

B-891



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

March 28, 1990

105 South Meridian Street
P.O. Box 6015
Indianapolis 46206-6015
Telephone 317/232-8603

VIA CERTIFIED MAIL # P 730 163 836

Robert N. Steinwurtzel
Andrews & Kurth
Suite 200
1710 Pennsylvania Ave., N.W.
Washington, D.C. 20006

CEI

MAR 28 1990

OFFICE OF HEARINGS
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Re: Adoption of Partial Interim Agreed Order
Commissioner of the Department of
Environmental Management

v.

U.S.S. Lead Refinery, Inc.
Cause No. B-891

Dear Mr. Steinwurtzel:

This letter is to inform you that the Commissioner of the Indiana Department of Environmental Management (the Department) has approved the Partial Interim Agreed Order negotiated between you or your representatives and members of my staff and has issued same as the Department's Order. A copy of the executed Order is enclosed.

Sincerely,

Paul Cluxton

Paul Cluxton, Acting Chief
Enforcement Section
Office of Water Management

MEO/meo
Enclosure

cc: Lake County Health Department (w/enclosure)
U. S. EPA, Region V, Office of Water (w/enclosure)
~~Office of Hearings~~ (w/enclosure)
Richard C. Liscum, Chief Accountant (w/enclosure)
Malvin G. Sander, General Counsel (w/enclosure)
Mathew Schershel, Deputy Attorney General (w/enclosure)

STATE OF INDIANA)
COUNTY OF MARION) SS:

BEFORE THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

COMMISSIONER, INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,)

vs.)

U. S. S. LEAD REFINERY, INC.,)

Respondent.)

CAUSE NO. B-891

PARTIAL INTERIM AGREED ORDER

Come now the parties to this cause, and being desirous of settling and compromising this action without hearing or adjudication of any issue of fact or law, and without this Order constituting any evidence or admission by any party hereto, and with this being only a partial resolution of the issues which are outstanding in this action hereby consent to the following FINDINGS AND ORDER:

FINDINGS

1. The Complainant is the successor of the original complainant herein, the Stream Pollution Control Board of the State of Indiana ("Board"), and, as such, is duly empowered to hold administrative hearings to determine whether there is a possible violation of the Stream Pollution Control Act (IC 13-1-13), the Environmental Management Act (IC 13-7), and the rules and regulations duly promulgated thereunder, and to enter an order requiring the abatement of a possible violation, including the assessment of a civil penalty.

2. The Complainant has jurisdiction over both the subject matter and the parties to this action.

3. Pursuant to the Indiana Administrative Adjudication Act, IC 4-22-1-6, and the Indiana Environmental Management Act, IC 13-7-11, on or about April 3, 1984, Notice of Hearing and Complaint was issued by the Board and service of same was made upon:

U.S.S. Lead Refinery, Inc.
5300 Kennedy Avenue
East Chicago, Indiana 46312

4. On or about June 15, 1975, NPDES Permit No. IN 0032425 was issued to U.S.S. Lead Refinery, Inc., (hereinafter referred to as "U.S.S. Lead").

5. NPDES Permit No. IN 0032425 was scheduled to expire on March 31, 1980. Pending the issuance of a new NPDES permit, consistent with the then-effective I.C. 13-7-10-2 (f), NPDES Permit No. IN 0032425 remained in effect until a new permit was issued on March 29, 1985. The conditions of that new permit have been appealed by U.S.S. Lead. Until that appeal is resolved, the requirements within the previous, expired, permit are effective, consistent with the then-effective 330 IAC 5-3-14.

6. NPDES Permit No. IN 0032425 authorizes a single permitted discharge identified as Outfall 001.

7. NPDES Permit No. IN 0032425 authorizes the discharge at Outfall 001 to be monitored for several parameters, including total lead. Specifically, NPDES Permit No. IN 0032425 authorizes a discharge limitation for total lead not to exceed 0.2 mg/l to be measured by daily composite samples.

8. On or about April 3, 1984, a Notice of Hearing and Complaint was filed against U.S.S. Lead with respect to its compliance with the terms of NPDES Permit No. IN 0032425.

9. The Complaint sets forth two allegations. First, the Complaint alleges that U.S.S. Lead is in violation of the discharge limitation for total lead. Second, the Complaint alleges that U.S.S. Lead is in violation of the sampling frequency requirements.

10. Subsequent to the filing of the Complaint, the parties determined that by letter dated March 15, 1976, the Board had amended NPDES Permit No. IN 0032425 by modifying the sampling frequency requirements; specifically, the sampling frequency requirements had been changed from "daily 24-hour composite" to "weekly grab sample." The parties also determined that U.S.S. Lead is in compliance with the amended sampling frequency requirements. Accordingly, the parties are in agreement that there is no substantive basis to the second allegation set forth in the Complaint filed on or about April 3, 1984, and therefore, that portion of the Complaint will be dismissed.

11. With respect to the allegation that U.S.S. Lead is in violation of the discharge limitation for total lead, the parties determined that U.S.S. Lead's discharge pipe from which samples had been collected was located below the water level of the Grand Calumet River. Consequently, the sampling results collected and analyzed by U.S.S. Lead were not representative of the company's discharge for the reason that the samples reflected a mixing of discharge and river water.

12. As a result of the location of the discharge pipe, the parties were uncertain whether U.S.S. Lead is in compliance with the discharge limitation for total lead. Accordingly, the parties agreed during a prehearing conference conducted on May 24, 1984, that U.S.S. Lead would undertake the following actions:

- a. Terminate the discharge to the existing discharge pipe;
- b. Install well points to dewater the area adjacent to the existing discharge pipe;
- c. Install steel form and fill existing discharge pipe with concrete;
- d. Construct a new discharge pipe at a location approved by representatives from the Board; and
- e. Install a 24-hour composite sampling pump, with a flow meter, at the new discharge pipe.

13. The actions described in paragraph 12 were completed by U.S.S. Lead to the satisfaction of the representatives of the Board.

