



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	Docket No.	V-W- '02-C-703
)		
NORTHWESTERN BARREL SITE,	)	ADMINISTRATIVE ORDER BY	
SOUTH MILWAUKEE,	)	CONSENT PURSUANT TO	
WISCONSIN	)	SECTION 106 OF THE	
	)	COMPREHENSIVE	
	)	ENVIRONMENTAL RESPONSE,	
Respondents:	)	COMPENSATION, AND	
	)	LIABILITY ACT OF 1980,	
Listed in Attachment A	)	as amended, 42 U.S.C.	
	)	§9606(a)	
)		

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 Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of certain removal actions described in Section VI of this Order (the "Work") and for reimbursement of certain response costs in connection with certain property located in South Milwaukee, Wisconsin (the "Northwestern Barrel Facility"). The Order requires Respondents to conduct the Work to evaluate 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 Northwestern Barrel Facility.

A copy of this Order will also 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 or of U.S. EPA's findings or determinations contained in this Order except in a proceeding 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. 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.

Respondents shall each ensure that their contractors, subcontractors, and representatives comply with this Order. 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:

"Northwestern Barrel Site" or "Site" shall mean that portion of the Northwestern Barrel Facility, 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).

"Northwestern Barrel Facility" or "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 or may 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 March 31, 2000. "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.

"Parties" shall mean the signatories to this Order.

"Respondents" shall mean those persons or entities listed in Attachment A.

"Work" shall mean all activities 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) and the 2001 Administrative Order on Consent (Order No. V-W-01-C-630) are hereby incorporated and made a part of this Order, and U.S. EPA further finds as follows:

1. The Northwestern Barrel Company operated a barrel reconditioning business on approximately 18 acres of property on the shoreline bluffs of Lake Michigan in the City of South Milwaukee, Milwaukee County, Wisconsin (latitude 42°53'59" N, longitude 87°50'55" W). The property is bordered on the west by 5th Avenue and on the east by Lake Michigan. The southern boundary is a roadway that ends in a lakeside dock. The northern boundary is the City of South Milwaukee Waste Water Treatment Plant. The area around the property includes residential and industrial properties.

2. Prior to 1941, the property used by Northwestern Barrel company 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 property, and commenced barrel recycling and reconditioning activities at that time. The Northwestern Barrel Company operated on the property 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. U.S. EPA initially defined the Northwestern Barrel Facility to include only the 13 acre Site - the eastern portion of the property occupied by the Northwestern Barrel Company. The original Facility definition excluded the private residential properties at the western end of the property (the "Marina Cliffs Condominium property") and the roadway and the City of South Milwaukee's easement at the south end of the former Northwestern Barrel Company property. The 13 acre Site portion of the former Northwestern Barrel Company property includes a deep ravine, lake bluff and upland areas and was the focus of time-critical and non-time-critical removal actions conducted pursuant to the 1995 and 1998 Unilateral Administrative Orders (Order Nos. V-W-95-C-313 and V-W-98-C-486) and the 2001 Administrative Order on Consent (Order No. V-W-01-C-630). The Site area is now fenced off from the western portion of the former Northwestern Barrel Company property.

5. Data collected and information developed as part of these removal actions showed that some level of contamination may exist in portions of the neighboring residential areas and city easement which are outside the initial Site boundaries. Elevated contaminant levels, including lead and PCBs, were found on the Site immediately adjacent to the residential properties and city easement. In addition, during the time-critical removal action, a visibly stained soil layer was evident at the fence boundary in the vicinity of Marina Cliffs Condominium building number 3. Excavation of contaminated soils in this area stopped at the fence line separating the Site from the residential areas.

6. During 1998, Conestoga-Rovers & Associates ("CRA"), environmental consultant for the Potentially Responsible Parties ("PRPs") performing work at the Site, conducted two rounds of soil sampling to identify whether contamination might be present to the west of the Site boundary. CRA drilled eleven boreholes during the March 1998 sampling round, and another eleven boreholes during the June/July 1998 sampling round. Subsurface soil samples at the Marina Cliffs Condominium property were collected from the soil borings, with sample depths ranging from 2 to 20 feet below ground surface. During the collection of the March 1998 samples, twelve surface soil samples were also collected from the Marina Cliffs Condominium property and outside the fenced 13-acre area of the Site.

7. All subsurface soil samples from the March 1998 sampling event

were analyzed for lead and PCBs. Selected samples were also analyzed for VOCs, semivolatile organic compounds ("SVOCs"), PAHs, pesticides, PCBs, and inorganic substances. All June/July 1998 subsurface soil samples were analyzed for VOCs. Soil samples from selected soil boring depths were analyzed for additional parameters, including SVOCs, PCBs, pesticides, and inorganic substances. The results of this soil sampling identified several locations on the Marina Cliffs Condominium property where subsurface soils have elevated concentrations of certain VOCs including trichloroethene and tetrachloroethene at 28 and 190 mg/kg, respectively. The highest lead concentration detected in subsurface soils from the March 1988 sampling was 1,150 mg/kg, at a location at the Site immediately adjacent to the Marina Cliffs Condominium property.

8. Surface soils were analyzed for VOCs, SVOCs, polycyclic aromatic hydrocarbons ("PAHs"), PCBs, pesticides and inorganic substances. Some surface soils collected during the March sampling round had slightly elevated levels of certain chemicals. The maximum concentration detected was 233 mg/kg for lead, 21.8 mg/kg for arsenic, 1.3 mg/kg for benzo(a)pyrene, and 0.1 mg/kg for dibenzo(a,h)anthracene.

9. On August 15, 2000, U.S. EPA signed an EE/CA Approval Memorandum which documented the need to collect additional information necessary to conduct an EE/CA investigation for any areas of the Northwestern Barrel Facility which extend outside the current Site boundary.

10. As described above, hazardous substances have been or are threatened to be released at or from the Northwestern Barrel Facility.

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

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 Northwestern Barrel 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 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 Respondents can perform the Work promptly and properly.

8. Consistent with NCP. The Work required by 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.

VI. ORDER

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

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

Respondents have retained Conestoga-Rovers & Associates to implement the Work. 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 contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, 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.

Within five (5) business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of Respondents' actions required by the Order. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during Site work. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves of a selected Project Coordinator, 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 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 Fred Bartman of the Superfund Division, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct two copies of all notices and submissions required by this Order to the OSC at 77 West Jackson Boulevard, SR-6J, Chicago, Illinois, 60604-3590, by certified or express mail. 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 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 Respondents, and 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

Respondents shall perform, at a minimum, the following removal actions consistent with the attached EE/CA Scope of Work (Attachment C) and any Work Plans or Supplemental Work Plans to be developed and approved pursuant to this Order:

a. Conduct additional sampling to further define the extent of contamination at the Northwestern Barrel Facility near the private residential properties at the western end of the former Northwestern Barrel Company property, and the roadway and the City of South Milwaukee's easement at the southern end of the former Northwestern Barrel Company property. Collect the necessary data to: 1) support a risk analysis of the exposure potential for residents on or near these areas and for construction/utility workers working in these areas; and 2) develop the EE/CA report.

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 and this Order;

d. Perform an additional Facility risk assessment as required to complete an approved EE/CA Report.

e. Perform any additional work required under Paragraph 2.6.

