

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

EPA Region 5 Records Ctr.



279583

IN THE MATTER OF:)

MARINA CLIFFS/NORTHWESTERN)
BARREL SITE, SOUTH MILWAUKEE,)
WISCONSIN)

Docket No. V-W- '01 -C-630

Respondents:)

Listed in Attachment A)

ADMINISTRATIVE ORDER BY
CONSENT PURSUANT TO SECTIONS
106 AND 122 OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT OF 1980, as amended,
42 U.S.C. §§ 9606 and 122

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Numbers 14-14-A, 14-14-C and 14-14-d, and to the Director, Superfund Division, Region 5, by Regional Delegation Numbers 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions described in Section VI of this Order (the "Work") and for reimbursement of response costs incurred by the United States in connection with property located in South Milwaukee, Wisconsin (the "Marina Cliffs Facility"). The Order requires certain Respondents (the "Performing Respondents") to conduct the Work to abate the potential of an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site. This Order also resolves the potential liability for Facility response actions of the de minimis Settling Respondents ("De Minimis Respondents"), the Federal De Minimis Respondent, and the Performing Respondents, subject to the limitations and reservations in Sections XIV and XVI.

A copy of this Order will be provided to the State of Wisconsin, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondents' participation in this Order shall not constitute an admission of liability; a waiver of any rights, defenses, legal arguments or otherwise, except as specifically set forth herein; or an admission of the accuracy of U.S. EPA's findings or determinations contained in this Order, except in a proceeding by U.S. EPA (or the United States on behalf of U.S. EPA) to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon each Respondent and each Respondent's heirs, receivers, trustees, successors or assigns. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Except as expressly provided, Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Performing Respondents shall each ensure that their contractors, subcontractors, and representatives comply with this Order. Performing Respondents shall each be responsible for any noncompliance with the Work provisions of this Order.

III. DEFINITIONS

Terms used in this Order that are defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings provided therein. For purposes of this Order:

"Marina Cliffs Site" or "Site" shall mean the Marina Cliffs/Northwestern Barrel Site, encompassing approximately 13 acres of vacant land along Lake Michigan and being a portion of Parcel 4 of CSM No. 1954, located in South Milwaukee, Wisconsin, and more particularly described in Attachment B (Legal Description).

"Marina Cliffs Facility" shall mean the Site and any other adjacent or adjoining properties or locations at which hazardous substances related to the Site, or to the operations conducted at the Site, have come to be located.

"Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order and all costs incurred in connection with developing this Order after the date set forth in the definition of Past Response Costs. "Oversight Costs" shall also include all costs that the United States incurs in implementing, overseeing, or enforcing this Order,

including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to the Site including any just compensation, any payments to the State through a cooperative agreement, and Interest on all such costs.

“Past Response Costs” shall mean all costs that the U.S. EPA has incurred and paid through March 31, 2000 for the Site.

“Parties” shall mean the signatories to this Order.

“Performing Respondents” shall mean those persons or entities listed as Performing Respondents in Attachment A.

“De Minimis Respondents” shall mean those persons or entities listed as De Minimis Respondents in Attachment A.

“Federal De Minimis Respondent” shall mean the U.S. Department of Defense and Department of the Army.

“Respondents” shall mean “Performing Respondents,” “Federal De Minimis Respondent” and “De Minimis Respondents”.

“Work” shall mean all activities Performing Respondents are required to perform under this Order.

IV. FINDINGS OF FACT

Based upon available information, including the Administrative Record in this matter, U.S. EPA finds, and for purposes of establishing jurisdiction and enforceability of this Order only, Respondents stipulate that the factual statutory prerequisites necessary for issuance of this Order under CERCLA have been met. The Findings of Fact of the 1995 and 1998 Unilateral Administrative Orders (Order Nos. V-W-95-C-313 and V-W-98-C-486) are hereby incorporated and made a part of this Order, and U.S. EPA further finds as follows:

1. The Marina Cliffs Site is the location of a former barrel reconditioning facility and is located on a parcel of land on the shoreline bluffs of Lake Michigan in the City of South Milwaukee, Milwaukee County, Wisconsin. The bluffs rise approximately 50 to 60 feet above the sand beach of Lake Michigan. The Site is bordered on the west by private residential properties on 5th Avenue and on the east by Lake Michigan. The southern boundary is an easement located just north of a roadway that ends in a lakeside dock. The northern boundary is bordered by the City of South Milwaukee Waste Water Treatment Plant. The area around the Site includes residential and industrial properties. A water intake for the municipal water treatment plant is approximately a mile northeast of the Site.

2. Prior to 1941, the Site had been operated as a leather treatment/tanning facility by the Pfister & Vogel Leather Company. In 1941, the Northwestern Barrel Company acquired title to the Site, and commenced barrel recycling and reconditioning activities at that time. The Northwestern Barrel Company operated on the Site from approximately 1941 to the mid 1960s. Its operations included the on-site handling, washing, and refurbishing of steel drums and wooden barrels.
3. In 1988, the U.S. EPA conducted a Site Inspection ("SI"), giving the Site a high priority designation. Elevated concentrations of polychlorinated biphenyls ("PCBs"), chromium, volatile organic compounds, and lead were present in soil samples taken at certain locations. Low levels of chlorinated hydrocarbons and heavy metals were quantified in certain surface water samples.
4. In 1990 and 1991, the current owner, Towne Realty, arranged for a partial removal action. It excavated a pit area and disposed of the contents in one hundred five (105) 55-gallon drums. Towne Realty also disposed of one hundred forty seven (147) 30-gallon burnable barrels and twenty-four (24) cubic yards of crushed empty drums.
5. The heavily wooded ravine and lake bluff areas of the Site contained 55-gallon barrels/drums or other various sized containers that appeared to be either filled, partially filled, or empty of potentially hazardous materials. In addition to the containers, waste piles, disposal areas of debris, cinders, and suspected waste paint materials were evident along the slopes of the ravine. Containers were exposed or partially exposed along the lake bluff and slopes of the ravine. Further releases may have occurred from the original disposal areas at the Site.
6. Storm water runoff travels through the bottom of the ravine bordering the Site on the north and empties into Lake Michigan. Two pits on the Site were fenced and contained a dark, oily sludge-like material. Sample collection and analysis revealed levels of lead, chromium and PCBs above U.S. EPA removal action criteria in soils and waste materials within the ravine, lake bluff and pit areas.
7. On October 3, 1995, pursuant to Section 106 of CERCLA, U.S. EPA issued a Unilateral Administrative Order No. V-W-95-C-313 ("1995 UAO") and notified certain persons and entities, including certain of the Respondents, that they were potentially responsible parties ("PRPs") and required the performance of certain work to abate releases or threatened releases of hazardous substances at the Site. The 1995 UAO directed the Respondents and certain other parties to conduct removal actions in two stages: time-critical and non-time-critical response actions. A time-critical action was to be conducted to address two pit areas and a depressed area located at the southeast corner of the Site. The remainder of the Site and any additional work to be conducted at the pits and depressed area were to be identified and addressed through non-time-critical actions after completion of an Engineering Evaluation/Cost Analysis ("EE/CA") Report and associated Action Memorandum to be issued after completion of the approved EE/CA Report.