14. On or about January 24 and 25, 1985, grab samples were taken of the effluent coming from U.S.S. Lead's new discharge pipe. Analyses of said grab samples conducted by the Indiana State Board of Health laboratory found the presence of lead in said effluent in

the amount of .36 mg/l. Although U.S.S. Lead continued to dispute that it had exceeded the discharge limitation for total lead specified by NPDES Permit No. IN 0032425, the parties agreed, in an Interlocutory Consent Decree herein which was issued by the Board on July 16, 1985, that U.S.S. Lead would undertake the following actions to reduce the discharge of pollutants and to determine the Company's ability to comply with the discharge limitations and conditions contained in NPDES Permit No. IN 0032425:

- a. Within one month from the execution of this Interlocutory Consent Decree, U.S.S. Lead will remove its battery casing stockpile, which is presently being stored outdoors, and shall agree not to store battery casing outdoors from that date forward.
- b. U.S.S. Lead will undertake a study with respect to runoff and process waste streams. The study will be conducted according to the conditions and requirements approved by the staff of the Stream Board and will include the sampling and identification of any additional controls needed to be installed to reduce the amount of pollutants being discharged from the company's operations. If said additional controls are identified, U.S.S. Lead will propose implementation dates for said controls. The study will be completed and submitted to the Board no later than six (6) months from the date of staff's approval of the conditions and requirements thereof.
- c. During the six-month study period identified herein, U.S.S. Lead will collect samples from the new discharge pipe and analyze the samples to determine the following levels of pollutants which were identified in the company's expired NPDES permit: total lead, fluoride, arsenic, and total dissolved solids. In addition, U.S.S. Lead will collect samples from the new discharge pipe and analyze the samples for the following parameters which have been identified in the company's new NPDES permit: cadmium, copper, total zinc, and total antimony.

- d. The collection of samples as required by this Interlocutory Consent Decree shall be on a weekly basis utilizing a 24-hour composite sample.
- e. All samples collected in accordance with this Interlocutory Consent Decree shall be analyzed pursuant to the latest edition of Standard Methods for the Examination of Water and Wastewater [330 IAC 1-1-9].

15. At the expiration of the six-month study period identified in paragraph 14b, the parties were to confer to discuss the results of said study and to address the status of the pending action, including but not limited to a discussion of whether the new effluent characteristics (cadmium, copper, total zinc and total antimony) are present in significant enough quantities to be regulated; whether additional controls are needed to reduce the amount of pollutants contained in the Company's discharge and if appropriate, to propose a schedule whereby additional controls must be implemented; whether, if additional controls must be implemented, this Interlocutory Consent Decree should be amended to incorporate the additional controls and the implementation schedule or whether the matter should be resolved through a separate administrative order; and whether any penalties should be imposed for alleged non-compliance with NPDES Permit No. IN 0032425.

16. It was the intent of the parties that the Interlocutory Consent Decree lead to a resolution of all claims against U.S.S. Lead with respect to NPDES Permit No. IN 0032425 regarding any discharges by the company which allegedly exceed the limitations contained in NPDES Permit No. IN 0032425 on or before

the date the Interlocutory Consent Decree was issued by the Stream Pollution Control Board.

17. On August 25, 1986, the Department of Environmental Management received results and a technical report from U.S.S. Lead which were the product of the six-month study required by the Interlocutory Consent Decree. Within the report, there was included a proposed treatment technique for U.S.S. Lead's effluent.

18. On September 23, 1986, the conference which was set in the Interlocutory Consent Decree to occur after the Complainant's receipt of the results of the six-month study took place, and was attended by representatives of both parties.

19. At the September 23, 1986 conference, discussions occurred regarding the results of the six-month study, and the Complainant informed U.S.S. Lead that, given those results, it would be necessary for U.S.S. Lead to collect and treat the stormwater run-off from the facility discharging through Outfall 001.

20. The six-month study's results, as well as the DMR's submitted by the facility, showed that the stormwater discharge from the facility exceeded the effluent limits of NPDES Permit No. IN 0032425 in regard to lead.

21. Since July 1987, there has been no sampling and monitoring of the discharge from Outfall 001 by U.S.S. Lead.

22. On October 20, 1988, an inspection of the facility was conducted by Staff of the Department. During that inspection, the following observations were made:

- a Despite the requirement set out in paragraph 14 (a), above, that battery casings no longer be stored outdoors, there are battery casings which are on-site and outdoors.
- b Battery casings, lead plates from batteries and portions of batteries where the casings and lead plates remain as one unit were all found to be placed either in direct contact with the waters of the State or in areas where direct discharge of surface water runoff would occur during rain events or snow melts.
- c Flue dust from the facility's air pollution control units was placed outside, near Outfall 001, in such an area that during rain events and snow melts there would be direct discharge of surface water runoff.

23. On November 29, 1988 a settlement conference was conducted, at which time discussions were held regarding the manner by which the parties could amicably resolve this action.

24. During the aforementioned discussions, it was determined that there should be coordination of the work required of USS Lead in resolving this action and the work required of USS Lead in resolving the administrative action entitled Department of Environmental Management v. U.S.S. Lead, Cause No. N-296, which deals with alleged violations of the State's hazardous waste regulations. It was also determined, at the aforementioned discussions, that there should be coordination of the resolution of this action with the resolutions of U.S.S. Lead's appeal of their NPDES permit conditions (U.S.S. Lead v. DEM, Administrative Cause No. 89-W-J-206) and the appeal of the modified closure plan proposed by the DEM regarding their hazardous waste facility at the site which is the subject of this action (USS Lead v. DEM, Administrative Cause No. 88-S-J-195).

25. The Department is seeking a civil penalty for the above alleged violations, which would be paid to the Environmental Management Special Fund.

ORDER

WHEREFORE, based upon the above FINDINGS and upon the consent of the parties, it is hereby ORDERED that:

1. The second allegation contained in the Complaint which originated this action, having to do with alleged violations of the sampling frequency requirements, is hereby dismissed.

2. Pursuant to NPDES Permit No. 0032425, there shall be no point source discharges other than through Outfall 001.

3. Due to the lack of any ongoing treatment of runoff waters from Respondent's property, and noting the work that is required of U.S.S. Lead pursuant to the partial interim agreed order executed in connection with Cause No. N-296, there is a need for U.S.S. Lead to adopt interim measures to minimize any deleterious effect on the waters of the State. Accordingly, within thirty (30) days from the effective date of this Order, U.S.S. Lead shall install a temporary protective covering over the identifiable baghouse dust and calcium sulfate sludge waste piles that are presently being stored outdoors. The temporary protective covering shall be designed to protect the identifiable baghouse dust and calcium sulfate sludge waste piles from precipitation until said waste piles are closed pursuant to 329 IAC 3-21 and 329 IAC 3-26-8.

Further, within 90 days from the effective date of this Order, U.S.S. Lead shall submit a plan, specifications and time schedule to Complainant for the construction and operation of a manner in which to minimize pollutant levels in stormwater discharges from Outfall 001 of Respondent's facility. Included within the time schedule there will be set out the date when discharge and precipitation monitoring shall begin. Within ten (10) days from approval of the plan and specifications by Complainant, U.S.S. Lead shall begin implementing said plan within the timeframes contained therein.