2.1 Work Plan and Implementation.

Within 20 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above and consistent with Attachment C. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

Once approved, or approved with modifications as provided in Section 2.2 below, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

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 residential EE/CA Report shall take into consideration all data generated for the Northwestern Barrel Facility up to the date of the residential EE/CA Report. Respondents may rely on such data and incorporate them by reference as appropriate.

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 Work Plan, Supplemental Work Plan and any other Plans, and the EE/CA Report submitted pursuant to this Order. If U.S. EPA requires revisions, Respondents shall submit a revised draft submittal within fifteen 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 Respondents shall implement the approved submittal, according to the schedule contained therein. If a new or modified guidance document adversely affects the schedule, 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 shall incorporate a plan prepared by the Respondents that ensures the protection of the public health and safety during performance of the Work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. 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 Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. 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, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the procedures followed by all sampling teams and laboratories performing data collection and/or analysis. 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, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing Work under this Order. 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. Respondents shall ensure that U.S. EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. 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 EE/CA Report. In accordance with the schedule in the approved Work Plan, the Respondents shall submit to U.S. EPA for approval a draft EE/CA Report that is consistent with this Order and Attachment C.

In the event of U.S. EPA disapproval of the revised EE/CA Report pursuant to Section 2.2 above, Respondents may be deemed in violation of this Order; however, approval shall not be unreasonably withheld by U.S. EPA. In such event, U.S. EPA retains

the right to terminate this Order, conduct a complete EE/CA, and obtain reimbursement for costs incurred in conducting the EE/CA from the Respondents.

The EE/CA 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 EE/CA Report, the information submitted is true, accurate, and complete.

2.6 Additional Work. In the event that the U.S. EPA or the Respondents determine that additional work, including EE/CA support sampling and/or an engineering evaluation, is necessary to accomplish the objectives of the EE/CA Report, notification of such additional work shall be provided to the other parties in writing. Any additional work which Respondents determine to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work. Respondents shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondents have proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this paragraph.

2.7 Reporting. 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 Facility 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 VI.3 (Access to Property and Information).

3. Access to Property and Information.

Respondents shall exercise their best efforts to provide or obtain access to the Facility and adjacent areas to which access is necessary to implement the Work required by 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 Facility and appropriate adjacent areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the 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 Facility 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, 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 Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 21 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the Work described herein, using such means as U.S. EPA deems appropriate. 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

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, 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, 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, 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.

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 Facility or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. 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 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.

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. 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 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. REIMBURSEMENT OF COSTS

Reimbursement of Costs to the United States. Respondents shall pay Oversight Costs to be incurred and paid by the United States related to the Facility that are not inconsistent with the NCP, in the manner described below.

U.S. EPA will send 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 Respondents' Oversight Cost payment obligations.

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

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/Northwestern Barrel Site" and shall reference the name of the trust established by the Respondents for payment of costs related to the Site (or individual 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, Respondents shall pay interest on the unpaid balance ("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 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 Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondents allege that U.S. EPA has made an accounting error, or if 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, 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, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. 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

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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 24 hours after become aware of any event that 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. 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 Respondents an extension of time for performance. 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 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 Respondents fail to fully perform their obligations related to the following enumerated items in accordance with the schedule established pursuant to this Order, and subject to the Dispute Resolution provisions of this Order, 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 , 5 0 0
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, 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 (Reimbursement 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 Respondents of a violation of act

of noncompliance. The payment of penalties shall not alter in any way 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 Respondents prevail in such a dispute, 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 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 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 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. 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 Northwestern Barrel Facility. Further, nothing herein shall prevent U.S. EPA or Respondents 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 Northwestern Barrel Facility.

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. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

Except as expressly provided in Section XIV (Covenant Not To Sue), 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 Respondent(s) waive(s) 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. §9613(h).

XIV. COVENANT NOT TO SUE

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

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VIII (Reimbursement of Costs) of this Order, U.S. EPA covenants not to sue or to take administrative action against 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 removal action and this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VIII.

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

XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against 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 persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

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 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 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 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 Respondents).

XVII. 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 Respondents seek permission to deviate from any approved plan or schedule, 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 Respondents shall relieve 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.

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the revised EE/CA report, that all Work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines, after reasonable opportunity to review and comment by the State, that any activities have not been completed in accordance with this Order, U.S. EPA will notify Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to complete the Work, provide a list of the deficiencies, and require that Respondents modify the EE/CA Report if appropriate to correct such deficiencies. U.S. EPA will set forth in such notice a schedule for performance of such activities consistent with the Order or require Respondents to submit such a schedule to U.S. EPA for approval in the manner provided in Section VI.2.1 above. 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 VIII (Dispute Resolution). The Respondents shall implement the required activities and shall submit a modified final report in accordance with the U.S. EPA notice. Failure to timely implement the required activities and revisions shall be deemed a violation of this Order.

XIX. 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 provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

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 20th day of MAY, 2002.

By: Nan Bernardo

Name: Nan Bernardo

Representing: BASF Corporation (on behalf of its self and its predecessors in interest, International Printing Ink, Inmont Corporation, and Cook Paint & Varnish)

Address for Notice:

Nan Bernardo, Esq.
BASF Corporation
3000 Continental Drive - North
Mt. Olive, NJ 07828-1234

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 to this document.

Agreed this 22nd day of May,
2002.

By: Kathleen M. Hennessey

Name: Kathleen M. Hennessey, Senior Staff Counsel

Representing: DaimlerChrysler Corporation

Address for Notice:
1000 Chrysler Drive
CIMS 485-13-62
Auburn Hills, MI 48326

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 15th day of May, 2002.

By: Michelle Fisher
Name: MICHELLE Y. FISHER, ATTORNEY
Representing: GENERAL MOTORS CORPORATION

Address for Notice: GENERAL MOTORS CORPORATION
M.C. 482-024-024
300 RENAISSANCE CENTER
DETROIT, MI 48243

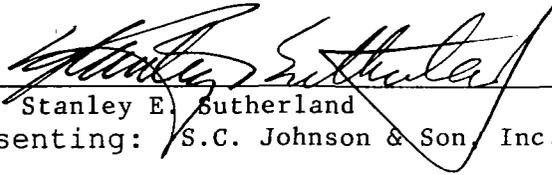
IN THE MATTER OF:

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 _____, 2002.

By: 
Name: Stanley E. Sutherland
Representing: S.C. Johnson & Son, Inc.

Address for Notice:
1525 Howe Street
Racine, WI 53403

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 17th day of May, 2002.

By: 
Name: Dan Drury
Representing:

Address for Notice:

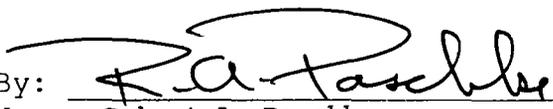
IN THE MATTER OF:

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 20th day of May, 2002.

By: 

Name: Robert A. Paschke

Representing: 3M Company

Address for Notice:

Brian H. Davis, Esq.
Senior Counsel
3M Company
3M Center
Bldg. 220-12E-02
St. Paul MN 55144

With a copy to:

Nancy K. Peterson
Quarles & Brady LLP
411 E. Wisconsin Ave.
Milwaukee, WI 53202

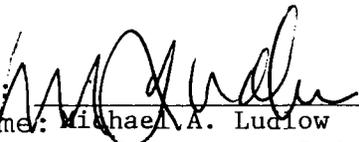
IN THE MATTER OF:

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 17th day of May, 2002.

