

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF MICHIGAN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
LAKE MICHIGAN TRANS-LAKE)	
SHORTCUT, INC., d/b/a LAKE MICHIGAN)	
CARFERRY SERVICE and S.S. BADGER,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“the United States”), on behalf of the United States Environmental Protection Agency (“EPA”), is concurrently filing a Complaint and Consent Decree for injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act (the “Act” or the “CWA”), 33 U.S.C. § 1319, alleging that Defendant, Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Service (hereinafter “LMC” or “Defendant”), violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a);

WHEREAS, LMC operates the Badger, a coal-fired steamship that transports passengers, cargo and vehicles on Lake Michigan;

WHEREAS, LMC generally operates the Badger seasonally during the months of May, June, July, August, September, October and November. In 2012, the Badger made approximately 500 crossings between Manitowoc, Wisconsin, and Ludington, Michigan. LMC has scheduled approximately 500 crossings in 2013;

WHEREAS, from December 19, 2008, until December 19, 2012, EPA’s 2008 Vessel General Permit For Discharges Incidental to The Normal Operation of Vessels (VGP) specified effluent limitations for the discharge of coal ash slurry from the Badger into Lake Michigan;

WHEREAS, the Complaint alleges, *inter alia*, that the Badger’s coal ash slurry discharge exceeded the effluent limitations for mercury set forth in the VGP;

WHEREAS, LMC denies any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, LMC has applied for an individual Clean Water Act permit to discharge coal ash slurry from the Badger into Lake Michigan;

WHEREAS, LMC agrees to comply with the interim effluent limits set forth in this Consent Decree;

WHEREAS, the United States and LMC (jointly, the “Parties”) have agreed that settlement of this action is in the best interests of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, EPA anticipates that the elimination of the coal ash slurry discharge pursuant to this Consent Decree will improve the water quality of Lake Michigan;

WHEREAS, the Parties have agreed, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm’s length and that this Consent Decree is fair, reasonable, in the public interest, and consistent with the goals of the Act; and

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Venue is proper under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaint, LMC waives all objections and defenses that it may have to the Court’s jurisdiction over this action, the Court’s jurisdiction over LMC, and to venue in this judicial district, and agrees that the Complaint alleges claims upon which, if proven, relief can be granted against LMC under

Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319. LMC consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Except as expressly provided for herein, this Consent Decree shall not create any rights in or obligations of any party other than the Parties to this Consent Decree.

II. APPLICABILITY

3. Nothing in this Consent Decree shall relieve LMC of its obligation to comply with all applicable federal, state, and local laws and regulations.
4. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the United States, and upon LMC and any successors, assigns, or other entities or persons otherwise bound by law. No transfer of ownership or operation of the Badger shall relieve LMC of its obligation to ensure that the terms of this Consent Decree are implemented for as long as the terms of this Consent Decree remain in effect.
5. LMC shall provide a copy of this Consent Decree to all officers, employees, vendors, suppliers, consultants, contractors, agents, and any other person or organization retained by LMC to perform any of the work required by this Consent Decree, or whose duties may reasonably include compliance with any of its provisions. LMC also shall provide a copy of this Consent Decree to each captain, master, and any other person placed in command or in charge of the Badger at any time, whether the Badger is in port or not. LMC shall condition any contract to perform work on the performance of the work being in conformity with the terms of this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, LMC shall be responsible for ensuring that all work is performed in accordance

with the requirements of this Consent Decree. In any action to enforce this Consent Decree, LMC shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

6. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the Act or in a federal regulation implementing the Act shall mean in this Consent Decree what such term means under the Act or those regulations.
7. “ABS” refers to the American Bureau of Shipping.
8. “Appendix A” contains interim effluent limitations and related standards for the discharge of coal ash from the Badger into Lake Michigan.
9. “Appendix B” contains the methods for calculating reductions in the amount of coal ash discharged by the Badger.
10. “Appendix C” contains the form of notice to be submitted to the United States Coast Guard National Vessel Documentation Center.
11. “Badger ” means, for purposes of this Consent Decree, the 410-foot, coal-burning passenger and car ferry that, as of the date of lodging of this Consent Decree, had vessel registration number 265156 and International Maritime Organization number 5033583, was named the Badger and was owned by LMC.
12. “Clean Water Act,” “Act,” or “CWA” means the Federal Water Pollution Control Act codified at 33 U.S.C. §§ 1251-1387 and its implementing regulations.

