RCRA”), in a three-count indictment filed in United States District Court, Southern District of Indiana, Indianapolis, Indiana. The indictment alleges that two trailers containing drums of hazardous wastes were discovered on March 11, 2004 in Muncie, Indiana by the Delaware County Emergency Management Agency and Muncie Fire Department in response to citizen complaints of chemical odors. The indictment charges Reece with illegal transportation of hazardous wastes in these trailers without manifests, to un-permitted facility, and storage and disposal of the wastes. The indictment is an allegation only, and the defendant is presumed innocent of these charges until proven guilty at trial.

Office of Regional Counsel Contact: David Mucha, (312) 886-9032

Consent Agreement and Final Order executed in RCRA Administrative Action for Redeen Engraving Company and Floyd W. Redeen.

On November 9, 2006, the Regional Administrator executed a Consent Agreement and Final Order (“CAFO”) in an enforcement action, resolving an administrative complaint filed against Redeen Engraving Company (“the Company”) and Floyd W. Redeen, under the Resource Conservation and Recovery Act (“RCRA”). The CAFO provides for payment of a \$100 civil penalty by Mr. Redeen for the Company’s violations of state authorized RCRA regulations in the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

On June 19, 2006, a Region 5 official, on delegated authority of the Administrator, filed a Complaint and Compliance Order, alleging in two counts that the Company violated the Illinois Administrative Code, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), in that the Company: (1) stored hazardous waste without having a permit; and (2) failed to document hazardous waste determinations. Prior to the filing of the Complaint, the Company sold its engraving business and was dissolved by Mr. Redeen, its sole shareholder. While under Illinois law, as sole shareholder Mr. Redeen is liable for the Company’s penalty in an amount equal to his distribution of the Company’s assets, a thorough analysis of Mr. Redeen’s financial circumstances by an agency financial analyst revealed that he had an ability to pay only a nominal penalty. Consequently, the Administrator’s Delegated Complainant has agreed to resolve this matter on Mr. Redeen’s payment of \$100.

Office of Regional Counsel Primary Contact: Richard Wagner, (312) 886-7947

U.S. District Court in Ohio denies extension of time to serve complaint to enjoin RCRA 3013 order in Schott Metal Products, Inc. v. EPA et al.

On September 7, 2006, Schott Metal Products, Inc. and Samuel Schott filed a civil complaint in the U.S. District Court for the Northern District of Ohio seeking an order enjoining the EPA from enforcing a RCRA Section 3013 unilateral administrative order against them. The complaint named EPA and Region 5’s Waste, Pesticides and Toxics Division Director as defendants. After 158 days passed without service, the United States moved to dismiss. The plaintiffs then filed a motion to extend the time for service, and

filed a supplemental motion to extend on February 26, 2007. On March 6, 2007, the U.S. District Court for the Northern District of Ohio denied the motions for extension on the grounds that Schott and Schott Metals had not shown good cause for their delay.

Office of Regional Counsel Contact: Tom M. Williams, (312) 886-0814

CAFO signed resolving violations of RCRA alleged against Star Acquisition, Inc.

On March 7, 2007, the Director of the Waste, Pesticides & Toxics Division signed a Consent Agreement and Final Order (CAFO) resolving violations identified in a pre-filing notice letter issued by Region 5, U.S. EPA, against Star Acquisition, Inc. (Star or Respondent), under Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. Under the terms of this CAFO, Star shall pay a settlement amount of \$1,289 within 30 days of the effective date of the CAFO. Respondent has signed the CAFO, certifying that it is currently in compliance with all applicable requirements of RCRA. Respondent has also remitted a check for payment of the penalty.

Office of Regional Counsel Contact: James Cha, (312) 886-0813

Illinois Manufacturing Firm and Owner Plead Guilty To Illegal Hazardous Waste Storage.

