

#(61)

153285

Original Copy E5

7/17/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

ADMINISTRATIVE ORDER ON CONSENT RE:
REMEDIAL INVESTIGATION, FEASIBILITY STUDY
FOR THE TOMAH ARMORY LANDFILL Site
TOMAH, WISCONSIN

U.S. EPA DOCKET NO. V-W-95-C-300

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

Table of Contents
to the Administrative Order on Consent
for the
TOMAH ARMORY LANDFILL Site

<u>Article</u>	<u>Title</u>	<u>Page</u>
I.	JURISDICTION.....	1
II.	NOTICE OF ACTION.....	2
III.	PARTIES BOUND.....	3
IV.	STATEMENT OF PURPOSE.....	5
V.	FINDINGS OF FACT.....	6
VI.	CONCLUSIONS OF LAW.....	8
VII.	DETERMINATIONS.....	9
VIII.	WORK TO BE PERFORMED.....	9
IX.	PLANS AND REPORTS.....	12
X.	ADDRESSES FOR ALL CORRESPONDENCE.....	15
XI.	ADDITIONAL WORK.....	16
XII.	COMPLIANCE WITH APPLICABLE LAWS.....	17
XIII.	ACCESS.....	17
XIV.	PROJECT COORDINATORS.....	19
XV.	SAMPLING AND DATA/DOCUMENT AVAILABILITY.....	21
XVI.	QUALITY ASSURANCE.....	22
XVII.	TIMELINESS OF PERFORMANCE.....	24
XVIII.	STIPULATED PENALTIES.....	25
XIX.	DISPUTE RESOLUTION.....	27

<u>Article</u>	<u>Title</u>	<u>Page</u>
XX.	COMMUNITY RELATIONS.....	30
XXI.	RECORD PRESERVATION.....	30
XXII.	WAIVER OF CLAIMS.....	31
XXIII.	RESERVATION OF RIGHTS.....	31
XXIV.	REIMBURSEMENT OF COSTS.....	33
XXV.	INDEMNIFICATION OF THE UNITED STATES.....	36
XXVI.	NOTIFICATION OF OUT-OF-STATE SHIPMENTS.....	36
XXVII.	FINANCIAL ASSURANCE AND LIABILITY INSURANCE.....	37
XXVIII.	COVENANT NOT TO SUE.....	38
XXIX.	CONTRIBUTION PROTECTION.....	38
XXX.	EFFECTIVE DATE OF CONSENT ORDER.....	39
XXXI.	MODIFICATION OF CONSENT ORDER.....	39
XXXII.	TERMINATION AND SATISFACTION.....	39
XXXIII.	PRECEDENCE OF CONSENT ORDER.....	40
	SIGNATURES.....	41

ATTACHMENTS

- ATTACHMENT I STATEMENT OF WORK FOR CONTINUING REMEDIAL
INVESTIGATION ACTIVITIES AND CONDUCTING A
FEASIBILITY STUDY AT THE TOMAH ARMORY
LANDFILL SITE, MONROE COUNTY, WISCONSIN
- ATTACHMENT II PHASE I REMEDIAL INVESTIGATION (RI) REPORT
TOMAH ARMORY AND TOMAH FAIRGROUNDS LANDFILLS
MONROE COUNTY, TOMAH, WISCONSIN
DECEMBER 1994, Revision 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)
)
)
TOMAH ARMORY LANDFILL)
TOMAH, WISCONSIN)
)
WISCONSIN DEPARTMENT)
OF MILITARY AFFAIRS)
)
Respondent.)
)
)
Proceeding under Sections 104,)
122(a), and 122(d)(3) of the)
Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980, as amended.)

V-W- '95-C-300
U.S. EPA DOCKET NO.

**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY**

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (U.S. EPA) and the State of Wisconsin for its Department of Military Affairs. The Consent Order concerns the preparation of, performance of, and reimbursement for costs incurred by U.S. EPA in connection with a remedial investigation and feasibility study (RI/FS) for the Tomah Armory Landfill, located in Tomah, Wisconsin.

I. JURISDICTION

A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9607, 9622 (CERCLA). This authority was delegated to

the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2926 (January 29, 1987) and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-C and 14-14-D, and to the Director of the Waste Management Division by Region V Delegation Nos. 14-14-C and 14-14-D.

B. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order, and consents to and will not contest or legally challenge the validity of this Consent Order or its terms, or U.S. EPA's authority or jurisdiction to issue or enforce this Consent Order. The Respondent's consent to this Order shall not be deemed to be an admission as to U.S. EPA's Findings of Facts or Conclusions of Law. Respondent's consent to this Order shall not be deemed to be an admission of responsibility or liability and shall not be admissible in any proceeding other than a proceeding to enforce the terms of this Order.

II. NOTICE OF ACTION

A. U.S. EPA has previously notified all persons whom it considers to be potentially responsible parties ("PRPs") as of the date of entry of this Consent Order.

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

C. U.S. EPA has notified the State of Wisconsin's Department of Natural Resources (WDNR) of this action and has afforded the WDNR an opportunity to participate in the negotiations resulting in this Consent Order pursuant to Section 121(f) of CERCLA.

