

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

IN THE MATTER OF: )

GREAT LAKES ASPHALT )  
Zionville, Indiana )

Proceeding Under Section 122 )  
(g)(4) and (h) of the Compre- )  
hensive Environmental Response, )  
Compensation, and Liability Act )  
of 1980, as amended, 42 U.S.C. )  
Section 9622(g)(4) and (h) )

V-W-94-C-228

US EPA Docket No. \_\_\_\_\_

ADMINISTRATIVE ORDER  
ON CONSENT

I. JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by § 122(g)(4) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. NO. 99-499, 42 U.S.C. § 9622(g)(4), to reach settlements in actions under §§ 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), and pursuant to the authority vested in the Commissioner of the Indiana Department of Environmental Management ("IDEM") by Indiana Code ("IC") 13-7-8.7-8 and 13-7-8.7-10. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrator of the EPA by Delegation No. 14-14-3 (Sept. 13, 1987), with the concurrence of the Department of Justice.

The Administrative Order on Consent is issued to the

persons identified in Appendix A ("De Minimis Respondents"). EPA, IDEM and the De Minimis Respondents agree that neither this Consent Order, nor any part hereof, nor entry into, nor any performance under this Consent Order by any of the De Minimis Respondents, shall constitute or be construed as a finding or admission or acknowledgement of the factual or legal statements contained in this Consent Order, including in Sections III and V, or of any liability, fault, or wrongdoing, or evidence of such, or an admission of violation of any law, rule, regulation or policy, by any De Minimis Respondent or by its officers, directors, employees, agents, successors or assigns, nor shall this Consent Order nor any performance hereunder by any of the De Minimis Respondents create any rights on behalf of any person not a party hereto. Each of the De Minimis Respondents expressly reserves any and all rights, including the right of contribution, defenses, claims, demands and causes of action which each of them may have with respect to any matter, action, event, claim or proceeding relating in any way to the Great Lakes Asphalt Site against any person, except as expressly provided in this Consent Order. De Minimis Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order. De Minimis Respondents agree not to contest the jurisdiction of the EPA and IDEM to issue or enforce this Consent Order, in any action taken to enforce this Consent Order.

Each De Minimis Respondent agrees to undertake all actions required by the terms and conditions of this Administrative Order on Consent.

## II. DEFINITIONS

Whenever the following terms are used in this Consent Order or the Appendix attached hereto, the following definitions specified in this Paragraph shall apply:

- A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § ~~9601, 95 889,~~
- B. "De Minimis Respondents" means all persons or entities listed in Appendix A.
- C. "EPA" means the United States Environmental Protection Agency.
- D. "Facility" means the "facility" as that term is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), where Great Lakes Asphalt, Inc. stored hazardous substances. The facility is located in Zionville, Boone County, Indiana, one mile north of State Route 32.
- E. "Hazardous substance" shall have the meaning provided in § 101(14) of CERCLA, 42 U.S.C. § 9601(14) and IC 13-7-8.7-1(c).
- F. "IDEM" means the Indiana Department of Environmental Management.

G. "IDNR" means the Indiana Department of Natural Resources.

H. "Natural Resources" shall have the meaning provided in IC 13-7-8.7-1(e).

I. "Parties" mean the United States Environmental Protection Agency, the U.S. Department of the Interior, the Indiana Department of Environmental Management, the Indiana Department of Natural Resources and De Minimis Respondents.

J. "Potentially Responsible Party" or "PRP" shall mean all persons, as that term is defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21), who are potentially liable to the United States, the State of Indiana or to other parties for payment of response costs or subject to injunctive relief under §§ 104, 106 and/or 107 of CERCLA and IC 13-7-8.7-8.

K. "Response Costs" means any costs incurred by EPA and IDEM pursuant to CERCLA, 42 U.S.C. § 9601, et seq. or IC 13-7-8.7 at the facility.

