RECOMMENDATION OF UMPIRE
CITY OF MANITOWOC / FORMER NEWTON GRAVEL PIT SITE
3130 HECKER ROAD, MANITOWOC, WISCONSIN
WI / WDNR BRRTS Activity #02-36-000268

The Wisconsin Department of Natural Resources (WDNR) appointed this Umpire to carry out the duties set forth in Wis. Stats. §292.35 concerning the Manitowoc site. The Umpire submits his recommendation pursuant to Wis. Stats, §292.35 regarding the design and implementation of the remedial action plan and the contribution of funds for investigation and remedial action by the local unit of government and all responsible parties that were identified by the local government unit. The parties available to participate submitted mediation statements to the Umpire on November 21, 2017. Negotiation sessions took place on November 30, 2017 and December 18, 2017 in Manitowoc and Milwaukee respectively. Additional telephone negotiations occurred through January 29, 2018, the last day of the statutory 60-day negotiation period. All available parties settled with the City except Newell Brands, Inc. (Newell, successor to Mirro Aluminum Co. and Aluminum Specialty Co.)

The City of Manitowoc (City) prepared its Offer to Settle (attached) as required by Wis. Stats. §292.35(3), and submitted it as its mediation statement. The Offer addressed the allocation issue for all parties and included allocation of any orphan share resulting from the unavailability of some parties to contribute to clean-up costs. The City proposed an allocation of 32.5% past and future costs to itself, and proposed a 67.5% allocation of past and future costs to the generator parties. All generator parties that have participated in the negotiation have settled with the City except Newell.

Newell challenged the City's proposed in its November 21, 2017 submittal (attached) on three grounds: "I. The Allocation Process is Tainted; II. The City Ignores Evidence of Its Own Use of the Site for Disposal; and III. The City's Delay in Addressing the Site Has Made Matters Worse." The City countered these three arguments in its December 8, 2017 response sent to all parties and to the Umpire. In its response (attached) City also highlighted "several key pieces of information" on which it based its allocation to Newell.

No site investigation is ever as complete as it could be if more work were done. Nor is a site investigation ever done as quickly or as thoroughly as some would want. Moreover, environmental clean-up cases throughout the country, and here in Wisconsin, have often taken decades of litigation to end. Here neither relative completeness of the record nor the time taken to compile and store it alters the fact that the City has invoked and complied with the process set forth in Wis. Stats. Ch. 292. The site needs to be clean and the costs need to be allocated to the available parties.

With respect to Newell's first position, Newell asserts that the Wis. Stats. §292.35 allocation process "...rests on the completeness and transparency of the City's compilation of the record." As stated, that requirement is not in the statute. Moreover, Newell has not proven that the City has not been "transparent" with the "record," however incomplete Newell thinks it is. Nor has Newell shown any instance of the City failing or refusing to disclose facts. The statute neither defines nor requires the content or scope of the "record." In the end, the statute does not require agreement. The statute does require willing parties to negotiate using whatever facts they have.

Regarding Newell's second position, the City identifies in its Offer a man who recalled City trucks "...disposing 'solvents' at the site but later couldn't confirm his accusation. Whether those facts prove the City to be both a generator and an owner-operator, the City has volunteered to accept 32.5% share of the cost as it did in 1996. The City has disclosed, not ignored, evidence of its liability and has proposed an equity allocation to itself.

In its third position, Newell asserts that the City delayed investigating and remediating the site and that "The record, such as it is, suggests that the delay resulted in the conditions actually worsening." Newell states that "Given these facts, the City should be required to make full disclosure of its internal investigation, to produce its own records, and to make its employees and former employees available for interviews by the other parties." Newell, however, offered no evidence of refusal by the City of any such requests. Further, the Umpire has no authority to "require" any party to the negotiation to disclose anything. What the record suggests may well be points to be raised in negotiation.

Newell has not asserted, either in writing or in the one negotiation session it attended, that Mirro Aluminum Company and Aluminum Specialty Company did not dispose of materials at the site as described in City's offer. Newell's three positions constitute an assertion that the statutory negotiation process could not work. That assertion may explain Newell's untimely withdrawal from the negotiations, more than one month after the time for withdrawal had passed, and its refusal to participate in the second formal negotiation session. Newell's assertion does not offer a basis for reducing the allocation the City made to Newell in its offer.

The allocations to the City and the responsible parties conforms with the allocation done by the parties themselves in 1996 and with the methods set forth in the statute and is thus reasonable on its face. Apportionment of contributions shall be done by applying the six criteria as set forth in Wis. Stats. §292.35(9)(d) I.VI. – the Wisconsin equivalent of the Gore factors used in CERCLA cases in federal courts – and "any other appropriate criteria." Newell offered no facts under the six criteria that lead to a reduction in the City's percentage allocations to all of the parties, including the City itself, allocations which the parties themselves used in 1996. Newell's tainted process argument could fall within the "other appropriate criteria" rubric. But Newell did not explain why facts available to it from its own corporations' records or its own investigations, coupled with the facts that were and are available in the City and WDNR records, were insufficient to enable it to negotiate. Newell appears to have chosen litigation over negotiation.

Therefore, the Umpire recommends that the WDNR and the City implement the AECOM plan. Newell should pay $4,112,132.66 minus the total paid by the parties that have settled with the City as its equitable contribution of funds for the cost of site investigation and remedial action pursuant to Wis. Stats. §292.35. This recommendation does not preclude seeking additional remedies as provide in Wis. Stat. §292.35(11).

Since this recommendation was filed with the Department of Natural Resources pursuant to Wis. Stats. §292.35 on February 9, 2018, a letter from the Department of Natural Resources to the City of Manitowoc, dated May 14, 2018, described the additional actions needed to bring the site investigation toward completion. This letter explained that existing or new contaminants discovered may warrant additional response actions. The Site investigation is incomplete. The AECOM preliminary remedial action plan, approved by the Department in a letter dated July 7,

2017 should be revised to require whatever additional investigation, interim measures, and remedial actions may be necessary for remediation of the Site.