The Department shall review all reports, plans, and other submissions made by U.S.S. Lead pursuant to this Order and shall notify U.S.S. Lead in writing as to whether the submission is approved or requires modification. If modifications are requested, then U.S.S. Lead shall submit to the Department a revised report, plan, or other submission that addresses the Department's requested modifications within twenty (20) days of receiving the Department's modification request letter. The Department shall review the revised submission and notify U.S.S. Lead in writing as to whether the revised submission is approved or is still inadequate.

Upon U.S.S. Lead's failure to submit an approvable plan to minimize pollutant levels in stormwater discharges from Outfall 001, as well as specifications and time schedule for implementation of said minimization plan, after their third submission, U.S.S. Lead will be provided with an opportunity to request a meeting to discuss the alleged deficiencies in said plan, specifications or time

schedule. If U.S.S. Lead fails to request such a meeting within ten (10) days of receipt of the Department's objections to the third submission, the Department shall direct U.S.S. Lead to make such changes in the plan, specifications or time schedule which will result in approval by IDEM.

Daily records shall be maintained by U.S.S. Lead recording precipitation and volume of water being discharged from Outfall 001. A flow monitoring device shall be installed in conjunction with the construction of the manner in which to minimize pollutant levels of stormwater discharges in order to measure the volume of water being discharged from Outfall 001.

Upon installation of the manner in which to minimize pollutant levels of stormwater discharges, as well as the flow measuring device, in accordance with the approved schedule, U.S.S. Lead shall begin monitoring of discharges from Outfall 001. Said monitoring shall be conducted bi-weekly using a Flow Proportional Sampler. The sampling will occur during a period when flow is present.

The following parameters shall be monitored during the bi-weekly sampling:

- Total Lead
- Cadmium
- Zinc
- Fluoride

The flow, precipitation and monitoring data, along with supporting laboratory QA/QC information, shall be submitted to

Complainant by the 28th day of the month following the month said information is collected by U.S.S. Lead.

The monitoring shall continue until Respondent's permit is revoked.

4. After the hazardous waste units on site are properly closed pursuant to the DEM's hazardous waste regulations, U.S.S. Lead shall either seek revocation of their NPDES permit, if after a six month sampling period it demonstrates compliance with its NPDES permit, or, USS Lead shall take the necessary steps to meet the final effluent limits of its NPDES permit within nine months of the closure completion date. U.S.S. Lead's petition seeking revocation of their NPDES permit shall not be unreasonably denied by the Complainant. Final effluent limits of U.S.S. Lead's NPDES permit shall be determined in the future through a procedure separate from this administrative action.

5. All information required to be submitted to IDEM pursuant to this Agreed Order shall be to the attention of: Chief, Enforcement Section, Office of Water Management, Indiana Department of Environmental Management.

6. During the effectiveness of this Order, the following Force Majeure provisions shall control:

a. Respondent shall perform the requirements of this Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not foreseeable and beyond the control of Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits.

b. Respondent shall notify the Department in writing within seven (7) days after it becomes aware of events which Respondent knows or should know constitute a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure as for that particular activity.

c. If the Department determines that the delay has been or will be caused by circumstances not foreseeable and beyond Respondent's control, which could not have been overcome by due diligence, the time for performance for that particular element of the required activity may be extended, upon the Department's approval, for a period equal to the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other tasks required by this Agreed Order, unless these are specifically altered by amendment of the Order.

7. U.S.S. Lead ("the Company") intends to appoint corporate officer(s) and director(s) in order to facilitate efforts to satisfy the Company's obligations at the U.S.S. Lead facility in East Chicago, Indiana as set forth in the Agreed Orders executed in connection with Cause Nos. N-296 and B-891, as well as to attend to other corporate matters relating to the Company.

Accordingly, the Indiana Department of Environmental Management agrees to hold harmless each of the new corporate officer(s) and director(s) individually for any and all civil liabilities arising from (i) the implementation of all measures to satisfy the Company's obligations at the U.S.S. Lead facility as set forth in the Agreed Orders executed in connection with Cause Nos. N-296 and B-891: (ii) the presence or release of any pollutants, contaminants, hazardous substances, or wastes in, on, at, or from

the U.S.S. Lead facility; and (iii) other handling of pollutants, contaminants, hazardous substances, or wastes in, on, at, or from the U.S.S. Lead facility in the course of satisfying the Company's obligations as set forth in the Agreed Orders executed in connection with Cause Nos. N-296 and B-891, unless such liabilities arise solely from any gross negligence or willful act or omission of the corporate officer(s) or director(s) committed in the course of his or her official duties and responsibilities.

8. In an attempt to enable U.S.S. Lead to satisfy certain undertakings at the U.S.S. Lead facility located in East Chicago, Indiana as set forth in the Agreed Orders executed in Cause Nos. B-891 and N-296, Sharon Steel Corporation intends to loan funds to U.S.S. Lead.

The Indiana Department of Environmental Management hereby acknowledges that Sharon Steel Corporation merely intends to provide financial assistance in the form of a loan to U.S.S. Lead in the context of these proceedings and that Sharon Steel Corporation is not, by virtue of this loan to U.S.S. Lead, (i) assuming any responsibility for whatever obligations U.S.S. Lead may have at the U.S.S. Lead facility; (ii) asserting any control over any activities at the U.S.S. Lead facility; (iii) retaining title or asserting any other indicia of ownership of the U.S.S. Lead facility; and (iv) that Sharon Steel is not admitting any fact or waiving any available defenses it may have in the event an enforcement action is brought against Sharon Steel in connection with the U.S.S. Lead facility. The Indiana Department of Environmental Management further agrees that it or its representatives and agents will not assert at any time in any forum that the

proposed loan from Sharon Steel to U.S.S. Lead acts in any way to make Sharon Steel liable for any obligations of U.S.S. Lead.

9. The provisions of this AGREED ORDER will apply to the Respondent, its agents, servants, employees, successors, and assigns, and to all persons, firms, or corporations acting through or for the Respondent.

10. This AGREED ORDER will have no force or effect until it is approved by the Commissioner, and timely compliance with the terms of this AGREED ORDER shall constitute a final resolution of this cause.

11. Respondent, by the duly authorized undersigned, hereby waives administrative review of this Partial Interim Agreed Order, consents to the provisions of this FINDINGS and ORDER and agrees to be bound by said ORDER when issued by the Commissioner.