### III. STATEMENT OF FACTS

1. The Great Lakes Asphalt Facility is located in Boone County, Indiana in an agricultural/residential area. The Facility originally was an asphalt production facility operated by Leroy and Madgel McAllister. In 1979 and 1982, the McAllisters leased the use of several tanks at the Facility to the operators of the Enviro-Chem Site for the storage of "synthetic fuel". On May 10, 1989, the Emergency Response Branch

of the IDEM was notified of a release at the Facility. The release flowed north to contaminate the soil, a drainage system and a waterway. The discharge covered a 1.5 mile area and entered Eagle Creek. The State of Indiana took the initial steps in analyzing and addressing the spill. EPA was notified the same day, and the cleanup at the Facility was completed by EPA's Emergency and Enforcement Response Branch ("EERB").

2. Approximately 80,000 gallons of liquid material containing elevated levels of volatile organic compounds such as toluene, xylene, methyl isobutylketone, ethylbenzene, trichloroethylene and tetrachloroethylene and high levels of metals such as lead, zinc, copper and chromium have been released into the environment at or from the Facility.

3. As a result of the release of hazardous substances into the environment, EPA and IDEM undertook a removal action at the Facility under § 104 of CERCLA, 42 U.S.C. § 9604.

4. On May 10, 1989, IDEM commenced the removal action at the Facility which consisted of installing containment devices around the tanks and in the farm fields and two floating non-absorbent booms approximately 6 miles downstream from the point where the spill entered Eagle Creek. The IDEM continued its efforts to contain the spill until May 16, 1989, at which time the removal began under EPA direction. The IDEM also continued assisting EPA through June, 1989.

5. On May 16, 1989, EPA commenced the removal at the Facility which consisted of two phases. Phase 1 consisted of

excavating and staging soil, decontaminating Eagle Creek, flushing drainage tiles, solidifying tank contents, securing staged soil, sampling tanks and beginning Facility restoration. Phase 2 consisted of completing tank solidification and Facility restoration and removing and disposing of all hazardous waste at the Facility. Removal activities were completed at the Facility in August 1990.

6. In performing its removal actions at the Facility, as of July 1, 1989, IDEM has incurred \$88,611.17 in removal costs, exclusive of interest.

7. In performing its removal actions at the Facility, as of July 1, 1989, U.S. EPA has incurred \$1,353,145.69 in removal costs, exclusive of interest.

8. Based upon information currently known to the EPA, the amount of hazardous substances generated or transported to the Facility by each De Minimis Respondent listed in Appendix A, or the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each De Minimis Respondent is minimal in comparison to the amount of hazardous substances at the Facility or the toxic or other hazardous effects of hazardous substances at the Facility.

9. The total of all payments required to be made by each De Minimis Respondent listed in Appendix A pursuant to this Consent Order is a portion of the total removal costs at the Facility.

10. Notice of this settlement will be given to the public.

#### IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of the Parties are:

A. To reach a final settlement with large numbers of the de minimis parties in this case which allows them to settle certain potential liability with respect to the Facility, to the extent that these liabilities can be determined at this stage of the enforcement action; thereby avoiding difficult, prolonged and complicated litigation among EPA, IDEM, the De Minimis Respondents, and other PRPs not participating in this settlement; and

B. To simplify subsequent negotiations or litigation concerning the Great Lakes Asphalt Facility by eliminating a substantial number of parties from further involvement in the case, while raising revenues from settlements with the De Minimis Respondents to be applied to EPA's and IDEM's past removal costs associated with this Facility.

#### V. DETERMINATIONS

Based upon the Findings of Fact set forth above and on the administrative record for this Facility, EPA and IDEM made the determinations enumerated below.

1. The Great Lakes Asphalt Facility is a "facility" as that term is defined in § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Hazardous substances, within the definitions of § 101(14) of CERCLA, 42 U.S.C. § 9601(14) and IC 13-7-8.7-1(c), have been released into the environment at or from the Facility.

3. Each De Minimis Respondent is a "person" as that term is defined in § 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IC 13-7-1-17.

4. Each De Minimis Respondent is a potentially responsible party (PRP) within the meaning of §§ 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g)(1) and IC 13-7-8.7-8.

5. The past migration of hazardous substances from the Facility constitutes an actual release as that term is defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22) and IC 13-7-8.7-1(f).

6. Prompt and final settlement with the De Minimis Respondents is practicable and in the public interest, consistent with § 122(g)(1) and (h) of CERCLA, 42 U.S.C. § 9622(g)(1) and (h).

