



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Burneatta L. Bridge  
Deputy Attorney General

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P.O. Box 7857  
Madison, WI 53707-7857

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Assistant Attorney General  
608/267-2061  
FAX 608/267-2223  
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June 28, 1996

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& Siddall, Ltd.  
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Appleton, WI 54914

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Niebler & Muren, S.C.  
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Reinhart, Boerner, Van Deuren  
& Rieselbach, S.C.  
1000 North Water Street  
Suite 2100  
Milwaukee, WI 53202-3186

David J. Matyas  
Trustee  
Better-Brite Plating, Inc.  
David J. Matyas Law Office  
366 Main Avenue  
DePere, WI 54115

Jeffrey A. Schmeckpeper  
Kasdorf, Lewis & Swietlik, S.C.  
1551 South 108th Street  
Post Office Box 44200  
Milwaukee, WI 53214-7200

Attorney Joseph P. Guidote, Jr.  
Outagamie County  
Corporation Counsel  
410 South Walnut Street  
Appleton, WI 54911

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Mohr, Anderson & McClung, S.C.  
1111 East Summer Street  
Post Office Box 32  
Hartford, WI 53027-0032

Mark M. Leitner, Esq.  
Kravit, Gass & Weber, S.C.  
825 North Jefferson  
Milwaukee, WI 53202-6495

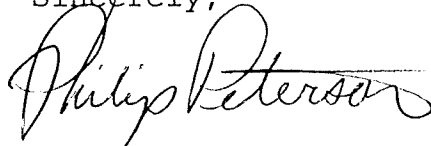
Re: State v. John D. Lewis  
Case No. 93-CV-239.

June 28, 1996  
Page 2

Dear Sirs:

Judge Troy has signed the judgment in the case referenced above. A copy of the fully signed stipulation and judgment with exhibits is enclosed for you.

Sincerely,

A handwritten signature in cursive script that reads "Philip Peterson". The signature is written in dark ink and is positioned above the typed name.

Philip Peterson  
Assistant Attorney General

PP:rmg

Enclosure

c: Robert Strous  
Joe Renville  
Annette Weissbach  
Paul Van Berkel

STATE OF WISCONSIN,

Plaintiff,

v.

JOHN D. LEWIS, individually  
and d/b/a Lewis Sales Company,

Defendant,

and

BITUMINOUS CASUALTY CORPORATION,  
NORTHWESTERN NATIONAL INSURANCE COMPANY, and  
HERITAGE MUTUAL INSURANCE COMPANY,

Intervening Plaintiffs,

v.

JOHN D. LEWIS, individually,  
and d/b/a Lewis Sales Company,  
and STATE OF WISCONSIN,

Defendants,

and

JOHN D. LEWIS, individually  
and d/b/a Lewis Sales Company,

Third-Party Plaintiff,

v.

JOHN ZENNER, et al.,

Third-Party Defendants.

STIPULATION AND JUDGMENT

STIPULATION

Plaintiff State of Wisconsin brought this civil action against  
defendant John D. Lewis seeking injunctive relief, public nuisance

damages, forfeitures, penalties, and costs for alleged violations of the State's hazardous substance spills law and for an alleged public nuisance, as more particularly described in the complaint commencing the action ("Complaint"). The parties wish to compromise and settle their differences by agreement, and they, therefore, enter this stipulation.

The parties enter this stipulation by their attorneys: the State, by its attorneys, James E. Doyle, Attorney General, and Philip Peterson, Assistant Attorney General; defendant Lewis, by himself and his attorneys, Herrling, Clark, Hartzheim & Siddall, Ltd., by Attorney Roger W. Clark, and Reinhart, Boerner, Van Deuren, Norris & Rieslbach, S.C., by Attorney Jeffrey P. Clark; intervening plaintiff Bituminous Casualty Corporation, by its attorneys, Kravit, Gass & Weber, S.C., by Attorney Mark M. Leitner; intervening plaintiff Northwestern National Insurance Company, by its attorneys, Kasdorf, Lewis & Swietlik, S.C., by Attorney Jeffrey A. Schmeckpeper; intervening plaintiff Heritage Mutual Insurance Company, by its attorneys, Mohr & Anderson, S.C., by Attorney James W. Mohr, Jr.; third-party defendant John Zenner, by his attorneys Niebler & Muren, S.C., by Attorney Joseph C. Niebler, Jr.; and third-party defendant Better-Brite Plating, Inc., by its attorney Attorney David J. Matyas.

IT IS HEREBY STIPULATED, among the parties, by their attorneys, that this case is fully and finally settled on its merits, with prejudice, on the following terms and conditions:

1. Defendant Lewis shall cause a total of \$270,000 to be placed in an escrow fund ("Escrow Fund") established to finance the

investigation and remediation of soil and groundwater contamination caused by chromium discharged at the real property described in numbered paragraph three of the Complaint ("Property"). The Escrow Fund shall be established and administered under the escrow agreement attached hereto as Exhibit A ("Escrow Agreement"). The escrow agent shall be chosen by Outagamie County ~~and the City of Kaukauna~~ BB. with the prior written concurrence of the Wisconsin Department of Natural Resources ("DNR").

2. The \$270,000 Escrow Fund required under the preceding paragraph and established and administered under the Escrow Agreement shall be derived from the following sources in the following amounts: John D. Lewis - \$195,000, Bituminous Casualty Corporation - \$25,000, Northwestern National Insurance Company - \$25,000, and Heritage Mutual Insurance Company - \$25,000.

3. Nothing in this stipulation requires defendant Lewis to contribute more to the Escrow Fund from his own sources than the \$195,000 required under the preceding paragraph. Likewise, nothing in this stipulation requires any further contribution from any source beyond the amounts called for in the preceding paragraph, except that Bituminous has agreed to pay one-third of all defense costs incurred by Heritage and Northwestern National in this case. This includes, not only Attorney Roger W. Clark's legal fees and expenses, but also amounts disbursed by Heritage and Northwestern National at Attorney Clark's request for testing and investigation, which he advised were necessary for a proper defense.

