

101060

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

IN THE MATTER OF:

Muskego Sanitary Landfill  
Waukesha County, Wisconsin

ADMINISTRATIVE ORDER  
BY CONSENT RE: REMEDIAL  
INVESTIGATION AND  
FEASIBILITY STUDY

U.S. EPA Docket No.

RESPONDENTS,

W-W- 19.

W-W- '87-C-019

Proceeding under Section 122(a)  
and (d)(3) of the Comprehen-  
sive Environmental Response,  
Compensation, and Liability  
Act of 1980, as amended.

The United States Environmental Protection Agency ("U.S. EPA"), the Wisconsin Department of Natural Resources ("WDNR") and the Respondents have each agreed to the making and entry of this Administrative Order by Consent ("Consent Order").

I. JURISDICTION

A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 122(a) and (d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("SARA"), and delegated to the Administrator of the U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2923, and further delegated to the Regional Administrator by U.S. EPA Interim Delegation No. 14-14-C on February 26, 1987. This Consent Order is also issued pursuant to the authority

vested in the WDNR by Section 144.442 (8)(a) and (9)(h), Wisconsin Statutes.

B. The Respondents to this Consent Order agree to undertake all actions required by the terms and conditions hereunder, and consent to and will not contest or legally challenge the issuance of this Consent Order or the U.S. EPA's or the WDNR's jurisdiction regarding this Consent Order.

C. Respondents do not admit to any of the factual or legal determinations made by U.S. EPA and WDNR as set forth herein and neither this Order nor any action taken pursuant to it shall constitute an admission of liability or responsibility by Respondents with respect to the Muskego Sanitary Landfill. EPA shall have the right to enforce this Order by any enforcement action taken pursuant to CERCLA, as amended by SARA, and/or any available legal authority including the right to seek injunctive relief and/or monetary penalties for any violations of this Consent Order except as provided in Section XXIX herein (Covenant Not To Sue). Respondents reserve their rights and defenses regarding liability or responsibility in any subsequent proceedings regarding the Muskego Sanitary Landfill site other than proceedings to enforce this Consent Order.

## II. NOTICE OF ACTION

A. The U.S. EPA has notified all potentially responsible parties whom it has identified as of the date of entry of this Consent Order of this action and has provided them with the names

and addresses of potentially responsible parties.

B. The U.S. EPA has notified the Federal Natural Resource trustee of this action pursuant to the requirements of Section 122(j) of SARA.

### III. PARTIES BOUND

A. This Consent Order applies to and binds the following persons as defined in Section 101(21) of CERCLA:

- (1) the U.S. EPA, through the Regional Administrator, Region V;
- (2) the WDNR, through the Secretary;
- (3) Respondents, as set forth in Appendix A and incorporated herein;
- (4) the officers, directors, successors and assignees of the Respondents, U.S. EPA and WDNR.

B. The undersigned representative of the U.S. EPA, the WDNR and each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind such party to this document.

C. No change in ownership or corporate or partnership status shall in any way alter the status or responsibility of any Respondent under this Consent Order. The Respondents shall be jointly and severally responsible for carrying out all actions required of the Respondents by the terms and conditions of this Consent Order. The Respondents shall be responsible for ensuring that all contractors, consultants, firms and other persons or

entities acting under or for them with respect to matters included herein comply with the terms of this Consent Order.

#### IV. STATEMENT OF PURPOSE

A. In entering into this Consent Order, the mutual objectives of the U.S. EPA, the WDNR and the Respondents are for the Respondents:

- (1) to conduct a remedial investigation (RI) to determine fully the nature and extent of the release or threatened release of hazardous substances, pollutants or contaminants from the Muskego Sanitary Landfill; and
- (2) to perform a feasibility study (FS) to identify and evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Muskego Sanitary Landfill.

B. The activities conducted pursuant to this Consent Order are subject to approval by the U.S. EPA, in consultation with the WDNR. Such activities shall employ sound scientific, engineering and construction practices and shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan), 40 CFR Part 300, Subpart F, as amended, and CERCLA, as amended.

C. Upon successful completion of all activities hereunder and termination pursuant to Section XXVIII (Termination and Satisfaction) hereof, work successfully performed shall be deemed consistent with the National Contingency Plan.

V. FINDINGS OF FACT

Based upon information available on the effective date of this Consent Order, the Regional Administrator of the U.S. EPA, Region V, and the Secretary of the WDNR make the following findings:

A. The Muskego Sanitary Landfill (previously referred to as Muskego Land Reclamation and Wauer Landfill, Inc., and hereinafter referred to as the "Facility") is located north of State Highway Route 24 and east of Crowbar Road, approximately 3 miles southwest of the City of Muskego in Waukesha County, Wisconsin. The Facility is comprised of the "old fill" and "southeast fill" areas and is located in the western half of Section 18, Township 5 North, Range 20 East. An active landfill operated by Waste Management of Wisconsin, Inc. (Muskego II, License No. 2985) is located directly north of and contiguous to the Facility. A former rendering plant and associated wastewater seepage lagoons are located adjacent to the eastern fill limits of the Facility. The surrounding area is predominantly rural/agricultural. An active sand and gravel extraction operation is located directly west of the Facility.