12. All relevant issues not resolved by this Partial Interim Agreed Order shall be addressed within the final resolution of this cause. Said final resolution shall be arrived at in later proceedings within this action.

TECHNICAL RECOMMENDATION

BY: Charles B. Bardonner
Charles B. Bardonner

DATE: 11/14/89

U.S.S. LEAD REFINERY, INC.

BY: Richard C. Liscum

TITLE: Chief Accountant

DATE: 12/7/89

ATTEST:

BY: _____

TITLE: _____

DATE: _____

APPROVED FOR LEGALITY AND FORM:

LINLEY E. PEARSON
Attorney General of Indiana.

By: Mathew S. Scherschel
Mathew S. Scherschel
Deputy Attorney General
219 State House
Indianapolis, IN 46204

DATE: January 28, 1990

ATTORNEY FOR COMPLAINANT

Robert N. Steinwurtzel
Robert N. Steinwurtzel
Andrews & Kurth
Suite 200
1701 Pennsylvania Ave., N.W.
Washington, D.C. 20006

DATE: December 14, 1989

ATTORNEY FOR RESPONDENT

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT this 27th day of March, 1989.
1990

Kathy Prosser
Kathy Prosser
Commissioner

4562W

INDIANA STREAM POLLUTION
CONTROL BOARD

IN THE MATTER OF THE:

STREAM POLLUTION CONTROL
BOARD OF THE STATE OF INDIANA,

Petitioner,

v.

U.S.S. LEAD REFINERY, INC.

Respondent.

Cause No. B-891

INTERLOCUTORY CONSENT DECREE

The above-captioned action having been filed and the parties being desirous of settling and resolving this action and having consented without hearing or adjudication of any issue of fact or law herein to the entry of this Interlocutory Consent Decree, and without this Interlocutory Consent Decree constituting any evidence or admission of liability or fault by any party hereto with respect to any issue of fact or law arising out of any allegation of the Complaint:

NOW, THEREFORE, before the taking of any testimony, upon the consent of the parties hereto, and pending final resolution of this cause, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The Stream Pollution Control Board of the State of Indiana (hereinafter referred to as the "Board") is an agency of the State of Indiana, duly empowered to hold administrative hearings to determine whether there is a possible violation of

the Stream Pollution Control Act (IC 13-1-13), the Environmental Management Act (IC 13-7), and the rules and regulations duly promulgated thereunder, and to enter an order requiring the abatement of a possible violation, including the assessment of a civil penalty.

2. The Board has jurisdiction over both the subject matter and the parties to this action.

3. Pursuant to the Indiana Administrative Adjudication Act, IC 4-22-1-6, and the Indiana Environmental Management Act, IC 13-7-11, on or about April 3, 1984, Notice of Hearing and Complaint was issued by the Board and service of same was made upon:

U.S.S. Lead Refinery, Inc.
5300 Kennedy Avenue
East Chicago, Indiana 46312

4. On or about June 15, 1975, NPDES Permit No. IN 0032425 was issued to U.S.S. Lead Refinery, Inc. (hereinafter referred to as "U.S.S. Lead").

5. NPDES Permit No. IN 0032425 expired on March 31, 1980. Pending the issuance of a new NPDES permit, consistent with the policy of the Board, NPDES Permit No. IN 0032425 has remained in effect.

6. NPDES Permit No. IN 0032425 authorizes a single permitted discharge identified as Outfall 001.

7. NPDES Permit No. IN 0032425 authorizes the discharge of several parameters from Outfall 001, including total lead. Specifically, NPDES Permit No. IN 0032425 authorizes a

discharge limitation for total lead not to exceed 0.2 mg/l to be measured by daily composite samples.

8. On or about April 3, 1984, a Notice of Hearing and Complaint was filed against U.S.S. Lead with respect to its compliance with the terms of NPDES Permit No. IN 0032425.

9. The Complaint sets forth two allegations. First, the Complaint alleges that U.S.S. Lead is in violation of the discharge limitation for total lead. Second, the Complaint alleges that U.S.S. Lead is in violation of the sampling frequency requirements.

10. Subsequent to the filing of the Complaint, the parties determined that by letter dated March 15, 1976, the Board had amended NPDES Permit No. IN 0032425 by modifying the sampling frequency requirements; specifically, the sampling frequency requirements had been changed from "daily 24-hour composite" to "weekly grab sample." The parties also determined that U.S.S. Lead is in compliance with the amended sampling frequency requirements. Accordingly, the parties are in agreement that there is no substantive basis to the second allegation set forth in the Complaint filed on or about April 3, 1984, and the Board will not pursue that allegation.

11. With respect to the allegation that U.S.S. Lead is in violation of the discharge limitation for total lead, the parties determined that U.S.S. Lead's discharge pipe from which samples had been collected was located below the water level of the Grand Calumet River. Consequently, the sampling results

collected and analyzed by U.S.S. Lead were not representative of the company's discharge for the reason that the samples reflected a mixing of discharge and river water.

12. As a result of the location of the discharge pipe, the parties were uncertain whether U.S.S. Lead is in compliance with the discharge limitation for total lead. Accordingly, the parties agreed during a prehearing conference conducted on May 24, 1984, that U.S.S. Lead would undertake the following actions:

- a. Terminate the discharge to the existing discharge pipe;
- b. Install well points to dewater the area adjacent to the existing discharge pipe;
- c. Install steel form and fill existing discharge pipe with concrete;
- d. Construct a new discharge pipe at a location approved by representatives from the Board; and
- e. Install a 24-hour composite sampling pump, with a flow meter, at the new discharge pipe.

13. The actions described in paragraph 12 have been completed by U.S.S. Lead to the satisfaction of the representatives from the Board.