4. Bituminous, Northwestern, and Heritage shall deliver their contributions to the Escrow Fund under paragraph 2 to Attorney

Roger W. Clark, counsel for defendant Lewis, within 45 days after entry of this stipulation and judgment. Each contribution shall be made by check payable to Attorney Roger W. Clark's trust account. Within 60 days after entry of this stipulation and judgment, defendant Lewis, by his counsel Roger W. Clark, shall cause a total of \$270,000 to be placed in the Escrow Fund. That \$270,000 amount shall consist of defendant Lewis' \$195,000 contribution and the contributions of Bituminous, Northwestern, and Heritage.

5. Defendant Lewis's acceptance of this stipulation, if approved by the court, and his compliance with its requirements, as evidenced by his having made a \$195,000 contribution in full to the Escrow Fund and as further evidenced by a total contribution from all sources to the Escrow Fund totalling \$270,000 as called for under paragraphs 1 and 2 above, shall fully and finally settle, compromise, and satisfy defendant Lewis' liability, civil or criminal, to the State, and shall bar further action, civil or criminal, by the State against him, for the following:

(a) all violations alleged in the Complaint or described in any notices of violation or noncompliance which the DNR previously issued to defendant Lewis concerning the Property, ~~X~~ *and APC*

(b) any costs for which the State might otherwise initiate an action to recover funds spent or to be spent to restore the environment at or near the Property because of the violations alleged in the Complaint or described in any notices of violation or noncompliance which the DNR previously issued to defendant Lewis concerning the Property, including, but not limited to, actions

brought for that purpose pursuant to secs. 144.265, 144.442, 144.60 through 144.74, 144.76, or 823.03, Wis. Stats.

6. Defendant Lewis agrees to allow Outagamie County ~~of the City of Kaukauna or Both~~ to acquire the Property for no consideration using tax delinquency proceedings initiated by Outagamie County ~~of the City of Kaukauna or Both~~ as soon as reasonably possible. Defendant Lewis shall convey the Property to the County ~~of City of Both~~ as required by quit-claim deed or otherwise, so the Property may be investigated and cleaned up in accordance with the Environmental Contract attached hereto as Exhibit B.

7. Defendant Lewis gives each of the intervening plaintiff insurance companies, Bituminous, Northwestern, and Heritage, an appropriate full site release conditioned only on their each contributing the full \$25,000 amount each has agreed to pay to the Escrow Fund. In view of each intervening plaintiff's \$25,000 contribution to the Escrow Fund, none is liable for any further defense costs in this case, except that Bituminous has agreed to pay one-third of all defense costs incurred by Heritage and Northwestern National in this case including, not only Attorney Roger W. Clark's legal fees and expenses, but also amounts disbursed by Heritage and Northwestern National at Attorney Clark's request for testing and investigation, which he advised were necessary for a proper defense. Upon payment in full by Northwestern National and Heritage of their respective \$25,000 amounts to the Escrow Fund, any further obligation to pay defense

costs and attorneys' fees to either Attorney Roger W. Clark or Herrling, Clark, Hartzheim & Siddall, Ltd., shall cease.

8. Defendant Lewis, acting personally and on behalf of Wisconsin Chromium Corporation, shall execute a full site release and a full, complete, and final release of Heritage Mutual Insurance Company, Northwestern National Insurance Company, and Bituminous Casualty Corporation for all claims he or it may have for any liability arising out of this litigation, the underlying claims or the handling of those matters, including claims for damages, attorneys' fees, defense costs, extra-contractual or exemplary damages, or any other matters whatsoever arising out of this suit or concerning the Property, or for damages arising out of his or its ownership, use, or occupancy of the Property.

9. Third-party defendant Better-Brite Plating, Inc., shall execute a full site release and a full, complete, and final release of Heritage Mutual Insurance Company, Northwestern National Insurance Company, and Bituminous Casualty Corporation for all claims it may have for any liability arising out of this litigation, the underlying claims or the handling of those matters, including claims for damages, attorneys' fees, defense costs, extra-contractual or exemplary damages, or any other matters whatsoever arising out of this suit or concerning the Property, or for damages arising out of its ownership, use, or occupancy of the Property.

10. The State enters this stipulation in reliance on the following: March 31, 1995, Statement of Financial Condition for Defendant Lewis provided to it by May 1, 1995, letter from Attorney



Jeffrey P. Clark; CPA Paul Runkel's letter to Attorney Jeffrey P. Clark of April 21, 1995; and defendant Lewis' affidavit of April 18, 1995, and its attachment. Defendant Lewis attests that his March 31, 1995, Statement of Financial Condition fairly and accurately represents his complete, current financial condition and that to this date the December 26, 1985, Marital Property Agreement attached to his April 18, 1995, affidavit remains unchanged and is in full force and effect as a marital property agreement between him and his wife.

11. This stipulation, if accepted by the parties and approved by the court, shall apply to and be binding on the parties and their successors, heirs, and assigns.

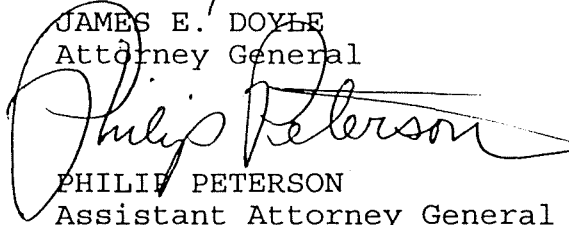
12. The court shall retain jurisdiction of the case to enable the parties to apply to the court for any further order needed to carry out, interpret, or enforce the terms and conditions of this stipulation or its exhibits in accordance with relevant law.