III. PARTIES BOUND

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

- (1) U.S. EPA, through the Director of the Waste Management Division, Region V.
- (2) The following person as defined in Section 101(21) of CERCLA, herein referred to as the Respondent:
Wisconsin Department of Military Affairs.
- (3) The successors and assignees of the Respondent.
- (4) The agents of the Respondent responsible for carrying out the Respondent's obligations under this Consent Order.

B. The undersigned representatives of U.S. EPA and the Respondent each 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 the party he or she represents to this document.

C. No change in ownership, corporate, or partnership status shall in any way alter the status or responsibility of the Respondent under this Consent Order. The Respondent shall

provide copies of this Consent Order to any and all subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. The Respondent shall be responsible for ensuring that all officers, directors, principals, contractors, consultants, firms and other persons or entities acting under or for the Respondent with respect to all matters herein comply with the terms of this Consent Order. The Respondent shall provide copies of this Consent Order to all contractors retained to conduct any work under this Consent Order within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Subcontractors, laboratories, consultants, firms and other entities that will provide \$20,000 or more of work under this Consent Order shall also be provided copies of this Consent Order. The Respondent shall inform all other subcontractors, laboratories, consultants, firms and other entities that provide less than \$20,000 of work under this Consent Order that the work they are conducting must be in full compliance with this Consent Order and that this Consent Order is available to them upon request. U.S. EPA's Project Coordinator will make a determination, if requested by the Respondent, whether any particular work conducted by a contractor is within the scope of this Consent Order.

IV. STATEMENT OF PURPOSE

A. The objectives of this Consent Order, and the mutual objectives of U.S. EPA and the Respondent in entering this Consent Order, are for the Respondent to (1) fully determine the nature and extent of the potential threat to the public health, welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from or at the Facility by continuing Remedial Investigation ("RI") activities initiated by the U.S. EPA; and (2) determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise remedy any release or threatened release of hazardous substances, pollutants or contaminants from or at the Facility by conducting a Feasibility Study ("FS"), if necessary. The parties also intend that U.S. EPA recover response and oversight costs incurred by U.S. EPA with respect to this Consent Order.

B. The activities conducted pursuant to this Consent Order are subject to approval by U.S. EPA. The Respondent, as provided herein, shall employ sound scientific, engineering and construction practices and shall conduct all activities pursuant to this Consent Order consistently with CERCLA, the National Contingency Plan ("NCP"), 40 CFR Part 300, as amended, and all other applicable laws.

V. FINDINGS OF FACT

Based upon information available on the effective date of this Consent Order, the Director of the Waste Management Division, Region V, makes the following findings:

A. The Tomah Armory (TA) covers a 10-acre rectangular area located in the northeast section of the City of Tomah. The former landfill is a small area in the northwest section of the TA.

B. A sandstone aquifer blankets and extends from the surface to a depth ranging from 50 to 250 feet. This aquifer is used by the City of Tomah as a municipal drinking water supply. Municipal wells serving the City of Tomah are located within a three mile radius of the TA.

C. The City of Tomah owned and operated the TA landfill from approximately 1950 to 1955. The TA landfill was closed around 1955. Disposal methods utilized at the Site included excavation of six to eight feet of topsoil, landfilling, placement of a cover consisting of previously excavated topsoil, and a final grading process. Some material disposed of at the Site was burned prior to burial.

D. In 1984, the TA was investigated by representatives of the WDNR and U.S. EPA's field investigation team (FIT) to gain information for a preliminary assessment. Concerns raised at the time included possible effect of disposal below the water table,

the effect on the aquifer, and the potential for direct contact with hazardous substances because of erosion of the landfill cap.

E. The Site was scored using the Hazardous Ranking System (HRS) and the TA landfill was proposed for the National Priorities List (NPL) on January 22, 1987. The TA landfill was placed on the NPL on July 21, 1987.

F. In February 1992, the U.S. EPA Technical Assistance Team (TAT) collected two soil samples, at depths of 1-3 feet, at a location where hazardous chemicals were suspected to have been dumped. Elevated levels of methylene chloride were detected in both samples, along with an elevated level of lead in one soil sample. Methylene chloride is a listed hazardous waste, and at the levels detected at the TA, lead is a characteristic hazardous waste.

G. In July 1993, the U.S. EPA conducted a Phase I remedial investigation (RI) to collect soil and groundwater samples to better characterize the degree and extent of contamination along with the associated exposure risks and to provide an adequate data base for decisions on further actions at the Site, including additional investigations. This investigation revealed the presence of hazardous substances at the Tomah Armory including trichloroethene and lead. The results of this investigation are summarized in a Phase I RI report dated December 1994. The Phase I RI report is attached to this AOC.

H. On September 30, 1988, the Wisconsin Department of Health and Human Services released a preliminary health assessment at the TA. The assessment identifies a number of potential exposure routes including ingestion, inhalation, and dermal contact with groundwater, surface water, and soils.

I. U.S. EPA has identified the City of Tomah as an operator of the facility and the Wisconsin Department of Military Affairs as the current owner of the facility.