The City of Manitowoc and all responsible parties that did not settle with the City during the Wis. Stat. § 292.35 negotiation period should pay all the costs of the additional Site investigation, revision of the remedial action plan, and all additional remedial actions, whether interim or permanent.

Dated this 31st day of July, 2018.

Respectfully submitted,

Kevin J. Lyons, Umpire

September 8, 2017

VIA FEDERAL EXPRESS

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Re: Section 292.35(3) Offer to Settle; City of Manitowoc/Former Newton Gravel Pit, 3130 Hecker Road, Manitowoc, WI/WDNR BRRTS Activity # 02-36-000268

To: Businesses/Individuals Identified Above:

I am writing as outside counsel to the City of Manitowoc, Wisconsin (the "City") to you in your capacities as representatives of the parties identified above. In accordance with Wis. Stat. § 292.35(3), the City is hereby serving you with this Offer to Settle and Notice of Service regarding the contribution of funds for the cost of the investigation and remedial action at the City of Manitowoc/Former Newton Gravel Pit, 3130 Hecker Road, Manitowoc, Wisconsin, WDNR BRRTS Activity # 02-36-000268 (the "Site").

I am attaching a chart (Attachment A) which sets forth the current and predecessor-in-interest generator parties associated with disposal of hazardous substances at the Site (referred to herein as "Generator Parties"). You will recall from my previous communications with you that the Site operated as a location utilized by businesses located in or near the City of Manitowoc for the disposal of wastes between 1962 and 1974.

In 1991, the Wisconsin Department of Natural Resources ("WDNR") contacted the City in regard to environmental concerns related to the Site, following which the City performed certain environmental investigation activities. As part of the City's response to this WDNR involvement, in January 1993, the Director of the City Department of Public Works ("DPW") prepared a memorandum to the City Attorney which reflected the DPW's efforts to identify the identity of any parties that had been associated with

"industrial dumping" at the Site (the "DPW Memo") (Attachment B). The DPW Memo attached a report dated March 4, 1968 "outlining materials and companies hauling to the Gravel Pit" (the "1968 Report"). The nine parties identified in the 1968 Report were Manitowoc Engineering Co., Manitowoc Shipbuilding Inc., Mirro Aluminum Co., Invincible Metal Furniture Co., Manitowoc Products Co., Heresite & Chemical Co., Imperial Eastman Corp., White House Milk Div., and Aluminum Speciality Co.

On the basis of the DPW memo and the 1968 Report, beginning in 1993, the City communicated with certain Generator Parties (including some corporate successors to the original Generator Parties) to ultimately negotiate the attached document entitled "Agreement between the City of Manitowoc and Participating Generators for the Town of Newton Gravel Pit Site" (signed in March/April 1996) (the "1996 Agreement") (Attachment C), whereby eight parties (Invincible Metal Furniture Co., White Consolidated Industries, Chrysler Corporation (White Consolidated and Chrysler accounting for Manitowoc Products' share), The Manitowoc Company, Inc. (Manitowoc Company accounting for Manitowoc Engineering's and Manitowoc Shipbuilding's share), Great Atlantic & Pacific Tea Co., Inc. (for White House Milk Div.), Gould Electronics Inc. (for Imperial Eastman), Heresite Protective Coatings, Inc., and Newell Co. (Newell accounting for Mirro's and Aluminum Specialty's share)) committed to pay $69,800 for specified activities at the Site (referred to in the 1996 Agreement as "Remedial Option #5 of the Site Investigation and Remedial Options Report (the "Remedial Plan") prepared by Rust Environment and Infrastructure ... 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 1996 Agreement was structured as a commitment to fund the $69,800 Removal with a contingent commitment by the Participating Generators to participate in the cost of additional Site Activities if the WDNR approved the Remedial Plan on or before December 31, 1996. This did not occur, with the WDNR ultimately denying approval of the Remedial Plan for the Site on March 9, 1999. As such, there was no further involvement by the Participating Generators after the 1996 Agreement. Their collective, non-contingent contribution of $69,800 to the Removal in 1996 was the only action taken or cost addressed by these parties.

The City, however, continued with activities required by the WDNR and applicable law. Certain of these activities are identified in the chronological summary of actions and communications listed in the WDNR Bureau of Remediation and Redevelopment Tracking System (or "BRRTS") database (http://dnr.wi.gov/botw/GetActivityDetail.do?siteId=2693600&adn=0236000268) and in the repository of documents maintained by the City and including, specifically, the Remedial Action Options Report and Conceptual Design Report identified below.

PROCEDURAL STATUS

On March 13, 2017, AECOM Technical Services, Inc. ("AECOM"), acting pursuant to Wis. Stat. § 292.35(2r)(b), presented, on behalf of the City, the draft Remedial Action Options Report and Conceptual Design (the "RAOR") at a public hearing at the Manitowoc City Hall, following notice to all responsible parties identified as of that time by the City. Following the public hearing, the City received comments on the proposed RAOR (receiving comments from Gould Electronics, Inc. and Manitowoc Company, to which the City provided responses prepared by AECOM). After this period of public hearing and comment, pursuant to Wis. Stat. § 292.35(2r)(c), the City submitted the final revised RAOR to the WDNR on June 12, 2017. Together with the final revised RAOR, AECOM submitted the comments AECOM/the City had received from the WDNR on September 26, 2016 from Manitowoc Company on April 12, 2017 and from Gould Electronics on April 14, 2017, and AECOM's responses to those comments. (Attachment D is the entire RAOR submittal.) Consistent with Wis. Stat. §

292.35(2r)(c), AECOM took the written comments it received from Manitowoc Company and Gould Electronics into account when it prepared the preliminary RAOR to the WDNR for approval. By letter dated July 7, 2017, WDNR approved the preliminary or revised RAOR. (Attachment E).