8. Beginning in 1997, the 1995 UAO respondents, with U.S. EPA oversight, excavated, stockpiled and disposed of approximately 5,000 yards of pit material and disposed of approximately 27,000 gallons of wastewater. The UAO respondents constructed a perimeter fence to restrict access to the working and highly contaminated areas, and posted warning signs along the perimeter fence and the Lake Michigan beachfront.
9. In the second phase of the time-critical removal work, during the summer of 1997, the 1995 UAO respondents solidified/stabilized and disposed of waste materials from the pit areas and depressed area, totalling approximately 55,000 gallons of wastewater, 7,500 tons of stabilized waste materials, and 750 tons of untreated waste materials. All remaining obligations of the Respondents under the 1995 UAO are incorporated into this Order, and when this Order takes effect, the Respondents shall have no further obligations under the 1995 UAO independent of the incorporation of the 1995 UAO into this Order.
10. On October 14-17, 1997, U.S. EPA's OSC, accompanied by a Wisconsin Department of Natural Resources ("WDNR") representative, performed a removal site assessment of the lake bluff and ravine areas. A Preliminary Ecological Assessment, which consisted of reviewing existing data, was conducted by a United States Fish and Wildlife Service biologist. The ravine and lake bluff areas were further evaluated for removal activities because of the eroding nature of side slopes and the actual and potential release of Site contaminants. Contaminants at varying levels were discovered to be present in the ravine and lake bluff areas as part of the October 17, 1997, site assessment.
11. As a result of the removal site assessment and based on initial EE/CA investigations, U.S. EPA determined that regardless of which final non-time critical removal actions would be required for the ravine and lake bluff areas, those actions would include excavation, appropriate treatment, and disposal of the containers, barrels, debris and contaminated soil observed in those areas.
12. On July 20, 1998, U.S. EPA issued a second UAO, No. V-W-98-C-486, ("1998 UAO") to certain PRPs for time critical removal actions in the ravine and lake bluff areas, as well as the upland area where the excavated materials would be staged. The removal action work pursuant to the 1998 UAO began in July 1998 and involved the excavation, removal and off-site disposal of more than 170,000 tons of material containing hazardous substances and debris from the Site. Also included was the disposal of wastewaters generated during the removal action and verification sampling. The removal actions required by this 1998 UAO will be completed in 2000.
13. EE/CA work has been proceeding under the 1995 UAO. The Performing Respondents have been developing a site specific risk assessment, and developing and assessing the need for additional possible removal alternatives for groundwater and soil contamination at the Site. The remaining EE/CA tasks are described in the Work Plan appended as Attachment C to this Order.

14. As described above, hazardous substances have been or are threatened to be released at or from the Site.

15. As described above, as a result of the release or threatened release of hazardous substances, U.S. EPA and Performing Respondents have undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

16. In performing these response actions, U.S. EPA and the Performing Respondents have incurred and will continue to incur response costs at or in connection with the Facility. To date those response costs exceed \$10,000,000. U.S. EPA's costs through March 31, 2000, totaled approximately \$1,235,223.

17. U.S. EPA has determined that each Respondent listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.

18. U.S. EPA has determined that the amount of hazardous substances contributed to the Site by each De Minimis Respondent and Federal De Minimis Respondent does not exceed 75,000 pounds of materials containing hazardous substances, and the hazardous substances contributed by each De Minimis Respondent and Federal De Minimis Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. The estimated amount of hazardous substances contributed to the Site by each Respondent is indicated in Attachment A.

19. U.S. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the U.S. EPA Hazardous Substance Superfund and by private parties is approximately \$13,000,000. The parties recognize that the actual costs may be more or less than this estimate. The payment required to be made by each De Minimis Respondent and Federal De Minimis Respondent pursuant to this Order is a minor portion of the total response costs at or in connection with the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. Facility. The Marina Cliffs Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

2. **Hazardous Substances.** The substances noted above are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. **Persons.** Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. **Release.** The conditions described in the Findings of Fact set forth above do for purposes of this Order constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601 (8) and (22).
5. **Threat.** The conditions described in the Findings of Fact set forth above do for purposes of this Order define a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2).
6. **Endangerment.** The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).
7. **Work.** Based upon the foregoing Findings of Fact, the U.S. EPA, as lead agency, and considering, among other factors, the factors set forth in 40 C.F.R. Section 300.415(b)(2), has determined that the work conducted or to be conducted pursuant to the 1995 and 1998 UAOs and this Order ("the Work") is necessary and appropriate to prevent, minimize and mitigate the release or threatened release of hazardous substances from the Site. The U.S. EPA has determined pursuant to 40 C.F.R. Section 300.415(a)(2) that Performing Respondents can perform the Work promptly and properly.
8. **Consistent with NCP.** The Work required by the 1995 UAO, the 1998 UAO and this Order, if properly performed, is consistent with the CERCLA National Oil and Hazardous Substances Pollution Contingency Plan, or "NCP." The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.
9. **De Minimis Parties.** Prompt settlement with each De Minimis Respondent and Federal De Minimis Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1). As to each De Minimis Respondent and Federal De Minimis Respondent, this Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1). The amount of hazardous substances contributed to the Site by each De Minimis Respondent and Federal De Minimis Respondent, and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Respondent and Federal De Minimis Respondent, are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Performing Respondents shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order.

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator.

Performing Respondents have retained Conestoga-Rovers & Associates to implement the Work. Performing Respondents shall also notify the U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform Work under this Order at least 5 business days prior to commencement of Work by any such contractor or subcontractor. U.S. EPA retains the right to disapprove of the the contractors and/or subcontractors retained by the Performing Respondents. If U.S. EPA disapproves a selected contractor, Performing Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within five (5) business days prior to the performance of any Work by said contractor.