B. The Facility is a former sand and gravel pit that evolved into an open dump and ultimately into a WDNR licensed landfill. In 1954, the original Facility owner, Alfred Wauer, received a permit from the Town of Muskego to operate a dump on a 53.70 acre parcel of land. In 1968, Lydia and Carl Wauer, wife and son of Alfred Wauer and owners at the time, were issued a

permit by the City of Muskego to operate a public dumping ground on 33.61 acres of land located within the previously referenced 53.70 acre parcel. The above parcels of land are part of the Facility and were licensed by the WDNR between 1971 and 1977, under Solid Waste Disposal Operation License Numbers 141 and 936. In 1977, a 22 acre parcel located directly southeast of the old fill became the active disposal area under an extension of License Number 141. Fill operations continued in the southeast area until Facility closure in 1981.

C. During its operation, the Facility accepted substances and/or wastes for disposal, some of which are now considered hazardous. One facet of operation during the 1950s and 1960s was open burning of waste materials transported to the facility. This included burning wastes and waste residues from incoming drums in an attempt to salvage the drums for reuse. The resulting ashes were buried at the Facility. Correspondence dated May 26, 1969, from the WDNR Division of Environmental Protection in Milwaukee to the Mayor of Muskego, referenced a May 21, 1969 inspection in which two pits were observed that served as disposal areas for waste oils and paint products. Documentation is lacking on specific waste types and quantities that were transported to the Facility for disposal.

D. In 1969, Acme Disposal Corporation leased the Facility from Carl Wauer and assumed operation of the landfill. In 1970, Acme Disposal Corporation was merged into Waste Management of Wisconsin, Inc. Sometime during 1973, United Waste Systems,

Inc., a division of Waste Management of Wisconsin, Inc., became the operator of the Facility. United Waste Systems, Inc., was listed as the operator on 1973 and 1974 solid waste disposal license applications to the WDNR. In 1976, Waste Management of Wisconsin, Inc., was listed as operator of the newly named Muskego Sanitary Landfill on the license renewal application to the WDNR.

E. On August 6, 1975, the WDNR issued Order Number 2A-75-1003 to Waste Management of Wisconsin, Inc. for the solid waste disposal facility operating under License Numbers 141, and 936. The Order required that Waste Management of Wisconsin, Inc.:

- 1). Submit a final abandonment plan acceptable to the WDNR for present active areas including all previously filled areas, and
- 2). Abandon these areas by October 1, 1976 in accordance with existing state statutes.
- 3). Should they desire to continue waste disposal practices on other portions of the Facility, the WDNR will review such a request in accordance with existing state statutes.

Modified Order Number 2A-75-1003A issued November 21, 1975, required Waste Management of Wisconsin, Inc. to submit an acceptable abandonment plan to the WDNR by January 7, 1976. Modified Order Number 2A-75-1003B issued February 13, 1976, required submittal of such plans within 45 days of the effective date of the modified order. All other provisions of Order Number 2A-75-1003 remained the same. Fill operations ceased in 1977 in the areas designated by the above Orders and the old fill closed in accordance with plans approved by WDNR on November 23, 1976. Post closure documentation was not required.

F. The 22 acre parcel located directly southeast of the old fill area became the active disposal area in 1977 under License Number 141 until Facility closure in 1981. Closure was to be completed in accordance with plans approved by WDNR on February 11, 1977. Documentation submitted to WDNR by Waste Management of Wisconsin, Inc. in December 1983, confirmed closure of the southeast fill area pursuant to the approved specifications.

G. The geology of the area is glacially influenced, comprised of till, outwash, and lake deposits which extend to bedrock. Underlying the glacial sediments at depths ranging from 250-300 feet is the Niagara dolomite. Groundwater in unconsolidated sand and gravel deposits appears to be hydraulically connected with groundwater in the Niagara dolomite. Regionally, groundwater flow is south to southeast, although flow tends multidirectionally at and near the Facility due to the complexity of the glacial deposits and an apparent leachate mound within the southern portion of the Facility. Unconsolidated sand and gravel deposits, and to a lesser extent the underlying Niagara dolomite, are the primary sources of drinking water for the area. Approximately 8,000-9,000 people within 3 miles of the Facility utilize the above-mentioned aquifers for drinking water. Included are private wells and several public supply wells servicing residential subdivisions.

H. The following contaminants, defined as hazardous substances in Section 101(14) of CERCLA, have been detected in samples collected from on-site monitoring wells in the old fill

and southeast fill areas. The above samples were collected by Waste Management of Wisconsin Inc, during the period 1984-1985. All concentrations are reported in parts per billion (ppb).