Wis. Stat. § 292.35(3)(a) provides that upon receiving WDNR's approval of the RAOR, "the governmental unit shall serve an offer to settle regarding the contribution of funds for investigation and remedial action at the site or facility [(the "Offer to Settle")] on each of the responsible parties identified by the local governmental unit . . ." This letter constitutes the City's Offer to Settle pursuant to Wis. Stat. § 292.35(3)(a). In addition, § 292.35(3)(a) provides that the Offer to Settle shall include the following information:

1. The amount of the offer and a rationale for the amount.

2. The names, addresses and contact persons, to the extent known, for all of the responsible parties identified by the local governmental unit.

3. The location and availability of documents that support the claim of the local governmental unit against the responsible party.

4. The location of the public repository where documents relating to the site or facility are maintained, the times during which the repository is open and the name and telephone number of the contact person at the repository.

5. A description of the procedures under this section.

Following service of this Offer to Settle upon the responsible parties, the local governmental unit is to notify the WDNR that service has been accomplished. § 292.35(3)(a). The secretary of WDNR or his/her designee shall then select an "umpire" from a list maintained by WDNR and notify the local governmental unit and responsible parties of the name of the person selected. § 292.35(3)(b). Additional procedures regarding the umpire selection and "negotiation process" are set forth in § 292.35(3)(c)-(e) and (4).

OFFER TO SETTLE

1. The Amount of the Offer to Settle and the Rationale for the Amount.

The amount of the City's Offer to Settle is based upon costs that the City has incurred (net of the Generator Parties' $68,900 contribution for the 1996 Removal) and anticipates incurring in regard to the Newton Site, the Generator Parties' relationship to the Site conditions, and a justifiable allocation of responsibility for a share of the total costs based on precedent and applicable law.

a. Past and Future Costs:

Past Costs

Attachment F to this Offer to Settle is a summary of past and anticipated future costs and a spreadsheet that identifies costs already incurred by the City related to the Newton Site between January 1993 and August 2017. The total for these services during this time period is $2,617,388.14.

Outstanding Current Costs

The summary also identifies outstanding current obligations of the City related to the Newton Site, including a balance owed to AECOM on the 2017 contract ($238,050.26), a balance owed for the engineered pond and western area cap and engineered control ($847,607), City owed issuance fees and interest on borrowing for Newton Site expenses for the years 2006-2017 ($459,239.98) and a credit reflecting forgiveness on $121,049 of principal related to a Safe Drinking Water Loan obtained in connection with the Site. Together with the $2,617,388.14 in past costs, these amounts net out to $4,041,236.38.

Estimated Expenses for Balance of 2017 Budget

For FY 2017, the City has budgeted $56,000 for potable well replacement and treatment equipment and $25,000 of fees related to the effort to recover the identified costs from the Generator Parties.

Estimated Expenses for 2018 Budget

Commencing in the City's FY 2018, the City anticipates incurring certain expenses at the Site including design, construction and implementation of the soil vapor extraction ("SVE") system in the western source area, free product recovery, construction management and initial operation and maintenance ("O&M") ($297,240), potable well testing, groundwater monitoring and replacement of at least one monitoring well ($274,372), issuance fees and interest related to borrowing for Newton Site expenses (estimated at $90,000 for 2018), additional cost recovery expenses ($50,000) and a repayment obligation for the Safe Water Drinking Loan Program ($28,000). These FY 2018 costs total $820,612.00.

Anticipated Costs for 2019 - 2024

Starting in FY 2019, the City anticipates certain longer term expenses including annual O&M of the engineered pond, the SVE system and free product recovery (five years @ $55,000/year = $275,000), potable well testing, groundwater monitoring and well replacements (five years @ $175,000/year = $875,000) and five years of repayment of the Safe Water Drinking Loan program (@ $28,000/year = $140,000). These expenses total $1,290,000. The City has also budgeted a $10,000 cost for preparing the materials and application for Site closure with the WDNR. Therefore, the total costs for the time period of 2019-2024 are $1,300,000.

EXPENSES AND ENCUMBRANCES 1993 THROUGH 8/16/2017:	**$4,041,236.38**
ESTIMATED EXPENSES FOR BALANCE OF 2017 BUDGET:	**$81,000.00**
ESTIMATED BUDGET FOR 2018:	**$739,612.00**
ANTICIPATED COSTS 2019-2024:	**$1,300,000.00**
TOTAL ACTUAL COSTS/ENCUMBERED, ESTIMATED AND ANTICIPATED THROUGH 2024:	**$6,161,848.38**
LESS 1996 SETTLEMENT AGREEMENT CREDIT:	**$69,800**
NET:	**$6,092,048.38**

b. Amount of Offer:

The amount of the City's Offer to Settle with the Generator Parties receiving this letter for the costs the City has and will incur for the investigation and remedial action at the Newton Site is $4,112,132.66, which represents 67.5% of identified past and future costs. Sixty-seven point five percent (67.5%) is the same allocation that the Generator Parties agreed to in 1996, then allocating costs within that share (e.g. the $69,800 for the Removal) according to a calculation based upon the "waste-in" volumes derived from the 1968 Report.

The attached chart (Attachment A) provides detail concerning this Offer to Settle, identifying (i) the presently viable Generator Parties (SÄEKAPHEN GmbH and Geoff Liban/Thomas Fritzke (for Heresite)), Parker-Hannifin and Gould Electronics (for Imperial Eastman), Newell (for Aluminum Speciality and Mirro) and Manitowoc Company (for Manitowoc Engineering and Manitowoc Shipbuilding)) and their respective predecessors in interest who disposed of waste at the Site, (ii) their respective shares of liability for 67.5% of certain costs comprising the Removal in the 1996 Agreement, (iii) the current Participating Generators' proposed adjusted "pro tanto" allocation/share of 67.5% of the City's total past and future costs (explained in further detail below), and (iv) the dollar figures associated with these proposed pro tanto shares that total $4,112,132.66.