13. The accompanying judgment may be entered incorporating the terms and conditions of this stipulation without further notice and without the award of costs or fees to any party.

14. This stipulation may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

Dated this 5th day of January, 1996.

JAMES E. DOYLE  
Attorney General

A handwritten signature in cursive script that reads "Philip Peterson". The signature is written in black ink and is positioned over the typed name and title of Philip Peterson.

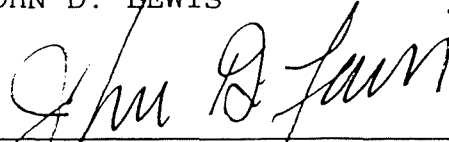
PHILIP PETERSON  
Assistant Attorney General  
State Bar No. 1013295

Attorneys for Plaintiff  
State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 267-2061

Dated this 11th day of November, 1995.

JOHN D. LEWIS



JOHN D. LEWIS, Defendant  
Signing personally and in his  
capacity as President of Wisconsin  
Chromium Corporation

SPAMCO Wisconsin, Inc. d/b/a

9729 North Lake Drive  
Bayside, Wisconsin 53217

Dated this 8th day of January, 1996.

HERRLING, CLARK, HARTZHEIM  
& SIDDALL, LTD.

By: \_\_\_\_\_

  
ROGER W. CLARK  
Attorney at Law  
State Bar No. 1010506

Attorneys for Defendant  
John D. Lewis

800 North Lynndale Drive  
Appleton, Wisconsin 54914  
(414) 739-7366

Dated this 8<sup>th</sup> day of November, 1995.

REINHART, BOERNER, VAN DEUREN,  
NORRIS & RIESLBACH, S.C.


By: Jeffrey P. Clark  
JEFFREY P. CLARK  
Attorney at Law  
State Bar No. 1009316

Attorneys for Defendant  
John D. Lewis

1000 North Water Street  
Milwaukee, Wisconsin 53202-0900  
(414) 298-8131

Dated this 4<sup>th</sup> day of January, 1996.

KRAVIT, GASS & WEBER, S.C.

By:   
MARK M. LEITNER  
Attorney at Law  
State Bar No. 1009459

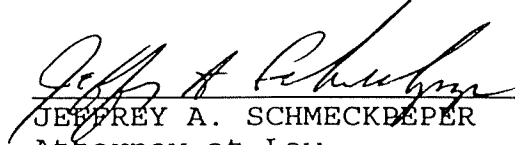
Attorneys for Intervening  
Plaintiff Bituminous  
Casualty Corporation

825 North Jefferson Street  
5th Floor  
Milwaukee, Wisconsin 53202  
(414) 271-7100

Dated this 2<sup>nd</sup> day of December, 1995.

KASDORF, LEWIS & SWIETLIK, S.C.,

By:

  
\_\_\_\_\_  
JEFFREY A. SCHMECKDEPER  
Attorney at Law  
State Bar No. 1016723

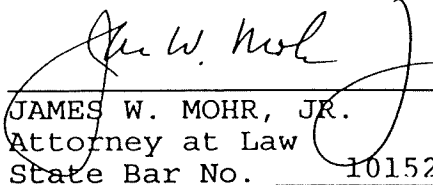
Attorneys for Intervening  
Plaintiff Northwestern National  
Insurance Company

1551 South 108th Street  
P.O. Box 44200  
Milwaukee, Wisconsin 53214  
(414) 257-1055

Dated this 26<sup>th</sup> day of December, 1995.

MOHR & ANDERSON, S.C.,

By:

  
\_\_\_\_\_  
JAMES W. MOHR, JR.  
Attorney at Law  
State Bar No. 1015241

Attorneys for Intervening  
Plaintiff Heritage Mutual  
Insurance Company

1111 East Sumner Street  
P.O. Box 32  
Hartford, Wisconsin 53027  
(414) 673-7850



Dated this 7<sup>th</sup> day of November, 1995.

NIEBLER & MUREN, S.C.,

By: Joseph C. Niebler Jr.  
JOSEPH C. NIEBLER, JR.  
Attorney at Law  
State Bar No. 1023250

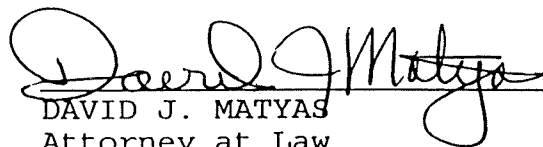
Attorneys for Third-Party  
Defendant John Zenner

450 North Sunny Slope Road  
P.O. Drawer 825  
Suite 270  
Brookfield, Wisconsin 53008  
(414) 673-7850

Dated this 31<sup>st</sup> day of October, 1995.

DAVID J. MATYAS LAW OFFICE

By:



DAVID J. MATYAS

Attorney at Law

State Bar No. 01017311

Trustee

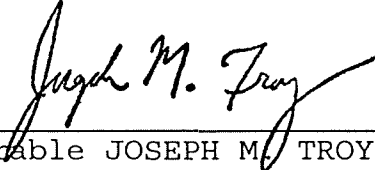
~~Attorney~~ for Third-Party  
Defendant Better-Brite Plating,  
Inc.

366 Main Avenue  
DePere, Wisconsin 54115  
(414) 336-2333

JUDGMENT

The terms and conditions of the foregoing stipulation are hereby approved and made binding on the parties. The stipulation terms are made the judgment of this court this <sup>24<sup>th</sup></sup>~~21<sup>st</sup>~~ day of June, 1995.