By: 

Name: Michael A. Ludlow

Representing: PPG Industries, Inc.

Address for Notice: One PPG Place
Pittsburgh, PA 15272

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN

IT IS SO ORDERED AND AGREED

By: W. E. Muno Date: 7/5/02
William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5

ATTACHMENT A

Name of Respondent
BASF Corporation, on behalf of itself and its predecessors in interest, International Printing Ink, Inmont Corp., and Cook Paint & Varnish.
DaimlerChrysler Corp
General Motors Corporation
S.C. Johnson & Son, Inc.
Mautz Paint Company
Minnesota Mining and Manufacturing Company
PPG Industries, Inc.

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 Marine 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

Statement of Work

STATEMENT OF WORK

NON-TIME-CRITICAL INVESTIGATION RESIDENTIAL PROPERTIES ADJACENT TO MARINA CLIFFS/NORTHWESTERN BARREL SITE SOUTH MILWAUKEE, WISCONSIN

Soil

- Surveying and layout of a 75-foot sampling grid across the residential areas adjacent to the Marina Cliffs/Northwestern Barrel Site.
- Collection of 1 surface soil sample (i.e., 0 to 0.5 feet below ground surface (BGS)) at each of 30 grid node locations shown on Drawing No. 1 for laboratory analyses of Target Compound List (TCL) semi-volatile organic compounds (SVOCs), TCL polychlorinated biphenyl (PCBs) and Target Analyte List (TAL) Inorganics. In addition, a limited number of surface soil samples at the grid node locations will also be submitted for laboratory analyses of TCL pesticides. The surface soils will be examined by Conestoga-Rovers & Associates' (CRA's) project geologist and described in accordance with the Unified Soil Classification System. The surface soil samples will be screened with a photoionization detector (PID) for the presence of volatile organics. The final surface soil sampling locations will be determined by CRA's project geologist in consultation with the United States Environmental Protection Agency (USEPA) and Wisconsin Department of Natural Resources (WDNR) representatives based on an evaluation of site conditions.
- Installation of boreholes to depths of 15 feet BGS at 37 grid node locations shown on Drawing No. 1 and collection of 1 subsurface soil sample from each borehole for laboratory analyses of TCL SVOCs, TCL PCBs and TAL Inorganics. In addition, a limited number of subsurface soil samples at the grid node locations will also be submitted for laboratory analyses of TCL pesticides. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The subsurface soil samples will be screened over the entire length of the borehole with a photoionization detector (PID) for the presence of volatile organics. Any intervals exhibiting elevated PID readings will be submitted for laboratory analyses of TCL volatile organic compounds (VOCs). The final number and locations of the boreholes and subsurface soil sampling intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.
- Installation of 3 boreholes to depths of 15 feet BGS near existing borehole BH-22 at locations shown on Drawing No. 1 and collection of 2 subsurface soil samples from each borehole for laboratory analyses of TCL VOCs. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The subsurface soil samples will be screened over the entire length of the borehole with a PID for the presence of volatile organics. The final number and locations of the boreholes and subsurface soil sampling intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.

STATEMENT OF WORK

NON-TIME-CRITICAL INVESTIGATION RESIDENTIAL PROPERTIES ADJACENT TO MARINA CLIFFS/NORTHWESTERN BARREL SITE SOUTH MILWAUKEE, WISCONSIN

- Installation of 4 boreholes to depths of 6 feet BGS east of Marina Cliffs Condominium Building Nos. 1 & 3 at locations shown on Drawing No. 1 and collection of 2 subsurface soil samples from each borehole for laboratory analyses of TCL PCBs and lead. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The final number and locations of the boreholes and subsurface soil sampling intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.
- Installation of 2 boreholes to depths of 6 feet BGS northwest of Marina Cliffs Condominium Building No. 1 at locations shown on Drawing No. 1 and collection of 1 subsurface soil sample from each borehole for laboratory analyses of TCL PCBs. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The final number and locations of the boreholes and subsurface soil sampling intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.
- Collection of 1 surface soil sample (i.e., 0 to 0.5 feet BGS) at each of 3 locations on the City of South Milwaukee property at locations shown on Drawing No. 1 for laboratory analyses of TCL PCBs and lead. The surface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The surface soil samples will be screened with a photoionization detector (PID) for the presence of volatile organics. The final surface soil sampling locations will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.

Soil Gas

- Installation of 4 boreholes to depths of approximately 10 feet BGS at locations shown on Drawing No. 1 and installation of permanent gas probes in each borehole. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The subsurface soil samples will be screened over the entire length of the borehole with a PID for the presence of volatile organics. The final borehole locations and screened intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of site conditions.
- Completion of 2 rounds (i.e., frozen ground/unfrozen ground conditions) of soil gas sampling in the 4 gas probes using Summa canisters, as well as completion of concurrent indoor air sampling at 4 basement locations in the Marina Cliffs Condominiums and background air sampling over a 4-hour sampling interval.

STATEMENT OF WORK

NON-TIME-CRITICAL INVESTIGATION RESIDENTIAL PROPERTIES ADJACENT TO MARINA CLIFFS/NORTHWESTERN BARREL SITE SOUTH MILWAUKEE, WISCONSIN

Groundwater

- Installation of 3 groundwater monitoring wells at the locations shown on Drawing No. 1. Nested monitoring wells MW-1 and MW-2 will be completed between Building Nos. 1 and 2 of the Marina Cliffs Condominiums. Monitoring well MW-3 will be completed immediately north of Building No. 1 of the Marina Cliffs Condominium. The borehole for each of the monitoring wells will be advanced using hollow-stem augering techniques and continuous soil sampling into the basal till unit underlying the Site. The subsurface soils will be examined by CRA's project geologist and described in accordance with the Unified Soil Classification System. The subsurface soil samples will be screened over the entire length of the borehole with a PID for the presence of volatile organics. Monitoring wells MW-1 and MW-3 will be installed to monitor the groundwater in the uppermost water-bearing hydrogeologic unit. Monitoring well MW-2 will be installed adjacent to MW-1 to monitor the groundwater in the deeper portion of the uppermost water-bearing hydrogeologic unit. The final monitoring well locations and screened intervals will be determined by CRA's project geologist in consultation with the USEPA and WDNR representatives based on an evaluation of stratigraphy and hydrogeological conditions encountered at each monitoring well location.
- Two rounds of groundwater samples will be collected from each of the three new monitoring wells as well as existing monitoring wells MW-4 and MW-6. The second round of groundwater samples will be collected a minimum of three months after collection of the first round of samples. Groundwater samples will be collected from each new monitoring well and submitted for laboratory analyses of TCL VOC, TCL SVOC, TCL Pesticides/PCBs and TAL Inorganics concentrations. Groundwater samples will be collected from each existing monitoring well and submitted for laboratory analyses of TCL VOC concentrations. If the first round of laboratory analyses indicates that the groundwater has been adversely impacted, the second sampling event will also include sampling and laboratory analyses for the natural attenuation indicator parameters of dissolved organic carbon, nitrate, nitrite, manganese, iron, sulfate, sulfide, methane, alkalinity, calcium, carbonate hardness, hardness, magnesium, chloride, ethane, and ethene. These additional data will be assessed to determine the probability of natural attenuation of VOCs contaminants in the groundwater at the Site.
- At the completion of two quarterly sampling events, the groundwater monitoring program will be evaluated to determine future groundwater monitoring needs. After two groundwater monitoring sampling events, an interim groundwater monitoring report will be submitted documenting the groundwater investigation and summarizing the groundwater monitoring results. This report will include a revised groundwater monitoring plan which will address future groundwater monitoring needs, if any, at the Site and attempt to address any information gaps, if any, which may become apparent after the first two rounds of sampling.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. V-W- '04-C-787
)
NORTHWESTERN BARREL SITE,) ADMINISTRATIVE ORDER BY
SOUTH MILWAUKEE, WISCONSIN) CONSENT PURSUANT TO SECTION
) 106 OF THE COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
Respondents:) COMPENSATION, AND LIABILITY ACT
) OF 1980, as amended, 42 U.S.C. § 9606
Listed in Attachment A)
)

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 certain removal actions described in Section VI of this Order (the "Work") and for reimbursement of certain response costs incurred by the United States in connection with certain property located in South Milwaukee, Wisconsin (the "Northwestern Barrel Facility"). The Order requires 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 Northwestern Barrel Facility.