Attachment A also identifies the corporate disposition of certain original Generator Parties identified in the 1968 DPW Memo, including Invincible Metal Furniture (liquidated 2009), Manitowoc Products (succeeded to by Chrysler, which filed bankruptcy, discharging the Newton liability, in 2009), and White House Milk (succeeded to by A&P, which filed bankruptcy, discharging the Newton liability, in 2015).

Please note that while this Offer to Settle is being provided to parties that are available and that the City believes should collectively legally account for the liability of the original Generator Parties, the City is receptive to entertaining individual settlements with any or all of the current viable parties, using the figures set forth in the final column of Attachment A as the City's proposed offer to each party.

The basis for the City's Offer to Settle is set forth below:

c. Rationale for Offer:

The evidence collected by the City overwhelmingly indicates that the remediation of the Newton Site is necessitated by contamination at the Site caused by the industrial waste dumped at the Site by the Generator Parties.

The Generator Parties meet the definition of "Generator" in Wis. Stat. § 292.35(1)(b), one of the classes of § 292.35(1)(e) Responsible Parties, in that each Generator Party is "a person who . . . arranged for disposal . . . or arranged with a transporter for transport for disposal . . . of a hazardous substance owned or possessed by the person . . ." The City meets the definition of "Owner or Operator" in Wis. Stat. § 292.35(1)(c), in that the City "owns or operates [or owned or operated] a site or facility at the time that the disposal or discharge of a hazardous substance at the site or facility occurs." And, finally, the Newton Site meets the definition of "site or facility" in Wis. Stat. § 292.35(1)(f), in that the Newton Site is a "waste site", included in the § 292.35(1)(f) definition of "Site or facility" and more specifically defined at Wis. Stat. § 292.01(21) as "any site . . . where a hazardous substance is discharged before May 21, 1978".

The 1968 Report entitled "Waste Materials Hauled to City Gravel Pit by Various Industrial Plants" identified wastes disposed of by the nine original Generator Parties including "cutting and drain oils . . . (inflammable)", "waste fuel oil . . . (inflammable)", "combustible oils", "gear box oils", "sulphuric acid solution", "Naptha", "waste alcohol . . . (inflammable)", "waste oil . . . (inflammable)", "cleaning solvent . . . (inflammable)", "drain oil . . . (inflammable)", "paint stripper . . . (inflammable)", and "paint thinner . . . (inflammable)". Under Wisconsin law (Wis. Stats. § 292.01(5)), the term "hazardous substances" is defined extremely broadly; the practical application of this term under Ch. 292 by the WDNR is equally broad. As such, each of the substances listed above constitutes a hazardous substance under Wis. Stats. Ch. 292.

The evidence demonstrates that the original Generator Parties arranged for disposal of waste materials containing hazardous substances to the Newton Site. The 1968 Report, located by the 1993 Director of Public Works, provides contemporaneous documentation of these waste disposing activities. As articulated by the City Attorney in a June 8, 1995 letter to the point of contact for the 1996 settling Generator Parties, Doug Clark, of Foley & Lardner, given the contemporaneous nature of the 1968 Report, "[t]here is no indication the [1968] Report was prepared with a view toward protecting some City interest which would have caused the City to do anything other than make its most reliable estimate of materials being disposed of at the Site. We accepted the waste without compensation as a favor to local industries. We believe the [DPW] Report would carry a great deal of credibility in any proceeding involving allocation of shares." (The June 8, 1995 letter is Attachment G.) Please note, as well, that as a document more than 20 years old whose authenticity can readily be established, the 1968 Report would be admissible evidence under Wisconsin's "Ancient Documents" exception to the hearsay rule. Wis. Stat. § 908.03(16).

Further to this point, the context and validity of the 1968 Report are supported by the covering January 11, 1993 memorandum from the Director of Public Works and City Engineer to the City Attorney, attaching a copy of the 1968 Report. The fundamental takeaway from this document is that it reflects the result of a detailed internal investigation for documents from a period of time twenty to thirty years earlier. The memo from the Director of Public Works and City Engineer to the City Attorney concluded that the 1968 Report had great value for identifying the names of the Generator Parties.

Moreover, this package of information (the January 11, 1993 memorandum and the 1968 Report) established the fundamental basis for the allocation formula to which all of the generator parties ultimately agreed. (Attachment H is the 1996 Generator Party allocation formula that was ultimately accepted by the Generator Parties. This is established and verified by the September 11, 1996 correspondence from the City Attorney to Susan Martin, additional counsel/point-of-contact for the Generator Parties under the 1996 Agreement, corroborating the respective contributions of the parties that signed the 1996 Agreement associated with their respective percentage allocations (Attachment I)).

In 1996, eight parties representing the interests of all nine original Generator Parties entered an agreement with the City to pay for $69,800 of certain remedial expenses at the site. While the terms of the 1996 settlement agreement provide that the Settling Parties did not "admit or concede ... any determination, allegation, finding or conclusion regarding the Site," these parties paid $69,800 and committed to pay 67.5% of estimated future costs if the WDNR approved a remedy. While this approval never transpired, the very act of paying $69,800 and committing to pay a 67.5% share of liability attributable to the Generator Parties or their legal predecessors in interest confirms a relationship to responsibility for the discharge of a hazardous substance at the Newton Site. The City believes, again quoting the City Attorney from 1995, that the evidence of entering the 1996 settlement "would carry a great deal of credibility in any proceeding" regarding the responsibility of the Generator Parties for the discharge of a hazardous substance at the Newton Site.

I am also attaching several statements that were obtained between December, 2013 and October, 2015 by representatives of the WDNR from individuals familiar with the Newton site and disposal activities that occurred there in the 1962-1974 time period.

