



New York State Department of Environmental Conservation

MEMORANDUM

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TO: Michael O'Toole, Director - DHWR, Albany
 FROM: Charles E. Sullivan, Jr., - Bur. Chief - DEE, Albany
 SUBJECT: Union Road Site - Final Approval and Signature for an
 Amendment to RD/RA Consent Order #B9-0148-92-03 (Site #850002)
 DATE: 17 JUNE 1996

9-15-128

Enclosed for your review, approval and signature are duplicate originals of an Amendment to the RD/RA Order on Consent originally signed by the Department and the Penn Central Corporation on March 28, 1994.

This amendment requires the Respondent, American Premier Underwriters (formerly the Penn Central Corporation), to sample, excavate, and dispose of contaminated soils on a property adjacent to the above-referenced site. This work will be performed pursuant to a Department-approved Addendum to the RD/RA Work Plan.

The estimated cost of this additional off-site remedial work is approximately \$300,000.00. Any additional oversight costs are covered under the original Order on Consent.

check this out

This site is a former railroad repair yard in the Town of Lancaster in Erie County. The remedial work under the original Order on Consent is well underway and will likely cost \$14 million when completed.

This Amendment was negotiated by Joseph P. Ryan, Esq. of DEE's Western Field Unit. If you have any questions, he can be reached at (716) 851-7050. The technical issues were negotiated by David Locey (DHWR - Region 9). He can be reached at (716) 851-7220.

Attachment

cc: J. Cahill
 G. Mikol
 G. Caito
 E. Armater

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York
by

AMENDMENT
TO
ORDER
ON
CONSENT
INDEX # B9-0148-92-03

AMERICAN PREMIER UNDERWRITERS
(f/k/a THE PENN CENTRAL CORPORATION)
Respondent.

Site Code #915128

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL Section 3-0301.

2. American Premier Underwriters ("APU"), the Respondent, formerly known as the Penn Central Corporation, is authorized to do business in New York and is organized in the Commonwealth of Pennsylvania. The Department alleges that a predecessor to APU conducted activities which resulted in the disposal of hazardous waste on that property currently owned by Witben Realty and Universal Marion Corporation which may be controlled by Louis Wolfson, among others, known as the Union Road Site in Cheektowaga, NY (the "Property"). There is

evidence of alleged unauthorized dumping at the Property after Respondent's predecessor was allegedly connected with the Site.

3. The Department and Respondent entered into an Order on Consent as identified in the above caption effective March 28, 1994, wherein Respondent was to conduct an inactive hazardous waste disposal site remedial program ("Remedial Program") at portions of the Property designated as inactive hazardous waste site no. 915128 (the "Site").

4. Pursuant to that Order on Consent and in accordance with a Remedial Work Plan approved by the Department, Respondent is currently implementing this Remedial Program. However, during the implementation of the Remedial Program, additional contamination, primarily soils, was discovered at or adjacent to the Site.

5. To effectively address the additional contamination, the Respondent and the Department have agreed to additional remedial actions for soil removal and other activities for the Site by incorporating elements from the initial work plan. This Work Plan implements activities consistent with 40 C.F.R. Part 300.

6. The Department and Respondent agree that the goal of this Amendment is for Respondent to implement additional remedial actions at or adjacent to the Site pursuant to the original remedial Work Plan and the Addendum as set forth on Schedule A as attached.

7. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Amendment, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Amendment.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Implementation

Respondent shall undertake and implement additional remedial actions for the Site as agreed to by the Department and Respondent pursuant to the attached Schedule A and the original Remedial Work Plan, under the oversight of the Department. Any modifications or revisions which may be required due to unanticipated field conditions shall be subject to approval by the Department. Any such modification or revisions shall be attached to and incorporated into this Amendment as an Appendix. The Department, for good cause shown, reserves the right to change Schedule A which was agreed to by the Department and Respondent. For good cause shown, Respondent may request the Department to change Schedule A. Schedule A is incorporated into this Amendment as Appendix "A".

During the performance of field activities, Respondent must have on-Site a full-time representative who is qualified to supervise the work done.

Within the time frame set forth in the Appendix A, Respondent must prepare a report ("Addendum Report") that includes all data generated and all other information obtained during the additional remedial actions and identifies any additional data that must be collected. The Addendum Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Addendum Report was prepared in accordance with this Amendment.

II. This Amendment and any appendices shall be incorporated in and become a part of the Order on Consent between the Department and the Respondent dated March 28, 1994 and identified as Index No. B9-0148-92-03. The terms, provisions, conditions and requirements of the Order on Consent shall remain in effect and shall apply to this Amendment.

III. The terms, conditions and modifications contained in this Amendment shall become effective on the date this Amendment is signed by the Commissioner or his designee.

DATED: 5/21, New York
1996

MICHAEL D. ZAGATA
Commissioner
New York State Department
of Environmental Conservation



Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Amendment, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Amendment.

AMERICAN PREMIER UNDERWRITERS

By: _____

[Handwritten Signature]

Michael L. Gioffi
(Type Name of Signer)

Title: Vice President

Date: June 4, 1996

STATE OF OHIO)
COUNTY OF HAMILTON) s.s.:

On this 4th day of June, 1996, before me personally came Michael L. Gioffi, to me known, who, being by me duly sworn, did depose and say that he resides in Cincinnati, Ohio; that he is the Vice President of the American Premier, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Mary L. Bonta
Notary Public



MARY L. BONTA
Notary Public, State of Ohio
My Commission Expires March 21, 1998