14. On or about January 24 and 25, 1985, grab samples were taken of the effluent coming from U.S.S. Lead's new discharge pipe. Analyses of said grab samples conducted by the Indiana State Board of Health laboratory found the presence of lead in said effluent in the amount of .36 mg/l. Although U.S.S. Lead continues to dispute that it has exceeded the

discharge limitation for total lead specified by NPDES Permit No. IN 0032425, the parties have agreed that U.S.S. Lead shall undertake the following actions to reduce the discharge of pollutants and to determine the Company's ability to comply with the discharge limitations and conditions contained in NPDES Permit No. IN 0032425:

a. Within one month from the execution of this Interlocutory Consent Decree, U.S.S. Lead will remove its battery casing stockpile, which is presently being stored outdoors, and shall agree not to store battery casings outdoors from that date forward.

b. U.S.S. Lead will undertake a study with respect to runoff and process waste streams. The study will be conducted according to the conditions and requirements approved by the staff of the Stream Board and will include the sampling and identification of any additional controls needed to be installed to reduce the amount of pollutants being discharged from the company's operations. If said additional controls are identified, U.S.S. Lead will propose implementation dates for said controls. The study will be completed and submitted to the Board no later than six (6) months from the date of staff's approval of the conditions and requirements thereof.

c. During the six-month study period identified herein, U.S.S. Lead will collect samples from the new discharge pipe and analyze the samples to determine the following levels of pollutants which were identified in the company's expired NPDES permit: total lead, fluoride, arsenic, and total dissolved solids. In addition, U.S.S. Lead will collect samples from the new discharge pipe and analyze the samples for the following parameters which have been identified in the company's new NPDES permit: cadmium, copper, total zinc, and total antimony.

d. The collection of samples as required by this Interlocutory Consent Decree shall be on a weekly basis utilizing a 24-hour composite sample.

e. All samples collected in accordance with this Interlocutory Consent Decree shall be analyzed pursuant to the latest edition of Standard Methods for the Examination of Water and Wastewater [330 IAC 1-1-9].

15. Provided U.S.S. Lead is in compliance with the terms of this Interlocutory Consent Decree, the Board agrees not to initiate any new enforcement proceedings against U.S.S. Lead with respect to its compliance with the expired or new NPDES permits during the time period the Interlocutory Consent Decree is in effect.

16. At the expiration of the six-month study period identified in paragraph 14b, the parties shall confer to discuss the results of said study and to address the status of the pending action, including but not limited to a discussion of whether the new effluent characteristics (cadmium, copper, total zinc and total antimony) are present in significant enough quantities to be regulated; whether additional controls are needed to reduce the amount of pollutants contained in the Company's discharge and if appropriate, to propose a schedule whereby additional controls must be implemented; whether, if additional controls must be implemented, this Interlocutory Consent Decree should be amended to incorporate the additional controls and the implementation schedule or whether the matter should be resolved through a separate administrative order; and whether any penalties should be imposed for alleged non-compliance with NPDES Permit No. IN 0032425.

17. If any event occurs which causes or may cause delays in achievement of any provisions of this Interlocutory Consent Decree, U.S.S. Lead shall notify the Board in writing within ten (10) days of the delay or anticipated delay, as appropriate,

describing the anticipated length of the delay, the cause(s) of the delay, the measure(s) taken or to be taken and the time required to prevent or minimize the delay. U.S.S. Lead shall adopt all reasonable measures to prevent or minimize such delay.

If the delay has been caused by fire, flood, riot, strike, administrative delays by the Board, or other circumstances beyond the reasonable control of U.S.S. Lead, then the time for performance hereunder shall be extended for a period no longer than the delay resulting from such circumstances.

18. Until termination of this Interlocutory Consent Decree, and upon reasonable notice to U.S.S. Lead, representatives of the Board shall have the right to enter the U.S.S. Lead site during normal business hours upon presentation of proper credentials for the purpose of determining U.S.S. Lead's compliance with the terms of the Interlocutory Consent Decree. Specifically, upon such notice, the representatives of the Board shall have the right to inspect appropriate Company records and logs relevant to this Interlocutory Consent Decree, monitor the progress of U.S.S. Lead in developing the study identified in paragraph 14b, and verify any data submitted by U.S.S. Lead by obtaining duplicate or split samples.

19. It is the intent of the parties that this Interlocutory Consent Decree lead to a resolution of all claims against U.S.S. Lead with respect to NPDES Permit No. IN 0032425 regarding any discharges by the company which allegedly

exceeded the limitations contained in NPDES Permit No. IN 0032425 on or before the date the Interlocutory Consent Decree is executed by the respective parties. Further, the parties agree that this Interlocutory Consent Decree will remain in effect at least until the conference referred to in paragraph 16, and thereafter until this cause is finally resolved through adjudication or final Consent Decree.

20. The parties agree that this Interlocutory Consent Decree will have no force and effect until is is approved by the Board, and U.S.S. Lead hereby consents to the terms contained herein.

TECHNICAL RECOMMENDATION

BY: Joseph C. Stallsmith
Chief, Op. Branch
DIVISION: Water Pollution Control

DATE: July 10, 1985

APPROVED FOR LEGALITY AND FORM

LINLEY E. PEARSON
Attorney General of Indiana

BY: Kenneth M. Wahnsiedler
Kenneth M. Wahnsiedler
Deputy Attorney General

DATE: July 9, 1985

U.S.S. LEAD REFINERY, INC.

BY: Donald J. Bidwell
Donald J. Bidwell
TITLE: Vice Pres. & Gen Mgr.
Vice President and
General Manager

DATE: July 3, 1985

BY: Robert N. Steinwurtzel
Robert N. Steinwurtzel
Attorney for U.S.S. Lead
Refinery, Inc.

DATE: July 5, 1985

RECOMMENDATION FOR ADOPTION

BY: *James M. Garrettson*
James M. Garrettson
Hearing Officer

DATE: *July 16, 1985*

STREAM POLLUTION CONTROL BOARD

BY: *Earl Bohm*

TITLE: *Technical Secretary*

DATE: *7/29/85*

B-891

State Form 4336

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date:

To: Myra Spicker, DAG Thru: Mark Stanifer, Chief
Office of Attorney Gen. Water Enforcement Section

From: Paul Cluxton *PC*
Water Enforcement Section

Subject: U.S.S. Lead, East Chicago

For the Joint Status Report due December 1, 1993, to Administrative Law Judge Garrettson in Cause No: 89-W-J-206 which includes the water case B-891, I communicated to you by phone that I have the U.S.S. Lead submittals referred to in Mathew Scherschel's December 1992 Status Report (1c and 1d). The USS Lead NPDES permit IN0032425 for Outfall 001 for noncontact cooling water and stormwater runoff expired February 28, 1990 and it was necessary for USS Lead to apply for a renewal which was done June 8, 1990. The Office of Water Management NPDES Permit Section then passed it to the Enforcement Section. Paragraph 4, page 12 of the 1990 Partial Interim AO B-890 sets out the requirement to either revoke the NPDES permit after hazardous waste units on site have been properly closed or within 9 months meet final limits (which would appear in the finalized NPDES permit to be determined through a procedure separate from B-890 because it is a permit adjudication).