Attachments J and K are statements obtained from Donald Vogt by a WDNR Warden, Robert Stroess, on December 23, 2013 and August 26, 2014, respectively. Vogt worked for Aluminum Specialty for two summers in 1965 and 1966, during which time he drove on a weekly basis to the Newton Site to dump up to three (3) 55-gallon barrels each of waste oil and benzene in a pit at the Site. Vogt stated that although he did not see other businesses dumping at the Site, he believed other companies dumped at the same on-site location "because the liquid accumulated in the pit far exceeded the amount he dumped there." On August 26, 2014, Vogt accompanied Stroess to the Site to confirm his previous recollections and assertions.

Attachments L and M are statements obtained by Stroess from Robert Hansen on December 20, 2013 and August 26, 2014, respectively. Hansen worked for Mirro from approximately 1962 to 1964 as a semi driver. Hansen stated that every two weeks, on average, he would drive a tanker to the Newton site and discharge the contents into a "dumping pit." Hansen identified the contents of the "30 foot long" tanker as "waste acid and aluminum remnants from the anodization process." On August 26, 2014, Hansen accompanied Stroess to the Site to confirm his previous recollections and assertions.

Attachments N and O are statements obtained by Annette Weissbach and Liz Heinen of the WDNR from Jim Aasen, retired WDNR Conservation Warden, on January 1, 2014 and by Stroess of Aasen on August 26, 2014. As identified in the Weissbach and Heinen obtained statement, Aasen recalled responding to complaints of dumping on the Site, although he didn't recall how many or on what dates he was at the Site. He indicated that he had watched City tankers dispose of "solvents", based upon his communications with the City Fire Chief in the early 1970's. On August 26, 2014, Aasen accompanied Stroess to the Site. Aasen confirmed his prior recollection and statements, adding that he could not confirm the accusations of the City disposing of various chemicals.

Attachment P is a statement obtained by WDNR Hydrogeologist (and current Project Manager for the Newton Site) Tauren Beggs from Nancy Voelker on December 9, 2016. As of that date, Voelker lived at a location is due north of the Newton Site. Previously, she lived with her parents at in Manitowoc, Wisconsin, across from the Newton Site entrance. On the basis of her residences' proximity to the Newton Site, Voelker stated that she was familiar with the Newton Site. She recalled City disposal of sewage and Mirro trucks "hauling and dumping chemicals."

Attachment Q is a statement obtained by Stroess from Voelker and her younger sister of 18 years, Susan DeBauch, on October 7, 2015. Voelker corroborated her earlier statement to Beggs, clarifying that she lived in the vicinity of the Newton Site from 1949-1956 and from 1961 up to the date of the interview with Stroess. Voelker also stated that she saw Mirro trucks at the Site during these time periods. DeBauch lived with her parents at one of the same locations from 1956-1973 and was familiar with the Newton Site, but did not recall specifics about dumping, other than the location of the dumping area itself.

The City is a responsible party because of its past and present ownership and operation of the Site. Although one individual providing a statement, Jim Aasen, recalled City trucks disposing "solvents" at the Site, he later indicated that "he couldn't confirm the accusation." Therefore, there is no evidence that the City contributed in any way to the contamination. The City received no compensation for allowing the Generator Parties to dispose of their wastes at the Site. The City is prepared to accept a 32.5% share of allocated liability for past and future costs, consistent with its previous 1996 Agreement allocated share, provided the Generator Parties account for the full balance (i.e. 67.5%) of the past and future costs.

Based upon Judge Crabb's decision in *Northern States Power Co. v. City of Ashland*, 93 F. Supp. 3d 958 (W.D. Wis. 2015) and her Judgment entered on September 15, 2015 allocating $0 response costs to the City of Ashland, we believe that a trier-of-fact overseeing the Newton matter would support an allocation of 32.5% responsibility, or less, to the City for the investigation and remedial action for the Site.

While this is not a contribution claim under CERCLA, we believe any allocation of response costs for the Site would likely be based upon the same equitable factors utilized in CERCLA contribution matters (see, e.g., Wis. Stat. § 292.35(9)(d)(the finding of fact shall apportion the contribution of each responsible party . . . *using . . . any other appropriate criteria.*") (emphasis added); it is well established in Wisconsin case law that "[w]here a Wisconsin statute is similar to a federal statute and there are no Wisconsin cases interpreting the state law, [courts] view the federal decisions in that area as persuasive authority." *State v. Fettig*, 172 Wis.2d 428, 444 (Wis. Ct. App. 1992). *See also Gygi v. Guest*, 117 Wis.2d 464, 467 (Wis. Ct. App. 1984); *State v. Buchegar*, 149 Wis. 2d 502, 507-08 (Wis. Ct. App. 1989); *Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis.2d 161, 174 (Wis. 1977)). Judge Crabb described these allocation factors in *Northern States Power Co. v. City. of Ashland, supra*, at 979 as follows:

> Under § 9613(f), "the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate" Courts have often relied on six factors called the "Gore factors" (because Congressman Albert Gore proposed them originally as part of an amendment to the 1980 House Superfund bill that did not pass, *Environmental Transportation Systems, Inc. V. ENSCO.* Inc., 969 F.2d 503, 508 (7th Cir. 1992)): (1) the ability of the parties to demonstrate that their

> contribution to a discharge, release or disposal of a hazardous waste can be distinguished; (2) the amount of the hazardous waste involved; (3) the degree of toxicity of the hazardous waste involved; (4) the degree of involvement by the parties in the generation, transportation, treatment, storage or disposal of the hazardous waste; (5) the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous waste; and (6) the degree of cooperation by the parties with federal, state or local officials to prevent any harm to the public health or the environment. *Kerr-McGee Chemical Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321, 326 n. 4 (7th Cir. 1994). The court should consider any other factors that are relevant and appropriate. *Id.* at 326 ("Factors which may be considered include the relative fault of the parties ...; relevant 'Gore factors,' ...; and any contracts between the parties bearing on the allocation of cleanup costs....") (citations omitted).

The City believes that application of these factors will result in the Generator Parties being allocated responsibility for at least 67.5% of the past and future costs for the Site. The Offer to Settle for 67.5% of the City's past and projected costs for the Site reflects only a good faith effort by the City to resolve this matter through negotiation. The City reserves the right to seek reimbursement of the full cost if this matter is not resolved during the Wis. Stat. § 292.35(4) negotiation process.