On July 27, 2007, TCI Manufacturing, Inc. (TCI) and one of its owners, Michael W. Maynard, pleaded guilty in Bureau County circuit court to criminal storage of hazardous waste, a Class A misdemeanor. TCI manufactures conveyors and other equipment used in quarries and gravel pits at a facility located in Walnut, Illinois. According to the charges filed, in December 2004, the company had collected and was storing over thirty 55-gallon drums of xylene paint waste, some of which was as much as 4-years old, without obtaining a needed RCRA permit. TCI and Maynard pleaded guilty to the charges the same day, and were sentenced in accordance with a plea agreement. TCI and Maynard were each fined \$2,500. TCI and Maynard were also required to pay restitution to the Illinois Environmental Protection Trust Fund in the amount of \$17,500 each and to pay \$50,000 each to the Midwest Environmental Enforcement Association. The case was prosecuted by the Illinois Attorney General's office and was investigated by EPA CID.

Office of Regional Counsel Contact: David M. Taliaferro, (312) 886-0815

Region 5 enters a RCRA Consent Agreement and Final Order with Trilla Steel Drum Corp. for a \$101,627 civil penalty.

On June 21, 2007, Region 5 and Respondent Trilla Steel Drum Corp. (Trilla) entered into a Consent Agreement and Final Order (CAFO) requiring Trilla to pay a \$101,627 civil penalty for violations of the Resource Conservation and Recovery Act.

On September 29, 2006, Region 5 filed an administrative complaint alleging that Trilla treated hazardous waste in its drying ovens without a permit, failed to make required waste determinations, improperly handled containers of waste, and did not comply with

contingency planning and training requirements. That six-count complaint sought a \$175,846 penalty.

In settlement discussions, Trilla presented mitigating evidence, especially concerning the nature and extent of its training program. Trilla also presented evidence showing that the potential harm to the environment from these violations was minimized because any emissions from the treatment activities were still within the limits of its Title V air permit. Trilla had ceased using its drying ovens even before Region 5 issued its original notice of violation and has certified that it is now in compliance with the RCRA requirements cited in the complaint. Region 5 considered these mitigating factors, along with Trilla's cooperation, under the Agency's RCRA penalty policy, and proposed a revised penalty of \$101,627. Trilla agreed to pay the proposed amount.

Trilla subsequently submitted financial information to Region 5, requesting that it be allowed to pay its penalty in installments due to cash flow issues. While the information was not conclusive, in the interest of resolving the matter quickly, Region 5 agreed to allow Trilla to pay half of the penalty within 30 days of the CAFO's effective date, and the remaining balance (plus \$677.51 of accrued interest on that amount) within 150 days of the effective date.

Office of Regional Counsel Contact: Thomas Krueger, (312) 886-6729; program contact: Spiros Bourgikos, (312) 886-6862

RCRA Permit to Vertellus Agriculture & Nutrition Specialties LLC.

U.S. EPA Region 5 issued a RCRA permit to Vertellus Agriculture & Nutrition Specialties LLC (formerly known as Reilly Industries, Inc.) in Indianapolis, IN. The permit mainly provides requirements for three boilers that burn hazardous waste. U.S. EPA has not yet authorized the state of Indiana to administer certain regulations, including the Boilers and Industrial Furnace regulations (40 CFR Section 266.100 *et seq.*, known as the BIF regulations). U.S. EPA Region 5 issued the RCRA permit requirements for operations at the Permittee's Facility, which fall under the BIF regulations. The permit became effective on November 6, 2006.

Contact: Jan Carlson, ORC, (312) 886-6059 and Jae Lee (312) 886-3781

Region 5 files a Consent Agreement and Final Order to conclude case against Warsaw Chemical Company, Inc., Warsaw, Indiana.

On September 28, 2007, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Warsaw Chemical Company, Inc. (Warsaw) for allegedly violating Section 3005 of the Solid Waste Disposal Act. On June 8, 2006, Region 5 conducted an investigation at Warsaw's 390 Argonne Road, Warsaw, Indiana facility. EPA determined that Warsaw had failed to comply with certain hazardous waste permit exemption conditions for generators. Region 5 had initially proposed a penalty of \$69,260 but determined that it was appropriate and consistent with the penalty policy to adjust the penalty to \$60,934 based on Warsaw's cooperation, good faith, and other factors as justice may require. During negotiations, Warsaw submitted financial information to Region 5, indicating that it had recently been encountering financial difficulties. While the information was not conclusive, in the interest of resolving the matter, Region 5 agreed to allow Warsaw to pay the \$60,934 penalty in installments over a term of 36 months plus interest.