Mark Jeffrey of Conestoga-Rovers & Associates shall serve as Project Coordinator and shall be responsible for the administration of Performing Respondents' actions required by this Order. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during Site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Performing Respondents. If U.S. EPA disapproves of a selected Project Coordinator, Performing Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name and qualifications within five (5) business days of U.S. EPA's disapproval. Receipt by Performing Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Michael Ribordy of the Superfund Division, Region 5, as its On-Scene Coordinator ("OSC"). Performing Respondents shall direct two copies of all notices and submissions required by this Order to the OSC at 77 West Jackson Boulevard, SR-5J, Chicago, Illinois, 60604-3590, by certified or express mail. Performing Respondents shall also send a copy of all submissions to Thomas Krueger, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Performing Respondents shall have the right, subject to the immediately preceding paragraphs, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Performing Respondents, and Performing Respondents 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. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

Performing Respondents shall perform, at a minimum, the following removal actions consistent with the attached EE/CA Work Plan and any subsequent Work Plans or Supplemental Work Plans to be developed pursuant to this Order:

- a. Conduct final soil borings and installation and sampling of groundwater monitoring wells to perform the EE/CA;
- b. Implement the Site Health and Safety Plan developed pursuant to the 1995 UAO and submitted to U.S. EPA, and all additional necessary revisions, including the continued maintenance of Site security to restrict Site access;
- c. Develop and submit to U.S. EPA an EE/CA report consistent with the EE/CA Work Plan, this Order and the 1995 UAO;
- d. Implement an approved Wetlands Restoration Work Plan as described in the EE/CA Work Plan and approved by U.S. EPA following issuance of the Action Memorandum;
- e. Implement all response actions selected by any Action Memorandum to be issued by U.S. EPA for the Site after completion of the EE/CA report.
- f. Perform an additional Site risk assessment as required to complete an approved EE/CA Report.
- g. Perform any additional work required under Paragraph 2.6.

2.1 Work Plan and Implementation. Performing Respondents shall implement the EE/CA Work Plan appended as Attachment C to this Order in accordance with the schedule provided therein. The EE/CA Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Performing Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-Site Work pursuant to this Order. Performing Respondents shall not commence or undertake any Work at the Site without prior U.S. EPA approval.

Performing Respondents shall develop and submit to U.S. EPA an EE/CA Report in accordance with the EE/CA Work Plan. The EE/CA Report shall be consistent with, at a minimum, U.S. EPA guidance entitled, "Guidance on Conducting Non-Time Critical Removal Actions under CERCLA", dated August 1993. The EE/CA Report shall take into consideration all work done pursuant to the 1995 and 1998 UAOs, including all data generated up to the date of the EE/CA Report.

Upon completion of an approved EE/CA, U.S. EPA will issue an Action Memorandum selecting the appropriate removal actions to be conducted for the Site. Within 90 days after U.S. EPA issues this Action Memorandum, Performing Respondents shall submit a draft Supplemental Work Plan for performance of the selected removal actions. Performing Respondents shall include in the draft Supplemental Work Plan the following project plans: (1) a support sampling plan; (2) a quality assurance project plan for any data gathering required to complete the Work; (3) the Wetlands Restoration Plan; and (4) a schedule for implementation of the Work. To the extent appropriate, the Supplemental Work Plan may rely on and incorporate elements of the Work Plan. The draft Supplemental Work Plan shall provide a description of, and an expeditious schedule for, the actions required by the Action Memorandum. The draft Supplemental Work Plan shall also include cleanup standards and performance standards at all points of compliance appropriate to a residential removal action, including all such standards identified in the Action Memorandum.

Performing Respondents shall perform the Work in conformance with the standards set forth in Section 121 of CERCLA, the NCP, U.S. EPA guidance on engineering evaluations/cost analyses, non-time critical removal actions, any additional applicable guidance documents provided by U.S. EPA prior to the start of the implementation of any phase of the Work, and the requirements of this Order, including the standards, specifications and schedule contained in the Work Plan and the approved Supplemental Work Plan.

2.2 Submittals. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Supplemental Work Plan and any other Plans and the EE/CA Report submitted pursuant to this Order. If U.S. EPA requires revisions, Performing Respondents shall submit a revised draft Plan within seven business days of receipt of U.S. EPA's notification of required revisions. Subject to the conditions set forth in the notice of approval, the Performing Respondents shall implement the approved Plan, according to the schedule contained therein. If a new or modified guidance document adversely affects the schedule, Performing Respondents may propose such extension as U.S. EPA determines may be necessary to conform the Work to such guidance.

2.3 Health and Safety Plan. The Work Plan incorporates a plan prepared by the Performing Respondents that ensures the protection of the public health and safety during performance of on-Site Work under this Order. This plan complies with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. Performing Respondents shall incorporate all changes to the plan recommended by U.S. EPA, unless it invokes the dispute resolution provisions of Section VIII herein to challenge any such recommended changes, and shall implement the plan during the pendency of the Work.

2.4 Quality Assurance and Sampling. All sampling and analysis performed pursuant to this Order shall conform to U.S. EPA direction, approval and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. These procedures shall be consistent with "EPA Requirements for Quality Assurance Project

Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by U.S. EPA to Performing Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Performing Respondents shall ensure that the laboratory used to perform the analysis participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Performing Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Performing Respondents shall provide to U.S. EPA the procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Performing Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Performing Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Performing Respondents or their contractors or agents while performing Work under this Order. Performing Respondents shall notify U.S. EPA not less than three business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary. Performing Respondents shall ensure that U.S. EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Respondents in implementing this Order. Performing Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order perform all analyses consistent with accepted U.S. EPA methods. Accepted U.S. EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated September, 1999 and February, 2000, respectively, and any amendments made thereto during the course of the implementation of this Order.

2.5 Post-Removal Site Control. In accordance with the Work Plan, the Performing Respondents, to the extent practicable, shall make any necessary provisions for post-removal Site control, consistent with Section 300.415(1) of the NCP, 40 C.F.R. § 300.415(1), and OSWER Directive 9360.2-02. Performing Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal Site control arrangements.

2.6 Additional Work. Performing Respondents agree to perform any additional response actions at the Site determined by U.S. EPA to be necessary based on the EE/CA Report as documented in the Action Memorandum, or on additional information developed by U.S. EPA. The response actions, if any, shall be implemented in accordance with a Supplemental Work Plan submitted by Performing Respondents and approved by U.S. EPA pursuant to Section 2.2 of this Order. Performing Respondents shall submit such a Supplemental Work Plan within 60 days after receiving a written request from U.S. EPA. U.S. EPA may require additional Work under this Order if: (1) that Work is consistent with the Scope of response actions selected in an Action

Memorandum issued for the Site; (2) that Work is not included in an approved Work Plan or Supplemental Work Plan but U.S. EPA determines such Work is necessary to protect public health, welfare or the environment; or (3) U.S. EPA determines that the Work as implemented has not or will not meet applicable cleanup standards or performance standards set forth in the relevant approved Supplemental Work Plan. If Performing Respondents object to U.S. EPA's determination that additional Work is required under this Paragraph, Performing Respondents may invoke dispute resolution pursuant to Section VIII (Dispute Resolution).

2.7 Reporting. Performing Respondents shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order and until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the Work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the state shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

2.8 Final Report. Within 120 calendar days after completion of all Work required under this Order, the Performing Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 C.F.R. § 300.165, and the "Superfund Removal Procedures -- Removal Response Reporting: POLREPs and OSC Reports" (EPA-540/R-94/023). The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analysis performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information.

