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May 24, 1996

WI DNR - GREEN BAY



MANITOWOC
CITY OF MANITOWOC,
WISCONSIN, USA

Ms. Diane Tesinsky
Wausau Insurance Companies
901 Warrenville Road
Suite 500
Lisle, IL 60532-4344

Mr. Richard Ventura
CIGNA Property & Casualty
160 Chestnut Street
P.O. Box 7716
Philadelphia, PA 19192

Ms. Brenda L. DuPree
General Casualty Ins. Co.
One General Drive
Sun Prairie, WI 53596

Ms. Elva McMullin
Crum & Forster Comm. Inc.
1700 West 82nd Street
Suite 200
Bloomington, MN 55431-1440

Mr. L.J. DacQuisto
AETNA
P.O. Box 2940
Milwaukee, WI 53201-2940

Ms. Janis Severson
Risk Enterprise Management
Limited
4940 Viking Drive
Suite 530
P.O. Box 39827
Minneapolis, MN 55439-0954



Re: Town of Newton Gravel Pit

OFFICE OF CITY ATTORNEY

Dear Insurer Representatives:

The City of Manitowoc has entered into an agreement with waste generators at the Town of Newton Gravel Pit site to facilitate the clean up of environmental damage. I'm enclosing a copy of that Agreement for your records.

Our consultant, RUST Environment and Infrastructure is in the process of submitting their Remedial Action Plan to the Wisconsin Department of Natural Resources. The cost of the recommended remedial action is approximately \$460,000. In addition, the City has spent approximately \$425,000 in engineering fees to this point.

Very truly yours,

Patrick L. Willis
City Attorney

PLW:es

Enc.

Patrick L. Willis
City Attorney

CITY HALL
817 Franklin Street
P.O. Box 150
Manitowoc, WI 54221-0150
Phone: (414) 683-4418
FAX: (414) 683-4331

WPF FILES \CORR\NWTNGRVL.INS



**AGREEMENT BETWEEN THE CITY OF MANITOWOC AND
PARTICIPATING GENERATORS FOR THE TOWN OF NEWTON
GRAVEL PIT SITE**

This Agreement is entered into as of the _____ day of _____, 1996 between the City of Manitowoc (the "City") and those Parties listed in Appendix A (the "Participating Generators") (with the City and the Participating Generators collectively referred to as the "Parties") and each, individually, as a "Party").

FACTUAL BACKGROUND

1. The Town of Newton Gravel Pit Site (the "Site") has been identified as requiring remediation. The required remediation is proposed to be carried out according to the Remedial Option #5 of the Site Investigation and Remedial Options Report (the "Remedial Plan") prepared by Rust Environment and Infrastructure ("Rust") dated January 19, 1995. Part of the Remedial Plan includes non-aqueous phase liquid removal at a cost not to exceed \$69,800 (the "Removal"). The Remedial Plan will be submitted to the Wisconsin Department of Natural Resources ("WDNR") by the City.

2. The Participating Generators are alleged to have generated waste during the relevant time period that may have been disposed of at the Site.

3. The City was the owner of the Site during the relevant time period.

4. The Parties have met on numerous occasions to discuss a privately financed investigation and remediation of the Site.

5. Consequently, in order to accomplish an expeditious remediation of the Site, the Participating Generators and the City have reached this Agreement to jointly fund the remediation at this Site.

PURPOSE OF THIS AGREEMENT

6. The purpose of this Agreement is to set forth the terms under which the Parties will jointly fund the remediation work and the manner in which the remediation will be accomplished.

SCOPE OF THIS AGREEMENT

7. The terms and conditions of this Agreement between the City and the Participating Generators apply only to the funding and conducting of the Remedial Plan, identified as Remedial Option #5 in the Rust Report dated January 19, 1995, and to the partial payment by the Participating Generators of past costs incurred by the City for site investigation services, as provided in Appendix B ("Past Costs").

8. This Agreement is contingent in part upon WDNR approval of the cleanup proposed for the Site in substantial compliance with the Remedial Plan (hereinafter the "WDNR Approval"). If WDNR fails to approve the cleanup proposed for the Site in substantial compliance with the Remedial Plan on or before December 31, 1996 (hereinafter the "Non-Approval"), this Agreement shall be declared to be null and void for all purposes except for those portions of this Agreement that relate to the Removal. Rust shall estimate the cost of implementing the cleanup for the site approved by the WDNR within 30 days after the date of the approval issued by the WDNR (hereinafter the "Rust Estimate"). The Rust Estimate shall be for total site costs including the cost of the Removal and Past Costs incurred by the City ("Total Site Costs"). As used in this Agreement, the term "substantial compliance" shall mean that Rust Estimate is not greater than \$1,000,000 for Total Site Costs.