VI. CONCLUSIONS OF LAW

Based upon information available on the effective date of this Consent Order, the Director of the Waste Management Division, Region V makes the following conclusions of law:

A. The Tomah Armory Landfill is a "Facility" as defined in Section 101(9) of CERCLA;

B. "Hazardous substances", as defined in section 101(14) of CERCLA, have been deposited, stored, disposed of, placed, or otherwise located at the Facility;

C. The Respondent is a "person" as defined in Section 101(21) of CERCLA;

D. The presence of hazardous substances at the Facility or the past, present or potential migration of hazardous substances currently located at or emanating from the Facility constitutes a "release" or substantial threat of "release", as defined in Section 101(22) of CERCLA, into the environment of a hazardous substance from or at the Facility; and,

E. The Respondent is a responsible party under sections 104, 107, and 122 of CERCLA.

F. Unless otherwise defined herein, terms used in this Consent Order shall have the meaning defined in CERCLA, the NCP or applicable U.S. EPA guidance. Unless otherwise specified, "days" shall mean calendar days.

VII. DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the Director of the Waste Management Division, Region V has determined that:

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

B. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

VIII. WORK TO BE PERFORMED

A. All work to be performed by the Respondent 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 Respondent shall notify U.S. EPA, 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, geologist, contractor and/or subcontractor shall be subject to approval by U.S. EPA. The Respondent reserves the right to replace the engineer, geologist, contractor and/or subcontractor for cause, except that any such replacement shall be subject to the notice and approval requirements of this paragraph and shall not be cause for delay of performance of work required by this Consent Order.

B. Attachment I to this Consent Order provides a Statement of Work (SOW) for continuing Remedial Investigation activities initiated by the U.S. EPA and conducting a Feasibility Study at the Tomah Armory, Tomah, Wisconsin, which is incorporated into and made a part of this Consent Order.

C. The Respondent shall perform the following work:

1. Within 60 calendar days of the effective date of this Consent Order, the Respondent shall submit to U.S. EPA and the WDNR a Work Plan for a complete RI/FS for the Facility, including a risk assessment (hereinafter, "RI/FS Work Plan"). The RI/FS Work Plan shall be developed in conformance with the attached SOW, the standards set forth in Section 121 of CERCLA, U.S. EPA guidance on remedial investigations and feasibility studies and any additional guidance documents provided by 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; (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 deliverables. The RI/FS Work Plan shall provide, at a minimum, for the submittal of preliminary and final RI Reports and preliminary and final FS Reports, to be prepared in accordance with applicable guidance.

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

4. Within 30 calendar days of receipt of the RI/FS Work Plan, the U.S. EPA Project Coordinator shall notify the Respondent, in writing, of approval or disapproval of the RI/FS Work Plan, or any part thereof. If a longer review period is required, the U.S. EPA Project Coordinator shall notify the Respondent of that fact within 30 calendar days of receipt of the Work Plan. In the event of disapproval of the RI/FS Work Plan, or any part thereof, U.S. EPA shall specify, in writing, any deficiencies and required modifications to the RI/FS Work Plan.

5. Within 30 calendar days of receipt of any U.S. EPA written disapproval of the RI/FS Work Plan, or any part thereof, the Respondent shall submit a revised RI/FS Work Plan to U.S. EPA

which incorporates U.S. EPA's comments and specified modifications.

6. In the event of subsequent U.S. EPA disapproval of the RI/FS Work Plan, or any part thereof, U.S. EPA retains the right to conduct a complete RI/FS and to enforce the terms of this Consent Order in the appropriate judicial or administrative forum.

7. The Respondent shall implement the work detailed in the RI/FS Work Plan, according to the schedule contained therein, if and when the RI/FS Work Plan is fully approved by U.S. EPA. Unless otherwise directed by U.S. EPA, the Respondent shall not commence field activities until approval by U.S. EPA of the RI/FS Work Plan. The fully approved RI/FS Work Plan shall be attached hereto as Attachment III and shall be deemed incorporated into and made an enforceable part of this Consent Order. All work shall be conducted in accordance with the National Contingency Plan, applicable RI and 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 Respondent shall provide draft and final Remedial Investigation Reports, draft and final Feasibility Study Reports, as well as any other plans or reports required by the RI/FS Work Plans, to U.S. EPA and the WDNR according to schedules contained in the RI/FS Work Plan and approved by U.S. EPA. The Feasibility

Study Report shall incorporate the Risk Assessment. The Respondent shall submit a schedule for completion of RI/FS documents within fifteen (15) days subsequent to the Respondent's receipt of U.S. EPA's comments on the existing draft RI.

B. U.S. EPA shall review, and after consultation with WDNR, shall approve, modify and approve, or disapprove, the Draft and Final Remedial Investigation Reports, the Draft and Final Feasibility Study Reports, and any other preliminary or final plans or reports specified in the RI/FS as requiring U.S. EPA approval.

C. If U.S. EPA disapproves any preliminary, draft, or final plan or report, U.S. EPA shall specify, in writing, any deficiencies in and required modifications to such plan or report. Within the time frames specified in Section VIII, Respondent shall submit a revised plan or report, which incorporates all U.S. EPA comments and modifications, to U.S. EPA and the WDNR. Subsequent revisions of any plan or report may be requested and approved by U.S. EPA, in consultation with the WDNR, without modification to this Consent Order under Article XXXI.