Performing Respondents shall exercise their best efforts to provide or obtain access to the Site and off-Site areas to which access is necessary to implement this Order. To the extent obtained, such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and WDNR representatives, who shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which U.S. EPA determines to be necessary. Performing Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Performing Respondents or their contractors, or on the Performing Respondents' behalf during implementation of this Order and shall provide to U.S. EPA, upon request, access to all non-privileged records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. This access to information may be limited by and subject to the joint defense privilege, attorney-client privilege and attorney work product doctrine. Regardless of any such claim of privilege, Performing Respondents shall provide to U.S. EPA all sampling data developed pursuant to the requirements of this Order.

Where Work under this Order is to be performed in areas owned by or in possession of someone other than Performing Respondents, Performing Respondents shall use their best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Performing Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Performing Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Performing Respondents in gaining access, to the extent necessary to effectuate the Work described herein, using such means as U.S. EPA deems appropriate. Performing Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access. All persons granted access to the Site pursuant to this Order shall, as appropriate, be subject to the requirements of the Health and Safety Plan.

4. Record Retention, Documentation, Availability of Information

Performing Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following receipt of the Certificate of Completion pursuant to Section XVIII below. At the end of this six-year period and at least 60 days before any document or information is destroyed, Performing Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Performing Respondents shall provide documents and information retained under this Section at any time before expiration of the six-year period at the written request of U.S. EPA. This access to information may be limited by and subject to the joint defense privilege, attorney-client privilege and attorney work product

doctrine. Regardless of any such claim of privilege, Performing Respondents shall provide to U.S. EPA all sampling data developed pursuant to the requirements of this Order.

5. Off-Site Shipments.

All hazardous substances removed off-Site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility or facilities in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 C.F.R. § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

6. Compliance with Other Laws.

Performing Respondents shall perform all Work required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. §9621(e), and 40 C.F.R. §300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site Work required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, be performed in accordance with applicable or relevant and appropriate requirements under federal environmental or facility siting laws and regulations.

7. Emergency Response and Notification of Releases.

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Performing Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Performing Respondents shall also immediately notify the OSC or, in the event of his or her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Performing Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with any such response.

Performing Respondents shall submit a written report to U.S. EPA within seven business days after each release under the preceding paragraph, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. Performing Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

Nothing in the preceding Paragraphs or in this Order shall be deemed to limit any authority of the U.S. EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances

on, at, or from the Site, or (b) to direct or order or pursue such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, subject to Section XIV (Covenants Not to Sue by the United States).

VII. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 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 Performing Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

VIII. PAYMENT OF COSTS

Prior to or no later than 30 days after the effective date of this Order, De Minimis Respondents shall pay the amounts specified in Attachment A into the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund established by the Performing Respondents as a vehicle to help fund performance of the remaining response actions at the Marina Cliffs Facility. To the extent De Minimis Respondents have already paid the amounts specified in Attachment A into the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund, no further payment is required from those parties for their participation in this Order. The Performing Respondents remain jointly and severally liable to perform their obligations under this Order regardless of the level of funding in the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund.

As soon as reasonably practicable after the effective date of this Order, the United States on behalf of the Federal De Minimis Respondent shall pay the amount specified in Attachment A into the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund. If the Federal De Minimis Respondent does not make the payment required by this paragraph as soon as reasonably practicable, the appropriate U.S. EPA Regional Branch Chief may raise any issues relating to payment to the appropriate Department of Justice Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Order, U.S. EPA and the Department of Justice have agreed to resolve this issue within an additional 30 days. In the event this payment required by this paragraph is not made within 30 days after the effective date of this Order, the United States on behalf of the Federal De Minimis Respondent shall pay to the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the 30th day following the effective date of this Order. The parties to this Order recognize and acknowledge that the payment obligations of the Federal De Minimis Respondent under this Order can only be paid from appropriated funds legally available for such purpose. Nothing in

this Order shall be interpreted or construed as a commitment or requirement that the Federal De Minimis Respondent obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

No later than 30 days after the effective date of this Order, Performing Respondents shall pay into a special account within the U.S. EPA Hazardous Substances Superfund the lesser of: (1) 10% of the total payments listed in Attachment A for all settling De Minimis Respondents; or (2) all payments made into the Northwestern Barrel/Marina Cliffs Environmental Remediation Trust Fund by De Minimis Respondents who had not made any such payments prior to the effective date of this Order. Funds in the Special Account shall be used to pay for future off-Site response actions at the Facility and for U.S. EPA's unreimbursed response costs at the Facility, as deemed appropriate by U.S. EPA.

Performing Respondents shall pay Oversight Costs to be incurred and paid by the United States related to the Site that are not inconsistent with the NCP, in the manner described below. U.S. EPA will send Performing Respondents a bill for "Oversight Costs" on an annual basis. Any failure by U.S. EPA to provide these bills on an annual basis shall not provide a defense to Performing Respondents' Oversight Cost payment obligations.

Performing Respondents shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill, made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting and Analysis Section
P. O. Box 70753
Chicago, Illinois 60673

Performing Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604-3590. Such payments shall be designated as "Response Costs - Marina Cliffs Site" and shall reference the name of the trust established by the Performing Respondents for payment of costs related to the Site (or individual Performing Respondents' names if appropriate), the U.S. EPA site identification number (#PO), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Performing Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Performing Respondents' receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Performing Respondents' failure to make timely payments under this Section.

Performing Respondents may dispute all or part of a bill for Oversight Costs submitted under this Order, if Performing Respondents allege that U.S. EPA has made an accounting error, or if Performing Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Performing Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Performing Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Performing Respondents shall simultaneously transmit a copy of both checks to the OSC. Performing Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

IX. DISPUTE RESOLUTION

A. **Informal Resolution.** The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order and shall reduce any and all such resolutions to a writing executed by the Respondents and the OSC as soon as is practical after any such resolution.

B. **Objections.** If the Respondents object to any U.S. EPA action taken pursuant to this Order, the Respondents shall notify U.S. EPA in writing of their objection within 10 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies ("Statement of Position"). U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

C. **Record.** An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to this Section. Any agreement reached by the Parties to the dispute pursuant to this Section shall be in writing, signed by all Parties to the dispute, and shall upon the signature of such Parties be incorporated into and become an enforceable element of this Order.

D. **Resolution by Director.** If the Parties to the dispute are unable to reach an agreement within the negotiation period, upon review of the administrative record, the Director of the Superfund

Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

E. No Tolling. Respondents' obligations under this Order, except as expressly provided in Section XI (Stipulated Penalties), shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirements that were the subject of the dispute in accordance with the agreement reached or with the Director's decision, whichever applies.