<u>Hazardous Substance</u>	<u>Concentration</u>
benzene	13
chlorobenzene	17
chloroethane	400
1,1-dichloroethane	2809.1
1,2-dichloroethane	48.1
ethyl benzene	4900
methylene chloride	3350
tetrachloroethylene	550
toluene	3200
1,2-trans-dichloroethylene	1400
trichloroethylene	133.5
2,4-dimethylphenol	18.2
bis(2-ethylhexyl)phthalate	43.48
1,4-dichlorobenzene	5.73

I. Lead was detected at 60 ppb and 100 ppb in two residential wells sampled by Waste Management of Wisconsin, Inc., on September 7, 1982. The primary drinking water standard for lead is 50 ppb. The above residential wells were located approximately 500 feet south and downgradient of the Facility prior to their abandonment. The contaminant 1,2-trans-dichloroethylene was detected at a concentration of 16 ppb in a residential well sampled July 6, 1984, and located less than 500 feet south-southwest of the Facility.

J. The Facility was placed on the National Priorities List ("NPL") pursuant to Section 105 of CERCLA. See 40 C.F.R. Part 300, Appendix B, and 50 Federal Register 37956 (September 18, 1985).

VI. CONCLUSIONS OF LAW

Based upon information available on the effective date of this Consent Order, the Regional Administrator of the U.S. EPA, Region V, and the Secretary of the WDNR make the following conclusions of law:

A. The Muskego Sanitary Landfill is a "facility" as defined in Section 101(9) of CERCLA, and a "site or facility" as defined in Section 144.442(1)(d), Wisconsin Statutes.

B. "Hazardous substances" as defined in Section 101(14) of CERCLA and Section 144.01(4m), Wisconsin Statutes, were deposited, stored, disposed of, placed, or located at the Facility.

C. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, and Section 144.01(9m), Wisconsin Statutes.

D. U.S. EPA and WDNR have determined that each Respondent is a liable person pursuant to Section 107 of CERCLA and a potentially responsible party for the purposes of Section of SARA, and Section 144.442(9), Wisconsin Statutes, for all costs of removal and remedial action incurred by the United States Government or the State of Wisconsin not inconsistent with the National Contingency Plan.

VII. DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the Regional Administrator of the U.S. EPA, Region V, has determined that:

A. The Respondents will promptly and properly take appropriate response action at the Facility by conducting a Remedial Investigation and Feasibility Study ("RI/FS") and are qualified to perform the RI/FS; and

B. The actions required by this Consent Order are in the public interest and are consistent with the National Contingency Plan, 400 CFR Part 300, as amended, and with CERCLA, as amended.

#### VIII. WORK TO BE PERFORMED

A. All work to be performed by the Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or certified geologist. Prior to the initiation of work at the Facility, the Respondents shall notify the U.S. EPA and the WDNR, in writing, of the name, title, and qualifications of the proposed engineer or geologist, and of the names of principal contractors and/or subcontractors proposed to be used in carrying out the work to be performed pursuant to this Consent Order. Selection of any such engineer or geologist or contractor and/or subcontractor shall be subject to approval by the U.S. EPA in consultation with the WDNR.

B. Attachment I to this Consent Order provides a Statement of Work ("SOW") for the completion of the RI/FS which is incorporated into and made a part of this Consent Order.

C. The following work shall be performed:

1. Within sixty (60) calendar days of the effective date of this Consent Order, the Respondents shall submit a Work

Plan to the U.S. EPA and the WDNR for a complete Remedial Investigation and Feasibility Study (hereinafter referred to as the "RI/FS Work Plan"). The RI/FS Work Plan shall be developed in conformance with the SOW, the standards set forth in Section 121 of SARA, U.S. EPA "Guidance on Remedial Investigations Under CERCLA", dated May 1985, as amended (the "RI Guidance") and U.S. EPA "Guidance on Feasibility Studies Under CERCLA", dated April 1985, as amended (the "FS Guidance"), and any additional guidance documents provided by the U.S. EPA.

2. The RI/FS Work Plan submittal shall include, but not be limited to, the following project plans: (1) a Sampling Plan; (2) a Health and Safety Plan; (3) a plan for satisfaction of permitting requirements; (4) a Quality Assurance Project Plan ("QAPP"); (5) provisions for the preparation of an Endangerment Assessment Plan; and (6) a schedule for implementation of RI/FS tasks and submission of RI/FS reports. The RI/FS Work Plan shall provide, at a minimum, for the submittal of a preliminary and final Remedial Investigation Report, to be prepared in accordance with the RI Guidance, and a preliminary and final Feasibility Study Report, to be prepared in accordance with the FS Guidance.

3. The RI/FS Work Plan shall be subject to review, modification, and approval by the U.S. EPA in consultation with the WDNR.

4. Within seventy-five (75) calendar days of receipt of the RI/FS Work Plan, the U.S. EPA Project Coordinator shall notify the Respondents, in writing, of approval or disapproval of the RI/FS Work Plan, or any part thereof. In the event that a

longer review period is required, the U.S. EPA Project Coordinator shall notify the Respondents and the WDNR of that fact within thirty (30) calendar days of receipt of the RI/FS Work Plan. In the event of any disapproval, the U.S. EPA shall specify, in writing, any deficiencies and required modifications to the RI/FS Work Plan.