I have the August 3, 1990 surface water discharge minimization plan submitted per the requirements of the Partial Interim Agreed Order (adopted 3/28/90) B-891 and IDEM has it "under review" in that I have not directed a revision of what was submitted and have not approved the earthen sedimentation unit due to concern by EPA (see attached 1991 memo) that it would become a surface impoundment. USS Lead had limited funds. IDEM did not expect the sedimentation pond to meet technical criteria--because it is not meant to meet technical criteria but function as partial treatment--but EPA commented that the earthen dam may be a liability and suggested a redesign to a tank which is not going to happen--so it is on hold. Meanwhile there is no treatment of the stormwater, as previously, which contains lead and there is no NPDES monitoring since July 87 when they shut down the facility and all electric utility service stopped because they didn't pay their bill. The closure action to address the source of the lead and proper interim measures as part of the corrective action will eventually get the site under control.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT


INDIANAPOLIS

OFFICE MEMORANDUM

TO: Paul Cluxton
Enforcement Section
Office of Water Management

DATE: April 2, 1991

THRU: Mark Stanifer, Chief ^{MW5}
Enforcement Section ⁴⁻³
Office of Water Management

FROM: Thomas Linson, Chief 
Hazardous Waste Management Branch

SUBJECT: Office of Solid and Hazardous Waste Management

ENFORCEMENT SENSITIVE

U.S.S. Lead Refinery, Inc.
Cause No. B-891

It has come to my attention that U.S. EPA, Region V, is concerned about the damming of the U.S.S. Lead Canal. Mr. Joe Boyle of Region V's RCRA Enforcement Branch, informed me that it was their opinion that damming the canal could create a RCRA regulated surface impoundment.

While it is the opinion of this Office that such a unit would not necessarily meet the definition of a surface impoundment (since it only receives surface water), I wanted to inform you of Region V's concerns. Their concern is that when the CERCLA (Superfund) activities commence (excavation and removal of wastes), the amount of lead in the storm water run-off might increase. It is conceivable that U.S.S. Lead could accuse U.S. EPA of increasing the contamination of the canal sediments in a legal suit. It is Region V's opinion that a tank would be a more appropriate unit.

Attached is a copy of Mr. Thad Slaughter's review memo on the canal project. He works for Mr. Joe Boyle and his number is AC 312/886-4460.

This Office agrees that from a regulatory standpoint, the use of a tank prevents the undesirable possibility of the formation of an illegal surface impoundment.

If you have any further questions, feel free to call Mr. Mike Sickels of our Enforcement Section at AC 317/232-3406.

MES/rmw

Attachment

cc: Mr. Mike Sickels
Mr. Joe Boyle, U.S. EPA, Region V

INTERNAL MATERIAL

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

TO:

Steve Wolfe

FROM:

Michael Kuss

SUBJECT:

Inspection of U.S.S. Lead Refinery
October 20, 1988

DATE:

November 1, 1988

THRU:

Steve Boswell *SB*
John Winters *JW*
Al Lao

On Thursday, October 20, 1988, I conducted an inspection of the U.S.S. Lead facility in Lake County.

The following findings were made:

1. There are many areas of the property located to the west and to the south of the refinery buildings where car batteries containing the lead plates have been dumped on the ground. The dumpings to the south are of the most concern to the Office of Water Management. It appears from maps of the area, and the on-site visit, that U.S.S. Lead has disposed of lead materials in the marsh lands directly connected to the Grand Calumet River. The contact with the river is therefore direct, and runoff from rains only adds to the pollution (photograph was taken).
2. Batteries were discarded directly next to Outfall 001. A photograph was taken.
3. Flue dust from the facility's air pollution control units is stockpiled near Outfall 001. During rain events or snow melts the water will run directly to Outfall 001 and into the Grand Calumet River. Photograph was taken.
4. The channel adjacent to Kennedy Avenue contains contaminated storm water run-off from stockpiles of used battery components, including lead plates. This discharges directly to a channel on the eastern border of the property. This channel is located along side the railroad track next to Kennedy Avenue. Photograph was taken.
5. Used batteries were also observed in the water and the channel next to the railroad tracks next to Kennedy Avenue. Photograph was taken.
6. A clay tile was observed near the back (northwest boundry) of the refinery. It was unclear as to the use of this tile. No one at the facility had any knowledge of this pipe.

Memo to Steve Wolfe
Page 2
November 1, 1988

If you have any questions regarding this inspection please contact me at
243-5142.

MPK/se
Attachments
cc: Paul Cluxton
Mathew Scherschel



Photo #3

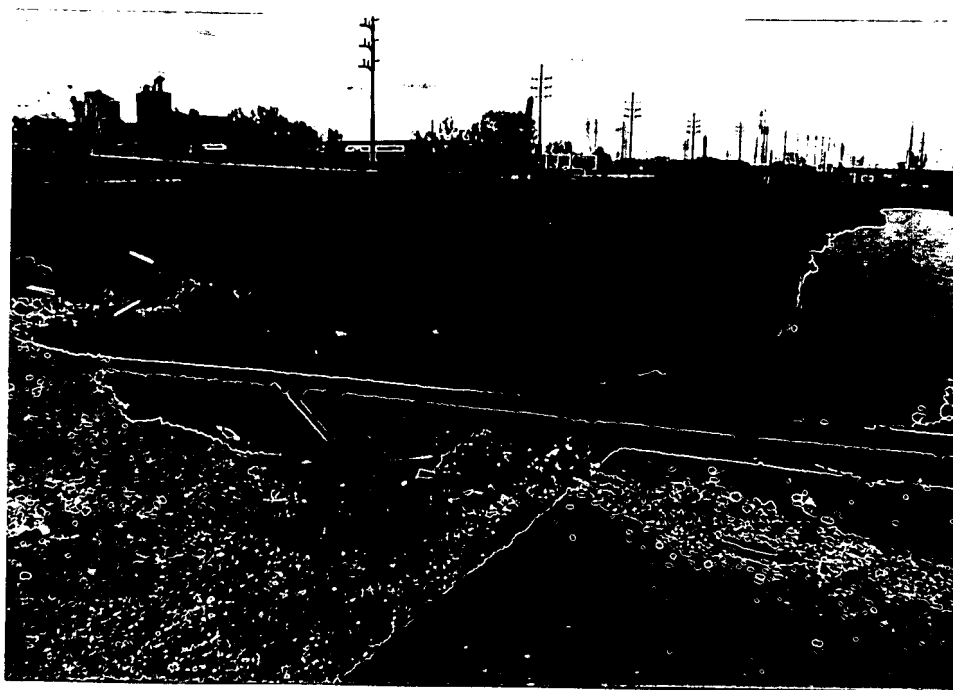
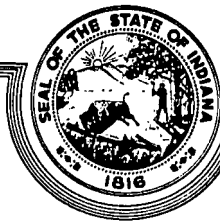


Photo #4

STATE OF INDIANA



INDIANAPOLIS 46206-1964

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street
P.O. Box 1964

RETURN RECEIPT

STATE OF INDIANA)
) SS: BEFORE THE STREAM POLLUTION CONTROL
COUNTY OF MARION) BOARD OF THE STATE OF INDIANA

IN THE MATTER OF THE STREAM POLLUTION)
CONTROL BOARD OF THE STATE OF INDIANA)

vs.)