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 or of U.S. EPA's findings or determinations contained in this Order except in a proceeding 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. 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.

Respondents shall each ensure that their contractors, subcontractors, and representatives comply with this Order. 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:

"Northwestern Barrel Site" or "Site" shall mean that portion of the Northwestern Barrel Facility, 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).

"Northwestern Barrel 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. "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.

"Parties" shall mean the signatories to this Order.

"Respondents" shall mean those persons or entities listed in Attachment A.

"Work" shall mean all activities 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) and the 2001 and 2002 Administrative Orders on Consent (Order Nos. V-W-01-C-630 and V-W-02-C-703) are hereby incorporated and made a part of this Order, and U.S. EPA further finds as follows:

1. The Northwestern Barrel Company operated a barrel reconditioning business on approximately 18 acres of property on the shoreline bluffs of Lake Michigan in the City of South Milwaukee, Milwaukee County, Wisconsin. The property is bordered on the west by 5th Avenue and on the east by Lake Michigan. The southern boundary is a roadway that ends in a lakeside dock. The northern boundary is the City of South Milwaukee Waste Water Treatment Plant property. The area around the Site includes residential and industrial properties.
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 ("VOCs"), 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. U.S. EPA initially defined the Northwestern Barrel Facility to include only the 13-acre Site – the eastern portion of the original 18 acres occupied by the Northwestern Barrel Company. The original Facility definition excluded the private residential properties at the western end of the property (the "Marina Cliffs Condominium Property") and the roadway and the City of South Milwaukee's easement at the southern end of the former Northwestern Barrel property. The 13 acre Site portion of the former Northwestern Barrel property includes a deep ravine, lake bluff and upland areas and was the focus of time-critical and non-time-critical removal actions conducted pursuant to the 1995 and 1998 Unilateral Administrative Orders (Order Nos. V-W-95-C-313 and V-W-98-C-486) and the 2001 Administrative Order on Consent (Order No. V-W-01-C-630). The Site area is now fenced off from the western portion of the former Northwestern Barrel property.

5. Data collected and information developed as part of these removal actions showed that some level of contamination may exist in portions of the neighboring residential areas and city easement which are outside the initial Site boundaries. Elevated contaminant levels, including lead and PCBs, were found on the Site immediately adjacent to the residential properties and city easement. In addition, during the time-critical removal action, a visibly stained soil layer was evident at the fence boundary in the vicinity of Marina Cliffs Condominium building number 3. Excavation of contaminated soils in this area stopped at the fence line separating the Site from the residential areas.

6. During 1998, Conestoga-Rovers & Associates (“CRA”), environmental consultant for the Potentially Responsible Parties (“PRPs”) performing work at the Site, conducted two rounds of soil sampling to identify whether contamination might be present to the west of the Site boundary. CRA drilled eleven boreholes during the March 1998 sampling round, and another eleven boreholes during the June/July 1998 sampling round. Subsurface soil samples at the Marina Cliffs Condominium Property were collected from the soil borings, with sample depths ranging from 2 to 20 feet below ground surface. During the collection of the March 1998 samples, twelve surface soil samples were also collected from the Marina Cliffs Condominium Property and outside the fenced 13-acre area of the Site.

7. All subsurface soil samples from the March 1998 sampling event were analyzed for lead and PCBs. Selected samples were also analyzed for VOCs, semivolatile organic compounds (“SVOCs”), polycyclic aromatic hydrocarbons (“PAHs”), pesticides, PCBs, and inorganic substances. All June/July 1998 subsurface soil samples were analyzed for VOCs. Soil samples from selected soil boring depths were analyzed for additional parameters, including SVOCs, PCBs, pesticides, and inorganic substances. The results of this soil sampling identified several locations on the Marina Cliffs Condominium Property where sub-surface soils have elevated concentrations of certain VOCs including trichloroethene and tetrachloroethene at 28 and 190 mg/kg, respectively. The highest lead concentration detected in subsurface soils was 1,150 mg/kg, at a location at the Site immediately adjacent to the Marina Cliffs Condominium Property.

8. Surface soils were analyzed for VOCs, SVOCs, PAHs, PCBs, pesticides and inorganic substances. Some surface soils collected during the March sampling round had slightly elevated levels of certain chemicals. The maximum concentration detected was 233 mg/kg for lead, 21.8 mg/kg for arsenic, 1.3 mg/kg for benzo(a)pyrene, and 0.1 mg/kg for dibenzo(a,h)anthracene.

9. On August 15, 2000, U.S. EPA signed an EE/CA Approval Memorandum which documented the need to collect additional information necessary to conduct an EE/CA investigation for any areas of the Northwestern Barrel Facility which extended outside the current Site boundary.

10. On July 5, 2002, U.S. EPA and Respondents entered an Administrative Order on Consent (No. V-W-02-C-703) in which the Respondents agreed to conduct an EE/CA investigation for any areas of the Northwestern Barrel Facility which extended outside the current Site boundary.

11. Sampling data developed by Respondents as part of the EE/CA investigation indicated that subsurface soils on the eastern end of the Marina Cliffs Condominium Property in the vicinity of the fence were contaminated with elevated levels of lead and PCBs, as high as 340 parts per million ("ppm") of PCBs and 1,150 ppm of lead.

12. Sampling data developed by Respondents as part of the EE/CA investigation indicated that surface soils on and around the Marina Cliffs Condominium Property in the vicinity of Building 1 were contaminated with elevated levels of PCBs, as high as 22 ppm, and that surface soils on a portion of the City of South Milwaukee's right of way just south of the Site were contaminated with elevated levels of lead, as high as 803 ppm.

13. Upon reviewing sampling data developed by the Respondents as part of the EE/CA under the 2002 Administrative Order on Consent (No. V-W-02-C-703), U.S. EPA determined that regardless of which final non-time critical removal actions would be required for portions of the Marina Cliffs Condominium Property and the City of South Milwaukee's right of way, those actions would include excavation, appropriate treatment, and disposal of soil contaminated with PCBs at levels greater than 1 ppm and soil contaminated with lead at levels greater than 400 ppm. The approximate areas with contamination above these levels are identified in Attachment C.

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 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.

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 Northwestern Barrel 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 this Order ("the Work") is necessary and appropriate to prevent, minimize and mitigate the release or threatened release of hazardous substances from the Northwestern Barrel Facility. The U.S. EPA has determined pursuant to 40 C.F.R. Section 300.415(a)(2) that Respondents can perform the Work promptly and properly.