BY THE COURT:



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Honorable JOSEPH M. TROY  
Circuit Court Judge

**ESCROW AGREEMENT**

This Escrow Agreement is entered by and among John D. Lewis, Outagamie County, the State of Wisconsin Department of Natural Resources ("DNR"), and also \_\_\_\_\_ ("Escrow Agent"). John Lewis, Outagamie County, and the DNR hereby acknowledge the following:

RECITALS

A. The parties to this agreement seek environmental cleanup of chromium contaminated property at 2101 Hyland Avenue, Kaukauna, Wisconsin ("Property").

B. John Lewis and the State of Wisconsin are among the parties to a stipulation ("Stipulation") settling their differences in a civil action captioned State of Wisconsin v. John D. Lewis, Case No. 93-CV-00239 (Outagamie County Circuit Court filed February 1993).

C. A Contract, attached to the Stipulation as Exhibit B, sets forth obligations concerning investigation and remediation of chromium contamination at the Property.

D. The Stipulation provides for an escrow fund in the amount of \$270,000 to finance the investigation and remediation of chromium contamination at the Property.

## AGREEMENT

In consideration of the Recitals above and of the agreements reached in the Stipulation, the Contract, and this Escrow Agreement, John Lewis, Outagamie County, DNR, and the Escrow Agent agree as follows:

1. Escrow of Cash. John Lewis and Outagamie County shall cause a total sum amounting to \$270,000 in cash ("Escrow Funds") to be deposited with the Escrow Agent, and the Escrow Agent shall acknowledge receipt of those Escrow Funds.

2. Maintenance of Escrow Fund. The Escrow Agent shall hold and maintain the Escrow Fund in accordance with the terms hereof and shall apply the Escrow Funds and amounts received in respect thereto as is set forth in this Escrow Agreement.

3. Investment of Escrow Fund. Until such time as this Escrow Agreement terminates, the Escrow Agent shall deposit or invest the Escrow Funds in its own name in certificates of deposit or United States treasury bills maturing in not more than 90 days from the date of purchase, whichever carries the greater interest at the time of purchase, or in such other investments as Outagamie County and DNR shall first approve in writing.

4. Disbursement of Escrow Fund.

(a) The Escrow Agent shall disburse amounts from the Escrow Fund to perform requirements of the plans submitted to DNR under the Contract attached to the Stipulation as Exhibit B. The Escrow Agent shall also disburse amounts from the Escrow Fund to prepare or implement plan modification or supplementation

requirements as provided for in that Contract. The Escrow Agent shall only disburse Escrow Funds upon receipt of a certificate in the form of Attachment I hereto, executed and duly authorized by Outagamie County and DNR, and subject to the allocation of the Escrow Funds to particular investigative or remediation tasks by DNR.

(b) The Escrow Agent may not disburse any funds from the Escrow Fund without first having received specific written concurrence from DNR.

(c) The Escrow Agent shall continue to disburse funds from the Escrow Fund pursuant to the terms of paragraph 4(a) of this Escrow Agreement until all funds have been disbursed or DNR certifies in writing to the Escrow Agent that remediation of the Property is complete.

(d) The Escrow Agent shall provide written notice to Outagamie County and DNR of each disbursement from the Escrow Fund.

5. Distribution of Escrow Fund. If an amount remains in the Escrow Fund when DNR certifies in writing to the Escrow Agent that remediation is complete, the Escrow Agent shall disburse the remaining funds either to the State of Wisconsin as an appropriate forfeiture amount under sec. 144.99, Stats., or to the Environmental Fund, established under sec. 25.46, Stats., in accordance with written instructions from DNR and after consultation with and notice to Outagamie County.

6. Waiver. Nothing herein shall limit any right John Lewis or DNR may have under the provisions of the Stipulation. No

modification or waiver of the provisions of this Escrow Agreement shall be effective unless in writing and signed by the party to be charged therewith nor shall any waiver be applicable except in the specific instance for which given.

7. Duties of Escrow Agent. The Escrow Agent undertakes the duties and obligations imposed by this Escrow Agreement upon the following terms and conditions, by all of which John Lewis, Outagamie County, and DNR agree to be bound:

(a) The Escrow Agent shall not be liable for any act done or step taken or omitted by it, as Escrow Agent, or for any mistake of fact or law, or for anything which it may do or refrain from doing in good faith and in the exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Escrow Agreement, except the Escrow Agent shall be liable for its negligence or default in the performance of any obligation imposed upon it hereunder. The Escrow Agent may not be responsible in any manner whatsoever for the recitals contained herein.

(b) The Escrow Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents and shall not be answerable or accountable for any act, default, or neglect of any such attorney, provided reasonable care shall have been exercised by the Escrow Agent in the selection or continued employment thereof.

(c) The Escrow Agent may consult at any time with legal counsel satisfactory to it and shall not incur any liability or responsibility in respect of any action taken, suffered or omitted by the Escrow Agent hereunder in good faith and in accordance with the opinion or the advice of such counsel, provided the Escrow Agent shall have exercised reasonable care in the selection and continued employment of such counsel.

(d) The Escrow Agent shall not be under any obligation to institute any action, suit, or legal proceedings or to take any other action likely to involve expenses unless John Lewis, Outagamie County, or DNR shall furnish the Escrow Agent with reasonable security and indemnity for any costs and expenses which may be incurred; provided, however, that this provision shall not affect the power of the Escrow Agent to take such action as it may consider proper, whether with or without any such security or indemnity. The Escrow Agent, in its sole discretion, shall determine the reasonableness of the indemnification or security.

(e) The Escrow Agent shall be entitled to rely upon the genuineness and validity of all signatures of John Lewis, Outagamie County, or DNR and to rely and act upon the authority of any signatory to any notice delivered from them to the Escrow Agent.

(f) The Escrow Agent shall be reimbursed for reasonable expenses incurred by it in the performance of this Escrow Agreement. The Escrow Agent shall be indemnified and held harmless against any and all liabilities, including judgments, costs, and reasonable attorney's fees, for anything done or omitted by the



Escrow Agent in the performance of this Escrow Agreement, except as a result of the bad faith or negligence of the Escrow Agent. All such compensation, reimbursements, and indemnifications shall be paid out of the Escrow Fund.