5. Within thirty (30) calendar days of receipt of any U.S. EPA RI/FS Work Plan disapproval, the Respondents shall submit a revised RI/FS Work Plan to the U.S. EPA and the WDNR which incorporates modifications required by the U.S. EPA.

6. In the event of subsequent U.S. EPA disapproval of the modified RI/FS Work Plan, the U.S. EPA retains the right to conduct a complete RI/FS and/or to enforce the terms of this Consent Order. Respondent shall have the right to dispute U.S. EPA's subsequent disapproval pursuant to Section XIX (Dispute Resolution) of this Consent Order.

7. The Respondents shall proceed with the work detailed in the RI/FS Work Plan, within fifteen (15) days after the RI/FS Work Plan is fully approved by the U.S. EPA, pursuant to the Schedule contained in the RI/FS Work Plan. Unless otherwise directed by the U.S. EPA, the Respondents shall not commence field activities until approval by the U.S. EPA of the RI/FS Work Plan. The fully approved RI/FS Work Plan shall be deemed incorporated into and made an enforceable part of this Consent Order. In order to assure that the RI/FS is conducted in full compliance with CERCLA, as amended, the RI/FS Work Plan shall conform with all relevant portions of SARA, including, but not limited to,

Section 121 of SARA ("clean-up standards"). All work conducted under this Consent Order shall be in accordance with CERCLA, as amended, the National Contingency Plan, the RI Guidance, the FS Guidance and the requirements of this Consent Order, including the standards, specifications and schedule contained in the RI/FS Work Plan.

#### IX. PLANS AND REPORTS

A. The Respondents shall provide a preliminary and final Remedial Investigation Report and Feasibility Study Report and any other plans or reports required by the RI/FS Work Plan to the U.S. EPA and the WDNR according to the schedule contained in the RI/FS Work Plan.

B. The U.S. EPA and the WDNR shall review and the U.S. EPA shall approve the preliminary and final Remedial Investigation Report the preliminary and final Feasibility Study Report and any other preliminary or final plans or reports specified in the RI/FS Work Plan as requiring U.S. EPA approval.

C. If the U.S. EPA, in consultation with the WDNR, disapproves any preliminary or final plan or report, the U.S. EPA shall specify, in writing, any deficiencies and required modifications and the Respondents shall submit a revised plan or report (which shall incorporate any U.S. EPA modifications or additions) to the U.S. EPA within forty-five (45) days or such longer period as the U.S. EPA Project Coordinator may establish.

D. In the event of subsequent disapproval of any revised plan or report, the U.S. EPA retains the right to perform additional studies, to conduct a complete or partial RI/FS, and/or to enforce the terms of this Consent Order.

E. The Respondents shall provide monthly written progress reports to the U.S. EPA and the WDNR. At a minimum, these monthly written progress reports shall include the following:

1. All results of sampling and tests and all other raw data produced during the month pursuant to the implementation of this Consent Order;
2. A description of activities completed during the past month pursuant to this Consent Order, as well as a description of such actions and plans which are scheduled for the next month pursuant to this Consent Order; and
3. Target and actual completion dates for each element of activity, including the project completion, and an explanation of any deviation from the schedules in the RI/FS Work Plan.

F. The monthly written progress reports shall be submitted to the U.S. EPA and the WDNR by the tenth business day of each month following the date of commencement of the work detailed in the RI/FS Work Plan.

#### X. ADDRESS FOR ALL CORRESPONDENCE

Documents, including reports, approvals, disapprovals and other correspondences to be submitted pursuant to this Consent Order shall be sent by certified mail to the following addresses, or to such other addresses as the Respondents, the WDNR or the U.S. EPA may hereafter designate in writing:

1. Documents to be submitted to the U.S. EPA should be sent to: (5 copies)

Mike Gifford  
Muskego Sanitary Landfill  
Remedial Project Manager  
Hazardous Waste Enforcement Branch (5HE-12)  
U.S. Environmental Protection Agency  
Region V  
230 S. Dearborn Street  
Chicago, Illinois 60604

2. Documents to be submitted to the WDNR should be sent to: (3 copies)

Mark Giesfeldt  
Muskego Sanitary Landfill  
Project Coordinator  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707

3. Documents to be submitted to the Respondents should be sent to: (3 copies)

Ron DeBattista, Project Manager  
Muskego Sanitary Landfill  
Waste Management of Wisconsin, Inc.  
W124 N8925 Boundary Road  
Menomonee Falls, Wisconsin 53501

#### XI. ADDITIONAL WORK

A. In the event that the U.S. EPA, the WDNR or the Respondents determine that additional work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to each of the other parties.

B. Any additional work determined to be necessary by the Respondents shall be subject to approval by the U.S. EPA, in consultation with the WDNR.

C. Any additional work determined to be necessary by the Respondents or the WDNR and approved by the U.S. EPA, or determined to be necessary by the U.S. EPA in consultation with the WDNR, shall be completed by the Respondents in accordance with the standards, specifications, and schedule determined or approved by the U.S. EPA in consultation with the WDNR.