8. Consistent with NCP. The Work required by this Order, if properly performed, is consistent with the CERCLA National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

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

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

Respondents have retained Conestoga-Rovers & Associates to implement the Work. 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 Respondents. If U.S. EPA disapproves a selected contractor, 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, as a subcontractor of Conestoga-Rovers & Associates, shall serve as Project Coordinator and shall be responsible for the administration of 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 Respondents. If U.S. EPA disapproves of a selected Project Coordinator, 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 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 Fred Bartman of the Superfund Division, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct two copies of all notices and submissions required by this Order to the OSC at 77 West Jackson Boulevard, SR-6J, Chicago, Illinois, 60604-3590, by certified or express mail. Respondents shall also send a copy of all submissions to Thomas Krueger, Associate 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 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 Respondents, and 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

Respondents shall perform, at a minimum, the following removal action, consistent with the Work Plan attached to this Order as Attachment D and any amendments to that Work Plan to be developed and approved pursuant to this Order:

- a. Identify, excavate, and provide appropriate treatment and disposal of soil contaminated with PCBs at levels greater than 1 ppm and soil contaminated with lead at levels greater than 400 ppm;
- b. Restore excavated areas to their pre-excavation condition to the extent practicable; and
- c. Implement the Site Health and Safety Plan developed pursuant to the 1995 Unilateral Administrative Order and submitted to U.S. EPA, and all additional necessary revisions.

2.1 Work Plan and Implementation.

The Work Plan and the schedule appended as Attachment D, and any subsequent modifications,

shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site Work pursuant to this Order. Respondents shall not commence or undertake any removal actions at the Northwestern Barrel Facility without prior U.S. EPA approval.

2.2 Submittals. U.S. EPA may approve, disapprove, require revisions to, or modify any Plans and reports submitted pursuant to this Order. If U.S. EPA requires revisions, Respondents shall submit a revised draft submittal within fifteen 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 Respondents shall implement the approved submittal, according to the schedule contained therein. If a new or modified guidance document adversely affects the schedule, 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 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. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, unless they invoke the dispute resolution provisions of Section IX 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 Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Respondents shall ensure that the laboratory used to perform the analysis participates in a QA/QC program that complies with U.S. EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing Work under this Order. 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. Respondents shall ensure that U.S. EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. 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.

2.5 Post-Removal Site Control. In accordance with the Work Plan, the 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. Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal Site control arrangements.

2.6 Reporting. 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 Facility shall, at least 30 days prior to the conveyance of any interest in real property at the Facility, 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 VI.3 (Access to Property and Information).

2.8 Final Report. Within 120 calendar days after completion of all Work required under this Order, the 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.

Respondents shall exercise their best efforts to provide or obtain access to the Facility and adjacent areas to which access is necessary to implement the Work required by this Order. To the extent obtained, such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State representatives, who shall be permitted to move freely at the Facility and appropriate adjacent areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the 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 Facility 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, 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 Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 21 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the Work described herein, using such means as U.S. EPA deems appropriate. 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

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 Facility, for six years following receipt of the Certificate of Completion pursuant to Section XX below. At the end of this six-year period and at least 60 days before any document or information is destroyed, 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, 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, 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.

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 Facility conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Facility or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. 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 Facility conditions. If 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.

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. 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 Facility, 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 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. REIMBURSEMENT OF COSTS

Respondents shall pay Oversight Costs to be incurred and paid by the United States related to the Facility that are not inconsistent with the NCP, in the manner described below.

U.S. EPA will send 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 Respondents' Oversight Cost payment obligations.

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

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/Northwestern Barrel Site" and shall reference the names of the Respondents, the U.S. EPA site identification number (#05PO), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance ("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 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 Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondents allege that U.S. EPA has made an accounting error, or if 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, 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, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. 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

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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that 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. 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 Respondents an extension of time for performance. 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 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 Respondents fail to fully perform their obligations related to the following enumerated items in accordance with the schedule established pursuant to this Order, and subject to the Dispute Resolution provisions of this Order, 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 Work Plan amendments or Supplemental Work Plans:	\$1,000	\$2,000	\$5,000
Failure to submit timely or adequate revisions to Work Plan amendments or Supplemental Work Plans:	\$1,000	\$2,000	\$5,000
Failure to provide timely notice of appointment of or change in 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

Failure to complete Work by the deadline established in the approved Work Plan:

\$1,000

\$5,000

\$10,000

Upon receipt of written demand by U.S. EPA, 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 (Reimbursement 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 Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way 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 Respondents prevail in such a dispute, 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 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 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 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, Respondents shall establish and maintain financial security necessary to ensure completion of the Work, estimated to be in the amount of \$1 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 Respondents; or

e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, 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. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

If Respondents can show that the estimated cost to complete the remaining Work has diminished below \$1 million after the effective date of this Order, 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. 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.

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 by the United States) 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. §9613(h).

XIV. COVENANTS NOT TO SUE BY THE UNITED STATES

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 Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform actions agreed to in this Order.

Except as otherwise specifically provided in this Order, in consideration of and upon Respondents' payment of the Oversight Costs specified in Section VIII (Reimbursement of Costs) of this Order, U.S. EPA covenants not to sue or to take administrative action against 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 removal action and 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 (Reimbursement of Costs).

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

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.

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 Northwestern Barrel Facility. Further, nothing herein shall prevent U.S. EPA or Respondents 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 Northwestern Barrel Facility.

XVII. CONTRIBUTION PROTECTION

With regard to claims for contribution against 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 persons not a parties to this Order for indemnification, contribution, or cost recovery.

XVIII. INDEMNIFICATION

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 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 Respondents, and any persons for performance of Work on or relating to the Facility, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by 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 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 Respondents seek permission to deviate from any approved plan or schedule, 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 Respondents shall relieve 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 Respondents conclude that the Work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (*e.g.*, record retention, reimbursement of costs), Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, U.S. EPA and the State. If, after the pre-certification inspection, 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 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 Respondents or 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 Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to complete the Work, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies.

U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order or require Respondents to submit a schedule to U.S. EPA for approval in the manner provided in Section VI.2.2 above. 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). The Respondents shall implement the required activities and shall submit a *modified final report in accordance with the U.S. EPA notice. Failure to timely implement the required activities and revisions shall be deemed a violation of this Order.*

XXI. COMMUNITY RELATIONS

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 Respondents in community relations activities. Respondents shall also cooperate with U.S. EPA in providing information regarding the Work to the public. As requested by U. S. EPA, 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 Facility.

XXII. 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.

XXIII. 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 _____, 2004.

By:

Name:

Representing:

Address for Notice:

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 23rd day of April, 2004.

By: 

Name: Nan Bernardo

Representing: BASF Corporation (on behalf of its self and its predecessors in interest, International Printing Ink, Inmont Corporation, and Cook Paint & Varnish)

Address for Notice:

Nan Bernardo
Environmental Counsel
BASF Corporation
3000 Continental Drive – North
Mt. Olive, NJ 07828-1234

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 26th day of April, 2004.

By:

Name: Gregory M. Rose

Representing: DaimlerChrysler Corporation

Address for Notice:

Mary C. Ericson
DaimlerChrysler Corporation
1000 Chrysler Drive
CMS 485-13-62
Auburn Hills, MI 48326

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 27th day of April, 2004.