D. In the event of subsequent U.S. EPA disapproval of any revised plan or report, the Respondent may be deemed in violation of this Order. In such event, U.S. EPA retains the right to perform additional studies, to add written supplements to the plan or report(s), to conduct a complete or partial RI/FS and/or

to terminate this Consent Order. U.S. EPA retains the right to enforce the terms of this Consent Order in the appropriate judicial or administrative forum.

E. The Respondent shall provide monthly written progress reports to U.S. EPA and the WDNR according to the schedule contained in the RI/FS Work Plan. At a minimum, these monthly written progress reports shall include the following:

1. A description of the action which has been taken toward achieving compliance with this Consent Order.
2. All results of sampling and tests and all other data produced during the month relating to the Facility. For any available data which has not been reviewed for compliance with QAPP requirements (raw data), the raw data only shall be submitted. For any available data which has been reviewed for QAPP compliance, the reviewed data, along with supporting QA/QC documentation, shall be submitted.
3. Target and actual completion dates for each element or activity, including the project completion, an explanation of any deviation or anticipated deviation from the RI/FS Work Plan schedule, and proposed method of mitigating such deviation.
4. A description of difficulties encountered during the reporting period and the actions taken to rectify the problems.
5. Changes in key personnel.

F. The monthly written progress reports shall be submitted to U.S. EPA by the tenth (10th) calendar day of each month following the date of commencement of the work detailed in the RI/FS schedule or Work Plan.

G. Neither failure of U.S. EPA to expressly approve or disapprove of a submission by the Respondent within the specified time period nor the absence of comments shall be construed as approval of such submission by U.S. EPA

X. ADDRESSES FOR ALL CORRESPONDENCE

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

A. Documents to be submitted to U.S. EPA, including the number of copies specified by the U.S. EPA Remedial Project Manager (RPM), should be sent to:

Remedial Response Branch - Section 1 (HSR-6J)
U.S. Environmental Protection Agency, Region V
77 W. Jackson Boulevard
Chicago, IL 60604
Attn: Matt Mankowski, Remedial Project Manager
Office of Superfund
TOMAH ARMORY LANDFILL Site

In addition, two copies of all documents to be submitted to U.S. EPA should be sent to an oversight contact at WDNR to be identified by the U.S. EPA RPM within fourteen (14) days after the effective date of this Consent Order.

B. Documents to be submitted to the WDNR should be sent to:

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
Western District Headquarters
1300 West Clairemont Avenue
P.O. Box 4001

Tomah Armory AOC - 7/6/95

Eau Claire, WI 54702-4001
Attn: Wendy Anderson, Project Manager
TOMAH ARMORY LANDFILL Site

C. Documents to be submitted to the Respondent will be sent to a name and address to:

Charles R. Larsen
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

XI. ADDITIONAL WORK

A. In the event that U.S. EPA or the Respondent 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 the other party.

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

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

XII. COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Respondent pursuant to this Consent Order shall be performed in compliance with all applicable Federal, State and local laws, ordinances and regulations, including all Occupational Health and Safety Administration and Department of Transportation regulations. In the event of an inconsistency in the application of Federal, State or local laws, ordinances or regulations, the Respondent shall comply with the more/most stringent such law, ordinance or regulation, unless provided otherwise in writing by U.S. EPA. The Respondent shall be responsible for obtaining all State or local permits which are necessary for the performance of any work hereunder, except as exempted under CERCLA.

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 the Respondent, the Respondent shall obtain, or shall use their best efforts to obtain, access agreements from the present owners within thirty (30) days of approval of the RI/FS Work Plan. The Respondent's best efforts shall include, when necessary, the offer of reasonable compensation to such other parties. At a minimum, "best efforts" shall include a certified letter to the owner requesting access which includes a proposed access agreement. Such agreements shall provide access for U.S. EPA, the WDNR, and all authorized representatives of U.S. EPA and

the WDNR, as specified below, and shall be attached to this Consent Order as Attachment IV. In the event that such access agreements are not obtained within the time referenced above, the Respondent shall so notify U.S. EPA in writing. U.S. EPA reserves the right to terminate this Consent Order, and/or perform a complete or partial RI/FS and seek reimbursement from the Respondent should the Respondent's inability to gain access to the Facility or other areas materially affect the Respondent's ability to perform all the work required herein.

B. Authorized representatives of U.S. EPA and the WDNR shall be allowed access to the Facility, and to other areas where work is to be performed hereunder, by the Respondent, 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 Respondent in carrying out the terms of this Consent Order; conducting such tests, inspections, and sampling as U.S. EPA, in consultation with WDNR, may deem necessary; using a camera, sound or video recording, or other documentary type equipment; and verifying the data submitted to U.S. EPA and the WDNR by the Respondent pursuant to this Consent Order. The Respondent shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Consent Order, subject to Paragraph C of Article

XV of this Consent Order (Sampling and Data/Document Availability) regarding confidentiality. All persons with access to the Facility pursuant to this Consent Order shall comply with the health and safety plan approved by U.S. EPA.

