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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 230 SOUTH DEARBORN ST.
 CHICAGO, ILLINOIS 60604

JAN 04 1991

5HS-12

REPLY TO ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ann L. Straw, Esq.
 Environmental Counsel
 Waste Management of North America, Inc.
 Midwest Region
 Two Westbrook Corporate Center
 P.O. Box 7070
 Westchester, Illinois 60154

Re: Muskego Sanitary Landfill
 Muskego, Wisconsin

Dear Ms. Straw:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within four (4) business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within four (4) business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Thomas J. Krueger, Assistant Regional Counsel, at (312) 886-0562 or Stavros Emmanouil, On-Scene Coordinator, at (312) 886-1768.

Sincerely yours,

David A. Ullrich, Director
 Waste Management Division

Enclosure

cc: Paul Didier, WENR
 Linda Meyer, WENR
 Gary Edelstein, WENR

bcc: Tom Pernell, ORC (5CS-TUB-3)
Tom Krueger, ORC (5CS-TUB-7)
Stavros Emmanouil, OSC (5HS-12)
Pamela Schafer, ESS (5HS-12)
Debbie Regel, ESS (5HS-12)
Oliver Warnsley, RP-CRU (5HS-TUB-7)
Toni Lesser, Public Affairs (5PA-14) w/out attachments
Sheila Huff, Department of Interior
Vince D'Aloia (5MFS-14)
Tony Audia (5MFS-14)
EERB Site File
EERB Read File
Bill Haubold, RPM (5HS-11)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:) Docket No. V-W- '91-C-082
)
Muskego Sanitary Landfill) ADMINISTRATIVE ORDER
Muskego, Wisconsin) PURSUANT TO SECTION 106
) OF THE COMPREHENSIVE
Respondents:) ENVIRONMENTAL RESPONSE,
) COMPENSATION, AND
Waste Management of) LIABILITY ACT OF 1980
Wisconsin, Inc.) as amended, 42 U.S.C.
) Section 9606(a)
)

PREAMBLE

This Administrative Order (Order) is issued on this date to Respondent, Waste Management of Wisconsin, Inc., who is located at Two Westbrook Corporate Center, Suite 1000, P.O. Box 7070, Westchester, Illinois 60154.

It is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Waste Management Division, Region V, by Regional Delegation 14-14-A and 14-14-B.

By copy of this Order the State of Wisconsin has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondent to undertake and complete emergency removal activities to abate an imminent and substantial endangerment to the public health and welfare or the environment that may be presented by the actual or threatened release of hazardous substances at the Site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Muskego Sanitary Landfill (the "Site") is located approximately three miles southwest of the City of Muskego in Waukesha County, Wisconsin.
2. The Site 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).
3. On July 14, 1987, Respondent, Waste Management of Wisconsin, Inc. (WMWI), entered into an Administrative Order by Consent (Consent Order) to conduct a Remedial Investigation/Feasibility Study (RI/FS) at the Site. The Consent Order became effective on October 7, 1987. The Site, as defined in the Consent Order, is comprised of two closed and contiguous landfills; the Old Fill Area and the Southeast Fill Area. The Site is adjacent to an active WDNR-licensed landfill operated by WMWI. The Site is owned by Carl Wauer and the active landfill is owned by WMWI.
4. The Old Fill Area is a former sand and gravel pit that evolved into an open dump in 1954 and ultimately into a WDNR-licensed landfill (License Numbers 141 and 936) operated at different times by Carl Wauer, the City of Muskego, and WMWI. The old Fill Area closed in 1977. Documentation is lacking on specific waste types and quantities; however, 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 apparently served as disposal areas for waste oils and paint products.
5. Land use within one mile of the Site is predominantly light industrial, agricultural and residential. To the south and east of the Site, the land used is a combination of residential and agricultural. Land use to the west of the Site is for sand and gravel excavation. To the north, agriculture is the predominant land use. The closest residence is located approximately 1000 feet south of the Southeast Fill area.
6. On November 21 and 22, 1988, Warzyn Engineering, Inc., consultant for WMWI at the Site, performed the second of two geophysical surveys as part of a larger scope of work. During the course of the investigation, a small trench (the "Trench") was discovered in the northeast corner of the Site which was found to contain buried drums and what appeared to be paint wastes. The three test pits that were excavated revealed full drums of waste, crushed deteriorated drums, and paint filtercake waste. VOC concentrations were very high during the investigation. Paint wastes may also contain lead compounds. Based on the geophysical survey and test pit results, this trench was estimated to be approximately 10 feet wide and 150 feet long. Although the bottom of the trench was never completely defined, it is believed to be about 15 feet deep.

7. Based on visual observations during the test pitting and analysis of samples collected from leachate head wells in the vicinity, this former disposal trench represents a potential source area for the release of hazardous substances to the environment. The primary potential receptor is groundwater, and ultimately private drinking water supplies, through leachate migration from this source area.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Respondent is the present "owner" and "operator" of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), or is either a past owner or operator of the site, or arranged for disposal or transport for disposal of hazardous substances at the Site. Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).
4. Paint products (containing volatile organic compounds and possible lead) are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The presence of crushed and deteriorated drums containing paint products constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.
7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment.
8. The actions required by this Order will contribute to the efficient performance of any anticipated long-term remedial action at the Site. These actions do not, however, preclude or eliminate the possibility of additional long-term remedial action to address the releases or threatened releases described above.