(g) The Escrow Agent may at any time resign by giving not less than 60 days written notice to DNR and Outagamie County. Upon giving such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor escrow agent of comparable qualifications to those of the resigning Escrow Agent.

8. Escrow Agent Fee. The Escrow Agent shall be entitled to its usual and customary fee for escrow agreements of this nature. All fees shall be paid out of the Escrow Fund.

9. Notices. All notices, requests, and other communications hereunder shall be in writing and delivered by hand or mailed by first-class, registered or certified mail, return-receipt requested, to the following:

John D. Lewis  
9729 North Lake Drive  
Bayside, Wisconsin 53217

With a copy to:  
Attorney Jeffrey P. Clark  
Reinhart, Boerner, Van Deuren,  
Norris & Rieslbach, S.C.  
1000 North Water Street  
Milwaukee, Wisconsin 53202-0900

Outagamie County  
Ron Van De Hey  
County Executive  
410 South Walnut Street  
Appleton, Wisconsin 54911

With a copy to:  
Attorney Joseph P. Guidote, Jr.  
Outagamie County Corporation Counsel  
Courthouse, 410 South Walnut Street  
Appleton, Wisconsin 54911

State of Wisconsin  
Department of Natural Resources  
Attention: Attorney Judy Ohm  
Bureau of Legal Services  
101 South Webster Street  
Post Office Box 7921  
Madison, Wisconsin 53707

With a copy to:  
State of Wisconsin  
Department of Natural Resources  
Attention: Annette Weissbach  
Lake Michigan District  
1125 North Military Avenue  
Post Office Box 10448  
Green Bay, Wisconsin 54307

Escrow Agent

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner provided above for giving notice.

10. Termination. This Escrow Agreement shall terminate when the Escrow Agent shall have disposed of the Escrow Fund in accordance with the provisions of paragraph 4 or 5 hereof.

11. Benefit. The provisions of this Escrow Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. Governing Laws. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

13. Counterparts. This Escrow Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have signed this Escrow Agreement.

Dated this 10 day of January, 1996.

HERRLING, CLARK, HARTZHEIM  
& SIDDALL, LTD.

By: \_\_\_\_\_

ROGER W. CLARK  
Attorney at Law  
State Bar No. 1010506

Attorneys for Defendant  
John D. Lewis

800 North Lynndale Drive  
Appleton, Wisconsin 54914  
(414) 739-7366

Dated this 20 day of June, 1996.

OUTAGAMIE COUNTY

By: 

JOSEPH P. GUIDOTE, JR.  
Outagamie County Corporation  
Counsel

State Bar No. 1010640

Attorney for Outagamie County

Courthouse  
410 South Walnut Street  
Appleton, Wisconsin 54911

Dated this 5th day of January, 1996.

JAMES E. DOYLE  
Attorney General



PHILIP PETERSON  
Assistant Attorney General  
State Bar No. 1013295

Attorneys for Plaintiff  
State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 267-2061

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

[escrow agent signature block]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTACHMENT I

CERTIFICATE AUTHORIZING DISBURSEMENT  
FROM ESCROW FUND

1. John D. Lewis, the State of Wisconsin, and other parties have entered a stipulation, dated \_\_\_\_\_, 1996, ("Stipulation") relating to the obligation to investigate and remediate conditions of environmental concern at the real property at 2101 Hyland Avenue, Kaukauna, Wisconsin ("Property").

2. John Lewis, Outagamie County, and the State of Wisconsin Department of Natural Resources ("DNR") have entered an escrow agreement, dated \_\_\_\_\_, 1996, ("Escrow Agreement") relating to escrow funds to finance investigation and remediation of conditions of environmental concern under the Stipulation and its exhibits. This certificate is an attachment to the Escrow Agreement.

3. Pursuant to the Stipulation and its exhibits, Outagamie County certifies that part or all of the Remedial Action Plan for the area at the Property that is described as \_\_\_\_\_

\_\_\_\_\_ has been completed in accordance with the Contract that is Exhibit B to the Stipulation. As a result, Outagamie County hereby authorizes the Escrow Agent identified in the Escrow Agreement to pay \$ \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_ from the Escrow Fund established under the Escrow Agreement for the expenditures itemized below. The DNR certifies that it has approved the work and the itemized expenditure and hereby authorizes the Escrow Agent to pay \$ \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_ from the Escrow Fund for the following expenditures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:  
John D. Lewis Property

**ENVIRONMENTAL CONTRACT**

No. ER-95-\_\_\_\_\_

RECITALS

WHEREAS, Outagamie County ("County") shall by tax delinquent proceedings acquire real property owned by John D. Lewis Outagamie County ("Property"); and

WHEREAS, the County shall investigate and clean up chrom contamination at the Property and restore the environment consistent with the requirements of sec. 144.76, Wis. Stats., c NR 700-736, Wis. Admin. Code, and this Contract.

NOW, THEREFORE, in consideration of the mutual promises and understandings in this Contract and intending to be legally bound, the County and Wisconsin Department of Natural Resources ("WDNR") enter this Contract:

I. PARTIES BOUND

1. The WDNR and County enter this Contract under sec. 144.442, Wis. Stats, and § NR 728.07, Wis. Admin. Code. Section 144.442, Wis. Stats., authorizes WDNR to contract with interested persons to take environmental repair action on property in Wisconsin.

2. This Contract binds the undersigned parties. Absent a future written agreement with WDNR to the contrary, the County is responsible for its obligations under this Contract even if ownership of the Property is transferred.