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

XIV. PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, the Respondent shall designate a Project Coordinator, who shall have primary responsibility for implementation of all the work at the Facility. U.S. EPA has designated as its Project Coordinator the Remedial Project Manager (RPM) for the Tomah Armory Site. The U.S. EPA Project Coordinator shall be responsible for overseeing the implementation of the work. The Project Coordinators will serve as the designated representatives at the Facility for their respective parties. To the maximum extent possible, communications between the Respondent and U.S. EPA, and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

B. U.S. EPA and the Respondent shall have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing.

To the maximum extent possible, such notification shall occur at least ten (10) days prior to the change.

C. The U.S. EPA Project Coordinator shall have all the authorities vested in an On-Scene Coordinator and a Remedial Project Manager ("OSC", "RPM") by the NCP, including the authority to halt, conduct, or direct any work required by this Consent Order or any response action taken by U.S. EPA when conditions at the Facility may present an imminent and substantial endangerment to human health or welfare or the environment. The Respondent shall notify the U.S. EPA Project Coordinator immediately of any conditions at the Facility which may present an imminent and substantial endangerment to human health or welfare or to the environment. This reporting requirement is in addition to any reporting which might be required by CERCLA § 103 or the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11001 et seq. If the U.S. EPA Project Coordinator halts work pursuant to this paragraph, the Respondent may request a modification of the schedule described in the RI/FS Work Plan and this Consent Order.

D. The U.S. EPA Project Coordinator shall also have the authority to extend deadlines as required by schedules or requirements described in this Order or attachments thereto, or in schedules submitted by the Respondent and approved by U.S. EPA.

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

F. The Project Coordinator for the Respondent or his/her designee shall be on call or on-Site during all hours of work at the Facility, and during regular business hours throughout the pendency of this Consent Order. Supervisory on-Site personnel shall be designated by the Respondent during the absence of the Project Coordinator.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. The Respondent shall make the results of all sampling, tests and other data generated by or on behalf of the Respondent pursuant to implementation of this Consent Order available to U.S. EPA and the WDNR and shall submit these results in written monthly progress reports, as required by Article IX of this Consent Order (Plans and Reports).

B. At U.S. EPA's or the WDNR's request, the Respondent shall provide the Requestor with split or duplicate samples of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify U.S. EPA or the WDNR at least ten (10) business days in advance of any sample collection activity to be conducted under this Order, in accordance with the Sampling Analysis Plan unless otherwise provided in the Sampling Analysis Plan.

C. Pursuant to applicable Federal laws and regulations, (Section 104(e) of CERCLA and 40 CFR Part 2), the Respondent may

assert a confidentiality claim with respect to any or all of the information requested pursuant to the terms of this Consent Order. Such an assertion must be adequately substantiated when the assertion is made. Analytical data and other information described in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. Information determined to be confidential by U.S. EPA in accordance with applicable Federal laws and regulations will be afforded the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to U.S. EPA and the WDNR, or if information claimed as confidential is determined by the U.S. EPA not to be confidential, the information may be made available to the public by the recipient.

XVI. QUALITY ASSURANCE

A. The Respondent shall prepare preliminary and final RI/FS Quality Assurance Project Plans (QAPP)s for submittal to U.S. EPA according to the schedule established by the RI/FS SOW or as required by U.S. EPA. The Respondent shall participate in a pre-QAPP meeting for the RI/FS with U.S. EPA prior to submission of the preliminary RI/FS QAPP to discuss the contents of the RI/FS QAPP.

B. The RI/FS QAPPs shall be subject to review, approval, modification and approval, or disapproval by U.S. EPA in accordance with Article IX (Plans and Reports).

C. The Respondent shall use quality assurance, quality control and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" (May 1978, revised 1984, EPA-330/9-78-001-R), U.S. EPA "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (December, 1980, QAMS-005/80), the "Final Standard Quality Assurance Project Plan Content Document" (June 1989), and other applicable documents throughout all data collection activities.

D. The Respondent shall consult with the U.S. EPA Project Coordinator in planning for, and prior to, all sampling and analysis 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 Respondent shall:

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

2. Ensure that all sampling and analyses are performed according to U.S. EPA methods or other methods deemed satisfactory by U.S. EPA and include all protocols to be used for analyses in the Quality Assurance Project Plan; and,

3. Ensure that any laboratories utilized by the Respondent for analyses participate in a documented U.S. EPA Quality Assurance/Quality Control program equivalent to that followed by U.S. EPA and consistent with U.S. EPA guidance

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

E. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by U.S. EPA shall be admissible as evidence, without objection, in any proceeding under or concerning this Consent Order.