Office of Regional Counsel Contact: Randa Bishlawi, (312) 886-0510

RCRA Consent Decree Entered in WCI Steel 7003/Bankruptcy Matter.

On February 6, 2006, the United States District Court for the Northern District of Ohio, Eastern Division, entered a Consent Decree signed by the United States and WCI Steel, Inc. (“WCI”). The Consent Decree resolves a Resource Conservation and Recovery Act (“RCRA”) Complaint filed by the United States on December 18, 2006, which sought injunctive relief (compliance with a RCRA 7003 Order which EPA issued to WCI) and penalties (for failure to comply with the RCRA 7003 Order). The Consent Decree also resolves claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties submitted in a predecessor WCI bankruptcy case (In re: WCI Steel, Inc., et. al., Case No. 05-81439 (Bankr. N.D. Ohio)).

In addition, under the Consent Decree, WCI is required to pay a civil penalty to the United States in the amount of \$620,000. This penalty will be paid through resolution of claims of the United States (set forth in a Proof of Claim and Administrative Proof of Claim) for penalties relating to WCI’s alleged violations of the Order previously submitted in Debtor WCI’s bankruptcy case in the United States Bankruptcy Court for the Northern District of Ohio (In re: WCI Steel, Inc., et. al., Case No. 05-81439).

Office of Regional Counsel Contact: Catherine Garypie, (312) 886-5825; Program Contact: Michael Beedle, (312) 353-7922

Environmental Appeals Board Grants Region’s Second Motion for Extension of Time to File Notice of Appeal in Zaclon Inc Matter, RCRA Docket No. RCRA-05-2004-0019.

On August 21, 2007, the EAB granted Region 5’s motion for a second extension of time in which to decide whether to appeal Judge Susan Biro decision in the Zaclon, Inc. matter. Judge Biro had issued a decision on June 4, 2007 that was not made public due to Confidential Business Information claims raised by the Respondents during the hearing. The Region was granted an initial extension of time 30 days subsequent to the issuance of a redacted CBI decision. Judge Biro issued a redacted version on or about July 24, 2007. The EAB’s Order signed by Judge Reich extends the period in which the Region must decide whether to appeal Judge Biro’s decision to October 24, 2007.

Office of Regional Counsel Contact: Larry Kyte, (312) 886-4245



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Safe Drinking Water Act (SDWA)

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You can view them sorted by name, state or statute.

SDWA:

- [Dupont de Nemours & Co.](#)
- [Mosaic USA, LLC](#)

EPA Regions 3 and 5 enter into an Administrative Order on Consent with DuPont to lower action level for C-8 (PFOA) caused by Washington Works Facility.

On November 20, 2006, the Administrators for EPA Regions 3 and 5 signed an Order on Consent with E.I. DuPont de Nemours & Co. The Order requires treatment or provision of alternate drinking water to residents affected by DuPont's Washington Works facility, located near Parkersburg, West Virginia. The facility, which manufactures products using perfluorooctanoic acid (also known as PFOA or C8) – is located on the Ohio River and affects drinking water sources in both WV and Ohio.

The Order contains an action level of 0.50 ppb that triggers the offer of installation of drinking water treatment or offer of provision of an alternate source of drinking water, by DuPont. This Order replaces an Order on Consent signed by Regions 3 and 5 in 2002, which resulted in a temporary threshold level of 150 ppb.

Currently there is no consensus on the possible toxicity of C-8 to humans. However, recent results from experimental animal studies and new data on human blood serum levels of C-8 in residents living near the Washington Works facility raise concern for possible human health effects from C-8 in drinking water. This Order is a precautionary action based on an evaluation of these recent study results and the new data. More human health and experimental studies are in progress, but results will not be available for several more years. In the meantime, the new action level will reduce local exposure to C-8 from drinking water and reduce the possibility of adverse health effects. DuPont agreed to the site-specific action level of 0.50 ppb.