The City proposes that the 67.5% share of liability attributed to the Generator Parties account for 100% of the non-City funded costs. Specifically, based upon the 1996 allocation formula utilized by the Generator Parties as of 1996, the remaining/viable/current Generator Parties as of the current date collectively account for 73.818% of the 100% (of 67.5%) from that prior (1996) allocation. However, based on the following analysis, the City is confident that a trier-of-fact, as well as an umpire appointed to oversee the negotiated settlement of this matter, would require the viable Generator Parties to assume the "orphan share" of liability otherwise attributable to the non-viable original Generator Parties and their successors-in-interest.

Wis. Stat. § 292.35(9) (Liability for Remedial Action Costs) sets forth the legal standards for apportionment of liability to responsible parties under the Local Government Unit Negotiation and Cost Recovery statute, providing that "a responsible party is liable for a portion of the costs, as determined under pars. (c) to (e), incurred by a local governmental unit for remedial action under sub. (5) or a recommendation under sub (6) and for any related investigation. A right of action shall accrue to a local governmental unit against the responsible party for costs listed in this paragraph." Wis. Stats. § 292.35(9)(b).

Subsection (d) of § 292.35(9) continues, providing that "[t]he finder-of-fact shall apportion the contribution of each responsible party to the environmental pollution resulting from the disposal or discharge of hazardous substances at the site or facility . . . using the following criteria **or any other appropriate criteria**" (emphasis added). This "following criteria" referenced by this provision parallel the "Gore Factors" itemized previously in this letter. The reference to "any other appropriate criteria" enables a trier-of-fact (or an umpire) to consider applicable and relevant criteria for the apportionment of the contribution by the Generator Parties. Again, it is well established in Wisconsin case law that "[w]here a Wisconsin statute is similar to a federal statute and there are no Wisconsin cases interpreting

the state law, [courts] view the federal decisions in that area as persuasive authority." *State v. Fettig*, 172 Wis.2d 428, 444 (Wis. Ct. App. 1992). *See also Gygi v. Guest*, 117 Wis.2d 464, 467 (Wis. Ct. App. 1984); *State v. Buchegar*, 149 Wis. 2d 502, 507-08 (Wis. Ct. App. 1989); *Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 79 Wis.2d 161, 174 (Wis. 1977). Therefore, in light of the absence of corresponding regulatory standards (i.e. Wisconsin Administrative Code) or WDNR guidance documents specific to Wis. Stats. § 292.35 identifying such "appropriate criteria", the City is confident that an umpire or trier-of-fact would apply principles identified or developed under the federal CERCLA law for orphan shares.

In the Seventh Circuit, which includes Wisconsin, guiding and binding precedent indicates that the legal standard which courts must utilize to apportion costs, including orphan shares, at multi-party sites is the "pro tanto" approach that reflects the Uniform Contribution Among Tortfeasors Act, or UCATA. This was determined by the Seventh Circuit Court of Appeals in the 1999 case *Akzo Nobel Coatings, Inc. v. Aigner Corp.* (197 F.3d 302 (7th Cir. 1999)). The "pro tanto", or UCATA, approach provides that the responsible parties that are viable or that have not previously settled are responsible for whatever share of liability remains, which is to be divided among those that remain. As such, the chart at Attachment A illustrates the reallocation of the 26.182% share that is otherwise "orphaned" due to the insolvency of/discharge of liability related to Invincible, Manitowoc Products and White House Milk. That 26.182% share will be redistributed to the remaining, viable Generator Parties according to their relative share of 100% of the 67.5% Generator Party allocation (Attachment R provides an illustration of this reallocation).

2. The Names, Address and Contact Persons, to the Extent Known, for All of the Responsible Parties Identified by the Local Governmental Unit.

The City has identified itself, SÄEKAPHEN, Geoff Liban/Thomas Fritzke, Gould Electronics, Parker-Hannifin, Newell Brands and Manitowoc Company as currently viable responsible parties. Attachment S sets forth the names, addresses and contact information for the City and all of the known Generator Parties.

3. The Location and Availability of Documents that Support the Claim of the Local Governmental Unit Against the Responsible Party.

The City has provided the Generator Parties with copies of documents supporting the City's claim against the Generator Parties. Any other relevant documents are attached to this letter.

The documents and other related documents are located in the public repository described in #4 below.

4. The Location of the Public Repository Where Documents Relating to the Site or Facility are Maintained, the Times During Which the Repository is Open and the Name and Telephone Number of the Contact Person at. the Repository.

The public repository for documents relating to the Site is maintained at the Manitowoc City Hall, 900 Quay Street, Manitowoc, WI 54220. City Hall is open Monday through Friday from 7:30 a.m. to 4:30 p.m. The contact person for the repository is Jane Rhode (920-686-6990, e-mail: jrhode@manitowoc.org).

5. A Description of the Procedures in Wis. Stat. § 292.35 (3) and (4).

The procedures are described above.

* * * * *

While I welcome the opportunity to hear from you and to discuss any interest in collective or individual settlement considerations, if this does not occur, you should anticipate that the next communication you receive should be from the WDNR identifying a proposed umpire for negotiation of this matter pursuant to Wis. Stat. §292.35(3)(b).

As discussed, an Admission of Service is enclosed. Please return it to me at your earliest convenience. If you are not able to execute and return the Admission of Service, please inform me accordingly and we will ensure service is properly carried out.

The City's hope is that this matter can be resolved through the negotiation process set forth in the statute. We look forward to working with you on this matter.