XVII. TIMELINESS OF PERFORMANCE

A. The Respondent shall cause all work required under this Consent Order and Attachments, including Additional Work required pursuant to Article XI and any work required pursuant to a modification to this Consent Order under Article XXXI, to be performed within the time limits set forth in this Consent Order and Attachments or modifications or in a written approval or determination of Additional Work pursuant to Article XI. C, unless performance is delayed by a force majeure. For purposes of this Consent Order, a "force majeure" is an event entirely beyond the control of the Respondent. Neither increase in costs, Respondent's inability to pay costs, nor failure of a contractor to perform constitutes a force majeure.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall

notify orally U.S. EPA's Project Coordinator or RPM or, in his or her absence, the Director of the Hazardous Waste Division, U.S. EPA Region V, within 48 hours of when the Respondent first knew or should have known that the event might cause a delay. Within five days thereafter, Respondent shall provide a written notification to U.S. EPA, describing the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delay, and the timetable by which these measures will be implemented. If the Respondent contends that a force majeure caused the delay, the Respondent shall set forth the reasons for such contention in the notification. In any administrative or judicial proceeding concerning this Consent Order, the Respondent shall have the burden of demonstrating that a force majeure caused any delay in performance.

C. If U.S. EPA determines that a delay in performance is attributable to a force majeure, U.S. EPA may, in writing, extend the time period for performance under this Consent Order for a time period not to exceed that attributable to the force majeure.

XVIII. STIPULATED PENALTIES

A. The Respondent shall be liable for payment into the Hazardous Substances Superfund administered by U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof that the Respondent fails to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable

quality, or otherwise fail to perform in accordance with the requirements contained in this Consent Order, and Attachments or modifications, unless U.S. EPA determines that such delay is attributable to a force majeure as defined in Article XVII (Timeliness of Performance) or otherwise waives the penalties. The deliverables, and the respective Stipulated Penalties which are due for failures to timely submit these deliverables, are set forth as below. For purposes of this paragraph, "timely submit" shall mean to submit pursuant to the schedule set forth in this Consent Order and any attachments, unless an extension to the schedule has been granted in writing, by the U.S. EPA Project Coordinator; in such case, the deliverable shall be submitted on or before the written extension deadline.

<u>Deliverable</u>	<u>Penalty Per Week</u>
Failure to submit a draft RI/FS, draft Alternatives Array, draft FS documents, or any draft Work Plans for above-referenced documents by the deadlines specified in this Order and Attachments.	\$1250/first week \$2500/second week or partial week thereafter
Failure to submit approvable versions of any or all of the following documents by the deadlines specified in this Order and Attachments:	\$1250/first week \$2500/second week or partial week thereafter
<ul style="list-style-type: none"> ● final RI ● final Alternatives Array ● final FS ● Pre-Design Report ● Preliminary Design ● Pre-Final Design ● Final Design ● final Work Plans for final RI, Alternatives Array, final FS or RD. 	

Late submittal of Progress Reports,	\$ 500/first week
Proposed RI schedule, or	\$1000/second week
RI/FS-related submittals required	or partial week
under this Consent Order by U.S. EPA.	thereafter

Stipulated penalties shall begin to accrue on the day after performance is due or on the day that a violation occurs and extend through the period of correction. Such sums shall be due and payable within fifteen (15) days of receipt of notification from U.S. EPA assessing the penalties. Payment shall be made in the manner described in Article XXIV below (Reimbursement of Costs).

B. The stipulated penalties set forth in paragraph A of this section shall not preclude U.S. EPA from electing to pursue any other remedy or sanction because of the Respondent's 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 U.S. EPA from seeking statutory penalties up to the amount authorized by law if Respondent fail to comply with any requirements of the Consent Order.

XIX. DISPUTE RESOLUTION

A. The parties shall use their best efforts to resolve all disputes or differences of opinion arising with regard to this Consent Order informally and in good faith. The resolution of any dispute regarding this Consent Order must be in writing and signed by U.S. EPA.

B. If a dispute arises concerning implementation of the work required of the Respondent under this Consent Order, which the parties are unable to resolve informally, the parties shall implement the following procedures:

1. The Respondent shall present a written notice of such dispute to U.S. EPA. Such notice shall set forth the specific points of dispute, the position of the Respondent and the technical basis therefor, and any actions which the Respondent consider necessary to resolve the dispute;
2. Within ten (10) days of receipt of such a written notice, U.S. EPA shall provide a written response to the Respondent setting forth its respective positions and the basis therefor. During the five (5) business days following receipt of U.S. EPA's response, the parties shall attempt to negotiate, in good faith, a resolution of their differences; and,
3. Following the expiration of the time periods described in Subparagraph 2 above, if U.S. EPA concurs with the position of the Respondent, U.S. EPA shall so notify the Respondent in writing and the parties shall modify this Consent Order pursuant to Article XXXI to include any necessary extensions of time or variances of work. If U.S. EPA does not concur with the position of the Respondent, the Director of the Waste Management

Division, U.S. EPA, Region 5 shall resolve the dispute, based upon and consistent with the terms and objectives of the Consent Order, and shall provide written notification of such resolution to the Respondent.

C. The pendency of dispute resolution set forth in this Article 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 U.S. EPA and the Respondent, any time period may be extended not to exceed the actual time taken to resolve the dispute. 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.

D. Upon written resolution of any dispute, whether informally or using the procedures in this Article, any additions or modifications required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure and into this Consent Order. The Respondent shall proceed with all remaining work according to the modified plan or procedure and this Consent Order.