9. In the event following WDNR Approval it is later determined that the actual costs of implementing the WDNR Approval exceed \$1,000,000 for Total Site Costs, the Participating Generators shall have no obligation under this Agreement to fund the portion of the costs in excess of \$1,000,000, provided, however, that the City and the other Parties shall retain any and all rights not specifically waived in this Agreement to seek contribution from other Parties to this Agreement as well as from any third parties for any such excess cost.

10. The Parties agree to waive consistency with the National Contingency Plan ("NCP") as to all work performed before or after the date of this Agreement.

11. The Parties agree that no portion of the tolling period beginning from January 1, 1995 up to the date that any Party to this Agreement mails written notification to all other Parties of its intent to terminate the tolling period shall be used for purposes of calculating the passage of time under an applicable statute of limitations for any claim that a Party may have against another Party relating to contamination at the Site.

12. The obligations of the Parties under this Agreement are limited solely to this Agreement and have no effect outside the terms of this Agreement. Nothing in this Agreement shall be an admission of law or fact or evidence of any liability or responsibility with respect to the Site. Nothing in this Agreement is intended to release, discharge, or in

any way affect any claim, cause of action, or demand in law or equity which the Parties may have against any other person or entity who is not a Party relating to the generation, storage, treatment, transportation, release, or disposal of any hazardous substances at, to, or from the Site.

13. The Parties do not admit or concede, and reserve the right to contest any determination, allegation, finding or conclusion regarding the Site in any action other than one brought by any of the Parties to enforce this Agreement.

14. This Agreement shall not create any private right, other than a right by any of the Parties to enforce this Agreement.

ALLOCATION OF COSTS

15. The Parties agree to fund jointly the cost of implementing the WDNR Approval and, in the event of Non-Approval, the Removal.

16. The Participating Generators shall pay the City \$69,800 for the Removal within 30 days of the execution of this Agreement. In the event of Non-Approval, this shall constitute the sole payment for which the Participating Generators are obligated under this Agreement.

17. In the event of WDNR Approval, the Participating Generators shall pay the City the balance of 67.5% of the Rust Estimate remaining after the payment made under paragraph 16, within 30 days of the date of mailing of the Rust Estimate. In the event of WDNR Approval, the City agrees to pay 32.5 percent of the Rust Estimate.

18. The City shall maintain the payments received from the Participating Generators in a separate account which shall not be commingled with monies from any source not covered by this Agreement (hereinafter the "Account"). The City is authorized to utilize the Account for the payment of costs incurred for the implementation of the WDNR Approval or, in the event of Non-Approval, the Removal.

19. The Parties agree that the City of Manitowoc, to date, has expended \$421,609 in project costs paid to Rust for cleanup activities at the Site. In the event of WDNR Approval and within 30 days of the date of the mailing of the Rust Estimate, the Participating Generators agree to reimburse the City an amount calculated in accordance with the following formula: $\$421,609 - (\text{Rust Estimate} \times 32.5\%)$. As a result of this reimbursement, the City is deemed to have contributed its 32.5 percent share of the Rust Estimate in accordance with paragraph 17 of this Agreement in the event of WDNR Approval.

20. If the total actual costs for the WDNR Approval exceed the Rust Estimate, the Participating Generators shall pay the City 67.5% of such excess costs within 45 days of the date of mailing by the City to the Participating Generators of notification of such excess costs provided, however, that the Participating Generators shall have no obligation for any portion of the total costs for the WDNR Approval in excess of \$1,000,000 Total Site Costs. In the event the total actual costs for the WDNR Approval are less than the Rust Estimate, the City shall distribute to the Participating Generators the balance in the Fund within 45 days of the date that WDNR has approved the completion of the WDNR Approval.

ACTIONS TO BE PERFORMED BY THE CITY OF MANITOWOC

21. Upon execution of this Agreement, the City shall direct its consultant, Rust, to conduct the Removal immediately or as promptly as site and weather conditions allow. Conduct of the Removal shall not be postponed until WDNR Approval or Non-Approval.