13. “Coal Ash” or “Coal Ash Slurry” means for the purposes of this Consent Decree any residuals from the combustion of coal whether dry or mixed with liquid.
14. “Consent Decree” means this Consent Decree and the Appendices hereto, which are incorporated into the Consent Decree.
15. “Court” means the United States District Court for the Western District of Michigan unless otherwise noted.
16. “Crossing” means a one-way trip across Lake Michigan, in either direction, between Manitowoc, Wisconsin and Ludington, Michigan.
17. “Date of Entry” means the date this Consent Decree is approved or signed by a Judge of the United States District Court for the Western District of Michigan.
18. “Date of Lodging” means the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Western District of Michigan.
19. “Day” means calendar day unless otherwise specified in this Consent Decree.
20. “Design” shall mean complete and detailed plans and specifications as needed to begin construction.
21. “EPA” means the United States Environmental Protection Agency.
22. “LMC” or “Defendant” means Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Service, with registered business address of 701 Maritime Drive, P.O. Box 708, Ludington, Michigan 49431.
23. “Month” means a calendar month.
24. “Operational or Ownership Interest” means part or all of LMC’s legal or equitable operational or ownership interest in the Badger.
25. “Operating Day” means any calendar day on which the boilers on the Badger are fired up.

26. “Operating Season” means every day during a calendar year, beginning with the first Operating Day in that calendar year on which the Badger provides services for which it charges or collects fares, tariffs or other fees, and continuing each day thereafter until the last Operating Day of that calendar year.
27. “Parties” means the United States of America on behalf of EPA; and LMC. “Party” means one of the named “Parties.”
28. “Work” shall mean all activities and obligations LMC is required to perform under this Consent Decree.

IV. PERMANENT CESSATION OF COAL ASH OR COAL ASH SLURRY DISCHARGE

29. LMC and any subsequent owner or operator of the Badger must permanently cease discharging coal ash or coal ash slurry from the Badger into any waters of the United States on and after the first day of the calendar year 2015 Operating Season.
30. On or before June 1, 2013, LMC shall submit a schedule to U.S. EPA for the design, construction, and installation of the technology LMC will use to meet the requirement set forth in Paragraph 29 above. In accordance with the provisions of Section XIII (Notices), within 7 calendar days of its application or other submission, LMC shall send U.S. EPA a copy of any application and supporting documentation submitted to the United States Coast Guard (“USCG”) or to any other entity regarding the design, construction and installation of the technology LMC proposes to implement. The schedule shall, at a minimum, set forth deadlines for completing design, commencing construction, completing construction, commencing installation, and completing installation.
31. During the 2013 and 2014 Operating Seasons, LMC shall comply with interim effluent limits as set forth in Paragraphs 32 and 33 and in Appendix A.

32. Beginning the first day of the Badger's calendar year 2013 Operating Season, LMC must operate the Badger in a manner that reduces the average amount of coal combusted per Operating Day. LMC must demonstrate compliance with this Paragraph according to the method set forth in Appendix B, Section I.A.
33. Beginning the first day and concluding on the last day of the Badger's calendar year 2014 Operating Season, LMC must reduce the amount of coal ash discharged from the Badger into Lake Michigan as compared to the calendar year 2013 Operating Season by fifteen percent (15%). LMC must demonstrate compliance with this Paragraph according to the method set forth in Appendix B, Section I.B.

V. CIVIL PENALTY

34. Within forty-five (45) Days after the Date of Entry of this Consent Decree, LMC shall pay to the United States a civil penalty in the amount of \$25,000 plus interest accruing from the date of lodging. The civil penalty and interest shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number __, DOJ Case Number 90-5-1-1-10771, and the civil action case name and case number of this action. The costs of such EFT shall be LMC's responsibility. Payment shall be made in accordance with instructions provided to LMC by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Michigan. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, LMC shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the United States Department of Justice and to EPA in accordance with Section XIII (Notices) of this Consent Decree.