E. In any administrative or judicial proceeding concerning this Consent Order, the party disputing U.S. EPA's position shall have the burden of proving that U.S. EPA's position is arbitrary and capricious or inconsistent with this Consent Order.

XX. COMMUNITY RELATIONS

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

XXI. RECORD PRESERVATION

The Respondent shall preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after termination of this Consent Order, all records and documents in the possession of the Respondent, or in the possession of any division, employees, agents, accountants, contractors, or attorneys of the Respondent, which relate in any way to the Facility, whether or not prepared pursuant to the Consent Order and despite any document retention policy to the contrary. After this ten year period, the Respondent shall notify U.S. EPA in writing within sixty (60) days prior to destruction or disposal of any such documents. Upon request of U.S. EPA, the Respondent shall make available to the Requestor all or any such records, or copies of all or any such records, subject to Paragraph C of Article XV of the Consent Order (Sampling and Data/Document Availability).

XXII. WAIVER OF CLAIMS

A. The Respondent hereby waives any claims or demands for compensation or payment under existing Sections 106, 111 and 112 of CERCLA against the United States or the Hazardous Substances Superfund established by Section 9507 of Title 26 of the United States Code for or arising out of any activity performed or expenses incurred in performing the activities required by this Consent Order.

B. This Consent Order does not constitute, and shall not be construed to constitute, approval or certification of response costs for purposes of Section 111(a)(2) of CERCLA.

XXIII. RESERVATION OF RIGHTS

A. U.S. EPA reserves all rights and defenses that it may have individually or collectively pursuant to any available legal authority, except as expressly waived herein.

B. Nothing herein shall waive the right of U.S. EPA to enforce this Consent Order, or the right of U.S. EPA to take action pursuant to Sections 104, 106(a) and 107 of CERCLA or any other available legal authority. U.S. EPA also reserves the right to take any enforcement action pursuant to CERCLA and/or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages. In addition, U.S. EPA reserves the right to undertake any RI/FS work, and/or any removal, remedial and/or response actions relating to the Facility, and to seek recovery from the

Respondent for any and all costs incurred in undertaking such actions.

C. 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 may 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.

D. U.S. EPA recognizes that the Respondent may have the right to seek contribution, indemnity and/or any other available remedy against any person not a party to this Consent Order found to be responsible or liable for contributions, indemnity or otherwise for any amounts which have been or will be expended by the Respondent in connection with the Facility.

E. Nothing herein shall be construed to release the Respondent from any liability for failure of the Respondent to perform the RI/FS in accordance with this Consent Order and Attachments hereto and incorporated herein. The parties further

expressly recognize that, except as provided in Article XXVIII, 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 against the Respondent relating to the Facility, including, but not limited to, claims to require Respondent to undertake further response actions, claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA and claims for damages to natural resources under Section 107 of CERCLA, except that, upon receipt of written notice of satisfaction as provided in Article XXXII (Termination and Satisfaction) of this Consent Order, Respondent shall have no further obligations under this Consent Order other than record preservation under Article XXI.

F. Nothing herein is intended to be a release or settlement of any claim for personal injury or property damage by any person not a party to this Consent Order against the Respondent.

XXIV. REIMBURSEMENT OF COSTS

A. Within 30 days of the effective date of this Consent Order, Respondent shall pay to the United States \$61,683.52, in reimbursement of Past Response Costs. Past Response Costs shall mean all costs, including, but not limited to, all direct and indirect costs, incurred and paid by U.S. EPA with respect to the Facility prior to the effective date of this Consent Order. Payment shall be made in the manner described in Article XXIV.C, below.

B. At the end of each twelve (12) month period beginning with the effective date of the Consent Order, U.S. EPA will provide the Respondent with a bill and Itemized Cost Summary for all Oversight Costs incurred and paid by U.S. EPA during such 12-month period. Oversight Costs shall include all Response Costs incurred by U.S. EPA prior to the effective date of this Order, but paid after the effective date of this Order with regard to this Site; and all costs including, but not limited to, direct and indirect costs that U.S. EPA incurs in reviewing or developing plans, reports or other items pursuant to this Order, in having the Wisconsin Department of Natural Resources (contracted for by Respondent) oversee the conduct of this RI/FS pursuant to Section 104(a) of CERCLA, and all other costs incurred by U.S. EPA in implementing, overseeing or enforcing this Order. Within thirty (30) days of receipt of any such bill and Itemized Cost Summary, the Respondent shall pay the total sum of Oversight Costs billed for such twelve month period. Failure of U.S. EPA to submit any such bill for Payment of Costs within the period specified shall not waive the Respondent's liability for any such oversight costs.

C. Payment to U.S. EPA for response and oversight costs incurred by U.S. EPA shall be made by check or money order payable to the order of the Hazardous Substances Superfund and shall reference the Facility name, as well as the following identification number: 6D. Such payment shall be remitted to:

Tomah Armory AOC - 7/6/95

U.S. Environmental Protection Agency, Region V
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Copies of the transmittal letter and check for each payment to U.S. EPA shall be provided at the time of such payment to U.S. EPA Project Coordinator and to: U.S. EPA, Region V, Office of Regional Counsel, CS-29A, 200 W. Adams, Chicago, IL 60606, attn: SWER Branch Secretary.