C-8 is used extensively in various manufacturing processes nationwide, including those for stain-resistant carpets and fabrics, stain-resistant paints, fire fighting foam, and oil- and grease-resistant food cartons and wrappers. Therefore, in developing this Order, EPA closely coordinated with the Office of Civil Enforcement, the Office of Water, the Office of Pollution Pesticides and Toxic Substances, and the states of Ohio and West Virginia. EPA also carefully developed a communications strategy in connection with the Order.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Charlene Denys, Water Division (312) 886-6206

Region 5 signs a Consent Agreement and Final Order with Mosaic USA, LLC resolving violations of Underground Injection Control (UIC) requirements.

On September 10, 2007, the Regional Administrator signed a Final Order resolving alleged violations of its UIC permit by Mosaic USA, LLC, d/b/a/ Mosaic Potash Hersey. The CAFO was filed with the Regional Hearing Clerk on September 17, 2007. Mosaic failed to demonstrate Part II mechanical integrity for 19 of its underground injection wells at its potash mining facility in Hersey, Michigan. The complaint proposed the statutory maximum administrative penalty of \$157,500. Based on Mosaic's immediate cooperation in remedying these violations, the lack of potential contamination of underground sources of drinking water due to the violations, and other factors consistent with the Safe Drinking Water Act and the Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy, the Region agreed to mitigate the penalty to \$50,000. Mosaic has returned to compliance with its permit and the UIC regulations.

Office of Regional Counsel Primary Contact: John Tielsch, (312) 353-7447; Other contact: William Bates, UIC Program (312) 886-6110



Enforcement Case Summaries Fiscal Year 2007: List of Cases under the Toxic Substance Control Act (TSCA)

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TSCA:

- AP Management, Inc.
- Battison, Thomas
- Bonnie Owen Realty, Inc.
- Clean Harbors
- Cortec Corporation
- Cowen, Neil and Mary Lou
- Dan H. Watkins Trust
- Investors Management Services Corp.
- King, Mark R.
- Krach, Karen
- McClain Properties
- Ottawa L.L.C.
- P & B Investment, Inc.
- Reardon Properties
- SJM Properties
- Three Bond International
- Transformer Decommissioning, Inc.

Region 5 signs a Consent Agreement and Final Order with AP Management, Inc., resolving Lead-Based Paint violations.

On March 28, 2007, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk that simultaneously commences and concludes, under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, alleged violations of the regulations at 40 C.F.R. Part 745, Subpart F, related to leasing transactions at a residential building located in Chicago, Illinois. Under the terms of the CAFO, AP Management, Inc., formerly known as Banner Property Management, Inc., agrees to pay \$1,350 as a penalty, and to perform a supplemental environmental project to conduct lead-based paint abatement and/or mitigation at one or more Chicago area residential properties where a child resides, through the not for profit organization Neighborhood Housing Services of Chicago, at a cost of \$12,125.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237 and Pamela Grace, Waste Pesticides and Toxics Division, (312) 353-2833

Region 5 signs Consent Agreement and Final Order with Thomas Battison.

On September 24, 2007, Region 5 signed a consent agreement and final order with Thomas Battison of Girard, Ohio, commencing and resolving an administrative penalty action for alleged violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Mr. Battison owns a number of residential rental properties in and around

Youngstown, Ohio. Region 5 initiated this enforcement action due to Mr. Battison's alleged failure to comply with lead paint disclosure requirements in several lease transactions, including a lease where children lived in the unit. Mr. Battison will pay a cash penalty of \$1,264 and perform a window replacement project costing at least \$11,371 at one of his properties to settle the violations.

Office of Regional Counsel Contact: Erik Olson, (312) 886-6829; primary technical contact, Estrella Calvo, (312) 353-8931

Region 5 Executes CAFO with Bonnie Owen Realty, Inc., of Carbondale, Illinois, Resolving TSCA Lead-Based Paint Disclosure Rule Violations.

On September 25, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Bonnie Owen Realty, Inc., for 7 violations of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d, and section 409 of TSCA, 15 U.S.C § 2689, for failure to make disclosures regarding lead-based paint as required by regulations under those statutes. Given the residence of a child with elevated blood lead levels in the target housing, the Agency initially calculated a penalty of \$38,080 for those 7 violations. Taking account of Respondent's cooperation in resolving the matter, its subsequent analysis that the target housing was indeed free of lead-based paint and its expenditure of in excess of \$6,000 to replace 16 windows at two additional properties in Carbondale, the CAFO requires Respondent to pay civil penalty of \$533.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; Joana Bezerra, alternate technical contact, (312) 886-6004

U.S. EPA reaches administrative settlement under TSCA for released substances.

