



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

Reply To The Attention Of
DE-9J

March 31, 2005

Certified Mail #7001 0320 0006 1563 0097
Return Receipt Requested

Mr. Mark Maassel
Northern Indiana Public Service Company
246 Bailly Station Road
Chesterton, IN 46304

Re: Northern Indiana Public Service Company
Bailly Generating Station
IND 000 718 114

Dear Mr. Maassel,

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent covering the completion of the corrective action work at the subject facility. This performance-based agreement will provide the flexibility that you need to complete the work expeditiously. In addition, we expect that it will lead to better communication between our two organizations and the public. We look forward to working cooperatively with your staff on this project. Your spirit of cooperation in utilizing this new approach is appreciated.

In accordance with Section V of the agreement, I am hereby designating Michelle Kaysen-Majack as the U.S. EPA project manager for this project. If you have any questions, please contact him at (312) 886-4253.

Sincerely

A handwritten signature in black ink that reads "George Hamper".

George Hamper, Chief
Corrective Action Section
Enforcement and Compliance Assurance Branch

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	ADMINISTRATIVE ORDER ON CONSENT
)	
Northern Indiana Public Service Company,)	U.S. EPA Docket No: RCRA -05- 2005 0005
Bailly Generating Station)	
246 Bailly Station Road)	
Chesterton, IN 46304)	
)	Proceeding under Section 3008(h) of the
)	Resource Conservation and Recovery Act,
EPA ID#: IND 000 718 114)	as amended, 42 U.S.C. § 6928(h).
)	
RESPONDENT.)	
_____)	

I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") is issuing this Administrative Order on Consent ("Order") to Northern Indiana Public Service Company under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Division Director; Waste, Pesticides and Toxics Division; U.S. EPA Region 5.

2. Northern Indiana Public Service Company, owns and operates the Bailly Generating Station at 246 Bailly Station Road, Chesterton, Indiana (the "facility"). The facility occupies 320 acres in an industrial area of Northwest Indiana. The facility is bordered on the north by Lake Michigan and the Indiana Dunes National Lakeshore, on the west by ISG, on the south by ISG and Route 12, and on the east by the Indiana Dunes National Lakeshore. The facility supplies electrical energy in the northern part of Indiana, using two coal-fired high-pressure steam boilers, each connected to a steam turbine generator.

3. Northern Indiana Public Service Company agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

4. Northern Indiana Public Service Company waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

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II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

6. This Order applies to and binds U.S. EPA, Northern Indiana Public Service Company and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Northern Indiana Public Service Company. Northern Indiana Public Service Company will be responsible for and liable for any violations of this Order, regardless of Northern Indiana Public Service Company's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the facility will alter Northern Indiana Public Service Company's obligations under this Order. Any conveyance of title, easement, or other interest in the facility, or a portion of the facility, will not affect Northern Indiana Public Service Company's obligations under this Order. Northern Indiana Public Service Company will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the facility or a portion thereof and will notify U.S. EPA in writing within five days of the transfer. This written notice will describe how Northern Indiana Public Service Company has assured that, despite the transfer, all institutional controls required now or in the future for the facility will be implemented and maintained. This paragraph will not apply if U.S. EPA and Northern Indiana Public Service Company agree that this Order has terminated as to the facility or any relevant portion of the facility.

IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Corrective Action Program Manager; Waste, Pesticides and Toxics Division; U.S. EPA Region 5 has made the following conclusions of law and determinations:

- a. Northern Indiana Public Service Company is a "person" within the meaning of Section 1004(15) of RCRA.
- b. Northern Indiana Public Service Company is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA.
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA and 40 C.F.R. Part 261.

- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

9. U.S. EPA and Northern Indiana Public Service Company must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, Northern Indiana Public Service Company agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. Northern Indiana Public Service Company represents that it has the technical and financial ability to carry out corrective action at the facility. Northern Indiana Public Service Company must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant, current U.S. EPA or Indiana guidance documents, as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, U.S. EPA's risk assessment guidance, and Indiana's Risk Integrated System of Closure guidance.

11. Northern Indiana Public Service Company must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from all Solid Waste Management Units (SWMUs), Hazard Waste Management Units (HWMUs), and Areas of Concern (AOCs) at the facility. This includes:

- ✓ a. Provide to U.S. EPA, within 90 days after the effective date of this Order, a brief Current Conditions Report that includes any recent relevant sampling data from the facility (excluding, unless directly relevant to defining the nature and extent of releases of hazardous waste and hazardous constituents, sampling data gathered pursuant to permits issued to the facility under the Clean Water Act and the Clean Air Act), and a summary of the historic operations and physical setting of the facility. The Current Conditions Report must describe, at a minimum, conditions at all SWMU and AOC locations specified in the "Preliminary Assessment and Visual Site Inspection for Northern Indiana Public Service Company" (12/92) and any other past or present locations at the facility for which Northern Indiana

Public Service Company knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.

