
STATE OF WISCONSIN,

Plaintiff,

GENERAL CASUALTY COMPANY OF
WISCONSIN, TOWER INSURANCE
COMPANY, EMPLOYERS INSURANCE OF
WAUSAU, A MUTUAL COMPANY and
HAWKEYE-SECURITY INSURANCE COMPANY,

Intervening Plaintiffs,

vs.

CITY OF RHINELANDER, CHAMPION
INTERNATIONAL CORPORATION,
BANTA CORPORATION, and TRIUMPH
TWIST DRILL COMPANY,

Defendants.

Case No. 95 CV 105
30703

STIPULATION AND ORDER

STIPULATION

The State brought this action against the City of Rhineland (the "City"), and Champion International Corporation, Banta Corporation and Triumph Twist Drill Company (collectively the "generator defendants") seeking, *inter alia*, to compel all of the defendants to undertake remedial activities to abate alleged discharges of hazardous substances from the City of Rhineland Landfill (the "Landfill"). The State further sought forfeitures for alleged violations of the

State's solid waste management and hazardous substance spill remediation laws, and a judgment for claimed damages to natural resources.

In response to a dispute among the parties as to what remedy should be implemented to address existing conditions at the Landfill, the Court remanded the matter to the Department of Natural Resources the "(DNR)" for a contested case hearing on the matter. Based on information exchanged and developed in the course of discovery for that contested case hearing, the parties have agreed that it would be in the public interest to implement the remedy described in paragraph 1 below to address existing conditions at the Landfill.

Now, therefore, without any adjudication of any issues of fact or law, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The generator defendants and the City will jointly implement the remedy described in the: (a) June 1997 "Remedial Landfill Design & Operations Report," prepared by Conestoga-Rovers & Associates, and; (b) May 1997 "Conceptual Design for a Groundwater Extraction System," prepared by RMT, Inc. (hereafter referred to as the "Remedy.") The City and generator defendants shall complete the construction and installation of all components of the Remedy by September 30, 1998. All of the parties will cooperate in good faith in an effort to implement these remedial activities in as cost effective a manner as possible. The actual capital costs and operating and maintenance costs of these remedial activities will be apportioned as follows: generator defendants shall jointly pay 66 2/3 %, and the City shall pay 33 1/3 %.

2. The City and generator defendants shall have one year from September 30, 1998 to shakedown the groundwater extraction and treatment system. For a period of three (3) years after completion of the one year shakedown period, until September 30, 2002, the generator defendants and the City will monitor the groundwater quality at and in the vicinity of the landfill for chemicals of concern (COCs) and natural attenuation parameters, and will promptly report the results of this monitoring to the DNR. All of the parties will cooperate in good faith to agree upon the parameters to be monitored, the location of any new wells to be added to the existing well network, and the sampling frequency. The actual cost of this monitoring will also be apportioned 66 2/3 % to the generator defendants and 33 1/3 % to the City.

3. From the effective date of this Stipulation, the DNR may, at its discretion, and at the DNR's sole cost and expense, conduct additional sampling and monitoring at and in the vicinity of the Landfill. The DNR will promptly transmit the results of any such additional sampling to the generator defendants and the City.

4. After the conclusion of the monitoring period on September 30, 2002, the parties will evaluate the effectiveness of the Remedy implemented by the generator defendants and the City, taking into account the results of the monitoring conducted by the generator defendants and the City and any additional sampling and monitoring data collected by the DNR.

5. If the parties agree, as a result of the evaluation conducted after the monitoring period is concluded September 30, 2002, that the Remedy implemented by the City and generator defendants is an effective remedy, the City and generator defendants will continue to implement the Remedy until a determination is made that no further remedial action is required. The actual cost of completing these remedial activities will be apportioned 66 2/3 % to the generator defendants and 33 1/3 % to the City.

6. If the DNR determines, as a result of the evaluation conducted after the monitoring period is concluded on September 30, 2002, that supplemental remedial activities are needed, the parties agree that the following procedures shall apply:

A. the DNR shall provide written notice to the City and each of the generator defendants which sets forth the DNR's findings and specifies the basis therefore.

B. Upon receipt of such notice, the City and the generator defendants shall have sixty (60) days to submit a response that disputes the Agency's findings, in whole or in part, and specifies the basis therefore; and/or includes one or more proposals for supplemental remedial activities to address the environmental issues identified by the DNR.