Respondent, Clean Harbors, operates a facility that is permitted under TSCA to store, disassemble and decontaminate PCB items by solvent washing. Storm water from the facility discharges into a sewer line which leads into Strong Brook. Strong Brook is about 0.6 miles long and empties into the Ashtabula River at a point called Jack's Marine Slip. On March 20, 2007, U.S. EPA was notified that the Respondent may have improperly stored and/or disposed of polychlorinated biphenyls (PCBs) and those PCBs may have migrated off the facility into Strong Brook and the Ashtabula River. Based on this information, the U.S. EPA conducted an inspection of the facility on March 28, 2007, which included the taking of several soil samples on the facility. The samples showed levels of PCBs from 2.82 parts per million (ppm) to 926 ppm on the facility.

While U.S. EPA was inspecting the facility, the Respondent stopped the discharge and run-off of water into the sewer system which empties into Strong Brook. The Respondent has and is collecting this water for treatment off-site. In addition, the Respondent installed a boom and silt curtain in Jack's Marine Slip to contain the spread of any PCBs and/or oil that could be migrating down Strong Brook into Jack's Marine Slip. U.S. EPA and Respondent have entered into a Consent Agreement and Final Order (CAFO) which requires the Respondent to conduct an investigation of the extent of PCBs on its facility and remediate the PCBs pursuant to EPA's Polychlorinated Biphenyl (PCB) Site Revitalization Guidance under the Toxic Substances Control Act (TSCA), commonly referred to as EPA's PCB Spill Policy. In addition, the Respondent will conduct an assessment of the sewer system and Strong Brook to determine the extent of PCB contamination and will maintain, inspect and repair as necessary the oil boom and silt curtain that Respondent has placed in the Marine Slip area to control the release of PCBs

in the River. The CAFO reserves the right of U.S. EPA to seek penalties for violations of TSCA at a later date.

Office of Regional Counsel Contact: Peter Felitti, (312) 886-5114

TSCA Pre-Manufacture Notice Case against Cortec Corporation Settled With Simultaneous Complaint and CAFO.

On January 31, 2007, Region 5 filed a simultaneous Complaint and Consent Agreement and Final Order (CAFO) initiating and resolving an administrative compliance action under Section 16 of Toxic Substances Control Act (TSCA), 15 U.S.C. 2615, and 40 C.F.R. § 720.120(f), against Respondent Cortec Corporation for violations alleged at the company's St. Paul, Minnesota facility. The Region alleges that Respondent Cortec manufactured two non-exempt new chemical substances for a non-exempt commercial purpose, without filing a notice with U.S. EPA under Section 5 of TSCA in violation of Section 5(a)(1)(A) of TSCA, and 40 C.F.R. § 720.120(a) and (b). Cortec claims the identities of the two substances as Confidential Business Information (the Complaint sets forth the Confidential Business Information (CBI); the CAFO does not). The Region proposed an unmitigated civil penalty of \$237,434 for the violations.

In the CAFO Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations. Respondent indicates that it filed a Low Volume Exemption for the substances at issue on August 9, 2005 (after the inspection date), thus achieving compliance with the relevant requirements. Based on the fact that Respondent timely achieved compliance after the inspection, and Respondent's co-operation and good faith in reaching the negotiated settlement set forth in the CAFO, the Region agreed to mitigate the civil penalty amount for the violations to \$202,000. This amount represents a 20% mitigation of the proposed penalty amount.

Office of Regional Counsel Contact: Andre Daugavietis, (312) 886-6663

Region 5 signs Consent Agreement and Final Order with Neil and Mary Lou Cowen.

On August 8, 2007, Region 5 signed a consent agreement and final order with Neil and Mary Lou Cowen of Indianapolis, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. The Cowens own a number of single family residential rental properties in Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in April of 2007, alleging that the Cowens had failed to comply with lead paint disclosure requirements in three lease transactions and one sales transaction. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to a purchaser the required ten day lead paint inspection period. The Cowens will pay a penalty of \$3,325 to settle the violations and will pay \$8,475 for a window replacement Supplemental Environmental Project.