XII. COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Respondents pursuant to this Consent Order shall be performed in compliance with all applicable Federal and State laws and regulations, including all Occupational Safety and Health Administration and Department of Transportation regulations. The Respondents shall be responsible for obtaining all State or local permits which are necessary for the performance of any work hereunder.

XIII. ACCESS

A. To the extent that the Facility or other areas where work is to be performed hereunder is presently owned by parties other than those bound by this Consent Order, the Respondents shall obtain, or shall use their best efforts to obtain, access agreements from the present owners within thirty (30) calendar days of approval of the RI/FS Work Plan. Such agreements shall provide access for the U.S. EPA, the WDNR and authorized representatives of the U.S. EPA and the WDNR, as specified below. In the event that such access agreements are not obtained within the time referenced above, the Respondents shall so notify the U.S.

EPA and the WDNR. WDNR and U.S. EPA shall then assist Respondents in gaining access, to the extent of their authority. The U.S. EPA reserves the right to terminate this Consent Order should the Respondents' inability to gain access to the Facility or other areas materially affect the Respondents' ability to perform the work required herein.

B. Authorized representatives of the U.S. EPA and the WDNR shall be allowed access to the Facility and other areas by the Respondents, and as part of any agreement obtained under Paragraph A above, for purposes including, but not limited to: inspecting records, operating logs and contracts related to the Facility; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as the U.S. EPA, in consultation with the WDNR, may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to the U.S. EPA and the WDNR by the Respondents hereunder. The Respondents shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertains to work undertaken pursuant to this Consent Order, subject to Paragraph C of Section XV (Sampling and Data/Document Availability) of this Consent Order. All persons with access to the Facility pursuant to the Consent Order shall comply with approved health and safety plans.

C. Nothing herein shall be construed as restricting the inspection or access authority of the U.S. EPA or the WDNR under any law or regulation.

#### XIV. PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, the U.S. EPA the WDNR and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The U.S. EPA Project Coordinator will be the U.S. EPA designated representative at the Facility. To the maximum extent possible, communications between the Respondents, the WDNR and the U.S. EPA, and all documents, reports, approvals and other correspondences concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators. During implementation of the RI/FS Work Plan, the Project Coordinators shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues.

B. The U.S. EPA, the WDNR and the Respondents shall each have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten (10) calendar days prior to the change.

C. The U.S. EPA Project Coordinator shall have the authority vested in an On-Scene Coordinator (OSC) and a Remedial Project Manager (RPM) by the National Contingency Plan, 40 CFR Part 300,

as amended, including the authority to halt, conduct, or direct any work required by this Consent Order, or to direct any response action undertaken by the U.S. EPA when conditions at the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment. In the event that the U.S. EPA Project Coordinator halts work pursuant to this paragraph, the Respondents shall obtain a commensurate modification of the schedule or work described in the RI/FS Work Plan and this Consent Order.

D. The absence of the U.S. EPA or WDNR Project Coordinator from the Facility shall not be cause for stoppage of work.

E. The Project Coordinator for the Respondents shall be onsite during all hours of site work and shall be on call during the pendency of this Consent Order.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Respondents, U.S. EPA and WDNR shall make the results of all sampling and/or tests or other data generated by them, or on their behalf, pursuant to implementation of this Consent Order, available to each other. Respondents shall submit these results in written monthly progress reports as required by Section IX of this Consent Order.

B. At the request of the U.S. EPA, the WDNR, or the Respondents, split or duplicate samples shall be provided to each other of any samples collected pursuant to the implementation or

oversight of this Consent Order. The Respondents shall notify the U.S. EPA and the WDNR at least five (5) calendar days in advance of any sample collection activity. Where practicable, U.S. EPA and WDNR shall notify Respondents at least five (5) calendar days in advance of any sample collection activity. U.S. EPA and WDNR reserve their right to conduct unannounced sampling as determined necessary by their Project Coordinators. Respondents' Project Coordinator, or other representative, shall be present for for such sampling and shall be offered split or duplicate samples where a sufficient quantity of sampling media is available.

C. Pursuant to applicable Federal laws and regulations, (Section 104(e) of CERCLA, as amended, and 40 CFR Part 2), the Respondents may assert a confidentiality claim with respect to the information requested or submitted pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. However, any such claim shall be subject to the restrictions set forth in Section 104 (e)(7)(F) of SARA. Information determined to be confidential by the U.S. EPA in accordance with applicable federal laws and regulations will be afforded the full protection provided by such laws and regulations. Information determined to be confidential by WDNR pursuant to applicable state laws and regulations (S. NR 2.19, Wisc. Admin. Code) will be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to the U.S. EPA and the WDNR, or if information claimed as confidential is

determined by the U.S. EPA or the WDNR not to be confidential, the information may be made available upon request to the public by the U.S. EPA or the WDNR.

#### XVI. QUALITY ASSURANCE

A. The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005-80 (U.S. EPA, 1980), or any mutually agreeable alternative, throughout all data collection activities.

