

TOLLING AGREEMENT

WHEREAS, the United States of America, on behalf of the United States Army Corps of Engineers (Corps) may file a complaint against Sedgwick County Public Works ("potential defendant") for, inter alia, alleged violations of Sections 301(a), 309, & 404 of the Clean Water Act ("CWA"), 33 U.S.C. Sections 1311(a), 1319, & 1344 and/or Section 9, 10, or 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401, 403, or 407, and/or Ocean Dumping Act Sections 101 and/or 103 (33 U.S.C. 1411, 1413), at a site commonly known as Dry Creek in Sections 1 and 2, Township 27 South, Range 2 West, Sedgwick County, Kansas; Corps Case File No. NWK-2011-01209.

WHEREAS, the purpose of any such complaint would be to obtain appropriate injunctive relief and to impose appropriate civil or criminal penalties for potential defendant'(s) alleged violations of the statute(s) cited above;

WHEREAS, the Corps accepted an after-the-fact (ATF) permit application from the potential defendant(s) in an attempt to settle the above claims;

WHEREAS, both parties believe that their interests will best be served by continuing the ATF permit process without the disruption that might be occasioned should the United States file a complaint in the immediate future;

AND WHEREAS both parties acknowledge the requirement found at 33 C.F.R. 331.11(c) for an applicant for an ATF permit to provide a signed tolling agreement;

THEREFORE, the United States and potential defendant(s) stipulate and agree as follows:

1. The United States and potential defendant(s) agree that the time between the acceptance by the Corps of the ATF permit application and the final Corps decision (as defined at 33 C.F.R. 331.10), plus one year thereafter, will not be included in calculating any statute of limitations that might be applicable to the alleged statutory violation(s) described above. Potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations that may apply during that period or any defense or avoidance based on laches or other principle concerning the timeliness of commencing a civil action, based on the failure of the United States to file its complaint during that period.

2. Potential defendants further agree not to transfer the property in question during the pendency of this tolling agreement nor during the pendency of any civil action brought as described above, without first notifying the United States and giving the United States a reasonable opportunity to oppose such transfer.

3. Nothing in the tolling agreement shall restrict or otherwise prevent the United States from filing a complaint regarding any alleged statutory violation(s) not described above, at any time.

4. This tolling agreement does not constitute any admission of liability on the part of potential defendants; nor does it constitute any admission or acknowledgment on the part of the United States that any statute of limitations has run or that any statute of limitations is applicable to the statutory claims described above.

5. This tolling agreement contains the entire agreement between the parties, and no statement, promise or inducement made by any party to this agreement, or any agent of such parties, that is not set forth in this agreement shall be valid or binding. This tolling agreement may not be enlarged, modified, or altered except in writing signed by the parties. This tolling agreement may be executed in counterparts.

FOR the United States of America:

Kevin Bond
District Counsel
Kansas City District, U.S. Army Corps of Engineers

DATE _____

FOR ("potential defendant"):

BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY KANSAS

TIM R. NORTON
Chairman, Second District

Date: _____


ATTEST:

RECOMMENDED:

DAVID C. SPEARS, P.E.
Director of Public Works/County Engineer

APPROVED AS TO FORM:

KELLY B. ARNOLD
County Clerk



ROBERT W. PARNACOTT
Assistant County Counselor