- b. Perform an investigation to identify the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the facility which may pose an unacceptable risk to human health and the environment, and provide a report to U.S. EPA. The report must also provide an evaluation of the risks and the basis of any determination that releases do not pose an unacceptable risk to human health and the environment. Northern Indiana Public Service Company may prepare and submit the report in two phases to provide timely support for the demonstrations described in paragraph 13, below, and for the determinations and proposal described in paragraph 15, below.

12. Northern Indiana Public Service Company must undertake required Interim Measures, as follows:

- a. Northern Indiana Public Service Company must demonstrate by November 30, 2006, through submitting a Human Health Environmental Indicator Report and by performing any other necessary activities, consistent with this Section, that all current human exposures to contamination at or from the facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
- b. Northern Indiana Public Service Company must provide a Groundwater Environmental Indicator Report by November 30, 2006, demonstrating that it has gathered sufficient information conclusively to determine whether migration of contaminated groundwater at or from the facility is stabilized. That is, Northern Indiana Public Service Company must determine and report within the Groundwater Environmental Indicator Report whether the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination. In addition, Northern Indiana Public Service Company must determine whether any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Northern Indiana Public Service Company must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized. In the event that the migration of contaminated groundwater has not been stabilized or that any discharge of contaminated groundwater to surface water is not acceptable, by November 30, 2006, Northern Indiana Public Service Company shall provide a plan and schedule for implementing appropriate interim measures to stop the

migration and/or unacceptable discharge to surface water no later than June 30, 2008.

- c. If any federal, state or local permits, permit modifications or other permissions are needed to implement the interim measures plan and schedule described above, Northern Indiana Public Service Company shall submit what it believes, in good faith, to be administratively complete applications which adequately satisfy the applicable technical requirements to the appropriate federal, state and local agencies no later than March 30, 2007. Northern Indiana Public Service Company shall make a good faith effort to obtain all necessary federal, state and local permission by September 30, 2007.
- d. If an interim measures plan and schedule are required under paragraph 12(b) above, Northern Indiana Public Service Company shall submit a Groundwater Contamination Control Report by June 30, 2008, describing the interim measure that has been implemented and demonstrating that the implemented interim measure has successfully controlled the migration of contaminated groundwater and any unacceptable discharge to surface water. The Groundwater Contamination Control Report shall also describe and report the results of any monitoring required to verify the success on the interim measure.

13. To prepare for and provide the demonstrations required by paragraph 12. above, Northern Indiana Public Service Company must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
- c. Control any unacceptable current human exposures that Northern Indiana Public Service Company identifies. This includes performing any corrective actions or other response measures ("corrective measures") necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.

- f. Prepare a report, either prior to or as part of the Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

14. Northern Indiana Public Service Company must propose to U.S. EPA by November 30, 2007, final corrective measures necessary to protect human health and the environment from all current and reasonably anticipated future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the "Final Corrective Measures Proposal"). The proposal must describe all corrective measures implemented at the facility since the effective date of this Order. It must also include a description of all other final corrective measures that Northern Indiana Public Service Company evaluated, a detailed explanation of why Northern Indiana Public Service Company preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule with significant milestone dates to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. Northern Indiana Public Service Company must complete as much of the initial construction work as practicable within one year after U.S. EPA selects the final corrective measures. Northern Indiana Public Service Company must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

15. As part of developing its proposal, Northern Indiana Public Service Company must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

16. U.S. EPA may request supplemental information from Northern Indiana Public Service Company if U.S. EPA determines that the proposal and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the facility. Northern Indiana Public Service Company must provide timely any supplemental information that U.S. EPA requests in writing.

17. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, U.S. EPA will approve the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

18. Upon notice by U.S. EPA, Northern Indiana Public Service Company must implement the final corrective measures selected in U.S. EPA's Final Decision according to the schedule in the Final Decision.