Office of Regional Counsel Primary Contact: Mark Koller, (312) 353-2591; Secondary contact: Terrence Bonace, (312) 886-3387

Region Resolves TSCA Lead Disclosure Case against H&C Building and the Dan H. Watkins Trust (Moline, Illinois).

On September 27, 2006, the Acting Regional Administrator signed a Consent Agreement and Final Order (CAFO) in which H&C Building and the Dan H. Watkins Trust (Respondents) agreed to pay a penalty of \$8,885 for violations of the “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (Disclosure Rule), 40 C.F.R. Part 745, Subpart F; Section 409 of Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689; and Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, at a residential apartment complex they own Moline, Illinois. Specifically, Region 5 alleged that Respondents failed to include within or as an attachment to the each of six leases to rent apartments at the complex, prior to the lessees being obligated under contract to rent the apartments: a lead warning statement; a statement by Respondents disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to Respondents regarding lead-based paint and/or lead-based paint hazards in the apartments or a statement that no such records exist; a statement by the lessees affirming receipt of certain information set out in the Disclosure Rule; the lead hazard information pamphlet; and signatures and dates of signatures of Respondents and the lessees certifying the accuracy of their statements. The parties agreed that settling the matter, without further litigation, was in the public interest. The CAFO became effective on September 28, 2006.

Office of Regional Counsel Primary Contact: Ann Coyle, (312) 886-2248; Secondary Contact: Joana Bezerra, (312) 886-6004

Region 5 signs Consent Agreements and Final Orders with Investors Management Services Corp. and Leroy W. Vaughn, resolving Lead-Based Paint violations.

On August 28 and 30, 2007, Respondents Investors Management Services Corp. and Leroy W. Vaughn entered into pre-filing settlement agreements resolving violations of the Lead-Based Paint Hazard Reduction Act for failing to comply with the requirements in 40 C.F.R. Part 745, Subpart F, in the leasing of target housing in Detroit, Michigan. Under the terms of the two settlements, Respondents will pay a total civil penalty of \$3,200, and perform a supplemental environmental project (SEP) in Detroit to abate and/or mitigate lead-based paint hazards in residential housing where one or more children reside. The abatement/mitigation will be performed in partnership with the Greater Detroit Area Health Council, CLEARCorpsDetroit, a not for profit organization, at a total cost of \$32,400.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237, and Estrella Calvo, Pesticides and Toxics Compliance Section, (312) 353-8931

Region 5 Enters into Pre-filing Settlement with Mark R. King under the Residential Lead-Based Paint Hazard Reduction Act.

On April 26, 2007, Region 5 signed a combined complaint and consent agreement with Mark R. King (“Respondent”), to settle violations of the Lead Disclosure Rule, 40 C.F.R. Part 745, Subpart F, for his residential properties located in Youngstown, Ohio. The settlement will require Respondent to pay a penalty of \$7,610, and perform a supplemental environmental project at a cost of \$68,500 to be used to conduct lead-based paint hazard abatement of his residential properties over the next eighteen months.

U.S. EPA and the U.S. Department of Housing and Urban Development (“HUD”) have targeted our Section 1018 Residential Lead-Based Paint Hazard Reduction Act joint enforcement efforts in cities with a large number of children with elevated blood lead (“EBL”) levels. U.S. EPA and HUD work with the local departments of public health to try to identify landlords and management companies with a history of children with EBLs, and then investigate those landlords and management companies. The Youngstown City Health District identified Mark King an appropriate landlord for our joint investigation.

Respondent had owned and managed over 230 properties, primarily single family dwellings, in Youngstown. He buys distressed properties, renovates them, and then rents them. He had received at least eight notices from the Youngstown City Health District related to lead hazards in his rental properties. In response to U.S. EPA’s subpoena, Respondent provided documents demonstrating his failure to comply with the Lead Disclosure Rule for some of his rental properties.

Office of Regional Counsel Contact: Mary McAuliffe, (312) 886-6237; Estrella Calvo, (312) 353-8931

Region 5 signs Consent Agreement and Final Order with Karen Krach.