7. This Consent Order involves only a portion of the total response costs at the Facility with respect to each De Minimis Respondent pursuant to § 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

8. It is appropriate that each De Minimis Respondent, upon payment, shall receive contribution protection against claims consistent with the provisions of § 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5) and IC 13-7-8.7-15.

9. In the event that information not currently known to the United States is discovered which establishes that the amount

of hazardous substances contributed to the Facility by a De Minimis Respondent, or the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each De Minimis Respondent is not minimal in comparison to the amount of

~~hazardous substances at the Facility or the toxic or other~~  
hazardous effects of hazardous substances at the Facility, then all terms of this Agreement shall remain in effect except that each such De Minimis Respondent shall receive contribution protection against claims consistent with the provisions of § 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), pursuant to Section VI-F-2 of Consent Order.

#### VI. ORDER

Based upon the Administrative Record for this Facility and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby ORDERED:

##### A. PAYMENT

1. De Minimis Respondents shall pay to the EPA Hazardous Substance Superfund six hundred two thousand, five hundred twenty-eight dollars and eighty-six cents (\$ 602,528.86) and the Indiana Hazardous Substances Response Trust Fund forty thousand seven hundred sixty-one dollars and fourteen cents (\$ 40,761.14), within 30 days of the effective date of this Consent Order.

2. The purpose of such payments are to reimburse the U.S. EPA and IDEM for costs incurred at the Facility.

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3. Payment to IDEM shall be made by check made payable to the Hazardous Substance Response Trust Fund. A cover letter referencing the Facility name and the name and address of the De Minimis Respondents should accompany the check. The payment shall be sent by certified mail to:

Attention: Cashier  
Indiana Department of Environmental Management  
P.O. Box 7060  
Indianapolis, Indiana 46206

4. De Minimis Respondents shall simultaneously send a copy of its check and cover letter to:

Donna Winsted  
Cost Recovery Coordinator  
Indiana Department of Environmental Management  
100 North Senate Avenue, Room N-1255  
Indianapolis, Indiana 46204

5. Payment to the EPA shall be made by check made payable to the EPA Hazardous Substance Superfund and reference the

Facility name, the name and address of the De Minimis

Respondents, this action's EPA docket number, and shall be sent to:

U.S. EPA Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

6. De Minimis Respondents shall simultaneously send a copy of its check to:

Peter M. Felitti  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region V (CS-3T)  
77 West Jackson Street  
Chicago, Illinois 60604-3590

7. Further, De Minimis Respondents shall pay twenty thousand dollars (\$ 20,000) to the Department of the Interior for settlement of the United States' claim for natural resource damage in connection with the Great Lakes Asphalt Site, within 30 days of the effective date of this Consent Order. The check or an attachment thereto should clearly state that the check is for the Great Lakes Asphalt Site, and note that the check is from the group of settling parties known as the De Minimis Respondents.

The original check should be sent to:

Department of the Interior  
Division of Fiscal Services  
Office of the Secretary  
Attn: Michael Horst  
Mail Stop 5257  
1849 C Street NW  
Washington, D.C. 20240

Photocopies of the check should be sent to:

U.S. Fish and Wildlife Service  
Division of Environmental Contaminants  
4401 North Fairfax Drive, Room 330  
Arlington, VA 22203

and

Department of the Interior  
Office of Environmental Affairs  
Mail Stop 2340  
1849 C Street, NW  
Washington, D.C. 20240

8. Further, De Minimis Respondents shall pay \$ 20,000 to the Indiana Department of Natural Resources for settlement of the State of Indiana's claim for natural resource damage in connection with the Great Lakes Asphalt Site, within 30 days of the effective date of this Consent Order. The check or an attachment thereto should clearly state that the check is for the

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Great Lakes Asphalt Site and note that the check is from the group of settling parties known as the De Minimis Respondents.

