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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

AUG 30 1993

MEMORANDUM

SUBJECT: Entry of Northside Sanitary Landfill De Minimis Cost Recovery Consent Decree (Site # H2)

FROM: Lynn Peterson, Chief  
Solid Waste and Emergency Response Branch

TO: William E. Muno, Chief  
Waste Management Division

Robert Springer, Assistant Regional Administrator  
Planning and Management Division

Attached is a copy of the August 18, 1993, order entering a cost recovery consent decree for the Northside Sanitary Landfill site and a copy of the decree. Under the terms of the decree, settling defendant White Metal Rolling & Stamping Corp. is obligated to pay past costs of \$3,811.58 plus interest, within thirty days of entry of the consent decree. (See paragraph 5 of the decree). Settling Defendant Industrial Plating, Inc. is obligated to pay \$75,000.00, plus interest, within thirty days of entry of the consent decree. (See paragraph 6 of the decree). Please contact Assistant Regional Counsel John Tielsch at 353-7447 if you have any questions concerning the payment requirements.

Attachments

cc: Tony Audia (w/ attachments)  
Vanessa Simmons (w/ attachments)  
Tom Pernell (w/o attachments)  
Karen Vendl (w/o attachments)

RECEIVED  
OFFICE OF SUPERFUND  
ASSOCIATE DIVISION DIRECTOR  
1993



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JONATHAN W. BANKERT, JR.; )  
 NORTHSIDE SANITARY LANDFILL, )  
 INC.; )  
 PATRICIA A. BANKERT; )  
 PATRICIA A. BANKERT, in her ) CAUSE NO. IP 91-1181-C  
 capacity as Personal )  
 Representative of the )  
 ESTATE OF JONATHAN W. )  
 BANKERT, SR.; )  
 PATRICIA A. BANKERT, JONATHAN )  
 W. BANKERT, JR., and )  
 CYNTHIA A. RUSSELL, in )  
 their capacities as )  
 TRUSTEES OF THE JONATHAN W. )  
 BANKERT REVOCABLE )  
 INTERVIVOS TRUST; )  
 WHITE METAL ROLLING & )  
 STAMPING CORP.; and )  
 INDUSTRIAL PLATING, INC., )  
 )  
 Defendant. )

**ORDER ON MOTION OF THE UNITED STATES TO ENTER CONSENT DECREE**

Plaintiff has moved for the entry of the Consent Decree that was lodged with the Court in this action in January 1993. The Court, being duly advised, hereby GRANTS the motion. Said Consent Decree shall be entered as of the date of this order.

SO ORDERED this 18 day of August, 1993.

  
LARRY J. MCKINNEY, JUDGE  
United States District Court  
Southern District of Indiana

Distribution attached

Distribution List

Charles Goodloe, Jr.  
Assistant United States Attorney  
274 U.S. Courthouse  
46 East Ohio Street  
Indianapolis, Indiana 46204

Barbara A. Rogers  
United States Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

John Tielsch  
United States Environmental Protection  
Agency  
Region V  
230 South Dearborn St.  
Chicago, Illinois 60604

Helen Keplinger  
United States Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Halbert W. Kunz  
KUNZ & KUNZ  
320 N. Meridian Street, SUITE 528  
Indianapolis, IN 46204

Warren D. Krebs  
PARR, RICHEY, OBREMSKEY & MORTON  
10 W. Market Street, Suite 1600  
Indianapolis, IN 46204-2970

Ronald J. Waicukauski  
WHITE & RAUB  
10th Floor, One N. Capital Avenue  
Indianapolis, IN 46204

Roger Wm. Bennett  
BENNETT, BOEHNING, POYNTER & CLARY  
P. O. Box 469  
Lafayette, IN. 47902

Mr. Joseph G. Nassif  
COBURN, CROFT & PUTZELL  
One Meracantile Center - Suite 2900  
St. Louis, MO 63101