19. Reporting and other requirements:

- a. Northern Indiana Public Service Company must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Northern Indiana Public Service Company must provide, or make available electronically or via other means acceptable to U.S. EPA, quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each calendar quarter. The report must list work performed to date, types of data collected, problems encountered, project schedule, and percent project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a quarterly basis to discuss the work proposed and performed under this Order. Additionally, Northern Indiana Public Service Company may request advice or assistance from the U.S. EPA concerning significant issues including, by way of example and not limitation, analytical parameters, ecological risk assessment strategies, and sampling locations and techniques; and concerning the content and recommendations of various workplans and reports. U.S. EPA will make a good faith effort to provide such advice or assistance in writing within 60 days of receipt of a written request from Northern Indiana Public Service Company for advice or assistance. However, the provisions of this Order will remain in force whether or not Northern Indiana Public Service Company receives or is satisfied with such advice or assistance.
- d. Northern Indiana Public Service Company must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Northern Indiana Public Service Company must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Northern Indiana Public Service Company must revise and resubmit the report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA reasonably specifies. Upon U.S. EPA's written approval, Northern Indiana Public Service Company must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- f. Any risk assessments Northern Indiana Public Service Company conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Northern Indiana Public Service Company will follow the

Risk Assessment Guidance for Superfund ("RAGS") or other appropriate U.S. EPA guidance, but may utilize Indiana risk standards for the final corrective action and any interim measures. Northern Indiana Public Service Company will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include, but are not limited to, those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, or RAGS.

- g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories Northern Indiana Public Service Company selects or require Northern Indiana Public Service Company to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Northern Indiana Public Service Company must notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, Northern Indiana Public Service Company will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples Northern Indiana Public Service Company collects under this Order. In order to coordinate such sampling, U.S. EPA will provide Northern Indiana Public Service Company with reasonable notice of its request for sampling.

20. Project Managers can agree in writing to extend, for 90 days or less, any deadline in this Section. However, extensions of greater than 90 days shall require obtaining approval from the Corrective Action Program Manager; Waste, Pesticides and Toxics Division.

VII. ACCESS

21. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the facility, while complying with all safety rules of the facility applicable to facility personnel, contractors and visitors, to, among other things: interview facility personnel and contractors; review Northern Indiana Public Service Company's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Northern Indiana Public Service Company submits to U.S. EPA. Northern Indiana Public Service Company will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Northern Indiana Public Service Company

or its contractors or consultants. Northern Indiana Public Service Company may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releaseable under the Freedom of Information Act.

22. If Northern Indiana Public Service Company must go beyond the facility's boundary to perform work required by this Order, Northern Indiana Public Service Company must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after Northern Indiana Public Service Company knows of the need for access. Any such access agreement must provide for access by U.S. EPA and its representatives. Northern Indiana Public Service Company must submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access within 30 days, Northern Indiana Public Service Company must notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Northern Indiana Public Service Company in obtaining access.

23. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

VIII. RECORD PRESERVATION

24. Northern Indiana Public Service Company must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Northern Indiana Public Service Company must notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. Northern Indiana Public Service Company's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Northern Indiana Public Service Company will also promptly give U.S. EPA's Project Manager a copy of the notice.

25. Within 30 days of retaining or employing any agent, consultant or contractor ("agents") to carry out the terms of this Order, Northern Indiana Public Service Company will enter into an agreement with the agents to give Northern Indiana Public Service Company a copy of all data and final non-privileged documents produced under this Order.

26. Northern Indiana Public Service Company will not assert any privilege claim concerning any analytical data gathered during any investigations or other actions required by this Order.

IX. STIPULATED PENALTIES

27. Northern Indiana Public Service Company must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit quarterly progress reports by the dates scheduled in paragraph 19, above: \$1,000 per day for the first 14 days and \$3,000 per day thereafter.
- b. For failure to adequately demonstrate that current human exposures are under control, in accordance with paragraph 12 above: \$4,500 per day.
- c. For failure to adequately demonstrate that groundwater migration is stabilized, in accordance with paragraph 12 above: \$4,500 per day.
- d. For failure to submit the Final Corrective Measures Proposal, in accordance with paragraph 14 above: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- e. For failure to implement, according to the significant milestone dates approved schedule, the selected final corrective measures, as described in paragraphs 18 and 19 above: \$4,500 per day for the first 14 days and \$9,000 per day thereafter.
- f. For failure to submit the Final Remedy Construction Completion Report, as scheduled in paragraph 14: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- g. For failure to submit the Current Conditions Report required in paragraph 11 above within 90 days after the effective date of the Order: \$750 per day for the first 14 days and \$1,500 per day thereafter.