Sincerely yours,

GODFREY & KAHN,

Edward B. Witte

Attachments

cc: Kathleen McDaniel, City of Manitowoc
Daniel Koski, City of Manitowoc
Dave Henderson, AECOM
Molly Schmidt, WDNR

PRIVILEGED - FOR SETTLEMENT PURPOSES ONLY

Memorandum

TO: Kevin Lyons

FROM: Gabriel M. Rodriguez

RE: Newton Gravel Pit Mediation Statement of Newell Rubbermaid

DATE: November 21, 2017

Newell Brands Inc. submits this statement to the mediator:

Introduction

Newell Brands Inc. ("Newell") was contacted in 1992 by Pat Willis, the then City Attorney of Manitowoc, regarding alleged past disposal of solvents at the site. Newell, along with several other companies contacted by the City, eventually entered into a Settlement Agreement with the City ("the 1996 Settlement"). The 1996 Settlement provided for a $69,800 settlement payment from the generators to the City to cover a portion of the costs associated with the removal of NAPL. The 1996 Settlement also would have required the generators to pay additional amounts to cover other past and future costs, subject to a cap. That obligation was contingent on the WDNR approving the City's then remedial plan. The 1996 Settlement became effective in the early part of 1996. The generators met all of their obligations under the 1996 Settlement. Newell does not believe it received any further information about the site or the City's activities until this year.

Based on a recent file search, it appears the WDNR disapproved the remedial plan in March 1999. Apparently little or nothing happened for the next ten years, as the site fell through the cracks. In about 2010, a new series of investigations were begun at the behest of the WDNR.

In March 2017, Newell received an information request under Wis. Stats 292.35(2g) from the City's attorneys. Newell responded by letter dated June 1, 2017, making documents available for inspection.

By letter dated September 8, 2017, the City's attorneys conveyed the City's offer to settle pursuant to Wis. Stat. §292.35 ("Offer Letter").

Mediation Positions

1. **The Allocation Process is Tainted.** The integrity of the allocation process has been undermined. The statutory process set forth in Wis. Stat. §292.35 aiming for an expedited allocation rests on the completeness and transparency of the City's compilation of the record. That hasn't happened here. The City's document repository doesn't appear to contain complete information about the City's investigation of its own use of the site for disposal. Apparently, WDNR did develop information about the City's liability. However, the City's investigation did

not focus on its own historic use. This failure alone demonstrates the City's investigation (or its document repository) is incomplete. To our knowledge, the City has not made full disclosure of the facts surrounding its use of the site as a disposal location, which appears to have been extensive.

2. **The City Ignores Evidence of Its Own Use of the Site for Disposal.** The City takes for itself an owner/operator share of 32.5%. The City has not taken a generator share. The record seems very clear that the City used this as its principal waste disposal site and allowed industry to use it as an accommodation. One witness allegedly said the City tanker trucks dumped at the site "for many years".

Another witness account related his first-hand knowledge of the City's disposing of solvents for the City. Jim Aasen, a retired conservation warden, described actually seeing City trucks back up to the pit and dump their contents in the 1970s. His "contact" at the City regarding the pit was the then City Fire Chief. In addition to the direct truck dumping, Aasen also said it was the "common practice" of the City's Fire Department to use "solvents from their stockpile" as an accelerant in burning demo debris at the site. The same report added the Fire Department also conducted "many training burns on houses to be demolished and used these opportunities to get rid of excess chemicals." The practice continued under the next Fire Chief before it was eventually halted.

3. **The City's Delay in Addressing the Site Has Made Matters Worse.** The City did little to investigate or remediate the site for a 10-year period. The record, such as it is, suggests that the delay resulted in the conditions actually worsening. The City should have to account for costs arising from its delay in addressing site conditions.

Given these facts, the City should be required to make full disclosure of its internal investigation, to produce its own records, and to make its employees and former employees available for interview by the other parties.

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MEMORANDUM

TO: Kevin Lyons

FROM: Edward (Ned) B. Witte

CC: Generator Parties
Kathleen McDaniel

DATE: December 8, 2017

RE: Newell Brands' Predecessor Parties' Responsibility for Newton Site Conditions

The purpose of this memorandum is to provide certain detailed information and analysis related to the responsibility of a particular party, Newell Brands, Inc. ("Newell"), for the disposal of wastes containing hazardous substances by its predecessors in interest, Mirro Aluminum Co. ("Mirro") and Aluminum Specialty Co. ("Aluminum Specialty"), at the former Newton Gravel Pit site that is the subject of the current negotiation under Wis. Stats. § 292.35. This memorandum briefly restates the basis for Newell's responsibility, emphasizing certain information that is "new" to this matter since Newell's last involvement with the Newton site, in 1996, and also provides specific responses to the arguments made by Newell in its November 21, 2017 statement to the Umpire.

The City incorporates by reference all of the information it previously set forth in its September 8, 2017 Offer to Settle including defined terms (e.g. the "1968 Report") and including, in particular, references to the legal standards of liability identified on page 6 of the Offer to Settle.

Newell's Share of Responsibility

With respect to Newell, the City's position that Newell is specifically responsible for costs of investigation and remediation is based on several key pieces of information:

The 1968 Memo indicates Mirro and Aluminum Castings were among the largest generators of disposal of waste containing hazardous substances at the Newton site. The 1968 Report indicates that Mirro disposed a combination of waste materials over various frequencies that totaled approximately 8,577 gallons of hazardous substances every month, or the equivalent of approximately 1,870 55 gallon drums every year.

On top of this, Aluminum Specialty accounted for four 55 gallon drums per week, or 946 gallons of hazardous substances per month. This is the equivalent of over 200 drums of waste per year.

Combined, Newells' predecessors accounted for the equivalent of over 2,000 drums of hazardous material per year to the Newton site.

Significantly, these are numbers that were previously undisputed by Newell. In 1996, the extent of this disposal and Newell's responsibility were recognized (a) by Newell, as the successor to Mirro and Aluminum Specialty and (b) by the other Generator Parties, who collectively agreed that Newell was responsible for nearly 50% of the generator's share of waste and toxicity disposed at the Newton Site. The total volumes identified above are set forth on Attachment H to the Offer to Settle, and established the basis for Newell's collective 47.807% responsibility among the then viable Generator Parties' share.

