



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
SEP 29 2010

REPLY TO THE ATTENTION OF:

SE-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ecological Systems, Inc.  
c/o Mr. Michael T. Scanlon  
Attorney at Law  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204

Re: ESI Environmental Inc Site, Indianapolis, Indiana (B5Y5)


Dear Mr. Scanlon:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within three (3) business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within seven (7) business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Nola Hicks, Associate Regional Counsel, at (312) 886-7949 or Verneta Simon, On-Scene Coordinator, at (312) 886-3601.

Sincerely,

  
Richard C. Karl, Director  
Superfund Division

Enclosure

cc: Mr. Thomas W. Easterly, Indiana Department of Environmental Management

This Order applies to and is binding upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order. Respondents are jointly and severally liable for

carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

### **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The ESI Site is a commercial used oil processing facility located at 4910 West 86<sup>th</sup> Street, Indianapolis, Marion County, Indiana. The Site is situated in an industrial area, and includes a tank farm which has various above ground and below ground tanks. The Site also consists of several ancillary buildings which includes a wastewater treatment plant, a sludge treatment building, a sludge treatment process area, an oil dehydration process area, and a truck off-loading building. In addition, the Site includes a maintenance building immediately adjacent to the tank farm, and a rail unloading area less than one mile west of the facility.
2. Ecological Systems, Inc. was previously known as Environsolve. Environsolve was formerly located at 1125 Brookside Avenue, Suite D and 5608 Massachusetts Avenue in Indianapolis, Marion County, Indiana.
3. Ecological Systems, Inc. relocated and began operations at the Site on or about December 10, 1999. The facility processes petroleum-contaminated water in order to reclaim the oil for resale. The business began by using small temporary storage tanks, with oil being shipped off-site almost as soon as it was produced. Current operations consist of shipments received via truck and rail of oily waters, machining coolants, and lubricating oil. The solids are separated after which the oil is removed. The recovered oil is then heat-finished with the use of live steam, pH control, and demulsifiers. The separated oil is pumped off, allowed to cool, and sold after analysis. The water phase is re-circulated back into the water treatment system. The rag phase is dewatered and, depending on the British Thermal Unit content, is either sold or solidified as waste for disposal.
4. According to Ecological Systems, Inc.'s Facility Response Plan (FRP), there are 12 above ground storage tanks at the facility with a total oil storage capacity of 1,199,392 gallons. The largest above ground tank has the capacity of 1.04 million gallons. There are also 3

underground storage tanks at the facility with a total oil storage capacity of 1,025,000 gallons. The total above ground and below ground tank capacity is 2,224,392 million gallons.

5. On April 20, 2001, the City of Indianapolis (City), Office of Environmental Services (OES), issued a Notice of Violation (NOV) to Ecological Systems, Inc. for one sample which exceeded its Industrial Discharge Permit limit for Total Petroleum Hydrocarbon. No penalty was assessed.
6. On July 11, 2003, the City OES issued a NOV to Ecological Systems, Inc. for one sample which exceeded its discharge limit for copper. No penalty was assessed.
7. On June 9, 2004, the City OES issued a NOV to Ecological Systems, Inc. for one zinc sample and one copper sample which exceeded its discharge limits. No penalties were assessed.
8. On February 13, 2006, (revised on June 28, 2006), the City OES issued a NOV to Ecological Systems, Inc. for eleven discharge violations involving benzene, copper, and Benzene, Toluene, Ethylbenzene, and Xylene (BTEX) on various dates between December 19, 2005, and May 30, 2006. The Indiana Department of Environmental Management (IDEM) issued a \$15,750 penalty to Ecological Systems, Inc., and required the installation of an air stripper for these violations.
9. On March 15, 2007, Ecological Systems, Inc. discharged untreated oil-impacted storm water and oil through two internal storm drains located on the northwest side of its facility into the City sanitary sewer system, which then overflowed through manholes at locations on the north side of Indianapolis, several miles downstream from the facility. The receding water from the sewer overflows deposited oil onto the soil and vegetation at the overflow locations. At least 27 residences, 1 church, 1 City park, 3 golf courses, and 5 manholes were impacted by Ecological Systems, Inc.'s discharge. Dye testing conducted by the City and its contractor after the discharge confirmed that Ecological Systems, Inc.'s two on-site storm drains allowed untreated water and oil to enter the City's sanitary sewer system without proper treatment prior to discharge.
10. On May 17, 2007, the City OES issued a NOV to Ecological Systems, Inc. for ten discharge violations involving benzene, BTEX, and Methyl Tertiary Butyl Ether, and for the illegal discharge that occurred on March 15, 2007.
11. On July 18, 2007, Ecological Systems, Inc. was informed by a customer that approximately 28 milligrams per kilogram (mg/kg) of Polychlorinated Biphenyls (PCBs) had been discovered in a used oil shipment from the facility.