35. Failure to timely pay the civil penalty shall subject LMC to a stipulated penalty of \$1,000 per day until the date of payment, and shall render LMC liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.
36. Payments made pursuant to this Section, and payments made pursuant to Section VIII (Stipulated Penalties), are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

VI. RESOLUTION OF CLAIMS AND RESERVATION OF RIGHTS

37. Effective upon LMC's performance of its payment obligations in Section V (Civil Penalties) and Section VIII (Stipulated Penalties), and on its full and satisfactory completion of its obligations in this Consent Decree, this Consent Decree resolves LMC's liability for the civil claims of the United States alleged in the Complaint through the Date of Lodging.
38. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.
39. This Consent Decree does not limit or affect the rights of LMC or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against LMC, except as otherwise provided by law.
40. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

41. In any subsequent administrative or judicial action initiated by the United States for injunctive relief or civil penalties relating to the Badger, LMC shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section VI (Resolution of Claims Against LMC).
42. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. LMC is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and LMC's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that LMC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, or with any other provisions of federal, state, or local laws, regulations, or permits. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the operation of the Badger, whether related to the violations addressed in this Consent Decree or otherwise.

VII. REPORTING REQUIREMENTS

43. LMC shall submit to EPA written progress reports on or before December 31, 2013 and December 31, 2014. Each report shall include the following information reflective of the status up until October 31 of that calendar year: 1) the status of LMC's progress toward implementing Section IV (Permanent Cessation of Coal Ash and Coal Ash Slurry Discharge); 2) a description of any Section IV requirements completed; 3) a description of any problems encountered or anticipated in implementing any requirements set forth in Section IV, together with implemented or proposed solutions; 4) a summary of all permitting, certification, and approval activity pertaining to compliance with the Consent Decree and the status of any necessary permit, certification and approval applications; and 5) the amount of coal ash and coal ash slurry discharged during the Operating Season.
44. If any coal ash or coal ash slurry is discharged after the 2014 Operating Season, LMC shall notify EPA by telephone or email within 24 hours of the discharge. In addition to the information required in Paragraph 43, above, within 7 days of the discharge, LMC shall provide in its written report to EPA the estimated amount coal ash or coal ash slurry discharged.
45. Each report and notification shall include a description of any non-compliance with the requirements of Section IV of this Consent Decree or federal law and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If LMC violates, or has reason to believe that it may violate, any requirement of Section IV of this Consent Decree or federal law, LMC shall notify the United States of such violation and its likely duration, in writing and by telephone,

fax, or email, within 7 days of the day that LMC first becomes aware of the violation or potential violation.

46. Each report submitted by LMC under this Section shall be signed by a responsible corporate official of LMC and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on any personal knowledge I may have and my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VIII. STIPULATED PENALTIES

47. For any failure by LMC to comply with the terms of this Consent Decree, and subject to the provisions of Sections IX (Force Majeure) and X (Dispute Resolution), LMC shall pay, within thirty (30) days after receipt of written demand to LMC by the United States, the following stipulated penalties to the United States:

Consent Decree Violation	Stipulated Penalty
a. Failure to cease discharging coal ash or coal ash slurry as required by paragraph 29 of Section IV(Permanent Cessation of Coal Ash and Coal Ash Slurry Discharge) of this Consent Decree	\$3,000 per Operating Day on which a discharge occurs
b. Failure to achieve reduction specified in paragraph 32	\$32,500 for the 2013 Operating Season
c. Failure to achieve 15% reduction specified in paragraph 33	\$65,000 for the 2014 Operating Season
d. Failure to comply with effluent limitations and relevant standards as required by and set forth in sections II and III of Appendix A of this Consent Decree	\$3,000 per violation per Operating Day on which a violation occurs

e. Failure to pay the civil penalty as required by Section V (Civil Penalty) of this Consent Decree	\$1,000 per calendar day
f. Failure to timely submit the reports or other submittals required by Section IV or VII of this Consent Decree	\$750 per calendar day per violation during the first 10 days; \$1,000 per calendar day per violation thereafter
g. Any other violation of this Consent Decree	\$1,000 per calendar day per violation

48. All stipulated penalties shall begin to accrue on the calendar day after performance is due or on the calendar day a violation occurs and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.
49. LMC shall pay all stipulated penalties to the United States within thirty (30) days of receipt of written demand to LMC from the United States, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless LMC elects within twenty (20) days of receipt of written demand to LMC from the United States to dispute the accrual of stipulated penalties in accordance with the provisions in Section X (Dispute Resolution) of this Consent Decree.
50. Stipulated penalties shall continue to accrue as provided in accordance with Paragraphs 47 and 48 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:
- a. If the dispute is resolved by agreement, or by a decision of the United States pursuant to Section X (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be

owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of the United States' decision;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, LMC shall, within thirty (30) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with interest accrued on such penalties determined by the Court to be owing, except as provided in subparagraph (c), below;

c. If the Court's decision is appealed by either Party, LMC shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined by the appellate court to be owing, together with interest accrued on such stipulated penalties.