22. The Parties agree that the City of Manitowoc will continue to act as the primary representative dealing with the WDNR. The City of Manitowoc further agrees that it will not inform WDNR of the terms of this Agreement between the Participating Generators and the City unless prohibited by applicable law as defined in paragraph 29 of this Agreement.

23. The Parties agree that the City is the party responsible for entering into and overseeing all contracts for work performed at this Site under the WDNR Approval or the Removal. The City will use reasonable efforts, as determined solely in the exercise of the City's discretion, to perform tasks covered by the WDNR Approval or the Removal with City personnel.

24. The Parties agree that the City is responsible for monitoring the total costs for the WDNR Approval and for providing notification to the Participating Generators in the event that total costs of the WDNR Approval exceed the Rust Estimate. The Parties further agree that the City will provide a final accounting of all costs for the WDNR Approval upon its completion and make distributions, if any are required, in accordance with paragraph 20 of this Agreement.

ACTIONS TO BE PERFORMED BY THE PARTICIPATING GENERATORS

25. The Participating Generators will agree among themselves how to fund the Participating Generators' allocated share of the costs of the WDNR Approval or the Removal as required by this Agreement.

26. The Participating Generators shall designate one or more representatives to coordinate the work to be performed with the City and for the receipt of any notices or payments made by the City or Rust under this Agreement.

COVENANT NOT TO SUE

27. In the event WDNR approves the completion of the WDNR Approval for the Site in accordance with applicable law and the Parties have fulfilled all of their obligations under this Agreement, and the clean up is accomplished at a cost of not more than \$1,000,000.00 Total Site Costs, the Parties agree not to sue each other for costs associated with the WDNR Approval; provided, however, that nothing herein shall preclude or bar the Parties from any available legal remedies directed against anyone who is not a Party for such costs, nor shall anything herein preclude or bar any of the Parties from any available legal remedies against any other Party in the event of a suit or claim against any Party from any party who is not a signatory to this Agreement.

INDEMNIFICATION

28. Each Party agrees to indemnify, defend and hold harmless any Party and its representative(s) from and against any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "Liability") which in any way relates to the good faith performance of any duties under this Agreement by any Party or its representative(s) on behalf of the Parties, including, but not limited to, any liability arising from any contract or agreement required to implement the WDNR Approval or the Removal. This indemnification shall not apply to any liability arising from a criminal conviction, unless the Party or its representative(s) demonstrates to the satisfaction of the Parties that the Party or its representative(s) had reasonable cause to believe that the conduct in question was lawful. However, nothing in this paragraph shall constitute a waiver or release of any claim or potential claim by any Party which is reserved within this Agreement. In addition, if assertion of any remedies against anyone who was not a Party which are specifically reserved in paragraph 27 of this Agreement results in claims being asserted by anyone who is not a Party against a Party who does not elect to assert such a claim ("Non-Claimant") or results in any person or entity asserting an indemnity claim against a Non-Claimant, then the claimants who are also Parties jointly and severally agree to defend, indemnify and hold harmless such Non-Claimants from such litigation costs, attorneys' fees, money damages, judgments and/or settlements relating to such contribution or indemnity claim.

CONFIDENTIALITY

29. The City will maintain the confidentiality of this Agreement unless prohibited by applicable law, including, but not limited to, the Wisconsin Public Records law, Wis. Stats. §19.31 et. seq.

SUCCESSORS AND ASSIGNS

30. This Agreement shall be binding upon the successors and assigns of the Parties. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Party without the prior written consent of the remaining Parties.

MAILING

31. Any reference to mail or mailing in this Agreement shall be accomplished by mailing a notification by certified mail, return receipt requested to the intended recipient(s).

APPLICABLE LAW

32. For purposes of enforcement or interpretation of the provisions of this Agreement, the Parties agree that the laws of the State of Wisconsin shall be applicable, except to the extent federal law shall apply to questions arising under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or the NCP promulgated thereunder, and further agree not to contest personal jurisdiction in the state or federal courts of Wisconsin with respect to litigation brought for such purposes.

NATURE OF AGREEMENT

33. Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Parties.

COUNTERPARTS

34. This Agreement may be executed in any number of counterparts, each of which shall be deemed a duplicate original, but all of which together shall constitute one and the same instrument and shall become effective as to each Party when the counterpart executed by such Party as of the date the last Party signs the Agreement provided all counterparts have been delivered to Susan H. Martin, Foley & Lardner.