CAUSE NO. B-891

U.S.S LEAD REFINERY, INC.)

NOTICE OF HEARING AND COMPLAINT

TO: Mr. Victor Posner, President
U.S.S Lead Refinery, Inc.
5300 Kennedy Avenue
East Chicago, IN 46312

Prentice Hall Corporation Company
Resident Agent, U.S.S. Lead Refining, Inc.
1100 Circle Tower
Indianapolis, IN 46204

You are hereby notified, as provided by the Indiana Administrative Adjudication Act at IC 4-22-1-6 and the Indiana Environmental Management Act at IC 13-7-11, and pursuant to the authority therein granted, that the Stream Pollution Control Board of the State of Indiana, on the 20th day of March 1984, ordered that a hearing be held before Mr. James M. Garrettson, a duly authorized representative of the Stream Pollution Control Board, acting on its behalf as its Hearing Officer.

You are further notified that the matters in issue and to be determined at this hearing relate to the question of whether or not Respondent has violated, is now violating, or is about to violate the provisions of the Indiana Stream Pollution Control Law, IC 13-1-3, or the Indiana Environmental Management Act, IC 13-7, as amended, including any and all applicable regulations promulgated thereunder, by permitting, threatening, causing, or contributing to the pollution of certain waters of this State, more particularly: (see enclosed Summary).

Also to be considered is whether an Order should be made requiring any or all Respondents in this Cause to cease and desist from threatening, causing, or contributing to the pollution of said waters of the State and from violating applicable statutes and regulations promulgated thereunder and also whether or not an Order, including civil

penalty, and/or schedule of compliance, should be recommended to the Stream Pollution Control Board by the Hearing Officer pursuant to the authority granted by IC 13-7-11-5 or IC 13-7-13-1.

Pursuant to IC 13-7-11-2 and IC 4-22-1-4, you are requested to attend a prehearing conference on April 27, 1984, at 9:30 a.m., E.S.T., in Room 336, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana, to attempt to reach a settlement on this matter prior to the hearing date. Arrangements for rescheduling of prehearing conference times or dates should be made by contacting Ms. MaryAnn Stevens at AC 317/633-0768.


Failing settlement at the prehearing conference, you are further notified that a formal administrative hearing shall be held on May 24, 1984, at 9:30 a.m., E.S.T., in Room 336, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana.

You are entitled to be represented by counsel, to attend this hearing with witnesses, and to present any testimony on your behalf in order to aid the Stream Pollution Control Board in reaching a determination in this matter. Arrangements for rescheduling of the hearing time or date should be made by contacting the Hearing Officer at AC 317/633-8548, or by mail to the following address:

Mr. James M. Garrettson, Hearing Officer
Indiana Stream Pollution Control Board
1330 West Michigan Street
Indianapolis, IN 46206

Written appearance of counsel should be promptly filed with the Hearing Officer if counsel is contemplated. Timely filing of written appearance by counsel may be considered in the granting of continuances.

Dated at Indianapolis, Indiana, this 3 day of April, 1984.



Earl A. Bohner
Technical Secretary

Enclosure

cc: Office of the Attorney General
Attention: Ms. Deborah Albright
Mr. Ron Mustard, Region V, U.S. EPA
Hearing Officer ✓
Lake County Health Department
Ronald G. Blankenbaker, M.D.
Mr. Ralph C. Pickard

SUMMARY
Request for Hearing
U.S.S. Lead Refinery, Inc.
East Chicago, Indiana
IN 0032425

U.S.S. Lead Refinery, Inc., in East Chicago, was issued an NPDES Permit No. IN 0032425 on June 10, 1975. The permit has since expired, but staff has continued to treat it as the effective permit until a new permit is reissued. The Company is a recycler of lead from batteries. Among the various limitations specified in the permit is a limit of 0.2 mg/l total lead to be measured by daily composite samples of the discharges into the Grand Calumet River. The Company's Discharge Monitoring Reports submitted under the requirements of the NPDES permit show that U.S.S. Lead Refinery consistently is in violation of the total lead limit and furthermore is only sampling one time per week using a grab sample.

A January 25, 1984, inspection by staff indicates that all process and sanitary wastewater is discharged into the city sewers. It is run-off from the property that leaches lead contamination from the years of operations at this site and discharges into the river. A Company official told staff during the inspection that paving of the outside battery storage area is being considered for this up-and-coming spring season. Staff is concerned that this paving actually be accomplished with proper drainage and curbing to collect the run-off so it can be treated prior to release to a receiving stream. Staff requests that the Board appoint a Hearing Officer to conduct a Hearing into the matter of violations of Indiana Regulation 330 IAC 5 (failure to comply with terms of the NPDES Permit) by U.S.S. Lead Refinery, Inc.

MAStevens/jb
3/20/84

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT
CAUSE NO. C85-2406

U.S.S. LEAD REFINERY, INC.,)
)
Petitioner,)
)
v.)
)
STREAM POLLUTION CONTROL BOARD OF)
THE STATE OF INDIANA,)
)
Respondent.)

FILED

JUN 24 1986

Bernard J. Lehman Jr.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the Court on a judicial review of agency action which is based on the record of the proceedings before the Agency, with the record of the proceedings before the court, and with the Court having heard oral argument and having considered the briefs of the parties, the Court hereby makes its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. USS Lead is a secondary lead smelter which operates a small refinery in East Chicago, Indiana, and discharges wastewater into the Grand Calumet River.
2. In September 1982, USS Lead applied to the Stream Pollution Control Board of the State of Indiana (the "Board") for a renewal of its National Pollutant Discharge Elimination System ("NPDES") permit authorizing it to discharge wastewater into the Grand Calumet River.
3. On or about August 8, 1984, the Board transmitted to USS Lead a draft permit and a fact sheet explaining the terms and conditions of that draft permit.
4. On August 30, 1984, on a timely basis, USS Lead submitted comments on the draft permit, objecting to certain of its terms and conditions. However, USS Lead did not, at this time, object to the daily maximum discharge limitation for total lead, which the draft permit set at 0.3 milligrams per liter ("mg/l").