Notwithstanding any other provision of this Consent Decree, the accrued stipulated penalties agreed by the United States and LMC, or determined by the United States through Dispute Resolution, to be owed may be less than the stipulated penalty amounts set forth in Paragraph 47.

51. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Paragraphs 29 through 33 that have occurred between the Date of Lodging and the Effective Date of the Consent Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.
52. All monetary stipulated penalties shall be paid in the manner set forth in Section V (Civil Penalty) of this Consent Decree.

53. Should LMC fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.
54. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of LMC's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree provides for payment of a stipulated penalty, LMC shall be allowed a credit for stipulated penalties paid against any statutory penalties also imposed for such violation.

IX. FORCE MAJEURE

55. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of LMC, its contractors, vendors, officers, or any person or entity controlled by LMC that delays or prevents compliance with any provision of this Consent Decree or otherwise causes noncompliance with any provision of this Consent Decree despite LMC's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using the best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the delay or noncompliance, and any adverse environmental effect of the delay or noncompliance, is minimized to the greatest extent possible. LMC's financial inability to perform any obligation under this Consent Decree does not constitute a Force Majeure Event.
56. Notice of Force Majeure Events. If any event occurs or has occurred that may delay or prevent compliance with or otherwise cause noncompliance with any obligation under

this Consent Decree as to which LMC intends to assert a claim of Force Majeure, LMC shall provide notice verbally or by electronic transmission to EPA within 24 hours of when LMC first learned of, or by the exercise of due diligence should have known that the event might cause a delay. LMC shall also notify EPA in writing via overnight mail as soon as practicable, but in no event later than seven (7) days following the date LMC first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or noncompliance. In this notice, LMC shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or noncompliance may persist, the cause or causes of the delay or noncompliance, all measures taken or to be taken by LMC to prevent or minimize the delay or noncompliance and any adverse environmental effect of the delay or noncompliance, the schedule by which LMC proposes to implement those measures, and LMC's rationale for attributing a delay or noncompliance to a Force Majeure Event. LMC shall include with the written notice all readily available documentation supporting the claim that the delay was attributable to a Force Majeure event and may provide further documentation. LMC shall exercise best efforts to avoid or minimize such delays or noncompliance. LMC shall be deemed to know of any circumstance which LMC, or any of its officers, employees, agents or contractors, or any entity controlled by LMC knew or should have known.

57. Failure to Give Notice. Failure to comply with verbal/electronic and written notice requirements of this Section shall preclude LMC from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

58. United States' Response. If EPA agrees that a Force Majeure Event has delayed or prevented, or will delay or prevent, compliance with any provision of this Consent Decree, or has otherwise caused or will cause noncompliance with any provision of this Consent Decree, then EPA and LMC shall extend the time for performance of the obligations under this Consent Decree for such time as EPA determines is necessary to complete those obligations. An extension of time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify LMC in writing of the length of the extension, if any, for performance of the obligation affected by the Force Majeure event.
59. Disagreement. LMC may invoke the dispute resolution procedures set forth in Section X (Dispute Resolution) of this Consent Decree if EPA does not accept LMC's claim of Force Majeure, or if LMC disagrees with EPA's determination regarding the extension of the time for performance of the obligations affected by a Force Majeure event.
60. If LMC elects to invoke the dispute resolutions procedures set forth in Section X (Dispute Resolution), it shall do so no later than ten (10) days after receipt of EPA's notice. In any such proceeding, LMC shall bear the burden of proving that any claimed Force Majeure event is a Force Majeure event under this Consent Decree, and that any delay or anticipated delay in performance or any other noncompliance with any requirement of this Consent Decree was caused by or will be caused by the Force Majeure Event. LMC shall also bear the burden of proving that LMC gave the notice required by this Section, and the burden of proving the anticipated duration and extent of any delay(s) or noncompliance attributable to a Force Majeure Event is or will be warranted under the circumstances, that LMC exercised best efforts to avoid and mitigate the delay and

effects of the delay caused by the Force Majeure Event, that LMC complied with the requirements of this Section and that EPA's rejection of LMC's assertion of Force Majeure was arbitrary and capricious. If LMC carries this burden, the delay at issue shall be deemed not to be a violation by LMC of the affected obligation of this Consent Decree identified to EPA and the Court. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

X. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. LMC's failure to seek resolution of a dispute under this Section shall preclude LMC from raising any such issue as a defense to an action by the United States to enforce any obligation of LMC arising under this Consent Decree.
62. If by May 1, 2015, after inspection, the USCG and ABS have (a) not approved, for reasons of safety as required by 46 U.S.C. §§ 3306 and 3316, LMC's operation of the technology installed by LMC to ensure compliance with Paragraph 29; and (b) the USCG has determined that LMC installed such technology in full accordance with the designs approved by USCG and ABS then upon notice to EPA LMC may seek relief from the court without first invoking formal dispute resolution as set forth in this Consent Decree.
63. The dispute resolution procedure required herein shall be invoked by LMC by giving written notice to the United States advising of a dispute pursuant to this Section. The

notice shall describe the nature of the dispute and shall state LMC's position with regard to such dispute. EPA shall acknowledge receipt of the notice, and the Parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

64. Informal Dispute Resolution. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond thirty (30) days from the date of the first meeting between the Parties' representatives unless they agree in writing to shorten or extend this period. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, LMC invokes formal dispute resolution procedures as set forth below.
65. Formal Dispute Resolution. LMC shall invoke formal dispute resolution procedures within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting LMC's position and any supporting documentation relied upon by LMC.
66. The United States shall serve its Statement of Position within 45 days of receipt of LMC's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on LMC, unless LMC files a motion for judicial review of the dispute in accordance with the following Paragraph.

67. LMC may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of LMC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.
68. The United States shall respond to LMC's motion within the time period allowed by the Local Rules of this Court. LMC may file a reply memorandum, to the extent permitted by the Local Rules.
69. Standard of Review
- a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 63 pertaining to the adequacy or appropriateness of submittals, data collection protocols, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, LMC shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.
- b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 63, Defendant shall bear the burden of

demonstrating that its position complies with this Consent Decree and further advances the objectives of the Consent Decree and the CWA.

70. The time periods set out in this Section may be shortened or lengthened upon motion to the Court of one of the Parties to the dispute, explaining the Party's basis for seeking such a scheduling modification.
71. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.
72. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 50. If LMC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).
73. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their filings with the Court under Paragraphs 67 and 68, the Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XI. PERMITS AND CERTIFICATIONS

74. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires LMC to secure a permit or certification to authorize construction or operation of any device, including all preconstruction, construction, and operating permits or other approvals required under applicable federal or state law and relating to the reduction and elimination of coal ash slurry from the Badger, LMC shall make such application in a timely manner.

XII. INFORMATION COLLECTION AND RETENTION

75. Any authorized representative of the United States, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the Badger for the purpose of:
- a. monitoring the progress of activities required under this Consent Decree;
 - b. verifying any data or information submitted to the United States in accordance with the terms of this Consent Decree;
 - c. obtaining samples and, upon request, splits of any samples taken by LMC or its representatives, contractors, or consultants; and
 - d. obtaining evidence, including documents, photographs, and other data; and
 - e. assessing LMC's compliance with this Consent Decree.

LMC shall ensure that the captain, the master, and any other person placed in command or in charge of the Badger at any time, whether the Badger is in port or not, is aware of the provisions of this Section XII. Nothing in this paragraph shall be construed as limiting in any way the requirements set forth in Paragraph 5 of this Consent Decree.

76. Upon request, LMC shall provide EPA or its representatives splits of any samples taken by LMC to demonstrate compliance with this Consent Decree. Upon request, EPA shall provide LMC splits of any samples taken by EPA.
77. LMC shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents or other information (including records and documents or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control and that directly relate to LMC's performance of its obligations under this Consent Decree for the following periods: (a) for ten years from Termination for records concerning physical or operational changes undertaken in accordance with Section IV (b) for six years from Termination for all other records. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.
78. All information and documents submitted by LMC pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless (a) the information and documents are subject to legal privileges or protection, or (b) LMC claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.
79. Nothing in this Consent Decree shall limit the authority of the United States to conduct tests and inspections in or on the Badger or at LMC's facilities under the Act, or any other applicable federal laws, regulations, or permits.