C. Within sixty (60) days of receipt of such submittal(s), the DNR shall respond. The DNR's response may include, but is not limited to the following: (i) The DNR may agree in whole or in part with the matters

disputed by the City and/or generator defendants; (ii) the DNR may accept one of the alternatives proposed by the City and/or generator defendants, or; (iii) the DNR may propose that the City and/or generator defendants implement supplemental remedial activities.

D. If the parties' disputes are not resolved as a result of the foregoing proceedings the DNR will initiate a contested case proceeding on the need for and scope of supplemental remedial activities. The DNR shall have the burden, in any such contested case proceeding, of demonstrating the need for, scope of, and efficacy of supplemental remedial activities. There shall be no presumption in favor of the proposals of the DNR, the City, or the generator defendants for supplemental remedial activities in any such contested case proceeding.

7. The City and the generator defendants shall, pursuant to Section 292.99(2), Stats., reimburse the State for enforcement costs not to exceed \$50,000 incurred by the State in connection with its prosecution of this lawsuit. This sum will be apportioned 33 1/3 % to the City and 66 2/3 % to the generator defendants.

8. Nothing in this Stipulation and Order shall be deemed to limit any lawful authority of the State to take, direct or order appropriate action, or seek an order from the Court, to abate or respond to an actual release of hazardous substances that presents an imminent and substantial endangerment to human health or the environment. The City and each of the generator defendants

expressly reserve all rights they may have to contest any such action by the State, together with all defenses they may have to any such action.

9. For and in consideration of the agreements of the parties contained herein:

A. The State the City and the generator defendants hereby agree that the terms of this Stipulation and Order settle all of the respective claims made by these parties against each other in this lawsuit.

B. The State will forego the collection of forfeitures and natural resource damages, the latter having in the State's estimation a value in excess of \$500,000, so as to allow the City and the generator defendants to devote these funds to the remediation of the Landfill.

C. The City and the generator defendants covenant not to sue the State for any actual costs that the City or generator defendants incur to implement the Remedy. Anything herein to the contrary notwithstanding, the City and the generator defendants expressly reserve all rights they have to enforce this Stipulation and Order against the State and each other, and all claims they may have against the State, the third party defendants and each other in the event that supplemental remedial activities are required at the Landfill.

D. The State covenants not to sue the City or the generator defendants for the costs of any additional sampling the State conducts pursuant to paragraph 3 of this Stipulation and Order or any costs the State may incur

for oversight of the Remedy; and subject only to the exception set forth in paragraph 8 of this Stipulation and Order, the State further covenants not to sue or initiate administrative action against the City or the generator defendants for matters covered by this Stipulation and Order while the City and the generator defendants are implementing the Remedy in compliance herewith. Anything herein to the contrary notwithstanding, the State expressly reserves all rights it may have to enforce this Stipulation and Order against the City and the generator defendants, and all claims the State may have against the City and the generator defendants in the event that supplemental remedial activities are required at the Landfill pursuant to the procedures set forth in paragraph 6 of this Stipulation and Order.

E. The contested case hearing scheduled to begin on June 16, 1997 will be canceled.

10. Any time periods provided herein may be extended by agreement of the parties to this Stipulation and Order without further Order of the Court. The parties agree that force majeure events shall be good cause for extending time periods. The State further agrees that approval of requests for extension of time by the City or generator defendants will not unreasonably be withheld.

11. This Court shall retain jurisdiction of this matter to enforce the terms and conditions of this Stipulation and Order.

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

Dated: June 12, 1997
JAMES E. BOYLE
Attorney General

Dated: _____

Shari Eggleston
SHARI EGGLESTON
Assistant Attorney General
Attorneys for the Plaintiff

PHILIP PARKINSON
City Attorney

Dated: _____
BRIGGS & MORGAN

Dated: _____
LONSDORF & ANDRASKI

DAVID MCDONALD
Attorneys for Defendant
Champion International Corporation

JAMES A. LONSDORF

Dated: _____
FOLEY & LARDNER

Dated: _____
PATTERSON, RICHARDS, HESSERT,
WENDORFF & ELLISON

MARK A. THIMKE
Attorney for Defendant
Banta Corporation

PAUL E. DAVID
Attorneys for Defendant
City of Rhineland

Dated: _____
KARAGANIS & WHITE

A. BRUCE WHITE
Attorney for Defendant
Triumph Twist Drill Company

ORDER

The terms of the foregoing Stipulation are approved and made the Order of this Court, this ____ day of June, 1997.

Robert A. Kennedy, Sr.
Circuit Court Judge

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