By: Michelle T. Fisher
Name: Michelle T. Fisher
Representing: General Motors Corp.

Address for Notice: GENERAL MOTORS CORPORATION
300 RENAISSANCE CENTER
H.C. 482-024-024
DETROIT, MI 48243

ATTN: MICHELLE T. FISHER
ATTORNEY

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 23rd day of April, 2004.

By: Donald O. Lofty, Corporate Counsel
Name: Donald A. Lofty
Representing: S.C. Johnson & Son, Inc.

Address for Notice: 1525 Howe St., MS 062
Racine, WI 53403.

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 22 day of April, 2004.

By: _____

Name: Bernhard F. Mautz

Representing: MICO, Inc., as successor to Mautz Paint Company

Address for Notice:

c/o David A. Crass, Esq.
Michael Best & Friedrich LLP
1 South Pinckney Street, Ste. 700
Madison, WI 53703
Phone: (608) 283-2267
Fax: (608) 283-2275
Email: dacrass@mbf-law.com

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN

IT IS SO ORDERED AND AGREED

By: _____

Richard C. Karl, Acting Director
Superfund Division
United States Environmental Protection Agency
Region 5

Date: _____, 2004

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 27 day of April, 2004.

By:

Name: Katherine E. Reed
Representing: 3M Company



Address for Notice:

3M Company
c/o Nancy K. Peterson
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, WI 53202

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 26th day of APRIL, 2004.

By: 
Name: J.R. Alexander
Representing: PPG INDUSTRIES

Address for Notice: 1 PPG PLACE
PITTSBURGH, PA.
15272

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN

IT IS SO ORDERED AND AGREED

By: Richard C. Karl
Richard C. Karl, Acting Director
Superfund Division
United States Environmental Protection Agency
Region 5

Date: 5-4-04

ATTACHMENT A

Name of Respondent
BASF Corporation, on behalf of itself and its predecessors in interest, International Printing Ink, Inmont Corp., and Cook Paint & Varnish.
DaimlerChrysler Corp
General Motors Corporation
S.C. Johnson & Son, Inc.
Mautz Paint Company
Minnesota Mining and Manufacturing Company
PPG Industries, Inc.

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

**TIME-CRITICAL REMOVAL ACTION WORK PLAN
PROPERTIES ADJACENT TO THE MARINA CLIFFS/NORTHWESTERN BARREL SITE
SOUTH MILWAUKEE, WISCONSIN**

SCHEDULE

- Work activities are tentatively scheduled to commence at the Marina Cliff Condominium Corporation property, the Bay Heights Owners Association property and the City of South Milwaukee property on May 3, 2004 with a projected completion date of June 10, 2004 for all excavation and backfilling activities.
- All excavation and backfilling activities will be completed on weekdays between 8:00 a.m. and 4:00 p.m. to minimize potential disturbance to residents. Work outside of these hours will only be completed upon the prior authorization of the Marina Cliff Condominium Corporation or the Bay Heights Owners Association, as appropriate.

SURFACE INSPECTION PROGRAM

- Prior to completion of excavation activities, the existing ground surface will be accurately documented through the completion of a topographical survey of the ground surface in the vicinity of the excavation areas at the Marina Cliff Condominium Corporation property and the Bay Heights Owners Association property. The topographical survey will also include location and elevation measurements of all surface water drainage features (i.e., catchbasins, drainage tile, curbing, etc.) as well as any surface features (i.e., trees, shrubs, lawns, patios, sidewalks, retaining walls, pavement, etc.). In addition, an inventory of the vegetation and photographic documentation of the ground surface and surface features will also be completed by a qualified landscaping professional approved by the Marina Cliff Condominium Corporation and the Bay Heights Owners Association.
- Copies of the topographical survey, vegetation inventory and photographic documentation will be provided to the Marina Cliff Condominium Corporation and the Bay Heights Owners Association for concurrence prior to completion of the excavation activities.
- The topographical survey, vegetation inventory and the photographic documentation will provide the basis for the restoration activities to be completed following the completion of the excavation activities (see Excavation and Stockpiling activities below).
- All surface features that will be potentially affected by the excavation activities will be identified and the owner will be notified. Features that can be readily removed (e.g., bird baths, picnic tables, trellis, patio stones, etc.), will be removed and provided to the owner for storage. Alternatively, the features will be re-located to a locked, secure storage container located inside of the perimeter fence until completion of the excavation activities at no cost to the Marina Cliff Condominium Corporation and the Bay Heights Owners Association.

- The location of all underground services will be accurately determined and marked on the ground surface prior to commencing excavation activities. In the event that an underground service is disturbed during the excavation activities and service is interrupted for an extended duration, alternative accommodations acceptable to the Marina Cliff Condominium residents and/or the Bay Heights Condominium residents will be arranged and provided until the service is restored.
- All parking areas that will be potentially affected by the excavation activities will be identified and alternative parking arrangements will be arranged for the affected individuals.

BUILDING INSPECTION PROGRAM

- An exterior inspection of the foundations of Building Nos. 1 and 3 of the Marina Cliff Condominiums and the garage at the Bay Heights Owners Association will be completed by a qualified inspector prior to and upon completion of the excavation activities. It is proposed that the qualified inspector be the same as was approved by the Marina Cliff Condominium Corporation during previous excavation activities. These exterior inspections will also include photographic documentation and elevation surveying of the foundation walls of Building Nos. 1 and 3 of the Marina Cliff Condominiums, the garage at the Marina Cliff Condominiums and the garage at the Bay Heights Owners Association. In addition, an interior inspection of the foundations at each of the units of Building Nos. 1 and 3 of the Marina Cliff Condominiums will be completed, upon concurrence of each owner, by the qualified inspector prior to and upon completion of the excavation activities.
- The qualified building inspector will also observe the progress of the excavation activities in the immediate vicinity of any structures and any recommendations by the qualified inspector regarding structural concerns will be immediately implemented.
- Appropriate restoration activities will be recommended for any potential damage to the building foundations identified by the qualified inspector to be caused by the excavation and/or backfilling activities.

FENCE RELOCATION ACTIVITIES

- Temporary fence will be installed at the approximate locations shown on Figure 1, attached, prior to completion of the excavation activities. The temporary fencing will be kept in place during all excavation activities and will be removed upon completion of backfilling and surface restoration activities. These activities will be coordinated to minimize the duration that the temporary fencing is in place.
- The existing 6-foot high perimeter fence will be removed at the approximate locations shown on Figure 1, attached.

- A geotextile curtain will be attached to the temporary fence. The geotextile curtain will be installed along the entire temporary fence from the top of the fence and will extend onto the ground surface where it will be secured with pegs driven into the ground. The temporary fence and the geotextile curtain will be removed at the completion of the excavation activities.
- If necessary, wooden stakes and caution tape will be installed outside of the temporary fence to provide further protection/warning to residents of the excavation activities.