12. On February 26, 2010, criminal charges were filed by the U.S. Attorney's office against two Ecological Systems, Inc. managers for violations of the Clean Water Act. The charges were the result of an investigation by U.S. EPA's Criminal Investigation Division, IDEM, and the Indiana Department of Natural Resources' Law Enforcement Division. In February 2009, the two managers allegedly directed lower-level employees to pump the contents of a tank containing approximately 300,000 gallons of untreated wastewater, oil, and other waste materials through hoses directly into the sewer system. An oily sludge-like substance then flowed out of various sewer manholes and into the yards of several Indianapolis residents, who then contacted IDEM. According to the charging documents, the two managers falsely insisted to IDEM inspectors that no bypass event had occurred. The U.S. Attorney's office also alleged that Ecological Systems, Inc. misrepresented the available waste storage capacity of tanks to regulators, and that one manager, at the direction of a corporate officer, regularly submitted falsified monitoring reports to the City. The two managers charged have since entered into Plea Agreements.
13. On August 24, 2010, the Site was brought to the attention of the U.S. EPA Region 5 Emergency Response Branch by IDEM. IDEM had been contacted by Ecological Systems, Inc. and informed of its pending closure, its possible bankruptcy, and a desire to leave the property in a condition that would not cause additional environmental harm or make a clean-up difficult for IDEM or U.S. EPA.
14. On September 1, 2010, representatives from U.S. EPA Region 5 Superfund and Land and Chemicals Divisions travelled to Indianapolis to meet with representatives of Marion County Health Department (MCHD), IDEM, Indianapolis Department of Public Works (IDPW), and Ecological Systems, Inc. to discuss the facility's imminent closure, and determine whether a CERCLA removal action is warranted at the Site. In addition, PCB issues involving the Site tank farm were discussed.
15. On September 1, 2010, U.S. EPA conducted a limited Site Assessment, and a Joint Formal PCB inspection at the Site. The results of the Joint Formal PCB inspection are not yet available from U.S. EPA Region 5 Land and Chemicals Division and IDEM.
16. Ecological Systems, Inc. has indicated that it will continue to accept used oil until the end of September 2010, and unbeknownst to its employees, intends to file for bankruptcy on October 1, 2010, and abandon the facility.
17. On September 23, 2010, U.S. EPA verbally issued a General Notice of Potential Liability (General Notice) by telephone to Ecological Systems, Inc. through its representative, Mr. Mike Scanlon. Ecological Systems, Inc. is the current owner/operator at the Site. The General Notice gave Ecological Systems, Inc. the opportunity, as a potentially responsible party, to voluntarily perform or fund the removal action which will be

required at the Site as a result of its impending abandonment. Ecological Systems, Inc.'s response to the General Notice was that it intends to file for bankruptcy on October 1, 2010, and will not fund or perform the removal action at the Site.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The ESI Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. PCB's are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Ecological Systems, Inc. is the present "owner" and "operator" of the ESI Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent Ecological Systems, Inc. is either a person who at the time of disposal of any hazardous substances owned or operated the ESI Site, or who arranged for disposal or transport for disposal of hazardous substances at the ESI Site. Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR Part 300. These factors include, but are not limited to, the following:
  - a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; This factor is present at the Site due to the existence of the outcome of a limited Site Assessment conducted by U.S. EPA on September 1, 2010. The Site Assessment confirmed several incidents of releases from this facility occurring between 2007 and the present that have caused oily sludge to affect approximately 27 residential properties and 3 golf courses. The Ecological Systems, Inc. facility is considered the source of the releases since it is the only facility that discharges to the North Belmont Public Owned Treatment Works.

Sampling data in the Administrative Record is a compilation of pre- and post- sampling since 2007 by Ecological Systems, Inc., Ecological Systems, Inc.'s contractor Keramida, IDPW, MCHD, etc. For example, total lead in soil sample results ranged from 124 to 14.6 mg/kg; diesel range organics (DRO) results ranged from 67,000 to 130,000 mg/kg; and extended range organics (ERO) results ranged from 450,000 to 13 mg/kg.