28. Whether or not Northern Indiana Public Service Company has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Northern Indiana Public Service Company complies. For items b and c, above, stipulated penalties will not accrue during the period, if any, beginning 31 days after the Environmental Indicators Report is due until the date that U.S. EPA notifies Northern Indiana Public Service Company in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

29. Northern Indiana Public Service Company must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless Northern Indiana Public Service Company invokes the dispute resolution procedures under Section X (Dispute Resolution) of this Order. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

30. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Northern Indiana Public Service Company receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Northern Indiana Public Service Company must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

31. Northern Indiana Public Service Company must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

A transmittal letter stating the name of the facility, Northern Indiana Public Service Company's name and address, and the U.S. EPA docket number of this action must accompany the payment. Northern Indiana Public Service Company will simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

32. Northern Indiana Public Service Company may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X (Dispute Resolution) of this Order. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Northern Indiana Public Service Company must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Northern Indiana Public Service Company must submit payment required by the dispute resolution decision or agreement to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

33. Neither invoking dispute resolution nor paying penalties will affect Northern Indiana Public Service Company's obligation to comply with the terms of this Order not directly in dispute.

34. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for Northern Indiana Public Service Company's violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

X. DISPUTE RESOLUTION

35. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

36. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

37. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

38. U.S. EPA and Northern Indiana Public Service Company will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

39. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Northern Indiana Public Service Company and U.S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U.S. EPA will respond to Northern Indiana Public Service Company's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5 ("EPA Dispute Decision").

40. If, at the conclusion of the Dispute Resolution process, Northern Indiana Public Service Company notifies U.S. EPA that it refuses to implement U.S. EPA's selected final corrective measures, U.S. EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

41. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Northern Indiana Public Service Company's control that delays or prevents the timely performance of any obligation under this Order despite Northern Indiana Public Service Company's best efforts.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Northern Indiana Public Service Company must notify U.S. EPA within two business days after learning that the event may cause a delay. If Northern Indiana Public Service Company wishes to claim a force majeure event, within 15 business days thereafter Northern Indiana Public Service Company must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

43. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation or obligations.

XII. MODIFICATION

44. This Order may be modified only by mutual agreement of U.S. EPA and Northern Indiana Public Service Company, except as provided in Section VI - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order.

XIII. RESERVATION OF RIGHTS

45. Nothing in this Order restricts U.S. EPA's authority to seek Northern Indiana Public Service Company's compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Northern Indiana Public Service Company shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA. Nothing in this Order shall be interpreted to in any way effect or hinder any rights, privileges, claims, or defenses of Northern Indiana Public Service Company with respect to any claim asserted by or against any person or entity not a party to this Order.

46. U.S. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

47. If U.S. EPA determines that Northern Indiana Public Service Company's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Northern Indiana Public

Service Company cannot perform any of the work ordered, U.S. EPA may order Northern Indiana Public Service Company to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

48. Northern Indiana Public Service Company does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Northern Indiana Public Service Company reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Northern Indiana Public Service Company has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Northern Indiana Public Service Company reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XIV. OTHER CLAIMS

49. Northern Indiana Public Service Company waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

50. Northern Indiana Public Service Company indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Northern Indiana Public Service Company or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Northern Indiana Public Service Company or the United States under their various contracts. This indemnification will not create any obligation on the part of Northern Indiana Public Service Company to indemnify the United States from claims arising from the acts or omissions of the United States.

XVI. SEVERABILITY

51. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XVII. TERMINATION AND SATISFACTION

52. Northern Indiana Public Service Company may request that U.S. EPA issue a determination that Northern Indiana Public Service Company has met the requirements of the Order for all or a portion of the facility. Northern Indiana Public Service Company may also request that U.S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the facility.

53. The provisions of the Order will be satisfied upon Northern Indiana Public Service Company's and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," consistent with U.S. EPA's Model Scope of Work.

54. Northern Indiana Public Service Company's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA's reservation of rights as required in Section XIII.

XVIII. EFFECTIVE DATE

55. This Order is effective on the 10th day following the date on which U.S. EPA signs the Order.

IT IS SO AGREED:

DATE: 3/21/05

BY: Mark 7. Maassel
Mark Maassel
President
Northern Indiana Public Service Company

IT IS SO ORDERED:

DATE: 3/31/05

BY: Margaret M. Guerriero
Margaret M. Guerriero, Director,
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

CASE NAME: Northern Indiana Public Service Company

DOCKET NO: ~~RORA-05-~~ 2005 0005

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Administrative Order On Consent** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed on 01 APR 2005 Via Certified Mail, Return Receipt Requested to the following:

7001 0320 0006 1563 0097

Mark Maassel
Northern Indiana Public Service Company
246 Bailly Station Road
Chesterton, IN 46304

Dated: 3/31/05



Ronza J. Jordan
Administrative Program Asst.
Waste, Pesticides and Toxics
Division
United States Environmental
Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590
(312) 353-0849

REC'D REGION 5
MAR 31 2:57

REC'D REGION 5