X. FORCE MAJEURE

Performing Respondents agree to perform all requirements under this Order within the time limits established under this Order unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Performing Respondents, or of any entity controlled by Performing Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Performing Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

Performing Respondents shall notify U.S. EPA orally within 24 hours after Performing Respondents become aware of any event that Performing Respondents contend constitutes a force majeure, and in writing within seven calendar days after any such event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Performing Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Performing Respondents an extension of time for performance. Performing Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Performing Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

XI. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Performing Respondents fail to fully perform their obligations related to the following enumerated items in accordance with the schedule established pursuant to this Order, Performing Respondents shall be liable as follows:

<u>Violation</u>	<u>Penalty Per Violation Per Day</u>		
	<u>Up to 30 Days</u>	<u>Up to 60 Days</u>	<u>Over 60 Days</u>
Failure to submit timely or adequate progress reports:	\$500	\$1,000	\$1,500
Failure to submit timely or adequate Supplemental Work Plans or EE/CA Report:	\$1,000	\$2,000	\$5,000
Failure to submit timely or adequate revisions to Work Plans or Supplemental Work Plans or EE/CA Report:	\$1,000	\$2,000	\$5,000
Failure to provide timely notice of appointment of or change in:			
Supervising Contractor	\$500	\$1,000	\$1,500
Project Coordinator	\$500	\$1,000	\$1,500
Alternate Project Coordinator	\$500	\$1,000	\$1,500
Failure to provide timely notice of sampling event:			
	\$1,000	\$2,000	\$5,000
Failure to provide timely notice of Work-related release			
	\$1,000	\$5,000	\$10,000

Upon receipt of written demand by U.S. EPA, Performing Respondents shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VIII of this Order (Payment of Costs).

Even if violations are simultaneous, separate penalties may accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Performing Respondents of a violation of act of noncompliance. The payment of penalties shall not alter in any way Performing Respondents' obligations to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Performing Respondents prevail in such a dispute, Performing Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

If Performing Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as interest. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Performing Respondents' receipt of the demand. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Performing Respondents' failure to make timely payments under this Section.

Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XII. ASSURANCE OF ABILITY TO COMPLETE WORK

Within 30 days after the effective date of this Order, Performing Respondents shall establish and maintain financial security necessary to ensure completion of the remaining Work, estimated to be in the amount of \$2 million in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Performing Respondents; or
- e. A demonstration that one or more of the Performing Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

If the Performing Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party, Performing Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Performing Respondents seek to demonstrate their ability to complete the Work by means of financial test or corporate guarantee, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Order. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Respondents shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed above. Performing Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

If Performing Respondents can show that the estimated cost to complete the remaining Work has diminished below \$2 million after the effective date of this Order, Performing Respondents may, on any anniversary date of this Order, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Performing Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA.

Performing Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section.

XIII. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIV (Covenant Not to Sue) and Section XVII (Contribution Protection), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §(h).

XIV. COVENANTS NOT TO SUE BY THE UNITED STATES

Performing Respondents. Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XX (Notice of Completion), U.S. EPA covenants not to sue Performing Respondents for judicial imposition of damages or civil penalties or to take administrative action against Performing Respondents for any failure to perform actions agreed to in this Order, or pursuant to the 1995 UAO, except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration of and upon Performing Respondents' payment of the Oversight Costs specified in Section VIII (Payment of Costs) of this Order, U.S. EPA covenants not to sue or to take administrative action against Performing Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the Oversight Cost payments required by Section VIII (Payment of Costs).

Except as otherwise specifically provided in this Order, in consideration of and upon performance of Performing Respondents' obligations under this Order, upon issuance of the U.S. EPA notice referred to in Section XX (Notice of Completion), U.S. EPA covenants not to sue or to take administrative action against Performing Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for recovery of U.S. EPA's Past Response Costs connected solely with this Site.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Performing Respondents of their obligations under this Order. These covenants not to sue extend only to the Performing Respondents and do not extend to any other person.

The covenants not to sue set forth above do not pertain to any matters other than those expressly specified herein. The United States reserves, and this Order is without prejudice to, all rights against Performing Respondents with respect to all other matters, including but not limited to, the following:

- a. liability for failure to meet a requirement of this Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Order;

e. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant or contaminant outside of the Site including, but not limited to liability for response actions on property adjacent to the Site;

f. liability for response actions at the Site that are beyond the scope of the Work required under this Order; or

g. liability for violations of federal or state law which occur during or after implementation of the Work.

De Minimis Respondents. In consideration of the payments that have been or will be made by each De Minimis Respondent under the terms of this Order, and except as specifically provided in Section XVI (Reservations of Rights), the United States covenants not to sue or take administrative action against that De Minimis Respondent pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Marina Cliffs Facility. With respect to present and future liability of each De Minimis Respondent, this covenant not to sue shall take effect upon: (1) payment of the amount provided for that De Minimis Respondent in Attachment A; and (2) written notification by the Director, Superfund Division, U.S. EPA Region 5, that the de minimis portion of this Order has been ratified after review of all comments received pursuant to Section 122(g) of CERCLA, 42 U.S.C. §9622(g). With respect to each De Minimis Respondent, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by that De Minimis Respondent of all of its obligations under this Order; and (b) the veracity of the information provided to U.S. EPA by that De Minimis Respondent relating to its involvement with the Facility. This covenant not to sue extends only to De Minimis Respondents and does not extend to any other person.

The covenants not to sue De Minimis Respondents by the United States set forth above do not pertain to any matters other than those expressly specified herein. The United States reserves, and this Order is without prejudice to, all rights against De Minimis Respondents with respect to all other matters including, but not limited to:

a. liability for failure to meet a requirement of this Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant by a De Minimis Respondent at the Marina Cliffs Facility after the effective date of this Order.

Notwithstanding any other provision in this Order, the United States reserves, and this Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual De Minimis Respondent seeking to compel that De Minimis Respondent to perform response actions relating to the Marina Cliffs Facility and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such De Minimis

Respondent contributed hazardous substances to the Marina Cliffs Facility in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Respondent no longer qualifies as a de minimis party at the Marina Cliffs Facility because such De Minimis Respondent contributed greater than 75,000 pounds of materials containing hazardous substances at the Marina Cliffs Facility, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Marina Cliffs Facility.

Federal De Minimis Respondent. In consideration of the payments that have been or will be made by the Federal De Minimis Respondent under the terms of this Order, and except as specifically provided in Section XVI (Reservations of Rights), the United States covenants not to take administrative action against the Federal De Minimis Respondent pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Marina Cliffs Facility. With respect to present and future liability of the Federal De Minimis Respondent, this covenant shall take effect upon: (1) payment of the amount provided for the Federal De Minimis Respondent in Attachment A; and (2) written notification by the Director, Superfund Division, U.S. EPA Region 5, that the de minimis portion of this Order has been ratified after review of all comments received pursuant to Section 122(g) of CERCLA, 42 U.S.C. §9622(g). This covenant is conditioned upon: (a) the satisfactory performance by the Federal De Minimis Respondent of all of its obligations under this Order; and (b) the veracity of the information provided to U.S. EPA by the Federal De Minimis Respondent relating to its involvement with the Facility. This covenant extends only to the Federal De Minimis Respondent and does not extend to any other person.

The covenants set forth above do not pertain to any matters other than those expressly specified herein. The United States reserves, and this Order is without prejudice to, all rights against Federal De Minimis Respondent with respect to all other matters including, but not limited to:

- a. liability for failure to meet a requirement of this Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant by Federal De Minimis Respondent at the Marina Cliffs Facility after the effective date of this Order.