The cleanups performed from 2007 to the present applied IDEM's Risk Integrated System of Closure, which is 81 mg/kg total lead for residential, 230 mg/kg total lead for commercial, 410 mg/kg total lead for direct contact, 80 mg/kg for both DRO and ERO for residential, 330 mg/kg DRO and 1000 mg/kg ERO for industrial or commercial. IDPW has spent \$100,000 to complete cleanups in 2007, 2008, 2009, and 2010. Residents affected by discharges from the Site were unaware of pre- or post- sampling results, since it does not appear those residents received confirmatory letters from the regulatory agencies involved in sampling and cleanup. Documentation is also lacking regarding the conditions present after each overflow, excavation and backfilling incident.

b. Actual or potential contamination of drinking water supplies or sensitive ecosystems; This factor is present at the Site due to the existence of Ecological Systems, Inc.'s FRP, which also includes a Vulnerability Analysis (VA). According to the VA, if a release were to occur from a one million gallon tank, the result would be a 27-mile plume. Such a release would take the path of least resistance and would first reach the dry ditch that handles storm water run-off from the Marathon-Ashland property, then flow into Oil Creek, Crooked Creek, and Lake Sullivan, and eventually reach the White River. The VA identifies water intakes, schools, medical facilities, residential areas, businesses, wetlands, fish and wildlife, lakes and streams, recreational areas, transportation routes, utilities, and other areas of economic importance and are listed below:

- Water Intakes – The White River is the only navigable body of water with enough flow to warrant withdrawing water from it. According to IDEM's Water Section, there are not any drinking water intakes within 28 miles of the confluence of the Crooked Creek and White River. There are several industrial/utility intakes such as Beveridge Paper Mill, Simkins Industries, Indianapolis Power and Light, Perry K Generation Station, E.W. Stour Generation Station, and the White River Basin.
- Schools – There are 31 schools.
- Hospitals and Medical Facilities – There are 5 medical facilities.
- Residential Areas – There are numerous developments in the area.
- Businesses – The two primary businesses are Asphalt Materials and Marathon-Ashland.
- Wetlands - Wetlands are present.
- Fish and Wildlife – The White River contains fishable areas that have edible fish.
- Recreation Areas – On Oil Creek, there are not any defined recreation areas. On Crooked Creek, there is Broodmoor Country Club and Lake Sullivan Golf Course. On the White River, there is an amusement park and soap box derby racetrack.

c. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; This factor is present at the Site due to the existence of a history of various sewer overflow incidents originating from the Ecological Systems, Inc. facility. Maps showing the extent of the sewer overflows are contained in the Administrative Record.

d. The unavailability of other appropriate federal or state response mechanisms to respond to the release; This factor supports the actions required by this Order at the Site due to the fact that the Site was referred to the U.S. EPA Emergency Response Branch by IDEM for further enforcement. MCHD, IDPW, Ecological Systems, Inc., and U.S. EPA met on September 1, 2010, to discuss closure of the facility, and any actions needed. The Respondent and the agencies involved thus far lack the resources required to fund or perform the removal action anticipated at the Site after its abandonment, or respond to future releases from the facility.

e. Other situations or factors that may pose threats to public health or welfare or the environment; This factor is present at the Site due to the existence of National Oceanographic and Atmospheric Agency data, which states that annual rainfall for the area is between 40 and 41 inches. Since this facility is predominately concrete, there is little opportunity for precipitation to absorb into the ground, resulting in the generation of large amounts of clean storm water. It is estimated that the Site receives approximately 228,000 gallons of storm water run-off per inch of precipitation. Based upon U.S. EPA pretreatment estimates, an average of 5.5 inches of rainfall is expected for the months of September and October 2010. This amount of precipitation would generate 1,254,000 gallons of clean stormwater at this facility, which already has a history of overflows.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

## **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:



1. Notice of Intent to Comply

Respondent shall notify U.S. EPA in writing within three (3) business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of the Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions itself or retain contractor(s) to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractors, whichever is applicable, within five (5) business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least five (5) business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within two (2) business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within three (3) business days of U.S. EPA's disapproval.

The contractors retained by the Respondent must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "U.S. EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the On-Scene Coordinator (OSC) and Regional quality assurance personnel to the Site file.

Within five (5) business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within three (3) business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within four (4) business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Verneta Simon of the Emergency Response Branch, Region 5, as its OSC. Respondent shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois 60604-3590, by certified or express mail. Respondent shall also send a copy of all submissions to Nola Hicks, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

### 3. Work to Be Performed

Respondent shall perform, at a minimum, the following response activities:

- a. Secure the Site, as needed, to prevent unauthorized access to hazardous substances and oil in tanks and other containers;
- b. Characterize acids, caustics, waste oil, tank semi-solids (sludges) , and unknown wastes for treatment and/or off-site disposal;
- c. Characterize the extent of PCB contamination in wastes and soils at the Site;
- d. Characterize the extent of contamination at residential properties and the golf courses impacted by past sewer overflows;
- e. Remove properly characterized wastes and contaminated soils for commercial treatment /disposal;
- f. Leave the Site in such a manner that storm water is properly managed and that any remaining contaminants no longer pose a threat to public health, welfare or the environment.

#### 3.1 Work Plan and Implementation

Within ten (10) business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17.

- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006.

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within seven (7) business days of notification. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

### 3.2 Health and Safety Plan

Within ten (10) business days after the effective date of this Order, the Respondent shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National

Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, “Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites.”