OAG-E

JUN 24 1986

1227

5. In April 1984, the Board brought an enforcement action against USS Lead, alleging that USS Lead had violated the terms of its original permit. Pursuant to an interlocutory consent decree, this action has been held in abeyance while USS Lead conducts a technical study concerning its wastewater discharge. That study has been formally approved by the Board.

6. On March 29, 1985, the Board sent to USS Lead a new NPDES permit. Included with the permit was the response of the Board to comments raised by USS Lead and a fact sheet which was intended to explain changes in the final permit from the draft permit. Certain discrepancies exist between the permit and the fact sheet. Of particular importance, the permit lists USS Lead's daily maximum discharge limitation for total lead as 0.2 mg/l, but the fact sheet lists the same limitation as 0.3 mg/l (as did the draft permit).

7. On April 8, 1985, USS Lead's representatives held several telephone discussions with the staff of the Board concerning both USS Lead's need to request an adjudicatory hearing on its new permit and the relationship of such a hearing to the separate enforcement proceeding which had been brought by the State in April 1984. The Board's staff suggested that USS Lead file a request for such a hearing but consider seeking a stay of the hearing until USS Lead had completed the technical study of its wastewater as agreed upon in the interlocutory consent decree.

8. The Board, by letter dated April 12, 1985, revised the fact sheet which accompanied the final permit and was supposed to explain changes in the final permit from the draft permit. This revised fact sheet again listed USS Lead's daily maximum discharge limitation for total lead as 0.3 mg/l.

9. On May 3, 1985, USS Lead sent to the Technical Secretary of the Board a letter requesting an adjudicatory hearing concerning the terms and conditions of the permit. Based on the telephone conversations with the Board staff, USS Lead requested that the hearing be stayed to allow USS Lead the opportunity to undertake the technical study agreed to in the context of settlement of the State enforcement action.

10. By letter dated May 15, 1985, the Technical Secretary, having concluded that USS Lead's request for an adjudicatory hearing was one day late, denied that request as untimely.

11. By letter dated May 21, 1985, USS Lead requested that the Board review the denial of USS Lead's request for an adjudicatory hearing.

12. In May 1985, the U.S. Environmental Protection Agency, Region V, brought an enforcement action, alleging, in part, that USS Lead had violated the terms of its original permit. Furthermore, in pleadings filed in that case, the U.S. EPA has indicated that it will seek civil penalties for alleged failure to comply with USS Lead's 1985 permit.

13. Indiana law requires that USS Lead first pursue a challenge to the terms of the 1985 permit, which may be the subject of a federal enforcement action, through an adjudicatory hearing before the Board.

14. At an informal hearing held on July 16, 1985, the Board upheld the Technical Secretary's denial of USS Lead's request for an adjudicatory hearing based on the alleged untimely filing.

15. On July 26, 1985, USS Lead filed with this court a Verified Petition for Judicial Review of the Board's action. On that same day, USS Lead filed a Verified Petition for a Stay of Agency Action pending judicial review.

CONCLUSIONS OF LAW

1. USS Lead is a person aggrieved by an action of a State agency under the provisions of the Indiana Administrative Adjudication Act. Ind. Code 4-22-1-14.

2. USS Lead timely filed both a Verified Petition for Judicial Review of the Board's final decision denying USS Lead an adjudicatory hearing on its NPDES permit and a Verified Petition for Stay of Agency Action Pending Judicial Review.

3. Indiana regulations establish NPDES permit application procedures by which, upon application by a person proposing to discharge wastewater, the Board shall develop a draft permit and fact sheet, receive public comment on that draft permit and fact sheet, and "make a final permit decision." 330 IAC 5-3-1, et seq. That fact sheet is to set forth "the major facts and the significant factual, legal, methodological and policy questions" considered in preparing the permit. 330 IAC 5-3-8.

4. The Board's regulations specifically require that the Board, in the course of making its "final permit decision," respond to all comments

on a draft permit received during the public comment period. 330 IAC 5-3-9.

5. The Board's regulations further require that, "contemporaneously with the issuance of a final permit," the Board transmit to each person who commented on the draft permit a response which includes the Board's response to all significant comments and also a "specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change." 330 IAC 5-3-15.

6. The "final permit decision" therefore encompasses the final permit and responses to comments, along with the final fact sheet. 330 IAC 5-3-8, 5-3-14, 5-3-15.

7. When the Board has reached a final decision on an NPDES permit, it is required to serve notice of that decision on the applicant. 330 IAC 5-3-14.

8. An applicant for an NPDES may "within 30 days following the date of receipt of an issued permit" request "an adjudicatory hearing concerning such action." 330 IAC 5-16-3.

9. Whenever the Board revises the fact sheet for a final permit, the 30-day time limit for request of an adjudicatory hearing by an applicant begins to run anew upon receipt of that revised fact sheet.

10. Therefore, the Board did not issue USS Lead's new permit until April 12, 1985, when it transmitted to USS Lead a revised fact sheet.

11. For these reasons, USS Lead's May 3, 1985 request for an adjudicatory hearing on its NPDES permit was timely filed.

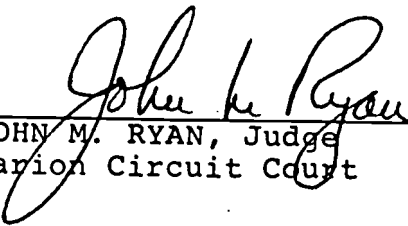
12. The Board must grant a request for an adjudicatory hearing which is timely filed. 330 IAC 5-16-4.

13. The Board's denial of USS Lead's request for an adjudicatory hearing on the basis that said request was untimely was "without observance of procedure required by law." Ind. Code 4-22-1-18.

14. For all of the above reasons, the Board's denial of USS Lead's request for an adjudicatory hearing on the terms and conditions of its permit was invalid and illegal, and the Board should now grant USS Lead a hearing on the terms of its NPDES permit.

15. Furthermore, contested provisions of a permit are automatically stayed pending the completion of a requested hearing and the Board's final decision. 330 IAC 5-3-14(C)(1)(a). Therefore, the contested provisions of USS Lead's permit will be stayed pending the completion of a hearing and a final decision by the Board.

All of which is ORDERED, ADJUDGED AND DECREED this 24th day of June, 1986.



JOHN M. RYAN, Judge
Marion Circuit Court