The original check should be sent to:

Indiana Department of Natural Resources  
402 West Washington Street, W273  
Indianapolis, Indiana 46204

Photocopies of the check should be sent to:

Indiana Department of Environmental Management  
Attn: Jim Smith  
100 North Senate Avenue, Room N-1255  
Indianapolis, Indiana 46204

and

Indiana Department of Natural Resources  
Attn: Wayne Faatz  
402 West Washington Street, W273

Indianapolis, Indiana 46204

**B. CIVIL PENALTIES**

In addition to any other remedies or sanctions available to EPA and IDEM, any De Minimis Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal, pursuant to § 122(1) of CERCLA, 42 U.S.C. § 9622(1) and IC 13-7-13-1.

**C. CERTIFICATION OF DE MINIMIS RESPONDENTS**

Without admitting that any of its wastes were shipped to the Great Lakes Asphalt Site or that any wastes shipped to the Great Lakes Asphalt Site contained hazardous substances within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14) and IC 13-7-8.7-1(c), each De Minimis Respondent certifies that, to the best of its knowledge and belief, it has provided to EPA all

information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, generation, treatment, composition, characteristics, transportation, or disposal of hazardous substances, if any, at or in connection with the Facility, and that the information so provided accurately reflects the kind and quantity of hazardous substances, if any, delivered by it to the Facility or to another for transport to the Facility.

**D. COVENANT NOT TO SUE**

1. Subject to the reservation of rights in Section VI, Paragraph E, of this Consent Order, upon payment of the amounts specified in Section VI, Paragraph A of this Consent Order, EPA and IDEM covenants not to sue or to take any other civil, judicial or administrative action against any of the De Minimis Respondents for "Covered Matters". "Covered Matters" shall include any and all civil liability for reimbursement of EPA's and IDEM's response costs, for damages to natural resources of which the United States is trustee, for damages to natural resources of which the State of Indiana is trustee or for injunctive relief, pursuant to §§ 104, 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9604, 9606 or 9607(a), § 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, or applicable Indiana law or statutory with regard to the Facility. This covenant is limited solely to costs or acts arising at the Great Lakes Asphalt Facility or as a result of the past or future

release of hazardous substances at or from the Great Lakes Asphalt Facility.

2. In consideration of EPA's and IDEM's covenant not to sue in Section VI, Paragraph D.1 of this Consent Order, the De Minimis Respondents agree not to assert any claims or causes of actions against the United States or the Hazardous Substance Superfund or the State of Indiana or the Hazardous Substance Response Trust Fund arising out of Covered Matters, or to seek any other costs, damages, or attorney's fees from the United States or the State of Indiana arising out of response activities at the Facility.

3. The United States is negotiating with other PRPs for reimbursement of response costs, with respect to the Facility. If agreement is reached within 120 days after the effective date of this Consent Order and provided that such Consent Decree or Order includes a covenant by the defendants therein not to initiate or maintain any civil administrative or judicial action or proceeding asserting contribution claims against De Minimis Respondents for any matters addressed in and arising from that Consent Decree, then in consideration of such defendants' covenant not to sue, De Minimis Respondents covenant not to initiate or maintain any civil judicial or administrative action or proceeding asserting any contribution claim against parties to such Consent Decree for any response costs paid by De Minimis Respondents under this Consent Order or for any matters addressed in and arising from this Consent Order.

**E. RESERVATION OF RIGHTS**

1. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which the United States, including EPA and the State of Indiana, including IDEM, may have against any of the De Minimis Respondents for any liability as a result of failure to make the payment required by Paragraph A of Section VI of this Consent Order.

2. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, and the State of Indiana, including IDEM, to seek or obtain further relief from any De Minimis Respondent hereto, and the covenant not to sue in Paragraph D of Section VI of this Consent Order is null and void with respect to De Minimis Respondent, if:

a) such De Minimis Respondent breaches one or more of the express warranties set out in Paragraph C of Section VI above; or

b) such De Minimis Respondent fails or refuses to make the payments required in Paragraph A of Section VI above.

3. EPA, IDEM and the De Minimis Respondents intend that nothing in this Consent Order shall be construed as a release or covenant not to sue any person, firm, corporation or other entity not a signatory to this Consent Order. Except as expressly provided herein, EPA, IDEM and the De Minimis Respondents

expressly reserve all claims, demands and causes of action, either judicial or administrative, civil or criminal, past or future, in law or equity, against any person, firm, corporation or other entity who is not a signatory to this Consent Order for any matter arising at or in connection with the Facility.