B. The Respondents shall consult with the U.S. EPA and WDNR Project Coordinators in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Consent Order, the Respondents shall:

1. Ensure that U.S. EPA and WDNR personnel and/or U.S. EPA and WDNR authorized representatives are allowed access to any laboratories and personnel utilized by the Respondents for analyses;

2. Ensure that all sampling and analyses are performed according to U.S. EPA methods or other methods deemed satisfactory by the U.S. EPA; and

3. Ensure that any laboratories utilized by the Respondents for analyses participate in a U.S. EPA quality assurance/quality control program equivalent to that which is followed by the U.S.

EPA, and which is consistent with U.S. EPA document QAMS-005-80. As part of such a program, and upon request by the U.S. EPA, such laboratories shall perform analyses of samples provided by the U.S. EPA to demonstrate the quality of analytical data for each such laboratory.

XVII. FORCE MAJEURE

A. The Respondents shall cause all work to be performed within the time limits set forth in this Consent Order, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a "force majeure" is an event beyond the reasonable control of the Respondents which delays performance of any obligations required by this Consent Order. Increases of costs or changes in economic circumstances shall not be considered circumstances beyond the reasonable control of the Respondents.

B. The Respondents shall notify the U.S. EPA and the WDNR in writing no later than two (2) business days after discovery of any event which the Respondents contend is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondents to minimize the delay, and the timetable by which these measures will implemented. The Respondents shall have the burden of demonstrating that the event is a force majeure.

C. If the U.S. EPA, in consultation with the WDNR, agrees that a delay is attributable to a force majeure, the time period

for performance under this Consent Order shall be extended for the time period attributable to the event constituting the force majeure. U.S. EPA shall provide Respondents with a written decision concerning the force majeure within fifteen (15) calendar days of receiving notification from Respondents pursuant to Paragraph B above.

XVIII. STIPULATED PENALTIES

A. The Respondents shall be liable, at the discretion of the U.S. EPA, for payment into the Hazardous Substances Response Trust Fund administered by the U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof, that the Respondents fail to submit a report or document or comply with a schedule in accordance with the requirements contained in this Consent Order, unless U.S. EPA determines that such delay is attributable to a force majeure as defined in Section XVII above. Such sums shall be due and payable within fifteen (15) days of receipt of notification from the U.S. EPA assessing the penalties. These stipulated penalties shall accrue in the amount of \$5000.00 for the first week or part thereof, and \$10,000.00 for each week or part thereof, thereafter.

B. The stipulated penalties set forth in Paragraph A of this Section shall not preclude the U.S. EPA or the WDNR from electing to pursue any other remedy or sanction because of the Respondents' failure to comply with any of the terms of this Consent Order, including a suit to enforce the terms of this

Consent Order. Said stipulated penalties shall not preclude the U.S. EPA or the WDNR from seeking statutory penalties up to the amount authorized by law in the event of Respondents' failure to comply with any requirements of this Consent Order.

XIX. DISPUTE RESOLUTION

A. The parties shall use their best efforts to in good faith resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Consent Order which the parties are unable to resolve informally, the party raising the dispute shall present a written notice of such dispute to the other parties which shall set forth the specific points of dispute, the position of the party with respect to the dispute, the technical basis therefor, and any actions which the party considers necessary.

B. Within ten (10) calendar days of receipt of such a written notice, the other parties shall provide a written response to the party raising the dispute setting forth its position and the basis therefor. During the five (5) business days following receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences.

C. Following the expiration of the time periods described in Paragraph B above, if the U.S. EPA concurs with the position of the Respondents, the Respondents and the WDNR shall be so notified in writing and this Consent Order shall be modified to include any necessary extensions of time or variances of work.

If the U.S. EPA does not concur with the position of the Respondents, the U.S. EPA shall resolve the dispute, based upon and consistent with the terms of this Consent Order, and shall provide written notification of such resolution to the Respondents.

D. The pendency of dispute resolution pursuant to this Section shall not affect the time period for completion of work and/or obligations to be performed under this Consent Order, except that upon mutual agreement of the U.S. EPA and Respondents, any time period may be extended not to exceed the actual time taken to resolve the dispute. U.S. EPA shall not unreasonably withhold agreement with respect to disputes brought in good faith. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the RI/FS Work Plan. Respondents shall not be deemed to be out of compliance with the Consent Order with respect to an item subject to a good faith dispute during the pendency of a dispute proceeding.

E. Upon resolution of any dispute, whether informally or using the procedures in this Section, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated or added, if necessary, into the appropriate plan or procedure and into this Consent Order. The Respondents shall proceed with all remaining work according to the modified plan or procedure. Respondents' failure to proceed shall be deemed noncompliance with this Consent Order. In the event of any noncompliance, in addition to any other rights

reserved hereunder, U.S. EPA and WDNR retain the right to conduct a complete RI/FS pursuant to its authority under CERCLA, as amended by SARA.

F. The dispute resolution procedures of this Section are available to any party for any dispute arising under this Consent Order.