XIII. NOTICES

80. Unless otherwise provided herein, whenever notifications, reports, submissions, or communications are required by this Consent Decree, they shall be made electronically and in writing and addressed as follows:

As to the United States of America:

(if by mail service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-1-1-10771

(if by commercial delivery service)
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom, Room 2121
601 D Street, NW
Washington, DC 20004
DJ# 90-5-1-1-10771

As to EPA:

(if by mail service)
Director, Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2243A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

(if by commercial delivery service)
Director, Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios South Building, Room 3104B
1200 Pennsylvania Avenue, NW
Washington, DC 20004

and

(by mail or commercial delivery service)
Director, Water Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (W-15J)
Chicago, IL 60604

(by electronic service)

Rose.Cheryl@epa.gov
Wood.Nicole@epa.gov
Lukowich.Michael@epa.gov

As to LMC:

Vice President of Navigation
701 Maritime Drive, P.O. Box 708
Ludington, Michigan 49431

81. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) electronic mail and first class U.S. mail; (b) upon request by the United States, overnight mail or overnight delivery service with signature required for delivery, or (c) upon request by the United States, certified or registered mail, return receipt requested. All notifications, communications, and transmissions sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or, if sent by overnight delivery service, they shall be deemed submitted on the date they are delivered to the delivery service.
82. Either Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XIV. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP INTERESTS

83. If LMC proposes to sell or transfer an Operational or Ownership Interest in the Badger to an entity unrelated to LMC (a “Third Party Purchaser”), LMC shall advise the Third Party Purchaser in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the United States pursuant to Section XIII (Notices) of this Consent Decree at least sixty (60) Days before such proposed sale or transfer.
84. No sale or transfer of an Operational or Ownership Interest, whether in compliance with the procedures of this Section or otherwise, shall relieve LMC of its obligation to ensure that the terms of this Consent Decree are implemented, unless (1) the transferee agrees to undertake all of the obligations required by this Consent Decree that may be applicable to the transferred or purchased Operational or Ownership Interests, and to be substituted for LMC as a Party under the Decree pursuant to Section XVII (Modification) and thus be bound by the terms thereof, and (2) the United States consents to relieve LMC of its obligations. The United States may refuse to approve the substitution of the transferee for LMC if it determines that the proposed transferee does not possess the requisite technical abilities or financial means to comply with the Consent Decree. The United States’ decision to refuse to approve the substitution of the transferee for LMC shall not be subject to judicial review. LMC shall provide the United States with a copy of any proposed written agreement transferring an Operation or Ownership Interest at least thirty (30) days prior to such transfer, in accordance with Section XIII (Notices).
85. This Consent Decree shall not be construed to impede the transfer of any Operational or Ownership Interests between LMC and any Third Party Purchaser so long as the

requirements of this Consent Decree are met. Any attempt to transfer ownership or operation of the Badger without complying with this Section constitutes a violation of this Consent Decree.

86. LMC may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Operational or Ownership Interests, including the obligations set forth in Section V (Civil Penalty).
87. Paragraphs 83 through 84 of this Consent Decree do not apply if an Operational or Ownership Interest is sold or transferred solely as collateral security in order to consummate a financing arrangement (not including a sale-leaseback), so long as LMC:
(a) remains the operator (as that term is used and interpreted under the Clean Water Act) of the Badger; and (b) remains subject to and liable for all obligations and liabilities of this Consent Decree.
88. No later than the tenth (10th) business day after entry of this Consent Decree, LMC must file for recordation a notice of this consent decree with the United States Coast Guard National Vessel Documentation Center. The notice must be substantially in the same form as set forth in Appendix C.

XV. EFFECTIVE DATE

89. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that LMC hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the

preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

90. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for the interpretation, construction, execution, or modification of the Consent Decree, or for adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XVII. MODIFICATION

91. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where an agreed to modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XVIII. COST OF SUIT

92. Each Party to this action shall bear its own costs and attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by LMC.

XIX. INTEGRATION

93. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written,

concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XX. SIGNATORIES AND SERVICE

94. Each undersigned representative of LMC, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.
95. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.
96. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.
97. Unless otherwise ordered by the Court, the United States agrees that LMC will not be required to file any Answer or other pleading responsive to the Complaint in this matter until and unless the Court expressly declines to enter this Consent Decree, in which case LMC shall have no less than thirty (30) Days after receiving notice of such express declination to file an Answer or other pleading in response to the Complaint.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. LMC agrees not to withdraw from or oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified LMC, in writing, that the United States no longer supports entry of this Consent Decree.