APPENDIX A

Participating Generators

A & P

Heresite

Imperial Eastman

Invincible

Manitowoc Co.
(Manitowoc Engineering)
(Manitowoc Shipbuilding)

Manitowoc Products Co.
(Chrysler Corporation)
(White Consolidated)

Newell
(Aluminum Spec.)
(Mirro)

APPENDIX B

RECEIVED
JAN 16 1996
CITY ATTORNEY



January 16, 1996

MEMO TO: CITY ATTORNEY PAT WILLIS
FROM: MICHAEL E. HAWLEY, P.E. *MEH*
Director of Public Works & City Engineer
SUBJECT: Gravel Pit Investigation

Pursuant to your request for information on costs incurred in the Gravel Pit Investigation, we have paid the following to date.

RUST' ENVIRONMENT & INFRASTRUCTURE

Contract 1 - Site Investigation Services
from December, 1992 thru
December 10, 1993 \$166,072.00
(Final Payment 1/14/94)

Contract 2 - Continuing Site Investigation
January, 1994 thru
December 8, 1995 \$255,536.69
(\$626.91 Paid 1/12/96)

MEH:ca
Revised 1/16/96
(450-353130-529900)



OFFICE OF DEPARTMENT
OF PUBLIC WORKS,
ENGINEERING

Michael E. Hawley
Director of Public Works
and City Engineer

CITY HALL
817 Franklin Street
P.O. Box 1597
Manitowoc, WI 54221-1597
Phone: (414) 683-4410
FAX: (414) 683-4424

MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.


The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

4-16-96
Date of Execution

INVINCIBLE METAL FURNITURE CO.

Name of Party

By:


(Signature)

Name:

JOHN A. SCHUETTE

(Typed Name)

Title:

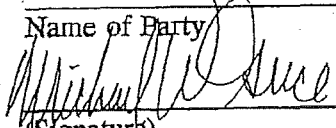
PRESIDENT

MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

3-12-96
Date of Execution

Chrysler Corporation
Name of Party
By: 
(Signature)

Name: Michael W. Grice
(Typed Name)

Title: Senior Staff Counsel

MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

April 15, 1996
Date of Execution

City of Manitowoc
Name of Party

By: *Patrick L. Willis*
(Signature)

Name: Patrick L. Willis
(Typed Name)

Title: City Attorney

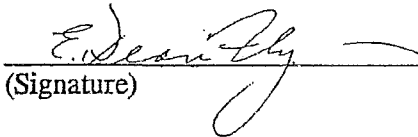
MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

March 29, 1996
Date of Execution

The Manitowoc Company, Inc.
Name of Party

By: 
(Signature)

Name: E. Dean Flynn
(Typed Name)

Title: Secretary & Manager - Corp. Insurance

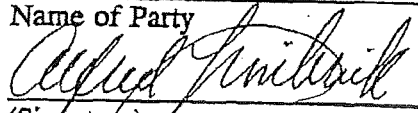
MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

3/22/96
Date of Execution

Great Atlantic & Pacific Tea Co., Inc.
Name of Party

By: 
(Signature)

Name: Alfred Limbrick
(Typed Name)

Title: Group Vice-President

MODIFICATION


35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

March 8, 1996
Date of Execution

Gould Electronics Inc.
Name of Party

By:


(Signature)

Name:

Lawrence W. Mitchell
(Typed Name)

Title:

Associate Counsel

MODIFICATION


35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

3-11-96
Date of Execution

HERESITE PROTECTIVE COATINGS, INC.
Name of Party

By:


(Signature)

Name:

GEOFFREY C. LIBAN
(Typed Name)

Title:

C.E.O.

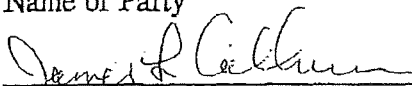
MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

March 12, 1996
Date of Execution

White Consolidated Industries, Inc
Name of Party

By: 
(Signature)

Name: James L. Calhoun
(Typed Name)

Title: Vice President - Regulatory Affairs

MODIFICATION

35. No modification may be made to this Agreement except in writing and signed by all parties.

The Parties have caused this instrument to be signed by persons duly authorized to sign on behalf of the Parties.

March 7, 1996
Date of Execution

Newell Co.
Name of Party

By: [Signature]
(Signature)

Name: Richard H. Wolff
(Typed Name)

Title: Secretary