Notwithstanding any other provision in this Order, the United States reserves, and this Order is without prejudice to, the right to institute administrative proceedings against Federal De Minimis Respondent seeking to compel the Federal De Minimis Respondent to perform response actions relating to the Marina Cliffs Facility and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that Federal De Minimis Respondent contributed hazardous substances to the Marina Cliffs Facility in such greater amount or of such

greater toxic or other hazardous effects that Federal De Minimis Respondent no longer qualifies as a de minimis party at the Marina Cliffs Facility because Federal De Minimis Respondent contributed greater than 75,000 pounds of materials containing hazardous substances at the Marina Cliffs Facility, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Marina Cliffs Facility.

XV. COVENANT NOT TO SUE BY RESPONDENTS

Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of response activities at the Site; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Nothing in this Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

Respondents covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Marina Cliffs Facility pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

XVI. RESERVATION OF RIGHTS

Except as specifically otherwise provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Marina Cliffs Facility. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. Except as otherwise provided herein, U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. Except as otherwise provided in this Order, Respondents reserve all rights, defenses and legal arguments to contest

any and all alleged liability or responsibility for hazardous substances, materials, or contamination at or emanating from the Marina Cliffs Facility.

XVII. CONTRIBUTION PROTECTION

With regard to claims for contribution against all Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are 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 Order precludes Parties from asserting any claims, causes of action or demands against any person not a party to this Order for indemnification, contribution, or cost recovery or other types of recovery allowed by law. It is intended by the Parties that the matters addressed by this Order include the following:

- A. **Work Completed.** All response actions performed to date at the Marina Cliffs Facility by U.S. EPA (including oversight activities) or by private parties, including but not limited to response actions taken pursuant to Orders issued by U.S. EPA.
- B. **Future Work.** All Work to be performed and costs to be incurred pursuant to the Work Plan and Supplemental Work Plan including but not limited to the time-critical removal actions described therein and the development of the EE/CA, and the implementation of the Work required by U.S. EPA upon completion of the EE/CA Report and issuance of the Site Action Memorandum.
- C. **Reimbursement of Costs.** All future oversight costs incurred by the United States and all past, present and future response costs incurred by the Respondents related to the Marina Cliffs Facility.

The Parties further agree that each De Minimis Respondent and Federal De Minimis Respondent is entitled, as of the effective date of this Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Order. The "matters addressed" in this Order with respect to the De Minimis Respondents and Federal De Minimis Respondent are all response actions taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Marina Cliffs Facility.

The "matters addressed" in this settlement with respect to each Respondent do not include those response costs, response actions, or damages as to which the United States has reserved its rights under this Order (except for claims for failure to comply with this Order) as to such Respondent, in the event that the United States asserts rights against the Respondent coming within the scope of those reservations.

XVIII. INDEMNIFICATION

Performing Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Performing Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Respondents, and any persons for performance of Work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Performing Respondents for any claim or cause of action against the United States based on action (negligent or otherwise) taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Performing Respondents).

XIX. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may only be modified in writing by mutual agreement of all parties.

If Performing Respondents seek permission to deviate from any approved plan or schedule, Performing Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Performing Respondents shall relieve Performing Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XX. NOTICE OF COMPLETION

Within 90 days after Performing Respondents conclude that the Work has been fully performed, Performing Respondents shall schedule and conduct a pre-certification inspection to be attended by Performing Respondents, U.S. EPA and the State. If, after the pre-certification inspection, Performing Respondents still believe that the Work has been fully performed, they shall submit the final report described in Paragraph VI.2.8 herein requesting certification to U.S. EPA for approval, with a copy to the State, within 30 days of the inspection. In the report, a registered professional engineer and Performing Respondents' Project Coordinator shall state that the Work has been completed in full satisfaction of the requirements of this Order. The written report shall

include as-built drawings as appropriate, signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of Performing Respondents or Performing Respondent's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written final report, U.S. EPA, after reasonable opportunity to review and comment by the State, determines that the Work or any portion thereof has not been completed in accordance with this Order, U.S. EPA will notify Performing Respondents in writing of the activities that must be undertaken by Performing Respondents pursuant to this Order to complete the Work, provided, however, that EPA may only require Performing Respondents to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the Work described in this Order, including any actions determined by U.S. EPA to be necessary in any Action Memoranda issued after completion of the EE/CA Report. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order or require Performing Respondents to submit a schedule to U.S. EPA for approval in the manner provided in Section VI.2.1 above. Performing Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution).

If U.S. EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity to review and comment by the State, that the Response Action has been performed in accordance with this Order, U.S. EPA will so certify in writing to Performing Respondents. This certification shall constitute the Certificate of Completion of the Work for purposes of this Order. The Certification of Completion of the Work shall not affect Performing Respondents' remaining obligations under this Order.

XXI. COMMUNITY RELATIONS

Performing Respondents shall propose to U.S. EPA their participation in the community relations activities to be conducted with respect to this Order. U.S. EPA will determine the appropriate role for the Performing Respondents in community relations activities. Performing Respondents shall also cooperate with U.S. EPA in providing information regarding the Work to the public. As requested by U. S. EPA, Performing Respondents shall participate in the preparation of such information for dissemination to the public in public meetings which may be held or sponsored by U.S. EPA to explain activities at or relating to the Site.

XXII. OPPORTUNITY FOR PUBLIC COMMENT

Before executing this Order, U.S. EPA shall publish a Federal Register notice establishing a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(I) of CERCLA, 42 U.S.C. § 9622(i). U.S. EPA reserves the right to withdraw or withhold its consent if the comments regarding the Order disclose facts or considerations which indicate that the Order is inappropriate, improper, or inadequate.

XXIII. ATTORNEY GENERAL APPROVAL

The Attorney General or her designee has issued prior written approval of the settlement embodied in this Order in accordance with Sections 122(g)(4) and 122(h)(1) of CERCLA, 42 U.S.C. §§ 9622(g)(4) and 9622(h)(1).

XXIV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more of the provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXV. EFFECTIVE DATE

This Order shall be effective upon receipt by Respondents of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this _____ day of _____, 2000.