XXII. TERMINATION

99. This Consent Decree may be terminated no less than seven months after the United States determines that LMC has satisfactorily completed performance of its compliance obligations required by this Consent Decree through the end of the 2015 Operating Season, provided that LMC has fulfilled all other obligations of this Consent Decree, including payment of the civil penalty under Section V of this Consent Decree and any accrued stipulated penalties as required by Section VIII of this Consent Decree not waived or reduced by the United States. LMC may serve upon the United States a Request for Termination, certifying that LMC has satisfied those requirements, together with all necessary supporting documentation.
100. Following receipt by the United States of LMC's Request for Termination, the United States and LMC shall confer informally concerning the Request and any disagreement

that they may have as to whether LMC has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the United States and LMC shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

101. If the United States does not agree that the Consent Decree may be terminated, LMC may invoke Dispute Resolution under Section X of this Consent Decree. However, LMC shall not seek Dispute Resolution of any dispute regarding termination until one hundred-twenty (120) days after service of its Request for Termination.
102. Termination of this Consent Decree shall not terminate LMC's obligation to permanently cease discharges of coal ash and coal ash slurry as set forth in Paragraph 29.

XXIII. FINAL JUDGMENT

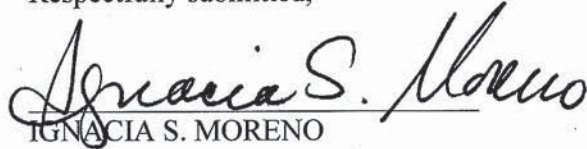
103. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Parties.

Entered this 10th day of October, 2013

/s/ Janet T. Neff
United States District Judge

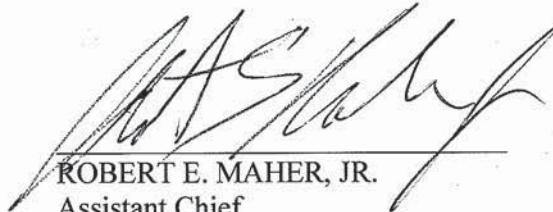
Signature Page for *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, Consent Decree
FOR THE UNITED STATES OF AMERICA

Respectfully submitted,



IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

Date: 3/14/13




ROBERT E. MAHER, JR.
Assistant Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
P.O. Box 7611
Washington, DC 20044-7611

Date: 3/14/13

Signature Page for *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, Consent Decree


FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,



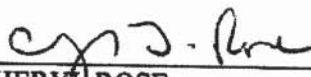
SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
United States Environmental
Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Date: 3/14/13



MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
United States Environmental
Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Date: 3/14/13



CHERYL ROSE
Senior Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
United States Environmental
Protection Agency
1200 Pennsylvania Ave, N.W. (2243A)
Washington, DC 20460

Date: 3/13/13

Signature Page for *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, Consent Decree

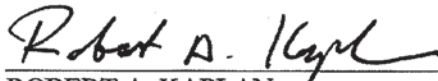
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respectfully submitted,



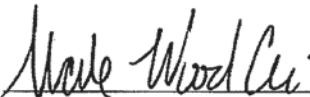
SUSAN HEDMAN
Regional Administrator
United States Environmental
Protection Agency, Region 5

Date: March 12, 2013



ROBERT A. KAPLAN
Regional Counsel
United States Environmental
Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Date: March 8, 2013



NICOLE WOOD-CHI
Associate Regional Counsel
United States Environmental
Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604

Date: MARCH 7, 2013

Signature Page for *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, Consent Decree

FOR LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC., d/b/a LAKE MICHIGAN
CARFERRY SERVICE

Respectfully submitted,


ROBERT MANGLITZ
President and Chief Executive Officer

Date: March 7, 2013

Signature Page for *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, Consent Decree

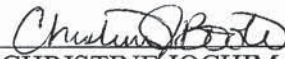
COUNSEL FOR DEFENDANT LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC., d/b/a
LAKE MICHIGAN CARFERRY SERVICE

Respectfully submitted,



BARRY M. HARTMAN
Partner
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Date: 3/7/13



CHRISTINE JOCHIM BOOTE
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christine.boote@klgates.com
www.klgates.com

Date: March 7, 2013

**UNITED STATES V. LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC.
CONSENT DECREE APPENDIX A**

INTERIM EFFLUENT LIMITATIONS AND RELEVANT STANDARDS

I. Interim Water Quality Based Effluent Limits

All discharges of coal ash or coal ash slurry into Lake Michigan are prohibited from causing or contributing to exceedances of water quality standards for Lake Michigan established by either the State of Michigan (Part 4 of the Michigan Administrative Code) or the State of Wisconsin (Chapter NR 105 of the Wisconsin Administrative Code), subject to Appendix F of 40 C.F.R. Part 132 governing implementation of the Great Lakes Water Quality Initiative.