D. Nothing in this Consent Order waives, or shall be construed to waive, the right of the United States to bring an action against the Respondent for recovery of any future costs incurred by the United States in connection with any response activities conducted or to be conducted at the Facility, other than those response activities completed pursuant to this Consent Order to the satisfaction and approval of U.S. EPA, in consultation with the WDNR.

E. The Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. The Respondent shall pay a sum equivalent to that of the disputed costs into an escrow account pending the resolution of the dispute. In any judicial or administrative proceedings concerning disputed costs, the Respondent shall bear the burden of establishing that costs assessed by the United States are attributable to an accounting error or include costs outside the scope of this Consent Order. Interest shall begin to accrue on the unpaid balance of disputed

costs found to be payable on the day following the date the payment was originally due. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing.

XXV. INDEMNIFICATION OF THE UNITED STATES

A. The Respondent agrees to indemnify and save and hold the United States Government and its officers, agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order, for which Respondent is legally liable and for which it is therefore legally responsible to pay pursuant to Sections 775.01, 893.82, and 895.46, Wisconsin Statutes.

B. U.S. EPA is not a party to any contract involving the Respondent at the Facility.

XXVI. NOTIFICATION OF OUT-OF-STATE SHIPMENTS

As soon as possible after the identification of any location outside Wisconsin to which a shipment of hazardous substances of greater than ten (10) cubic yards from the Facility is expected to be made and, in all cases, prior to any such shipment, the Respondent shall provide written notification of such shipment to the appropriate environmental official of the State receiving the substances and to the U.S. EPA Project Coordinator. The

notification shall include, at a minimum: 1) the name and location of the facility to which the hazardous substances are being shipped; 2) the type and quantity of the hazardous substances being shipped, including the Department of Transportation shipping code, if any; 3) the schedule for shipment of the hazardous substances; 4) the method of transportation; and 5) any other relevant information, including any special procedures necessary to respond to an accidental release of the substances during transportation. The Respondent shall promptly notify the official of the receiving State and U.S. EPA and the WDNR in writing of any changes to the shipment plan.

XXVII. FINANCIAL ASSURANCE AND LIABILITY INSURANCE

A. Prior to the effective date of this Consent Order, Respondent provided U.S. EPA with information regarding its financial resources and its ability to finance the work and any other obligations required under this Consent Order. U.S. EPA has reviewed this information and is satisfied that Respondent has sufficient financial resources to assure that it can and shall timely complete all the work.

B. Prior to the effective date of this Consent Order, Respondent provided EPA with information that satisfies EPA as to its financial resources and its ability to provide the equivalent of comprehensive general liability insurance with limits of \$1 million per occurrence with an annual aggregate of \$4 million.

C. For the duration of this Order, the Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Order.

D. At least 7 days prior to a contractor commencing any work under this Consent Order, the Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

XXVIII. COVENANT NOT TO SUE

In consideration of the payment that Respondent will make under the terms of this Consent Order, U.S. EPA covenants not to sue or take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Past Response Costs incurred by U.S. EPA, as defined in Article XXIV.A, above. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payment required by Article XXIV.A.

XXIX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Consent Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and

9622(h)(4). Nothing in this Consent Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Consent Order for indemnification, contribution, or cost recovery.

XXX. EFFECTIVE DATE OF CONSENT ORDER

This Consent Order shall become effective upon the date of signature by the Director of the Waste Management Division, U.S. EPA, Region V.

XXXI. MODIFICATION OF CONSENT ORDER

In addition to the procedures set forth in Articles XI (Additional Work), XIV (Project Coordinators), XVII (Timeliness of Performance), and XIX (Dispute Resolution) of this Consent Order, this Consent Order may be modified by mutual agreement of U.S. EPA and the Respondent. Any modification of this Consent Order shall be in writing, signed by U.S. EPA, and shall have as the effective date that date on which such amendment is signed by U.S. EPA.

XXXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon receipt by the Respondent of written notice from U.S. EPA that the Respondent have demonstrated that all of the terms of this Consent Order, including any additional work, modifications or amendments but excluding record preservation pursuant to Article XXI, have been completed in accordance with the terms hereof to the satisfaction of U.S. EPA.

XXXIII. PRECEDENCE OF CONSENT ORDER

A. In the event that a conflict arises among the terms and conditions of this Consent Order and those of the Statement of Work, the Approved RI Work Plan and/or the approved FS Work Plan, this Consent Order shall govern and the terms and conditions hereunder shall determine the parties' rights and responsibilities.

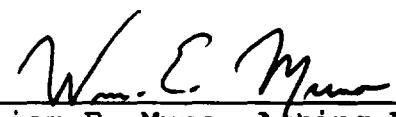
B. In any proceedings other than those to enforce the terms of this Consent Order, nothing contained herein shall be construed as an admission of liability, either of law or of fact.

IT IS SO AGREED:

BY: 
Name

7/14/95
Date

Assistant Attorney General
Title
State of Wisconsin

BY: 
William E. Muno, Acting Director
Waste Management Division
U.S. EPA, Region 5

7/17/95
Date