



Technical Assistance Services for Communities
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**Executive Summary of the Administrative Order on Consent for Removal Action
Prepared for the Bay Harbor CKD Site Regional Stakeholder Group**

Site Name: Bay Harbor Cement Kiln Dust Site
Location: Bay Harbor, Michigan

Purpose

This document was prepared for the Bay Harbor Regional Stakeholders Group and represents an executive summary of the February 2, 2005 Administrative Order on Consent (AOC) for Removal Action at the Little Traverse Bay Cement Kiln Dust (CKD) Site (the Site) in Petoskey, Michigan.

Summary

Sections I.-III. *Jurisdiction, General Provisions, Parties Bound and Definitions:*

This AOC is an order to selected respondents, primarily CMS Land Company and CMS Capital LLC (referred to as CMS in this document), to provide environmental investigation and removal activities at the Little Traverse Bay CKD Site. CMS entered into this AOC voluntarily and agrees to reimburse future costs incurred by the United States. Additional cleanup at the Site may be necessary if additional hazardous waste is released. CMS is not admitting to liability but agrees not to challenge enforcement of the AOC. The AOC is binding and land ownership change will not affect CMS's responsibilities for cleanup. CMS and all their contractors are bound to comply with the AOC. Definitions of terms used in the AOC are provided in Section III.

Sections IV.-VII. *Findings of Fact, Conclusions of Law and Determinations, Order, Designation of Contractor, Project Coordinator and On-Scene Coordinator:*

- The Site is located along the south shore of Little Traverse Bay, Lake Michigan on a former cement manufacturing facility operated by Penn-Dixie Company, formerly owned by Holnam, Inc. Portions of the Site are now owned by Bay Harbor Golf Course, Inc.
- In 1994 CMS, Boyne USA, Inc. and Bay Harbor Company (among others) entered into an "Administrative Agreement and Covenant Not to Sue" with the state of Michigan in connection with redevelopment of the Site. The parties to this agreement performed several cleanup activities at the Site in conjunction with Site redevelopment, including: reshaping and consolidating the CKD waste piles and installing a leachate collection trench and a leachate pre-treatment system that was shut down temporarily from January to September 2004.
- In 2004, leachate discharge was observed on the shoreline area now known as Seep 1. The pH levels from Seep 1 exceeded the Michigan water quality standards. Michigan Department of Environmental Quality conducted an investigation that concluded that exposure to the leachate

would have negative health effects on people and the environment. Additional investigations by the Environmental Protection Agency (EPA) revealed another CKD release area on the shoreline with high pH and high heavy metal levels known as Seep 2.

- EPA determined that conditions at the Site are a threat to health and the environment, violate federal law and regulations, and therefore require a “removal action” consistent with the National Oil and Hazardous Substances pollution Contingency Plan (NCP).
- CMS is required to hire a contractor to perform the removal activities with EPA approval and designate a project coordinator. Ralph Dollhopf was designated as the EPA Region 5 On-Scene Coordinator (OSC) at the Site.

Section VIII. Work to Be Performed:

CMS will conduct the following removal work:

- Provide site security and restrict access to the Site by constructing fences, posting warning signs and other controls required by EPA.
- Prepare a Site Health and Safety Plan and Site Control and Access Management Plan.
- Prepare a plan for and evaluate the lakeshore for additional CKD leachate releases and restrict access to any release areas identified.
- Implement recovery of leachate and treatment on site, or storage and disposal off site, of high-pH release area waste.
- Design, build and operate systems to prevent leachate releases to the lakeshore and surface waters until long-term engineering controls can be implemented effectively.
- Confirm the effectiveness of the controls listed above, and begin a monitoring program measuring the pH and hazardous substance levels in the release areas.
- Investigate the extent of contamination at the Site to determine potential health threats to the public and the environment, evaluate alternatives for addressing any threats, and prepare a report of the findings. Within 120 days of approval of this report, CMS will negotiate an enforceable agreement with the State to accomplish the following:
 - Integrate the interim response activities described in the report and prevent unacceptable exposures to surface water and sediment impacted by CKD waste.
 - Design and implement long-term response activities to prevent discharge of hazardous substances at levels above State criteria.
 - Prevent unacceptable risk and exposure from human contact with CKD waste.
 - Prevent new releases and unacceptable exposure, and place land use controls and resource use restrictions on CKD waste materials.
 - Construct and maintain erosion control measures for CKD waste.
 - Ensure adequate financial resources are available for as long as cleanup is necessary.
 - Ensure that additional hazardous waste exposures are addressed effectively.

The above goals will be achieved by one or more of the following actions:

- Removal of CKD wastes.
- Isolation or containment of CKD wastes.
- Application of other engineering controls with equal or better effectiveness to containing or isolating the CKD wastes.

A Work Plan and Health and Safety Plan will be submitted to EPA. All sampling will comply with EPA standards. A proposal for Post-Removal Site Control and progress reports during the cleanup will be submitted. After cleanup has been completed a final report will be submitted. Copies of all non-privileged documents will be submitted to EPA and records will be maintained by CMS for six years.

Sections IX. – XXV. *Site Access, Access to Information, Record Retention, Compliance with Other Laws, Emergency Response and Notification of Releases, Authority of On-Scene Coordinator, Payment of Response Costs, Dispute Resolution, Force Majeure, Stipulated Penalties, Covenant Not to Sue by U.S. EPA, Reservation of Rights by U.S. EPA, Covenant Not to Sue By Respondents, Other Claims, Indemnification and Modifications:*

- CMS must gain access to any area on site where work is to be performed and provide copies of all non-privileged documents to EPA. CMS will not alter or destroy any site-related documents and will perform the actions required in this AOC in compliance with any additional state, local and federal laws.
- In the event of a hazardous waste release that may present an immediate threat to health, welfare or the environment, CMS will respond immediately and appropriately. The EPA OSC has authority over all work performed at the Site.
- CMS will pay EPA up to \$500,000 in future response costs incurred by the United States. If an objection is made to any part of this AOC. CMS will notify EPA in writing and both will follow the methods for resolving disputes provided in the AOC. Any agreement reached will be incorporated into the AOC.
- CMS will perform all work within the AOC unless delayed by an event beyond its control. CMS will pay increasing fines each day it is not in compliance with the terms of the AOC. These fines do not alter the work required in the AOC. If CMS does not pay the fines, EPA will collect the penalties with interest.
- EPA will not take legal action against CMS during the effective dates of this AOC, but can take any action necessary to enforce the terms of this AOC. CMS will not sue the United States during the effective dates of this AOC. The United States and EPA are not liable for any injuries to persons or property resulting from work required in the AOC. The parties to the AOC reserve all other legal rights. CMS agrees to protect the United States from certain legal actions.
- The OSC may make any modifications to schedules or plans in writing or orally. If CMS desires to change the schedules or plans, the Project Coordinator will submit a written request to EPA.

Sections XXVI. - XXIX. *Additional Work, Notice of Completion of Work, Severability/Integration/ Appendices, Obligations of Respondent Bay Harbor Company and Effective Date:*

- If EPA or CMS decides that extra work not included in the Work Plan is necessary to protect health and the environment, they will notify each other in writing. CMS must complete any additional work requested or approved by EPA or request the dispute resolution procedures provided for in the AOC. After EPA has reviewed the final report and determined that all work has been performed completely, EPA will notify CMS in writing. If EPA determines that any deficiencies in the cleanup exist, CMS will modify the Work Plan to correct the issues.
- Bay Harbor Company and CMS will cooperate to provide information necessary for access to areas owned by people other than Bay Harbor Company.