II. Interim Coal Ash Effluent Limits and Related Requirements

A. Minimization of Coal Ash and Coal Ash Slurry Discharge

LMC must minimize the discharge of coal ash and coal ash slurry into Lake Michigan. Minimization techniques shall include:

- Efficient combustion of coal,
- Minimization of the ash content of the coal used onboard, but in no event may the ash content exceed 9.5 % (by weight and as received), and
- Limiting discharge quantities to those necessary for the safe and efficient operation of the vessel.

B. Coal Sulfur Content

LMC must minimize the sulfur content of all coal ash and coal ash slurry discharged into Lake Michigan by using coal with the lowest sulfur concentration technologically feasible and economically practicable and achievable, but in no event may the sulfur content of the coal exceed 1.023% (by weight and as received).

C. Limitations on Coal Ash and Coal Ash Slurry Discharge Locations

Except in emergency situations, as determined and documented in the ship's log by the vessel's master, coal ash and coal ash slurry discharge is prohibited when the Badger is:

- less than 5 nautical miles from any shore,
- in waters less than 100 feet in depth,
- not underway, or
- underway at a speed less than 6 knots.

III. Educational and Training Requirements

The crews of ferries play a key role in minimizing the discharge of pollutants from ferry operations and its passengers. Therefore LMC is subject to the following requirements:

A. LMC must provide advanced training in shipboard environmental management procedures to those directly involved in managing discharge of coal ash and coal ash slurry from the S.S. Badger

B. The crew members of the Badger who actively take part in the management of the discharge or who may affect the discharge must receive training regarding shipboard environmental procedures and must be able to demonstrate proficiency in implementing those procedures.

IV. Reporting Requirements

For each progress report due pursuant to Section VII (Reporting Requirements) of the Consent Decree, LMC shall include a written explanation describing how LMC has complied with the requirements set forth in this Appendix A to the Consent Decree.

**UNITED STATES V. LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC.
CONSENT DECREE APPENDIX B**

**METHODOLOGIES FOR ESTABLISHING REDUCTIONS IN COAL ASH AND COAL
ASH SLURRY DISCHARGES**

**I. Methodology for Determining Reductions in Average Amount of Coal Ash
Discharged in 2013 & 2014 Seasons**

A. Compliance with Paragraph 32 of this Consent Decree must be demonstrated by LMC in the following manner:

LMC must demonstrate a reduction in the average amount of coal used to operate the Badger per Operating Day during 2013 compared to 2012.

B. Compliance with Paragraph 33 of this Consent Decree must be demonstrated by LMC in the following manner:

LMC must demonstrate a reduction in the average amount of coal used to operate the Badger per Operating Day during 2014 compared to 2013.

II. Reporting Requirements

For each progress report due pursuant to Section VII (Reporting Requirements) of the Consent Decree, LMC shall include a written explanation describing how LMC has complied with the requirements set forth in this Appendix B to the Consent Decree.

**UNITED STATES V. LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC.
CONSENT DECREE APPENDIX C**

**UNITED STATES COAST GUARD
NATIONAL VESSEL DOCUMENTATION CENTER**

NOTICE OF CONSENT JUDGMENT

Name of Vessel: BADGER

IMO Number: 5033583

REGISTERED OWNER: LAKE MICHIGAN TRANS-LAKE SHORTCUT
701 MARITIME DR.
PO BOX 708
LUDINGTON, MI 49431

On _____, 2013, the United States District Court for the Western District of Michigan entered a Clean Water Act Consent Decree in the civil action entitled *United States of America v. Lake Michigan Trans-Lake Shortcut, Inc.*, Civil Action Number _____. The United States filed the action on behalf of the United States Environmental Protection Agency, c/o Office of Regional Counsel, 77 West Jackson Blvd., Chicago, Illinois 60604.

A certified copy of the Consent Decree is attached to this Notice of Consent Judgment.

I(we) hereby certify that the facts recited herein are true and correct. I(we) understand that the U.S. Coast Guard will rely on those recitations in indexing the attached Consent Decree.

SIGNATURE(S) OF REGISTERED OWNER:

State of _____
County of _____

Subscribed and sworn to before me on _____.

NOTARY PUBLIC
My Commission Expires _____