XX. COMMUNITY RELATIONS

The Respondents shall cooperate with the U.S. EPA and the WDNR in providing RI/FS information to the public. As requested by the U.S. EPA or the WDNR, the Respondents shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by the U.S. EPA or the WDNR to explain activities at or concerning the Facility, including the findings of the RI/FS.

XXI. RECORD PRESERVATION

The Respondents agree to preserve, during the pendency of this Consent Order, and for five (5) years after termination of this Consent Order, all records and documents in the possession or control of the Respondents, or known by the Respondents to be in the possession or control of any division, employees, agents, accountants, contractors or attorneys of the Respondents, which relate to the Facility. Respondents shall make full inquiry as to whether any of its divisions, employees, agents, accountants contractors or attorneys have possession or control of any such

records or documents. Except for records or documents subject to an attorney work product or attorney-client privilege, upon request by the U.S. EPA or the WDNR, the Respondents shall make available to the U.S. EPA or the WDNR such records or documents, or copies of any such records or documents. Any such disclosure by Respondents may include a confidentiality claim as set forth in Section XV of this Consent Order.

#### XXII. CERCLA FUNDING

A. The Respondents waive any claims or demands for compensation or payment under Sections 111 and 112 of CERCLA, as amended, against the United States or the Hazardous Substance Response Trust Fund established by Title II of SARA for or arising out of any activity performed or expenses incurred pursuant to this Consent Order.

B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, as amended.

#### XXIII. RESERVATION OF RIGHTS

A. Except as otherwise provided in Section XXIX of this Consent Order, the parties reserve all rights and defenses that they may have pursuant to any available legal authority.

B. Subject to Section XXIX (Covenant not to Sue) of this Consent Order, nothing herein shall waive the right of the U.S. EPA to enforce this Consent Order, to take action pursuant to

Sections 104, 106(a) and 107 of CERCLA, as amended, or take any other action pursuant to any other available legal authority. The U.S. EPA and the WDNR reserve the right to take any enforcement action pursuant to CERCLA, as amended, and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In addition, the U.S. EPA reserves the right to undertake any remedial investigation/feasibility study work should Respondents fail to satisfactorily implement the Work Plan in accordance with this Consent Order, and/or any removal, remedial and/or response actions relating to the Facility, and to seek recovery from the Respondents for any costs incurred in undertaking such actions.

C. The U.S. EPA and the WDNR reserve the right to bring an action against the Respondents for recovery of any past and future costs incurred by the United States or the State of Wisconsin in connection with any response activities conducted or to be conducted at the Facility, other than those response activities successfully completed by Respondents pursuant to this Consent Order to the satisfaction and approval of the U.S. EPA, in consultation with the WDNR. This reservation of rights shall include, but not be limited to, the right to bring an action for recovery of all response costs incurred by the United States and the State of Wisconsin prior to the effective date of this Consent Order in connection with any response actions related to the Facility.

D. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation not a party to this Consent Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the Facility. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Consent Order, and as to each other for matters not covered hereby.

E. The U.S. EPA and the WDNR recognize that the Respondents have the right to seek contribution, indemnity and/or any other available remedy against any person found to be responsible or liable for contributions, indemnity or otherwise for any amounts which have been or will be expended by the Respondents in connection with the Facility.

F. Nothing herein shall be construed to release the Respondents from any liability for failure of the Respondents to perform the RI/FS in accordance with the RI/FS Work Plan attached hereto and incorporated herein. The parties further expressly recognize that this Consent Order and the successful completion and approval of the RI /FS do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of the United States or the

State of Wisconsin against the Respondents relating to the Facility, (including claims to require Respondents to undertake further response actions and claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA) except that, upon receipt of written notice of satisfaction as provided in Section XXVIII (Termination and Satisfaction) of this Consent Order, Respondents shall have no further obligations under this Consent Order.

G. Nothing in this Consent Order shall be construed by the parties to be an admission of law or fact by the Respondents.

#### XXIV. REIMBURSEMENT OF COSTS

A. The Respondents agree to reimburse the U.S. EPA and the WDNR for oversight costs incurred by the U.S. EPA and the WDNR with respect to this Consent Order.

B. At the end of each twelve (12) month period beginning with effective date of this Consent Order, the U.S. EPA and the WDNR shall submit an accounting to the Respondents of all oversight costs incurred by the U.S. EPA and the WDNR with respect to this Consent Order during the previous twelve (12) month period including, but not limited to, the costs incurred by the U.S. EPA in having a qualified person oversee the conduct of this RI/FS pursuant to Section 104(a) of SARA. Within thirty (30) calendar days of receipt of each such accounting, the Respondents shall remit a check to the U.S. EPA and/or the WDNR for the full amount of such costs.

C. Payment to the U.S. EPA for response and oversight costs incurred by the U.S. EPA shall be made to the order of the Hazardous Substance Response Trust Fund and forwarded to U.S. EPA, Superfund Accounting, P.O. Box 371003, Pittsburgh, Pennsylvania 15251, Attn: Superfund Collection Office. Copies of all payments to the U.S. EPA shall be provided at the time of such payments to the U.S. EPA Project Coordinator and to: U.S. EPA, Region V, SWER Branch, Attention: Ms. Isalee Coleman, Office of Regional Counsel, 5CS-16, 230 South Dearborn Street, Chicago, Illinois 60604.