HEALTH AND SAFETY CONCERNS/EMERGENCY RESPONSE GUIDELINES

- All excavation activities will be continuously monitored by CRA's on-Site Resident Engineer. The health and safety procedures and emergency response guidelines specified in the USEPA-approved Site-Specific Health and Safety Plan will be implemented and maintained during the excavation activities. The Site-Specific Health and Safety Plan has been developed to ensure that public health, personnel and the environment are not adversely impacted by the excavation activities. Any unanticipated events will be immediately addressed as they arise by CRA's on-Site Resident Engineer in consultation with USEPA's OSC. Appropriate notification to the Marina Cliff Condominium Corporation and/or the Bay Heights Owners Association, if necessary, will be determined by USEPA's OSC.
- Work activities will immediately cease and appropriate additional engineering controls will be implemented if the continuous air monitoring data (see Air Monitoring Program below) indicates that any of the specified action levels are exceeded. In addition, in the event of an accident, (e.g., fire, explosion, disturbance of an underground service, etc.), work activities will immediately cease and the appropriate emergency response personnel (e.g., Fire Department, Police Department, State of Wisconsin Emergency Response Commission, Utility Company) will be immediately notified in accordance with the Emergency Contingencies specified in the USEPA-approved Site-Specific Health and Safety Plan. USEPA's OSC will also be immediately notified and immediate notification to the Marina Cliff Condominium residents and/or the Bay Heights Condominium residents will be initiated, as appropriate.
- In the unlikely event that the Marina Cliff Condominium residents and/or the Bay Heights Condominium residents must be evacuated from the building due to an accident, (e.g., fire, explosion, disturbance of an underground utility, etc.) during Time-Critical Removal Action activities, alternative accommodations acceptable to the residents will be arranged and provided throughout the duration that the residents are displaced from their homes.

EXCAVATION AND STOCKPILING ACTIVITIES

- All excavation activities will be completed in a manner cognizant of the proximity of the residences to the excavation areas. Excavation activities will be conducted in a manner

to minimize, to the extent practicable, disturbance to the residents and to minimize the potential for any adverse impacts to the general public or the environment.

- Excavation of soil will be completed to a maximum depth of approximately four feet below ground surface. Figure 1, attached, shows the approximate location and depth of each of the excavation areas.
- The location of all underground services will be accurately determined and marked on the ground surface prior to commencing Time-Critical Removal Action excavation activities. All excavation activities are anticipated to be completed above the elevation of the underground services. However, in the event that excavation activities require excavation in, around or below an underground service, the underground service will be exposed using hand excavation, as necessary, properly supported and service maintained throughout the duration of the excavation activities.
- Excavation adjacent to building foundations, as necessary, will be completed in a manner to minimize disturbance to the foundations and supporting soils. It is anticipated that excavation will be completed to a maximum depth of approximately four feet below ground surface and foundation walls and supporting soils will be unaffected. However, excavation will not be completed in a manner to jeopardize the structural integrity of the foundation or the stability of the supporting soils. In any event, excavation immediately adjacent to the structures will not be completed below the top of the footing of the foundation wall. In addition, the qualified building inspector will also observe the progress of the excavation activities immediately adjacent to the structures and any recommendations by the qualified inspector regarding structural concerns will be immediately implemented.
- In the event that precipitation or surface water run-off enters the excavation, the water will be pumped from the excavation and transferred to a wastewater storage facility for characterization and off-site disposal.
- All excavated soil will be directly loaded into off-road dump trucks and transported to a materials staging area located inside of the existing 6-foot high perimeter fence for waste characterization followed by loading, transportation and disposal at appropriate off-site disposal facilities. Figure 1, attached, shows the route for the off-road dump trucks and the approximate location of the materials staging area. The off-road dump trucks will not enter the excavation area and all soil attached or adhered to the outside of the trucks will be removed prior to transport to minimize the potential tracking of soil during these activities.
- Former building foundations encountered during excavation activities will be removed, as necessary, to allow excavation of the subsurface soils. Foundation removal will be conducted in a manner to minimize, to the extent practicable, disturbance to the residents. Soils around the concrete foundations will be excavated prior to removal of the concrete. The concrete will be transported in off-road dump trucks or dragged using an excavator to the materials staging area. No unnecessary breaking of the concrete will occur in the excavation area beyond those efforts needed to load the concrete into off-road dump trucks. Figure 1, attached, shows the route for the off-road dump trucks and the approximate location of the materials staging area.

- All stockpiles of excavated soil will be covered with polyethylene sheeting to minimize the potential for migration of dust from the stockpiles.
- Equipment startup activities will be completed away from the excavation areas to minimize diesel odors from construction equipment. Diesel odors may be noticed during excavation activities.

FUGITIVE AIR EMISSION CONTROLS

- Fugitive air emission control measures will be maintained during the excavation activities to ensure that areas are not adversely affected by the activities. These measures involve specific material handling procedures such as covering the stockpiles of excavated soils, limiting the size of the active excavation area, and the application of water, foaming agents or the use of dust palliative. The fugitive air emission controls described above will be implemented if fugitive dust generation is observed during excavation activities or if the PM-10 action level is exceeded at the temporary fence (see Air Monitoring Program below for details). In addition to the fugitive air emissions control measures described above, a geotextile curtain will be attached to the temporary fence to minimize the potential for migration of dust from the excavation areas.
- Fugitive air emission control measures will also be implemented to limit the potential for emission of fugitive dust along Marina Road during the performance of the transportation activities. These measures involve specific material handling procedures such as covering the soils in the transportation units (transportation units hauling concrete will not be covered), water misting and use of a covered-brush street sweeper on Marina Road. All trucks will be visually inspected by CRA's on-Site resident engineer prior to leaving the site and any loose dirt will be removed. These fugitive air emissions control measures will be implemented during all transportation activities from the site.
- All soils attached or adhered to excavated concrete will be removed from the concrete prior to transportation from the site to limit the potential for emission of fugitive dust along Marina Road during the performance of the transportation activities. All excavated concrete will be visually inspected by CRA's on-Site resident engineer at the materials staging area and any soils attached or adhered to excavated concrete will be removed.
- The off-road dump trucks will not enter the excavation area and all soil attached or adhered to the outside of the trucks will be removed prior to transport to minimize the potential tracking of soil during these activities.

VIBRATION MONITORING PROGRAM

- Continuous real-time vibration monitoring will be conducted at the foundation wall of the Marina Cliff Condominium Corporation building or Bay Heights Owners Association

garage (as appropriate) nearest to the excavation area by a qualified consultant during the excavation activities. Vibration monitoring data will be compared to the United States Office of Surface Mining frequency based velocity criteria of 2 inches/second to ensure that the building foundations are not adversely affected. In addition, these data will also be compared to the maximum peak particle velocity limit of 2 inches/second for frequencies of greater than 40 Hz and 0.75 inches/second for frequencies of less than 40 Hz as specified in Table 7.64-2 of the State of Wisconsin Industry, Labor and Human Relations (ILHR) regulations. Excavation activities will immediately cease and construction techniques will be modified if any of these protective action levels are exceeded.