On March 23, 2006, a CAFO was signed with Karen Krach of Fishers, Indiana, to settle violations of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Rules enacted by U.S. EPA under the Act require, among other things, landlords and sellers of certain residential properties to disclose any knowledge, or the lack thereof, about the presence of lead based paint at the properties. Ms. Krach owns a number of single family residential rental properties in and around Indianapolis, Indiana. Region 5 initiated this enforcement action by filing an administrative complaint in July of 2006, alleging that Ms. Krach had failed to comply with lead paint disclosure requirements in three lease transactions and three sales transactions. The complaint included violations alleging the failure to comply with disclosure requirements prior to tenants being obligated under a lease, and failure to provide to purchasers the required ten day lead paint inspection period. Ms. Krach will pay a penalty of \$13,600 to settle the violations.

Office of Regional Counsel Primary Contacts: Erik Olson, (312) 886-6829; Mark Koller, (312) 353-2591; Estrella Calvo, additional contact: (312) 353-8931

McClain Properties enters CAFO settling violations of Lead Disclosure Rule under TSCA § 16(a) and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act.

On September 27, 2007, McClain Properties entered a consent agreement and final order settling alleged violations of the Lead Disclosure Rule at 40 C.F.R. Part 745. The alleged violations concern the Respondent’s failure to comply with the requirements of providing lessees, before they become obligated on a lease, a lead warning statement, an accurate lead disclosure statement, a list of any records or reports available to the lessor and an acknowledgement by lessor and lessee concerning the foregoing matters. Respondent agreed to perform a lead paint abatement project and thus obtained a 90% reduction in the proposed penalty under EPA’s 2004 Policy “SEPs in Administrative Enforcement Matters Involving Section 1018 Lead-based Paint Cases.” The reduced penalty amount is

\$1,263.00.

Office of Regional Counsel Contact: Gaylene Vasaturo, (312) 886-1811

Region 5 signs a Consent Agreement and Final Order with Ottawa L.L.C.

On April 11, 2007, Region 5 signed a CAFO with Ottawa L.L.C. (Respondent) that both initiates and fully resolves the TSCA Section 16, 15 U.S.C. § 2615(a), administrative action. On December 22, 2005, Region 5 sent Respondent a pre-filing notice letter informing Respondent that it violated the Lead Disclosure Rule, 42 U.S.C. § 4851 of TSCA. Respondent contacted Region 5 in response to the letter and negotiated a settlement with EPA. EPA planned to file a complaint for \$28,600 for violations which originated with the failure to include certain information, either within each contract or as an attachment to each contract, before Respondent's lessees were obligated under leasing contracts. The information Respondent failed to include in the contracts included:

- a Lead Warning Statement;
- a statement disclosing the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence;
- a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist;
- a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet; and
- the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

In consideration of Respondent's cooperation and other factors as justice may require, Region 5 agreed to reduce the proposed penalty to \$20,060 in settlement of the case.

Office of Regional Counsel Contact: Jacqueline Clark, (312) 353-4191; Program Contact: Joana Bezerra, (312) 886-6004

Region 5 files Consent Agreement and Final Order with P & B Investments, Inc.

On April 2, 2007, Region 5 and P & B Investments, Inc. (Respondent) entered into a pre-complaint Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that the Respondent, as lessor of target housing in Detroit Michigan, violated the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4252d et seq., and Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), (b)(6).

The initial proposed penalty in this matter was \$59,039, which was calculated consistent with the statutory penalty criteria of Section 16 of TSCA, 15 U.S.C. § 2615, and Section 1018 Disclosure Rule Enforcement Response Policy ("penalty policy"). Also consistent with the penalty policy, U.S. EPA mitigated the proposed penalty by 30% to \$41,327 in consideration of Respondent's cooperation, the immediate steps to comply with the Disclosure Rule and in consideration of the value of early settlement. The penalty of \$41,327 was further mitigated to \$4,133 due to Respondent's agreement to perform Supplemental Environmental Project (SEP) involving a window replacement project and

lead clearance sampling to protect tenants from potential lead-based paint hazards at a cost of at least \$37,194.