3. The County shall ensure by contract that all contractors, consultants, and other persons or entities acting with respect to matters included in this Contract comply with it and all applicable laws. The County shall give a copy of this Contract to each contractor and consultant performing work required by this Contract



and shall require each contractor to provide written notice of this Contract to any subcontractor retained to perform any part of the work covered by this Contract.

## II. STATEMENT OF PURPOSE

1. The County shall promptly acquire from John D. Lewis the real property presently owned by him in Outagamie County having a street address that includes 2101 Hyland Avenue, Kaukauna, Wisconsin, having parcel number 32-2-0914, and being approximately 2.7 acres ("Property"). The County shall acquire the Property under tax delinquency proceedings, thereby obtaining an exemption under sec. 144.76(9)(e), Wis. Stats.

2. The County shall oversee the environmental investigation and cleanup of the chromium contamination at the Property.

3. The County may use the escrow fund established under the Stipulation by which State v. Lewis (Case No. 93-CV-239, Outagamie County) was settled ("Escrow Fund") for environmental investigation and cleanup at the Property. Among the uses of the Escrow Fund, the County may use the Escrow Fund to hire a consultant to manage the investigation and cleanup. The County may also arrange to receive Accurate Mechanical Contractors, Inc.'s monthly rental payments for the Property to cover its own internal oversight costs for investigating and cleaning up the Property.

4. The WDNR shall also provide money from the Environmental Fund under sec. 144.442, Wis. Stats., to the County for investigation and cleanup at the Property if the Escrow Fund becomes exhausted before the chromium contaminated Property is cleaned up to applicable environmental standards. The WDNR shall contribute money from the Environmental Fund under this paragraph only to the extent needed for investigation and cleanup to applicable environmental standards. The WDNR shall fully encumber sufficient moneys in the Environmental Fund, following governing procurement requirements, to investigate and clean up the Property to applicable environmental standards. If the Environmental Fund becomes insufficiently funded to provide the moneys needed to reach the applicable environmental standards, WDNR shall acting entirely in good faith use all its best efforts to obtain the legislative appropriation required for the investigation and cleanup needed at the Property to reach applicable environmental standards. Furthermore, if the Environmental Fund shall become insufficiently funded to provide the moneys needed to reach applicable environmental standards at the Property, the parties shall each work cooperatively to obtain the requisite moneys from other sources. If no such moneys are available, then so long as they shall remain unavailable, WDNR shall not take enforcement action to require the County to investigate or cleanup the Property. Once moneys are again available, whether from the Environmental Fund or

another source, the County shall again promptly and diligently proceed to investigate and cleanup the Property as needed to reach applicable environmental standards.

5. When the Property is cleaned to applicable standards, WDNR shall issue the County WDNR's standard "no-action close-out letter" for the Property.

6. The County may not sell the Property for less than its fair market value when the Property is cleaned up to applicable standards.

7. From the purchase price proceeds for the Property, the County, first, shall receive the amount of any back taxes or special assessments owed for the Property and, second, shall be reimbursed for any otherwise unreimbursed reasonable project oversight costs it incurred for Property investigation or cleanup.

8. If purchase price proceeds exceed disbursements under the preceding paragraph, WDNR shall be reimbursed from the proceeds for up to the full amount of the money from the Environmental Fund it has contributed for Property investigation and cleanup. If still additional purchase price proceeds remain, they shall be disbursed to the County.

### III. WORK TO BE PERFORMED

1. Work under this Contract is subject to WDNR approval. Work shall be done using sound scientific, engineering, and construction practices and complying with applicable statutes and administrative rules, including sec. 144.76, Wis. Stats., and the relevant portions of chs. NR 700-736, Wis. Admin. Code.

2. Governing guidance documents or new WDNR rules published after the effective date of this Contract shall apply prospectively to work not yet begun. If an applicable guidance document is newly adopted or changed and it requires change in a work plan or report required under this Contract, WDNR shall give written notice of the new or revised guidance document. Within 30 calendar days after receiving notice, the County or its consultant shall submit a revised plan or report complying with the new or revised guidance document.

3. If the County or its consultant, contractor, or subcontractor fails to comply with this Contract, WDNR may recover from the County any costs incurred by WDNR to do the work that is the responsibility of the County under this Contract, as provided in sec. 144.76(13), Wis. Stats., or may seek to enforce this Contract, as provided in ch. NR 728, Wis. Admin. Code, if WDNR has not undertaken the work.

4. All work under this Contract shall be directed and supervised by a qualified professional engineer and qualified hydrogeologist, as defined in § NR 712.03(1) and (2), Wis. Admin. Code. Within ten business days after the effective date of this Contract, the County shall notify WDNR, in writing, of the name, title, and qualifications of all engineers and hydrogeologists, including staff names, titles, and responsibilities, who will perform work under this Contract.

5. Within 30 calendar days after the effective date of this Contract, the County shall, through its consultant, submit to WDNR plans to investigate the chromium soil and groundwater contamination at the Property. The County shall submit its plans for WDNR approval or conditional approval. The County may incorporate into its plans the investigative plans already submitted to WDNR on behalf of John D. Lewis by Thresher & Son, Inc.

6. Within 60 calendar days after receiving WDNR's approval or conditional approval under the preceding paragraph, the County, through its consultant, shall submit to WDNR plans to clean up the chromium soil and groundwater contamination at the Property. The County shall submit its plans for WDNR approval or conditional approval. The County may incorporate into its plans the remediation proposals already submitted to WDNR on behalf of John D. Lewis by Thresher & Son, Inc.

7. The County, through its consultant, shall timely perform all requirements of each plan as approved or conditionally approved by WDNR under the preceding numbered paragraphs 5 and 6. Plan requirements shall be performed in accordance with WDNR's reasonable approval or conditional approval under sec. 144.76, Wis. Stats., and relevant portions of chs. NR 700-736, Wis. Admin. Code. The County, through its consultant, shall perform the requirements of each plan in accordance with applicable schedules reasonably approved or established by WDNR.