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than three (3) business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning thirty (30) calendar days after the date of U.S. EPA’s approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

### 3.5 Final Report

Within sixty (60) calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs

incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondent shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Indiana representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within fourteen (14) calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six (6) years following completion of the removal actions required by this Order. At the end of this six (6) year period and at least sixty (60) days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to

U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six (6) year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR § 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR § 300.415(j). In accordance with 40 CFR § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within seven (7) business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

## **VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

## **VII. PENALTIES FOR NONCOMPLIANCE**

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$37,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **VIII. REIMBURSEMENT OF COSTS**

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall, within thirty (30) days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
 Superfund Payments  
 Cincinnati Finance Center  
 P.O. Box 979076  
 St. Louis, Missouri 63197-9000

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Boulevard, SE-5J, Chicago, Illinois 60604-3590. Payments shall be designated as "Response Costs – ESI Environmental Inc Site" and shall reference the payer's name and address, the U.S. EPA site identification number (B5YS), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

#### **IX. RESERVATION OF RIGHTS**

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **X. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).



Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

## **XI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondent seek permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## **XII. NOTICE OF COMPLETION**

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

### **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Nola Hicks, Associate Regional Counsel, at (312) 886-7949 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

### **XIV. OPPORTUNITY TO CONFER**

Within three (3) business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within five (5) business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within two (2) business days following the conference, or within seven (7) business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Nola Hicks, Associate Regional Counsel, at (312) 886-7949. Written submittals shall be directed as specified in Section V.2 of this Order.

### **XV. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

### **XVI. EFFECTIVE DATE**

This Order shall be effective upon the signature of the Director, Superfund Division, U.S. EPA, Region 5 unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective five (5) business days after the day of the conference.

IN THE MATTER OF:  
ESI Environmental Inc Site  
Indianapolis, Indiana

IT IS SO ORDERED

BY: Richard C Karl DATE: 9.29.10  
Richard C. Karl, Director  
Superfund Division  
United States  
Environmental Protection Agency  
Region 5

# ATTACHMENT 1

## U.S. ENVIRONMENTAL PROTECTION AGENCY REMOVAL ACTION

### ADMINISTRATIVE RECORD FOR ESI ENVIRONMENTAL INC. SITE INDIANAPOLIS, INDIANA

ORIGINAL  
SEPTEMBER 2010

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	05/00/95	U.S. EPA	File	Combined Sewer Overflows: Guidance for Nine Minimum Controls (SDMS ID: 375298)	69
2	02/07/06	City of Indianapolis	Ecological Systems, Inc.	Compliance Agreement Docket No. 05-IP-0261 (SDMS ID: 375277)	5
3	08/08/06	City of Indianapolis	Ecological Systems, Inc.	Compliance Agreement Docket No. 06-IP-0276 (SDMS ID: 375276)	10
4	09/29/06	U.S. of America & The State of Indiana	City of Indianapolis	Consent Decree in Connection with the City's Operation of its Municipal Wastewater and Sewer System (SDMS ID: 375299)	119
5	2007-2009			Photographs: Oily Overflow Occurrences onto Private/Public Properties	
6	10/12/09		File	Pretreatment History for Ecological Systems, Inc. (SDMS ID: 375275)	3
7	02/26/10			News Story: "Feds Charge Two Men Accused of Ordering Workers to Flush Contaminated Water" w/Attached Press Release (SDMS ID: 375281)	2
8	07/01/10	Wise, R., City of Indianapolis	Gawlik, T., ESI Environmental, Inc.	Letter re: Transmittal of Attached Revised Notice of Violation Dated June 29, 2010 (SDMS ID: 375278)	11
9	07/07/10	Simon, J. & D. McLay, WSP Environment & Energy	Martig, T., U.S. EPA	Letter re: Revised Tank 51 Restoration Work Plan Application at the ESI Environmental Inc. Site (SDMS ID: 375280)	18

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
10	09/01/10		File	Sign-in Sheet for the September 1, 2010 ESI Closure Plan/Update Meet- ing (SDMS ID: 375279)	1
11	08/31/10		File	FAX Transmittal of ESI En- vironmental Slug Discharge Prevention Plan and Facility Layout Diagram (SDMS ID: 375282)	2
12				Facility Response Plan for ESI Environmental, Inc.	
13	00/00/00	Simon, V., U.S. EPA	Karl, R., U.S. EPA	Action Memorandum: Request for Funds to Initiate a Time-Critical Removal Action at the ESI Environmental, Inc. Site (PENDING)	

ATTACHMENT B

LIABILITY FILE INDEX

1. Consolidated Lead Evaluation and Reporting  
Thomson Reuters  
Real Property Ownership  
4910 W 86<sup>th</sup> Street, Indianapolis, Indiana  
09/24/2010
- 2.
- 3.
- 4.