By:

Name:

Representing:

Address for Notice:

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN

IT IS SO ORDERED AND AGREED

By: William E. Muno
William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5

Date: 2/7/01

ATTACHMENT A

Name of Performing Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made)
BASF Corporation, on behalf of itself and its predecessors in interest, International Printing Ink, Inmont Corp., and Cook Paint & Varnish.	n/a	n/a	n/a	n/a
DaimlerChrysler Corp	n/a	n/a	n/a	n/a
General Motors Corporation	n/a	n/a	n/a	n/a
S.C. Johnson & Son, Inc.	n/a	n/a	n/a	n/a
Minnesota Mining and Manufacturing Company	n/a	n/a	n/a	n/a
PPG Industries, Inc.	n/a	n/a	n/a	n/a

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
A F Gallun & Sons, LLC	Gallun & Sons	4	\$0	\$12,375.00
Albert Trostel & Sons Company	Albert Trostel/E. Smith	1	\$0	\$213,880.00
Aldrich Chemical Co. Inc.		4	\$0	\$12,375.00
Allen-Bradley Co. LLC		3	\$0	\$36,432.00
Ampco Metals, Inc		3	\$0	\$36,432.00
A.O. Smith Corporation		2	\$0	\$100,094.00
Appleton Papers Inc., a.k.a. Appleton Papers, Inc., NCR Corporation, Appleton Papers, Inc. division of National Cash Register Company, Appleton Coated Paper Co.; Appleton Coated Paper Company; Appleton Papers Division of NCR Corporation, The National Cash Register Company, NCR Delaware, Inc., Combined Paper Company, Combined Locks Paper Company, Combined Paper Mills, Inc.	Appleton Papers	2	\$0	\$100,094.00
AR Accessories Liquidating Trust as successor to Amity Leather	Amity Leather	4	\$0	\$12,375.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Ato Findley, Inc.	F.G. Findley Adhesives	2	\$0	\$100,094.00
Atofina Chemicals Inc. (Elf Atochem North America, Inc.) on behalf of itself, its predecessors and Menasha Printing	Menasha Printing/Sun/Elf Atochem	1	\$0	\$213,880.00
Baxter International Inc. (Hamilton Scientific)	Hamilton Scientific	2	\$0	\$100,094.00
Beazer East, Inc., on behalf of its former subsidiary Thiem Corporation	Thiem Products/Beazer	2	\$0	\$100,094.00
Blackhawk Leather, Ltd. And its successor, Blackhawk Leather LLC		4	\$0	\$12,375.00
Briggs & Stratton Corporation		3	\$0	\$36,432.00
Bucyrus International, Inc. (f/k/a Bucyrus-Erie Company)	Bucyrus Erie	3	\$0	\$36,432.00
Carbolineum Wood Preserving Co.		4	\$12,375.00	\$12,375.00
Case Corporation		2	\$0	\$100,094.00
Caterpillar Inc.	Caterpillar Tractor	3	\$0	\$36,432.00
City of Green Bay, Wisconsin		4	\$12,375.00	\$12,375.00
City of Manitowoc, Wisconsin		4	\$12,375.00	\$12,375.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
City of Milwaukee, Wisconsin		4	\$12,375.00	\$12,375.00
City of Sheboygan, Wisconsin		4	\$12,375.00	\$12,375.00
City of West Allis, Wisconsin		4	\$12,375.00	\$12,375.00
City of West Bend, Wisconsin		4	\$12,375.00	\$12,375.00
CMC Heartland Partners	St. Paul Railroad	3	\$0	\$36,432.00
Colonial Heights Packaging Inc. f/k/a Milprint, Inc.	Milprint	2	\$0	\$100,094.00
Cooper Industries, Inc.	solely for Cooper Power/Line/Kyle	2	\$0	\$100,094.00
Crucible Materials Corporation by and through its Trent Tube Division	Trent Tube	3	\$0	\$36,432.00
Cudahy Tanning Co.	Cudahy/Law Tanning	3	\$0	\$36,432.00
Deere & Company		3	\$0	\$36,432.00
Dresser Industries, Inc. (Waukesha Engine)	Waukesha Engine/Dresser Ind.	3	\$0	\$36,432.00
E.I. du Pont de Nemours and Company	du Pont	3	\$0	\$36,432.00
Eaton Corporation f/k/a Cutler-Hammer, Inc.)	Cutler-Hammer, Inc.	3	\$0	\$36,432.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Eggers Industries	F. Eggers Plywood	4	\$12,375.00	\$12,375.00
Essential Industries Inc.	Essential Chemicals	3	\$0	\$36,432.00
FMC Corporation on behalf of Bolens Corporation and Bolens Products Divisions	Bolens Corp./FMC	3	\$0	\$36,432.00
Hamilton Sundstrand Corporation and The Falk Corporation	Falk/Sundstrand	3	\$41,027.50	\$41,027.50
Fort James Corporation, successor to Fort Howard Corporation	Fort Howard	3	\$0	\$36,432.00
Georgia Gulf Corporation, on behalf of itself, Cook Composites & Polymers, and the former Freeman Chemical Co.	Cook Company/Freeman Chemical	1	\$0	\$213,880.00
Golden Books Publishing Company, Inc. (formerly known as Western Publishing Company, Inc.)	Western Publishing	3	\$0	\$36,432.00
Grede Foundries, Inc.		3	\$0	\$36,432.00
Harley-Davidson Motor Company		2	\$0	\$100,094.00
Harnischfeger Corporation		2	\$0	\$100,094.00
The Heil Co.	Heil Corp.	3	\$0	\$36,432.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Hein-Werner		2	\$0	\$100,094.00
Henkel Corporation, as successor to Kepec Chemical	Kepec Chemicals	3	\$0	\$36,432.00
Hentzen /Wisconsin Paint		1	\$0	\$213,880.00
Hercules Incorporated	Hercules Powder	2	\$0	\$100,094.00
Heresite Protective Coatings, Inc.		3	\$41,027.50	\$36,432.00
Honeywell International Inc.	Allied Signal/Bendix	3	\$0	\$36,432.00
Hydrite Chemical Co.		3	\$0	\$36,432.00
Hydrite Chemical Co. for Benlo Chemical/Hydrite share	Benlo Chemical/Hydrite	2	\$138,672.30	\$138,672.30
Ingersoll-Rand Co. for Clark Equipment Co.	Clark Equipment	3	\$0	\$36,432.00
International Paper Co. (and Champion International, a wholly owned subsidiary of International Paper)	Thilmany/International Paper and Algoma Lumber	3 4	\$0 \$12,375.00	\$36,432.00 \$12,375.00
Invincible Metal Furniture Co.		4	\$12,375.00	\$12,375.00
Johnson Controls Battery Group, Inc. as successor to and on behalf of Johnson Controls, Inc.	Johnson Controls/Globe Union	3	\$0	\$36,432.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Kearney & Trecker		2	\$0	\$100,094.00
Kickhaefer Manufacturing Company		4	\$12,375.00	\$12,375.00
Kimberly-Clark Corporation and Scott Paper Company	Kimberly Clark and Scott or Menominee Paper	1 & 2	\$0	\$213,880.00 \$100,094.00
Ladish Co., Inc		3	\$0	\$36,432.00
Law Tanning Co. LLC	Cudahy/Law Tanning	3	\$0	\$36,432.00
Litton Industries, Inc., on behalf of itself and the Louis Allis company and MagneTek, Inc.	Louis Allis	3	\$0	\$36,432.00
Maysteel Corporation (and its successor, Maysteel LLC)	Maysteel/Everett Smith	2	\$0	\$100,094.00
Midwest Tanning Co.		4	\$12,375.00	\$12,375.00
Miller Brewing Company		3	\$0	\$36,432.00
Milport Chemical Company		4	\$12,375.00	\$12,375.00
Milwaukee County		4	\$0	\$12,375.00
MRC Holding, Inc (Northern Paper, Marathon Corp.)	Northern Paper Marathon	3 & 3	\$0	\$36,432.00 \$36,432.00
Navistar International Transportation Corporation	International Harvester	2	\$0	\$100,094.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Nekoosa Papers Inc. and Georgia-Pacific Corporation		3	\$0	\$36,432.00
The Nelson Paint Co. of MI, Inc.		3	\$0	\$36,432.00
Niles Chemical Paint Company, Inc.		4	\$12,375.00	\$12,375.00
Nordberg Inc.		3	\$0	\$36,432.00
Pabst Brewing Co.		3	\$0	\$36,432.00
Pharmacia & Upjohn Company (formerly The Upjohn Company)	Upjohn Company	4	\$12,375.00	\$12,375.00
The Procter & Gamble Paper Products Company	Charmin/Procter & Gamble	2	\$0	\$100,094.00
Rapco Leather, Inc.		4	\$0	\$12,375.00
Reichhold Chemicals, Inc./J.G. Milligan & Company	J.G. Milligan/Reichhold	1	\$0	\$213,880.00
Research Products Corporation		3	\$0	\$36,432.00
RHS Holdings, Inc. as successor to Rexnord, Inc. /Chainbelt	Rexnord/Chainbelt	3	\$0	\$36,432.00

Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
RHL Inc. fka Lindsay Finishes, Inc. (Lindsay Paint)	Lindsay Paint/RHL	4	\$12,375.00	\$12,375.00
Roper Corp.	Roper Stove	4	\$12,375.00	\$12,375.00
SBC Holdings, Inc. (f/k/a the Stroh Brewery Company)	solely for Schlitz/Stroh	3	\$0	\$36,432.00
Seidel Tanning Corp.		4	\$0	\$12,375.00
The Sherwin-Williams Company		2	\$0	\$100,094.00
Square D Company		3	\$0	\$36,432.00
Soo Line Railroad Company	St. Paul Railroad	3	\$0	\$36,432.00
Stolper Industries (Stolper Steel)		4	\$12,375.00	\$12,375.00
Stora Enso North America Corp., successor by merger to Consolidated Papers, Inc.	Consolidated Water Paper	2	\$0	\$100,094.00
Textron Inc.	Jacobsen Mfg.	3	\$0	\$36,432.00
Thiele Tanning Company		3	\$0	\$36,432.00
Union Pacific Railroad Company as successor to Chicago & NorthWestern	Chicago & NW RR/Union Pacific	3	\$0	\$36,432.00
Viad Corp (for Armour and Co.)	Armour Leather	2	\$0	\$100,094.00

The Vollrath Co., L.L.C.	Vollrath Paint	3	\$0	\$36,432.00
Name of Settling De Minimis Respondent	Name on allocation (if different)	Tier	Total Payment due within 30 days after effective date	Total Payment (including payments already made) *
Wenthe-Davidson Engineering Co.		4	\$12,375.00	\$12,375.00
West Bend Company	West Bend Aluminum	4	\$12,375.00	\$12,375.00
W. H. Brady Corporation		2	\$0	\$100,094.00
Wisconsin Electric Power Company		3	\$0	\$36,432.00
Name of Settling Federal De Minimis Respondent	Name on allocation (if different)	Tier	Total payment due as soon as reasonably practicable after effective date	Total Payment (including payments already made)
U.S. Department of the Army	U.S. Army/Badger/JAPP	4	\$12,375.00	\$12,375.00

* - The actual amounts paid by those parties who have already made their required payments may differ somewhat from the amounts shown in this column due to adjustments made for late payments and other factors.

ATTACHMENT B

MARINA CLIFFS SITE

THAT PART OF PARCEL 4 OF CERTIFIED SURVEY MAP NO. 1954, BEING A PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 5 NORTH, RANGE 22 EAST, IN THE CITY OF SOUTH MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 13; THENCE NORTH 89°05'00" EAST 220.00 FEET TO A POINT, SAID POINT BEING THE NORTHEAST CORNER OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 4167 AND THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED; CONTINUING THENCE NORTH 89°05'00" EAST ALONG THE NORTH LINE OF SAID 1/4 SECTION 913.00 FEET TO A POINT; THENCE DUE SOUTH ALONG A MEANDER LINE 400.00 FEET TO AN ANGLE POINT; THENCE SOUTH 18°31'52" WEST ALONG SAID MEANDER LINE 410.75 FEET TO A POINT; THENCE NORTH 89°30'40" WEST 315.00 FEET TO A POINT; THENCE NORTH 21.00 FEET TO A POINT; THENCE NORTH 89°21'00" WEST 526.38 FEET TO A POINT; THENCE NORTH 51°07'32" EAST 259.42 FEET TO A POINT; THENCE NORTH 25°00'00" WEST 259.88 FEET TO A POINT; THENCE SOUTH 65°00'00" WEST 178.81 FEET TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF PARCEL 2 OF CERTIFIED SURVEY MAP NO. 4167; THENCE DUE NORTH 219.41 FEET TO A POINT; THENCE DUE WEST 18.02 FEET TO A POINT; THENCE DUE NORTH 204.67 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL LANDS LYING BETWEEN THE MEANDER LINE AND THE SHORELINE OF LAKE MICHIGAN.

Less and except the:

Northwest 1/4 of Section 13, Town 5 North, Range 22 East, in the City of South Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at the Northwest corner of said 1/4 section; thence South along the West line of said 1/4 section, 765.25 feet; thence North 89°05'00" East along the center line of Marina Road, 161.00 feet; thence South 89°21'00" East 526.38 feet to the place of beginning of lands to be described; thence North 21.0 feet; thence North 89°21'00" West along the South line of Parcel 4 of Certified Survey Map No. 1954, 54.00 feet; thence North 45.0 feet; thence South 89°21' East, 54.00 feet; thence South 89°30'40" East parallel with the South line of said Parcel 4, 337.06 feet to a point on the meander line of Parcel 4; thence South 18°31'52" West on said meander line 69.41 feet; thence North 89°30'40" West along the South line of said Parcel 4, 315.00 feet to the place of beginning; said Parcel to include lands lying between the Northerly and Southerly lines of the above described lands extending from the meander line of said Parcel to the shore line of Lake Michigan.

ATTACHMENT C

Work Plan

The Work Plan is not attached to this proposed settlement in the interest of saving paper, postage and resources. The Work Plan will have minimal relevance to most of the de minimis parties receiving this mailing. Those parties wishing to receive a copy of the present version of the Work Plan should contact Thomas Krueger at (312) 886-0562. The current version of the Work Plan is also available at the public document repository for the Site.