4. If information not currently known to the United States or the State of Indiana is discovered which indicates that the amount of hazardous substances contributed to the Facility by any De Minimis Respondent, or the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each De Minimis Respondent is not minimal in comparison to the amount of hazardous substances at the Facility or the toxic or other hazardous effects of hazardous substances at the Facility, then the Covenant Not to Sue as to future liability referred to in Section VI, Paragraph D-1 shall be null and void as to future liability as to that De Minimis Respondent and a covenant not to sue as to future liability as is set forth in CERCLA § 122(f)(6)(A), 42 U.S.C. § 9622(f)(6)(A), shall become effective as to that De Minimis Respondent.

5. EPA, IDEM and the De Minimis Respondents agree that the actions undertaken by the De Minimis Respondents in accordance with this Consent Order do not constitute an admission of any liability by any De Minimis Respondent. The De Minimis Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement

or enforce this Consent Order, the validity of the Findings of Fact or Determinations contained in this Consent Order.

**F. CONTRIBUTION PROTECTION**

1. Subject to the reservations of rights in Section VI, Paragraph E of this Consent Order, EPA and IDEM agree that by entering into and carrying out the terms of this Consent Order, each De Minimis Respondent will have resolved its liability to the United States and the State of Indiana for Covered Matters pursuant to § 122(g)(5) of CERCLA 42 U.S.C. § 9622(g)(5), and

~~shall not be liable for claims for matters within the scope of~~  
the contribution protection afforded by the provisions of § 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5) and IC 13-7-8.7-15.

2. Subject to the reservation of rights in Section VI, Paragraph E of this Consent Order, EPA and IDEM agree that by entering into and carrying out the terms of this Consent Order, each De Minimis Respondent will have resolved its liability to the United States and the State of Indiana for Covered Matters pursuant to § 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and shall not be liable for claims for matters within the scope of the contribution protection afforded by the provisions of § 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

**G. PARTIES BOUND**

This Consent Order shall apply to and be binding upon the De Minimis Respondents and their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized

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to enter into the terms and conditions of this Consent Order and to bind legally the De Minimis Respondent represented by him or her.

H. PUBLIC COMMENT

This Consent Order shall be subject to a thirty day public comment period pursuant to § 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with § 122(i)(3) of CERCLA, 42 U.S.C. § 9622(1)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

I. EFFECTIVE DATE

The effective date of this Consent Order shall be the date upon which EPA issues written notice to the De Minimis Respondents that the public comment period pursuant to Section VI, Paragraph H of this Consent Order has closed and that comments received, if any, do not require modification of or EPA's withdrawal from this Consent Order.

**IT IS SO ORDERED**

U.S. Environmental Protection Agency  
Region V

By: \_\_\_\_\_

*Valdas V. Adamkus*  
Valdas V. Adamkus  
Regional Administrator

*5/25/94*

\_\_\_\_\_  
Date

**In re Great Lakes Asphalt, USEPA Docket No. V-W-94-C**

**For the United States Department of the Interior**

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**Lois J. Schiffer, Esquire  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530**

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**Date**

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
INDIANA DEPARTMENT OF NATURAL RESOURCES AND STATE OF INDIANA

TECHNICAL RECOMMENDATION:

By: *Greta J. Hawvermale*  
Greta J. Hawvermale  
Assistant Commissioner  
Office of Environmental Response  
IDEM

Date: 5/12/94

By: *David S. Herbst*  
David Herbst  
Deputy Director  
IDNR

Date: 5-19-94

APPROVED FOR LEGALITY AND FORM

By: *Pamela Carter*  
Pamela Carter  
Indiana Attorney General

Date: 5-20-94

ATTORNEY FOR PETITIONER

By: *Gregg D. Romane*  
Gregg D. Romane  
Office of Legal Counsel  
IDEM

Date: 5/16/94

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT

By: *Kathy Brosser*  
Kathy Brosser  
Commissioner  
IDEM

Date: 5-18-94

By: *Evan Bayh*  
Evan Bayh  
Governor  
State of Indiana

Date: May 20, 1994