9. The conditions present at the Facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.415(b)(2). These factors include, but are not limited to, the following:

- a. actual or potential contamination of drinking water supplies or sensitive ecosystems;

This factor is present at the Facility due to the existence of buried drums and wastes containing hazardous substances that may migrate into an aquifer that is used for private drinking water supplies.

- b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This factor is present at the Facility due to the existence of crushed and deteriorated drums containing paint products containing volatile organic compounds and possibly lead.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that Respondent(s) undertake the following actions at the Facility:

1. Within five (5) business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent shall implement the Work Plan as finally approved by U.S. EPA. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.
3. Respondent shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within three (3) business days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. In the event U.S. EPA disapproves of a selected contractor, Respondent shall retain

a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.

4. Within three (3) business days after U.S. EPA approval of the Work Plan, Respondent shall begin to implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondent to perform, and complete within three months after approval, at a minimum, the following removal activities:

- a. Locate, remove and dispose of all drums, liquids, and filter cake waste in the Trench area.
- b. After excavating to the bottom of the Trench (as defined by the lowest extent of liquid, drummed or solid wastes), remove and dispose of 18" of soil below the base of the trench at all points in the Trench, and dispose of drums and debris from the Trench.
- c. After excavating 18" of soil below the base of the Trench, remove and dispose of all remaining visibly contaminated soil, and sample and remove any contaminated sand lenses.
- d. After completing the excavation and removal activities, line and maintain the excavation with a 30 mil HDPE liner, and backfill and regrade to an elevation where proper drainage is established.

5. All materials containing hazardous substances, pollutants or contaminants removed pursuant to this Order shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.

6. On or before the effective date of this Order, the Respondent shall designate a Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. The U.S. EPA has designated Stavros Emmanouil of the Emergency and Enforcement Response Branch, Response Section II, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator.

7. The U.S. EPA and the Respondent shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be verbal, but shall promptly be reduced to writing.

8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the facility.

9. No extensions to the above time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

10. All instructions by the U.S. EPA On-Scene Coordinator or his designated alternate shall be binding upon the Respondent as long as those instructions are not clearly inconsistent with the National Contingency Plan.

11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, Respondent shall obtain all necessary access agreements. In the event that after using their best efforts Respondent is unable to obtain such agreements, Respondent shall immediately notify U.S. EPA. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate.

12. Respondent shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants at reasonable times, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.

13. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law.

14. The provisions of this Order and the directions of the On-Scene Coordinator shall be binding on the employees, agents, successors, and assigns of the Respondent.

15. This Order shall be effective seven (7) calendar days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the third (3rd) calendar day following the day of the conference unless modified in writing by U.S. EPA.

16. On or before two (2) business days of the effective date of this Order, Respondent shall provide notice, verbally or in writing, to U.S. EPA stating their intention to comply with the terms of this Order. Verbal notification must be followed in writing within two (2) calendar days. In the event any Respondent fails to provide such notice, that Respondent shall be deemed not to have complied with the terms of this Order.

17. Copies of all records and files relating to hazardous substances found on the site shall be retained for six years following completion of the activities required by this Order and shall be made available to the U.S. EPA prior to the termination of the removal activities under this Order.

18. The Respondent shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within sixty (60) days of completion of the work required by the U.S. EPA.

18. All notices, reports and requests for extensions submitted under terms of this Order shall be sent by certified mail, return receipt requested, and addressed to the following:

one copy Stavros Emmanouil
On-Scene Coordinator
U.S. EPA (5HS-12)
230 South Dearborn Street
Chicago, IL 60604

one copy Thomas J. Krueger
Assistant Regional Counsel
U.S. EPA (5CS-TUB-7)
230 South Dearborn Street
Chicago, Illinois 60604

19. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Determinations and Findings is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 W. Jackson Blvd., Third Floor, Chicago, Illinois. Please contact Thomas J. Krueger, Assistant Regional Counsel, at (312) 886-0562 to review the Administrative Record. An index of the Administrative Record is attached hereto.

OPPORTUNITY TO CONFER

With respect to the actions required above, Respondent may within four (4) business days after issuance of this Order, request a conference with the U.S. EPA. Any such conference shall be held within three (3) business days from the date of request unless extended by mutual agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person, or be represented by an attorney or other representative. If any Respondent desires such a conference, the Respondent shall contact Thomas J. Krueger, Assistant Regional Counsel, at (312) 886-0562.

If such a conference is held, Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to U.S. EPA within one (1) business day following the conference. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within four (4) business days following the issuance of this Order. Any such writing should be directed to Thomas J. Krueger, Assistant Regional Counsel, at the address cited above.

Respondent is hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those government actions.

PENALTIES FOR NONCOMPLIANCE

Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject the Respondent to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject the Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

By: David A. Ullrich
David A. Ullrich, Director
Waste Management Division
United States Environmental
Protection Agency
Region V

January 4, 1998

ADMINISTRATIVE RECORD
FOR
MUSKEGO SANITARY LANDFILL

Muskego, Wi.

December 19, 1990

<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
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01/08/90	Warzyn Eng., Inc.	U.S. EPA	Draft Drum Removal Removal Plan	100
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10/20/90	Straw, A. Waste Mgt., Inc.	Krueger, T. U.S. EPA	Correspondence	2
11/01/90	WIHA	Barnette, J., U.S. EPA	Draft Interim Guidelines for Selecting Clean- up Actions Involving Hazardous Wastes in the State of Wisc.	4
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