8. After investigation or remediation results are obtained, the County, through its consultant, shall promptly submit the results to WDNR and consult with WDNR to determine whether any additional investigation or remediation is required by law. If based on information before it or if after consulting with the County or its consultant, WDNR reasonably determines that additional investigation or remediation is required under sec. 144.76, Wis. Stats., or the relevant portions of the Wisconsin Administrative Code, the County, through its consultant, shall promptly prepare and submit to WDNR for its approval or conditional approval, which WDNR shall not unreasonably withhold, the reasonably required plan modification or supplementation. The County, through its consultant, shall fully and timely comply with each plan modification or supplementation reasonably approved or conditionally approved by WDNR and shall do so in accordance with

an applicable schedule reasonably approved or established by WDNR.

9. Within 90 calendar days after any required monitoring is completed and a close-out report is submitted to WDNR under ch. NR 726, Wis. Admin. Code, WDNR shall issue a written decision on whether further remediation or monitoring is required at the Property. The WDNR decision shall be based on whether sampling results exceed applicable standards and whether additional remediation or monitoring is required by applicable law. The WDNR may also issue a decision requiring further remediation or monitoring at any time during the period of a monitoring plan, provided its decision is supported by sampling results and applicable law.

#### IV. SUBMISSION OF DOCUMENTS AND CORRESPONDENCE

1. Documents, including reports, plans, approvals, conditional approvals, disapprovals, and correspondence to be submitted under this Contract, shall be sent to the following addresses or other addresses as the County or WDNR may designate in writing:

a. Documents submitted to WDNR --

Emergency and Remedial Response Section  
Wisconsin Department of Natural Resources  
Lake Michigan District Headquarters  
P.O. Box 10448  
Green Bay, Wisconsin 54307  
Attn: DNR Hydrogeologist Annette Weissbach

b. Documents submitted to the County --

Ron Van De Hey, County Executive  
410 South Walnut Street  
Appleton, Wisconsin 54911

2. All reports, plans, notices, and other documents required to be submitted under this Contract shall be deemed submitted on the date mailed, if mailed, or on the date received, if delivered by telefax or messenger.

#### V. MODIFICATION OF WORK

1. If modification to planned work or if additional work is needed to accomplish the objectives of this Contract and comply with applicable law, notification shall be given to the other party. If a modification or additional work is found necessary by

the County or its consultant, it shall be subject to WDNR's approval.

2. If a minor modification to planned work or minor additional work is found necessary during field work and it would cost less than \$5,000, oral notice may be given to the other party by the party or its consultant making the determination. The party giving oral notice shall, within five business days after oral notice, confirm the circumstances under which the determination was made, describing the modification or additional work performed and the reasons for it.

3. Any modification or additional work required by law shall be completed in accordance with the standards, specifications, and schedules lawfully and reasonably approved by or determined by WDNR under this Contract.

#### VI. ACCESS

1. Employees and authorized representatives of WDNR may enter the Property at any reasonable time to do the following: (a) inspect records, operating logs, contracts, and other documents relating to this Contract; (b) review progress under this Contract; (c) conduct tests or take samples as WDNR's project coordinator believes necessary; and (d) verify data submitted to WDNR. The County shall permit WDNR employees and authorized representatives to inspect and copy records, files, photographs, and documents, including sampling and monitoring data, pertaining to this Contract. All persons on the Property under this Contract shall meet all health and safety requirements. The County shall honor all reasonable WDNR requests for access to the Property, conditioned only on presentation of proper credentials.

2. Nothing in this Contract shall restrict WDNR's inspection or access authority under any statute or rule.

#### VII. PROJECT COORDINATORS

1. The WDNR and County shall each designate a project coordinator within ten business days after signing this Contract. Any party may change its designated project coordinator by notifying the other parties, in writing, at least ten business days prior to the change. To the extent possible, communications between the County and WDNR concerning the Property shall be through the project coordinators. Each project coordinator shall ensure that communications are properly disseminated and processed among the respective parties.

2. The WDNR project coordinator or designee may do the following: (a) make or authorize minor field modifications in or

minor additions to work under this Contract with respect to technique, procedure, or design; (b) take samples or direct the taking of samples; (c) direct that work be stopped whenever she or he determines activities at the Property may endanger public health or welfare or the environment; (d) observe, take photographs, and report on progress of the work; and (e) review records, files, and documents relevant to this Contract. Any field modification may be approved orally by the project coordinators. Within seventy-two hours following modification, the project coordinator who requested modification shall prepare a memorandum detailing the modification and its reasons and mail a copy to other project coordinators.

3. The project coordinator for the County or designee shall be on the Property during performance of work on the Property under this Contract.

4. Absence of the WDNR project coordinator from the Property shall not require stoppage of work.

#### VIII. FORCE MAJEURE

1. The County shall cause all work to be done within the times set under this Contract unless performance is delayed by a "force majeure." Under this Contract, a "force majeure" is an event that results from a cause beyond the control of the County or an entity controlled by it, including contractors and subcontractors, and that delays or prevents performance under this Contract. Force majeure events include, but are not limited to, denial or delay in receiving a governmental authorization necessary to implement work required under this Contract, provided, however, that the County has submitted a timely application for the authorization and used its best efforts to obtain it. An increase in cost or change in economic circumstances may not itself constitute a force majeure. An event that would otherwise be a force majeure may, however, be a force majeure even if it also results in increased cost or changed economic circumstances.

2. The County shall notify WDNR in writing within seven calendar days after any event it contends is a force majeure. The notification shall describe the anticipated length of delay, the cause of delay, the measures taken and to be taken to minimize delay, and the time by which the measures will be taken. The County has the burden to demonstrate that an event is a force majeure. After receiving notification, WDNR shall promptly give the County a written decision as to whether WDNR agrees that the event is a force majeure.