Office of Regional Counsel Primary Contact: Tamara Carnovsky, (312) 886-2250; Estrella Calvo additional contact, (312) 353-8931

Region 5 files Consent Agreement and Final Order with Laurence Reardon and Reardon Properties Limited Partnership.

On February 28, 2007, Region 5 and Laurence Reardon and Reardon Properties Limited Partnership, entered into a Consent Agreement and Final Order (CAFO) resolving U.S. EPA's claims alleging that Laurence Reardon and Reardon Properties Limited Partnership violated the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Lead-Based Paint Hazard Reduction Act"), 42 U.S.C. § 4852d *et seq.*, and Sections 409 and 16 of TSCA, 15 U.S.C. §§ 2689, 2615, and 40 C.F.R. §§ 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) by failing to make certain required disclosures in the leasing of sixty-seven (67) apartments. U.S. EPA filed its complaint in this matter on August 8, 2006, and sought a penalty of \$146, 630. At Respondents' request, Region 5 agreed to participate in Alternative Dispute Resolution (ADR) discussions under Judge Gunning's supervision. The parties have agreed to settle this case for a total of \$61,176, plus interest, in two installment payments. The penalty is being mitigated for litigation risk identified in the ADR process and for Respondents' good faith attitude.

Office of Regional Counsel Contact: Jeffrey A. Cahn, (312) 886-6670 and Scott Cooper, (312) 866-1332

Court Enters Consent Decree for Section 1018 Lead-Based Paint Case in Minnesota.

On December 8, 2006, the District of Minnesota entered a consent decree between the Environmental Protection Agency, the Department of Housing and Urban Development, and the U.S. Attorney's Office for the District of Minnesota with a Minneapolis landlord, Steven J. Meldahl, the owner of SJM Properties. This consent decree resolves his violations of reporting and recordkeeping requirements regarding the disclosure of lead-based paint information. Meldahl has agreed to address all lead-based paint hazards in the 34 Minneapolis rental homes he owns and manages. In addition to making his rental units lead safe, Meldahl has paid a civil penalty of \$5,000 for violating Section 1018 of the Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations at 40 C.F.R. Section 745, Subpart F ("Lead Disclosure Rule"). The complaint and proposed consent decree were simultaneously filed on August 3, 2006.

This settlement is the sixth consent decree in Minnesota that requires landlords to abate all lead hazards in their rental units. Pursuant to the six consent decrees, nearly 5,000 rental units in Minneapolis and St. Paul will be made lead safe for tenants. Moreover, the landlords involved in these six settlements have paid civil penalties as well as provided over \$170,000 for local children's health projects, including funding a mobile lead poisoning screening vehicle called the "Leady Eddie Van." The "Leady Eddie Van" is now fully equipped and being used to screen children for lead poisoning throughout Minnesota.

Office of Regional Counsel Primary Contact: Mary McAuliffe, (312) 886-6237; Scott Cooper, additional contact (312) 886-1332

Three Bond International's Self-Disclosure Of Violation of TSCA Polymer Exemption Rule Meets Criteria Of Audit Policy.

On July 30, 2007, U.S. EPA Region 5 notified Three Bond International that its self-disclosure of a failure to file a report on the import of an exempt polymer as required by 40 C.F.R. 723.250(f) at its West Chester, Ohio facility met all nine criteria of EPA's audit Policy.

Office of Regional Counsel Contact: Gaylene Vasaturo, 312-886-1811

Region 5 Executes CAFO with Transformer Decommissioning, Inc., Resolving TSCA PCB Violation at its Facility in Nabb, Indiana.

On August 21, 2007, the Region filed a Consent Agreement and Final Order resolving the liability of Transformer Decommissioning, Inc. (TDI), for a violation of the PCB Rule under TSCA resulting from the emptying of six transformers containing over 100 gallons of PCB-contaminated oil into holding tanks for non-PCB-contaminated oils at its transformer disposal facility in Nabb, Indiana. TDI, after an inspection by the State, acknowledged its error and disposed of the contents of the tanks as contaminated waste. The settlement requires TDI to pay a cash penalty of \$27,625 representing one count of improper disposal of PCBs.

Office of Regional Counsel Primary Contact: Robert Guenther, (312) 886-0566; Kendall Moore, alternate contact, (312) 353-1147