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) Civil Action No. 1P91-1181C  
 )  
 ) JUDGE MCKINNEY  
 )  
 JONATHAN W. BANKERT, JR.; )  
 NORTHSIDE SANITARY LANDFILL, INC.; )  
 PATRICIA A. BANKERT )  
 Patricia A. Bankert, in her )  
 capacity as Personal )  
 Representative of the ESTATE OF )  
 JONATHAN W. BANKERT, SR.; )  
 Patricia A. Bankert, Jonathan W. )  
 Bankert, Jr., and Cynthia A. )  
 Russell, in their capacities as )  
 TRUSTEES OF THE JONATHAN W. )  
 BANKERT PEVOCABLE INTERVIVOS )  
 TRUST; )  
 WHITE METAL ROLLING & STAMPING )  
 CORP.; and )  
 INDUSTRIAL PLATING, INC., )  
 )  
 ) Defendants. )  
 )  
 \_\_\_\_\_ )

CONSENT DECREE

WHEREAS Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), on October 24, 1991, filed the Complaint in the above-captioned action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607, alleging, inter alia, that Defendants are jointly and severally liable to the United States for past and future costs incurred by the United

States in responding to releases and threatened releases of hazardous substances into the environment from the Northside Sanitary Landfill facility ("Northside site") in Boone County near Zionsville, Indiana.

WHEREAS no Defendant who is party to this Consent Decree admits such liability.

WHEREAS this Consent Decree ("Decree") is made and entered into by and between Plaintiff, the United States of America, on behalf of EPA, and two of the Defendants in this action, White Metal Rolling & Stamping Corp. ("White Metal"), and Industrial Plating, Inc. ("Industrial Plating"), to resolve the United States' claims against those Defendants as alleged in the Complaint.

WHEREAS this settlement is pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), which relates to de minimis settlements. Information currently known to EPA indicates that: (1) the amount of hazardous substances contributed to the Northside site by each Settling Defendant is minimal in comparison to the total amount of hazardous substances contributed to the Site, since the contribution by each did not exceed 100,000 gallons of the total of more than 52 million gallons of hazardous substances which were contributed to the Site; and (2) the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant is minimal in comparison to other hazardous substances at the Site and did not and do not contribute disproportionately

to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. In addition, this settlement involves only a minor portion of the response costs at the Northside site, and settlement of this action is practicable and in the public interest.

WHEREAS the United States and the Settling Defendants have entered into this Decree in good faith to avoid expensive and protracted litigation and to settle the claims asserted by the United States in this action. The parties hereto agree that settlement of this matter without further litigation is in the public interest.

NOW, THEREFORE, the Court being duly advised of the premises, before the taking of any testimony, before adjudication of the merits of this case or any issue of fact or law, and upon the consent of the parties to this Decree, it is ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree, pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107(a), 113(b) and 122(d)(1)(A) of CERCLA, 42 U.S.C. §§ 9607, 9613(b), and 9622(g)(4). The Complaint states a claim upon which the Court may grant relief pursuant to CERCLA.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1391(b) and (c).

## II. DEFINITIONS

3. The following definitions shall apply in this Consent Decree:

A. "Settling Defendants" means White Metal Rolling & Stamping Corp. ("White Metal"), and Industrial Plating, Inc. ("Industrial Plating").

B. "Northside site" and "Site", for purposes of this Consent Decree, mean property located approximately 10 miles northwest of Indianapolis, on U.S. Highway 421, in Boone County near Zionsville, Indiana, and include property which has been used for landfilling operations including the disposal of various substances, and was operated under names including Northside Sanitary Landfill, Inc. See National Priorities List, 40 C.F.R. Part 300, and 49 Fed. Reg. 37070 (1984).

C. "Response Costs" shall have the meaning ascribed to that term in 42 U.S.C. § 9607(a).

D. "Northside Response Costs" are all Response Costs that have been incurred or may in the future be incurred by the United States by or on behalf of EPA with respect to the Northside site, including interest on such costs. For purposes of this Consent Decree only, "Northside Response Costs" do not include any costs incurred by the United States in connection with enforcing the terms of this Consent Decree.