AIR MONITORING PROGRAM

- Real-time air monitoring for respirable particulate matter (PM-10) will be conducted at the exterior wall of the Marina Cliff Condominium building or the Bay Heights Owners Association garage (as appropriate) and the downwind temporary fence nearest to the excavation area on a continuing basis during the excavation activities. Real-time monitoring data for PM-10 based on a 15-minute average will be conservatively compared to the National Ambient Air Quality Assessment Standard (NAAQS) of 150 $\mu\text{g}/\text{m}^3$, which is based on a 24-hour average. Excavation activities will immediately cease and appropriate additional engineering controls will be implemented if this action level is exceeded or if fugitive dust generation is observed.
- Real-time air monitoring for respirable particulate matter (PM-10) will also be conducted along Marina Road on a continuing basis during street sweeping activities. Real-time monitoring data for PM-10 based on a 15-minute average will be conservatively compared to the National Ambient Air Quality Assessment Standard (NAAQS) of 150 $\mu\text{g}/\text{m}^3$, which is based on a 24-hour average. Street sweeping activities will immediately cease and appropriate additional engineering controls will be implemented if this action level is exceeded or if fugitive dust generation is observed.
- Real-time air monitoring for organic vapors will be conducted at the exterior wall of the Marina Cliff Condominium building or the Bay Heights Owners Association garage (as appropriate) and the downwind temporary fence nearest to the excavation area on a continuing basis during excavation activities. Real-time monitoring data for organic vapors will be compared to the site-specific criteria of 1.0 ppm. Excavation activities will immediately cease and appropriate additional engineering controls will be implemented if this action level is exceeded.
- Eight-hour compound specific air monitoring for organic vapors will be conducted at the downwind temporary fence nearest to the excavation area during excavation activities. The location of the air monitoring station will be modified on a daily basis so that it monitors the air at the downwind temporary fence nearest to the excavation area. The organic vapors samples will be submitted to an AIHA accredited laboratory for analysis using NIOSH methods. A summary of the compounds and the associated NIOSH methods are provided on Table 1 attached. Eight-hour compound specific air monitoring data for organic vapors will be compared to the Wisconsin Acceptable Ambient Air Criteria (AAC) for the protection of human health and the environment as specified in NR 445.

- Eight-hour air monitoring for total suspended particulates (TSP) and total lead concentrations will be conducted at the downwind temporary fence nearest to the excavation area during excavation activities. The TSP and lead samples will be submitted to an AIHA accredited laboratory for analysis using NIOSH methods. A summary of the associated NIOSH methods are provided on Table 1 attached. The TSP and lead sample results will be evaluated to determine if additional fugitive air emission control measures are necessary. The location of the air monitoring station will be modified on a daily basis so that it monitors the air at the downwind temporary fence nearest to the excavation area.

NOISE LEVEL MONITORING PROGRAM

- Real-time noise level monitoring will be conducted at the exterior wall of the Marina Cliff Condominium building or the Bay Heights Owners Association garage (as appropriate) and the temporary fence nearest to the excavation area on a continuous basis during excavation activities. Noise monitoring data will be compared to the American Conference of Governmental Industrial Hygienists (ACGIH) standard of 100 dBA based on a 15-minute duration as well as the ACGIH standard of 85 dBA based on a sustained 8-hour duration, irregardless of background levels. Excavation activities will immediately cease and construction techniques will be modified if these action levels are exceeded.
- CRA's on-Site Resident Engineer and USEPA's OSC will discuss the anticipated excavation activities one day prior to completing the activities each day. Appropriate notification to the Marina Cliff Condominium Corporation and/or the Bay Heights Owners Association and scheduling restrictions will be determined by USEPA's OSC based on an evaluation of the noise level monitoring program database and the anticipated excavation activities.

VERIFICATION SAMPLING

- Upon completion of excavation activities, verification soil samples will be collected on an approximate 25 foot grid interval from the base and sidewalls of the excavation to confirm that cleanup criteria of 400 ppm for lead and 1 ppm for PCBs has been attained. Samples will be submitted to the laboratory for expedited analyses of lead and/or PCB concentrations as appropriate and indicated on Figure 1, attached.
- All sampling and analyses will be conducted in accordance with the procedures and protocols specified in the USEPA-approved Amendment to the Quality Assurance Project Plan (QAPP Amendment).
- The locations of all verification samples will be surveyed for horizontal and vertical control.

settling). Any unsatisfactory vegetation and/or surface features will be identified and replaced.

- Any potential damage to the building foundations identified by the qualified inspector to be caused by the excavation and/or backfilling activities will be addressed through the implementation of the restoration activities recommended by the qualified inspector. All restoration activities will be completed to the satisfaction of the qualified inspector and will be inspected approximately one year following restoration. Any deficiencies in the restoration will be identified by the qualified inspector and addressed.

TABLE 1

SUMMARY OF COMPOUND SPECIFIC AIR MONITORING
 TIME CRITICAL REMOVAL ACTION WORK PLAN
 PROPERTIES ADJACENT TO MARINA CLIFFS/NORTHWESTERN BARREL SITE
 SOUTH MILWAUKEE, WISCONSIN

<i>Compound Specific Air Monitoring</i>	<i>NOISH Method</i>
<i>VOC Analytes</i>	
Hexane	1500
Acetone	1300
1,1,1-Trichloroethane	1003
Methyl Ethyl Ketone	1300 mod
Isopropyl Alcohol	1400 mod
Methylene Chloride	1005
Benzene	1501
Trichloroethylene	1022
Methyl Isobutyl Ketone	1300
Perchloroethylene	1003
Toluene	1501
Butyl Acetate	1450
Propylene Glycol Monomethyl Ether	1401
Ethyl Benzene	1501
Butyl Alcohol	1401
Xylene	1501
Epichlorohydrin	1010
Propylene Glycol Monomethyl Ether Acetate	1450 mod
Styrene	1501
1,2,4-Trimethylbenzene	1501
Cyclohexanone	1300
Diacetone Alcohol	1402
Butyl Cellosolve	1403
Butyl Cellosolve Acetate	1450
Naphthalene	1501
<i>Inorganic Analytes</i>	
TSP	500
Lead	7300 mod



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 15 2002

REPLY TO THE ATTENTION OF

To Addressees Identified in Attachment A

Re: Marina Cliffs/Northwestern Barrel Site
South Milwaukee, Wisconsin

Dear Sir or Madam:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this Site 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 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Thomas Krueger, Associate Regional Counsel, at (312) 886-0562 or Fred Bartman, On-Scene Coordinator, at (312) 886-0776.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Wm. E. Munro".

William E. Munro, Director
Superfund Division

Enclosure

bcc: Carl Stimson, ORC (C-14J)
Thomas Krueger, ORC (C-14J)
Fred Bartman (SE-5J)
Fouad Dababneh, EESS (SE-5J)
John Maritote, EESS (SE-5J)
Fushi Cai, EESS (SE-5J)
Tony Audia, PAAS (MF-10J)
Records Center (SMR-7J)
ERB Read File
Toni Lesser, Public Affairs (P-19J) w/out attachments

ATTACHMENT A

Mautz Paint Company
c/o David A. Crass
Michael Best & Friedrich
One South Pinckney Street
P.O. Box 1806
Madison, Wisconsin 53701-1806

PPG Industries, Inc.
c/o Charles F. Helsten
Hinshaw & Culbertson
220 E. State Street
P.O. Box 1389
Rockford, Illinois 61105-1389

BASF Corporation
c/o Harry M. Baumgartner
3000 Continental Drive - North
Mt. Olive, New Jersey 07828-1234

3M Company
c/o Nancy Peterson
Quarles & Brady
411 E. Wisconsin Ave.
Suite 2550
Milwaukee, Wisconsin 53202-4497

S.C. Johnson & Sons, Inc.
c/o Linda E. Benfield
Foley & Lardner
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202-5367

Daimler Chrysler Corp.
c/o Steven C. Kohl
Howard & Howard
Suite 101
39400 Woodward Avenue
Bloomfield Hills, Michigan 48304-5151

General Motors Corporation
c/o Jerome I. Maynard
Dykema Gossett
55 East Monroe
Suite 3050
Chicago, Illinois 60603