D. Payment to the WDNR for response and oversight costs incurred by the WDNR shall be payable to the Wisconsin Department of Natural Resources, Bureau of Solid Waste Management, SW/3, Environmental Response and Restoration Unit, P.O. Box 7921, Madison, Wisconsin, 53707. A copy of the transmittal letter and check shall be sent to the WDNR Project Coordinator.

#### XXV. INDEMNIFICATION

A. The Respondents agree to indemnify and save and hold the United States Government and the State of Wisconsin, their agents and employees, harmless from any and all claims or causes of action arising from, or related to, acts or omissions of the Respondents, their employees, agents or contractors, in carrying out the activities pursuant to this Consent Order.

B. Nothing herein shall be deemed as a waiver of any right or defense available to U.S. EPA or WDNR in any proceeding,

action or claim against them. In addition, nothing herein shall limit the right of U.S. EPA or WDNR to defend any action brought against them.

C. Neither the U.S. EPA nor the WDNR shall be deemed to be a party to any contract involving the Respondents at the Facility.

XXVI. PUBLIC COMMENT AND EFFECTIVE DATE  
OF ADMINISTRATIVE ORDER

Within fifteen (15) calendar days of the date of the execution of this Consent Order, the U.S. EPA shall announce the availability of this Consent Order to the public for review and comment. The U.S. EPA shall accept comments from the public for, at a minimum, a thirty (30) calendar day period after such announcement. At the end of the comment period, the U.S. EPA, in consultation with the WDNR, shall review all such comments and shall either:

- a) determine that the Consent Order should be made effective in its present form, in which case the U.S. EPA shall so notify the Respondents in writing, and the Consent Order shall become effective on the date the Respondents receive such notification; or
- b) determine that modification of the Consent Order is necessary, in which case the U.S. EPA will inform the Respondents as to the nature of all required changes. If the Respondents agree to

the modifications, the Consent Order shall be so modified and shall become effective upon the date that the Respondents receive notification that the Consent Order has been fully executed.

In the event that the Respondents do not agree to modifications required by the U.S. EPA as a result of public comment, this Consent Order may be withdrawn by the U.S. EPA. In such an event, the U.S. EPA and the WDNR reserve all rights to take such actions as they deem necessary, and the Respondents reserve all of their rights and defenses.

#### XXVII. SUBSEQUENT AMENDMENT

In addition to the procedures set forth in Sections XI, XIV, XVII, and XIX of this Consent Order, this Consent Order may be amended by mutual agreement of the U.S. EPA, the WDNR and the Respondents. Any amendment of this Consent Order shall be in writing, signed by the U.S. EPA, WDNR and Respondents, and shall have as the effective date that date on which Respondents receive notice from U.S. EPA that such amendment has been fully executed.

#### XXVIII. TERMINATION AND SATISFACTION

A. The provisions of this Consent Order shall be deemed satisfied upon receipt by the Respondents of written notice from the U.S. EPA that the Respondents have demonstrated that all of the terms of this Consent Order, including any additional work, modifications or amendments, have been completed in accordance

with the terms hereof to the satisfaction of the U.S. EPA in consultation with the WDNR. Such written notice shall not be unreasonably withheld or delayed.

B. Following completion of all of the requirements of work in the Consent Order, Respondents may request a determination by U.S. EPA as to whether Respondents have satisfactorily completed the work. U.S. EPA shall provide Respondents with such a determination as soon as practicable, but in any event within ninety (90) days of such a request. Any negative determination by U.S. EPA shall set forth the reasons why the work has not been satisfactorily completed. Respondents shall have reasonable opportunity to respond to any alleged deficiencies, and to correct any deficiencies.

C. If U.S. EPA or WDNR completes the RI/FS prior to termination and satisfaction under this paragraph, Respondents' future obligations to perform work under this Consent Work shall cease.

XXIX. COVENANT NOT TO SUE

From the date of this Consent Order, for as long as the terms herein are complied with, and upon termination and satisfaction of this Consent Order pursuant to Section XXVIII of this Consent Order, U.S. EPA and WDNR covenant not to sue the Respondents for the performance and the RI/FS, as provided in this Consent Order, including the costs thereof, except as otherwise reserved herein.

IT IS SO AGREED:

BY: William R. Katzman Pres. West Management 7/14/87  
[Respondent] of West. Inc. Date

IT IS SO ORDERED AND AGREED:

BY: Kathryn Curtner 8-3-87  
Kathryn Curtner Date  
For the Secretary  
Wisconsin Department of Natural Resources

BY: Frank M. Covington, for 8-14-87  
Valdas V. Adamkus Date  
Regional Administrator  
U.S. Environmental Protection Agency, Region V

EFFECTIVE DATE \_\_\_\_\_