## III. PARTIES BOUND

4. This Decree shall apply to and be binding upon the Settling Defendants and their successors and assigns, and the

United States on behalf of EPA. Each undersigned representative of a Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree, to execute this Decree, and to bind that party to this Decree. Settling Defendants agree to be bound by the terms of this Decree and not to contest its validity in any subsequent proceeding arising from it.

IV. REIMBURSEMENT OF NORTHSIDE RESPONSE COSTS

5. As reimbursement of Northside Response Costs, within thirty (30) days after entry of this Decree, defendant White Metal shall pay to the United States the sum of \$3,811.58, plus interest thereon from January 1, 1992, to the date of payment in full, at the same rate as interest on investments of the EPA Hazardous Substance Superfund. For fiscal year 1992, beginning October 1, 1991, that rate of interest is 5.7% per annum. Interest shall be compounded annually.

6. As reimbursement of Northside Response Costs, within thirty (30) days after entry of this Decree, defendant Industrial Plating shall pay to the United States the sum of \$75,000, plus interest thereon from July 1, 1992, to the date of payment in full, at the same rate as interest on investments of the EPA Hazardous Substance Superfund. For fiscal year 1992, beginning October 1, 1991, that rate of interest is 5.7% per annum. Interest shall be compounded annually.

7. If any Settling Defendant fails to make payments required by this Decree, such Defendant shall be liable for all

litigation and other enforcement costs incurred by the United States to enforce this Decree or otherwise obtain such payments.

8. Payments made by Settling Defendants pursuant to Section IV of this Consent Decree shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank referencing the CERCLA Number, Northside Sanitary Landfill, No. H2, D.J. No. 90-11-2-48H, and the U.S.A.O. file number 91V0861-001. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

V. PLAINTIFF'S COVENANT NOT  
TO SUE SETTLING DEFENDANTS,  
AND SETTLING DEFENDANTS'  
CERTIFICATIONS

9. In consideration of payments by Settling Defendants under the terms of this Decree, and except as otherwise provided below and subject to paragraph 10 below, the United States, on behalf of EPA, covenants not to sue or take any other civil judicial or administrative action against the Settling Defendants under Section 107(a) of CERCLA for recovery of Northside Response Costs, or under Section 106 of CERCLA relating to the Northside site. The United States expressly reserves, and this Decree shall be without prejudice to, any other claims that the United States may have against Settling Defendants including, without limitation, the following:

(1) claims for criminal liability; (2) claims based on failure by either Settling Defendant to timely meet the requirements of this Decree; and (3) claims for damages for injury to, destruction of, or loss of natural resources, including costs of assessing such damages.

10. Each Settling Defendant hereby certifies that, based on information currently available to it and to the best of its knowledge and belief, it has provided to the United States all information currently in its possession or control which relates in any way to the ownership, operation, generation, treatment, transportation or disposal of hazardous substances related to the Northside site. Each Settling Defendant also certifies that, based on information currently available to it and to the best of its knowledge and belief, it is aware of no facts indicating that its volumetric contribution of hazardous substances to the site was greater than 3,575 gallons (White Metal) or 31,714 gallons (Industrial Plating), or that the hazardous substances it contributed to the Site contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site.

11. Except with respect to future liability, this covenant not to sue shall become effective upon settling defendants' timely payment to the United States, as provided in Section IV above, of all sums required by Section IV of this Decree. With respect to future liability, this covenant not to

sue shall take effect upon EPA's certification of completion of the remedial action at the Northside site.

12. This covenant not to sue is not, and shall not be construed to be, a release of any kind.

VI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

13. Nothing in this Decree is intended as a covenant not to sue regarding any claim or cause of action against any person or entity other than the Settling Defendants.

14. The United States expressly reserves and, except as otherwise expressly provided herein, the Settling Defendants expressly reserve, any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands and causes of action, both judicial and administrative, past and future, in law and equity, which each party may have with respect to any matter, transaction, or occurrence arising at or relating in any manner to the Northside site against any person or entity not a party to this Consent Decree, including against defendants in this action who are not signatories to this Consent Decree.

15. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Settling Defendants agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by Section 122(g) of CERCLA, 42 U.S.C. § 9622(g).

VII. CIVIL PENALTIES

16. In addition to any other remedies or sanctions available to the United States, any Settling Defendant who fails or refuses to comply with any term or condition of this Consent

Decree shall be subject to a civil penalty of up to \$25,000 per day for each such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

VIII. RESPONSE AUTHORITY

17. Nothing in this Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or the authority of the United States under Section 106 of CERCLA, 42 U.S.C. § 9606, or under any other applicable law.

IX. DEFENDANTS' WAIVER OF CLAIMS

18. In consideration of the entry of this Decree, the Settling Defendants agree not to, and shall not, make or assert any claim, demand, or cause of action against the United States, including any department, agency or instrumentality of the United States, or against the Hazardous Substance Superfund ("Superfund") (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), including any claim, demand or cause of action pursuant to Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, with respect to the Northside site, including for Northside Response Costs, for reimbursement of any costs incurred by Settling Defendants in connection with the Northside site, or for any attorneys' fees related to this action. Nothing in this Decree shall be construed as EPA's preauthorization of a claim against the Superfund within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. RETENTION OF JURISDICTION

19. The Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Decree.

XI. PUBLIC NOTICE AND COMMENT

20. The parties acknowledge that final approval by the United States and entry of this Decree is subject to the procedures under 28 C.F.R. §§ 50.7 for public notice and an opportunity for public comment during a 30 day comment period following publication of notice of this Consent Decree by the Department of Justice in the Federal Register, as well as consideration of any comments received by the United States in response to public notice.

XII. EXECUTION

21. This Consent Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree.

Signature page in United States v. Jonathan W. Bankert, Jr., et al. (Civil Action No. IP91-1181C)

BY THEIR COUNSEL, THE PARTIES ENTER INTO THIS CONSENT DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND ENTERED.

For Plaintiff, the United States of America:

1-13-93

Date



VICKI A. D'NEARA  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

1/19/93

Date



DEBORAH J. DANIELS  
United States Attorney  
Southern District of Indiana

1/19/93

Date



CHARLES GOODLOE  
Assistant United States Attorney  
Office of the United States  
Attorney  
274 United States Courthouse  
46 East Ohio Street  
Indianapolis, Indiana 46204

Signature page in United States v. Jonathan W. Bankert, Jr., et al. (Civil Action No. IP91-1181C)

12/16/93

Date

Barbara A. Rogers

BARBARA A. ROGERS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
Benjamin Franklin Station  
P.O. Box 7611  
Washington, D.C. 20044

9/30/92

Date

David A. Adamkus

VALDAS V. ADAMKUS  
Regional Administrator  
United States Environmental  
Protection Agency  
230 S. Dearborn Street  
Chicago, Illinois 60604

9/25/92

Date

John Tielsch

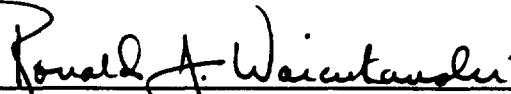
JOHN TIELSCH  
Assistant Regional Counsel  
United States Environmental  
Protection Agency  
230 S. Dearborn Street  
Chicago, Illinois 60604

Signature page in United States v. Jonathan W. Bankert, Jr., et al. (Civil Action No. IP91-1181C)

For Defendant White Metal Rolling & Stamping Corp:

7-14-92

Date



Ronald J. Waicukauski  
Attorney for White Metal Rolling  
& Stamping Corp.  
White & Raub  
One N. Capitol Ave., Tenth Floor  
Indianapolis, IN 46204

Signature page in United States v. Jonathan W. Bankert, Jr., et al. (Civil Action No. IP91-1181C)

For Defendant Industrial Plating, Inc:

July 28, 1992  
Date

William A. Cerkwitz  
William A. Cerkwitz, President  
Industrial Plating, Inc.

IT IS SO ORDERED:

**Larry J. McKinney**

UNITED STATES DISTRICT JUDGE

Date: August 18, 1993