3. If WDNR agrees that a delay is attributable to force majeure, time for performance under this Contract shall be extended for the time attributable to force majeure unless WDNR determines it will terminate this Contract because the County is unable to

fulfill its material obligations under this Contract within a time acceptable to WDNR.

#### IX. INDEMNIFICATION

1. Neither party may be required to hold the other party harmless or to defend or indemnify the other party. However, any loss or expense, including costs and attorneys fees, incurred because of liability imposed by law, shall be charged to the party responsible for the officer, employee, or agent whose activity caused the loss or expense.

2. The WDNR throughout has dealt with investigation and cleanup at the Property as a hazardous substance spill under sec. 144.76, Wis. Stats. State v. Lewis (Case No. 93-CV-239, Outagamie County) was commenced and settled as a hazardous substance spill case under sec. 144.76. In dealing with investigation and cleanup to reach applicable environmental standards at the Property, WDNR will continue to deal with this case under sec. 144.76. In accordance with sec. 144.76(9)(e) 1m, after the County acquires the Property through tax delinquency proceedings, the County is exempt from environmental investigation and cleanup liability under sec. 144.76.

#### X. STIPULATED PENALTIES

If the County fails to fulfill the requirements of this Contract in accordance with its terms and fails to meet the applicable requirements of law, WDNR may determine that it will not provide money from the Environmental Fund, as provided under section II. 4. of this Contract, or that it will not issue the County WDNR's standard "no-action close-out letter" for the Property, or both. Nothing in this section shall prevent a party, including WDNR, from pursuing another legal or equitable remedy available to it under applicable law.

#### XI. DISPUTE RESOLUTION

1. The parties shall use their best efforts to resolve in good faith all disputes informally through the project coordinators. If, however, a dispute arises concerning this Contract that the parties are unable to resolve informally, the County may present a written notice of the dispute to WDNR. The notice shall set forth the specific points of dispute, the position of the County, the technical basis therefor, and any actions the County considers necessary. All information submitted by the County to WDNR for dispute resolution under this section shall become part of the administrative record concerning the Property.

2. Within ten business days after receiving written notice of a dispute, WDNR shall respond in writing to the County setting forth WDNR's position and the basis for it. The County may respond within five business days of its receipt. During the five business days following receipt of the County's response to its stated position, WDNR shall attempt to negotiate a good faith resolution to the dispute.

3. After the time set in the preceding paragraph, if WDNR concurs with the County, WDNR shall notify it in writing, and this Contract shall be modified to include any necessary extensions of time, variances of work, or reversal of a WDNR determination. If it does not concur with the County, WDNR shall resolve the dispute in good faith, taking due account of the position of the County and, based on this Contract and applicable law, provide written notification and justification of the resolution to the County.

4. A dispute pending under this section may affect the time for work or other obligations under this Contract if the County demonstrates a good faith basis for the dispute. Time shall be extended, however, only to the extent of actual time taken to resolve the dispute. Elements of the work and obligations not affected by the dispute shall be completed in accordance with the otherwise applicable schedule.

5. After resolving a dispute, whether informally or under this section, any additions or modifications required as a result of the dispute resolution shall immediately be incorporated, if necessary, into the appropriate plans or procedures and into this Contract. The County shall then proceed with all remaining work according to the modified plan or procedure.

6. In a proceeding to enforce this Contract, the County may assert that WDNR's resolution of a dispute was arbitrary and capricious, in addition to any other defenses available under this Contract or applicable law. If the court concludes that WDNR's resolution of a dispute was arbitrary and capricious or otherwise contrary to law, the court may exercise such legal and equitable powers as are appropriate.

## XII. EFFECTIVE DATE

The effective date for this Contract shall be the date 60 days after entry of the stipulation and judgment in State v. Lewis (Case No. 93-CV-239, Outagamie County).

## XIII. SUBSEQUENT AMENDMENT

In addition to the procedures elsewhere in this Contract, the Contract may be amended by mutual agreement of WDNR and the County.



Any amendment shall be in writing, signed by WDNR and the County, and have as an effective date the date on which the last party signed the amendment.

XIV. TERMINATION AND SATISFACTION

This Contract shall be fully satisfied on the County's receipt of a WDNR standard "no-action close-out letter" for the Property. The WDNR shall issue that letter after the County shows it has met all terms of this Contract, including any modification, additional work requirement, or other amendment, in accordance with applicable law. After that showing by the County, WDNR may not unreasonably withhold or delay issuing a standard "no-action close-out letter" for the Property.

XV. COVENANT NOT TO SUE

1. Except as otherwise provided in this Contract, from the effective date of the Contract, for as long as its terms are complied with and after satisfaction of the Contract under the preceding section, WDNR may not sue the County concerning the work satisfactorily performed under this Contract.

2. Work shall be deemed satisfactory if performed in accordance with all applicable requirements in section III of this Contract as in effect at the time the work is performed.

CONCLUSION

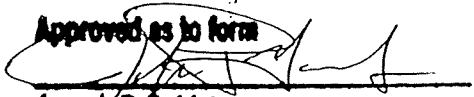
The parties, whose signatures appear below, hereby agree to this Contract. Each person signing has been duly authorized to execute and legally bind the respective parties to the terms of this Contract. This Contract may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES

By: George E. Meyer Date: 3/9/96  
George E. Meyer, Secretary  
Department of Natural Resources

OUTAGAMIE COUNTY

By: James P. Schvette Date: 6/20/96  
~~Hon Van De Hey~~ James P. Schvette  
County Executive  
Outagamie County

**Approved as to form**  
  
**Joseph P. Guidote**  
Corporation Counsel, Outagamie County