The following facts have been noted previously, but bear repeating:

- Newell and the other Generator Parties developed this allocation formula based on the volumes identified above, extrapolated from the 1968 Report, and set forth on Attachment H.

- Newell agreed to this allocation.

It is also important to note that the case against Newell has only gotten stronger. In 2013, seventeen years after the 1996 Settlement Agreement, two residents of Manitowoc, Donald Vogt, who hauled waste from the Aluminum Specialty plant to the Newton site in the summers of 1965 and 1966, and Robert Hansen, who hauled waste from the Mirro plant to the Newton site between 1962 and 1964, corroborated the 1968 memo and provided greater clarity on the extent of Newell's successors' disposal activities at the Newton Site. According to Mr. Vogt, he personally drove to and dumped at the Newton site up to six 55-gallon barrels of hazardous substances from Aluminum Specialty per week. According to Mr. Hansen, he delivered waste contained in a tanker truck approximately 30 feet long from Mirro "twenty to twenty-five times" over a two year period.

Today, WDNR Project Manager Tauren Beggs produced a document that the City had never seen before, which is a sworn statement from Mr. Vogt on December 23, 2013, the date that he first met with WDNR Warden Robert Stroess. Mr. Beggs indicated that he too had only received this from Mr. Stroess today. A copy of this statement, which is largely consistent with the information previously produced by Mr. Vogt, is attached.

Newell's Statement to the Umpire

In its November 21, 2017 Statement to the Umpire and in response to (a) the 1968 Report, based upon which Newell's predecessors were identified as the largest contributors of hazardous substances discharged at the Newton site, (b) the 1996 Settlement Agreement, wherein Newell stepped up to account for this role, and (c) the two WDNR Case Activity Reports of Mr.

Vogt and Mr. Hansen, directly identifying Newell's predecessors as generators of hazardous substances at the Newton Site, Newell responded with three assertions:

1. An inadequately developed assertion that "the allocation process is tainted." Newell has stated that "the City's document repository doesn't appear to contain complete information about the City's investigation of its own use of the site for disposal." Such an investigation is not required anywhere in § 292.35. The City has fulfilled its responsibility under § 292.35(2g) ("A local government unit that intends to use the cost recovery procedures in this section shall attempt to identify all responsible parties."). The City exercised the same degree of investigation into its own use of the Newton site as that of any other party, including Newell. But just because Newell feels that it appears that the record contains scant information about the City's (or, for that matter, any party's) use of the Newton site, this alleged concern (a) does not constitute a "failure," (b) does not make "the investigation (or … the document repository) incomplete," (c) does not substantiate Newell's unsupported assertion that the City's use of the site was "extensive" and, (d) whatever it means, does not "taint" the allocation process.

2. On an apparently related note, Newell next asserts that the 32.5% share of liability the City applied to itself represents an "owner/operator share" but does not account for a "generator share." However, these are concepts without context – on what basis can Newell assert that 32.5% is more than or less than or just right as an owner/operator share? The City relied upon the 1996 Settlement Agreement allocation, which Newell subscribed to at that time. That is a far more valid basis for a share to be assumed by the City than Newell's out of thin air characterization. And, again, this was before Vogt and Hansen had provided first-hand accounts of their years of hauling substantial quantities of hazardous substance bearing wastes to the Newton site.

   Newell also asserts, without reference to any authority, that "the record seems very clear that the City used this [site] as its principal waste disposal site."

   There is no basis for this claim, and it also doesn't establish any basis for arguing that 32.5% is not enough apportionment to the City.

   As noted in my 11/29/17 e-mail to the Umpire and the RPs, it appears that any disposal activity carried out by the City at the Newton site was "raw sewage," which was disposed in an impoundment separate from the hazardous materials disposal area(s). There is no support for the claim that this was an industrial or hazardous substance bearing waste. In addition, as previously addressed, the only documented allegation regarding hazardous materials being disposed of by the City at the Newton Site, by Jim Aasen on January 10, 2014, was subsequently qualified on August 26, 2014, when Aasen identified an area during his site visit where he investigated accusations that the City of Manitowoc Fire Department had disposed of various chemicals. According to the WDNR Warden who accompanied Aasen, "[Aasen] couldn't confirm the accusations regarding disposal by the City." To be precise, unlike the specific accounting of disposal by Newell's predecessors, there is no

established evidence of the City's disposal of hazardous substances at the site. As such, there is no reason to conclude that 32.5% share of responsibility is "not enough."

Finally, with respect to the city's status as a generator, even putting aside the lack of evidence that the city dumped waste containing hazardous substances, contrast the city's (population: ~30,000) *potential* to generate waste with hazardous substances with the established disposal practices of Mirro and Aluminum Specialty, two of the larger industrial companies in the City of Manitowoc.

3. Newell's last assertion is that the City's delay in addressing the site has made matters worse. This assertion, however, contains two unfounded assumptions: first, that it is the City that is responsible for the delay, and second, that conditions worsened as a result. In response to the first point, I demonstrated on behalf of the City in my 11/29/17 communication that the pace and sequence of activities related to the Newton site has primarily been driven by the WDNR. Newell cannot ascribe delay to the City. Second, it is unclear that conditions have appreciably worsened during "a ten-year period," as referred to by Newell, or since 1996. Almost 25 years passed between the time period of the 1960s when Newell's predecessors were disposing tanker trucks and drums of hazardous substances at the Newton site every week and 1991, when the WDNR first required action. Newell's predecessors' hazardous substances were well on their way to downgradient receptors by 1996 and had traveled further in those first 28 years than they have in the last 21.

Conclusion

The three points raised by Newell in its November 21, 2017 Statement attempt to establish to the degree of responsibility that Newell believes the City should bear. Again, whether that proper allocation is 32.5%, or something more or less, could be further addressed. The City proposed a number that has historical context and prior approval by Newell and the other Generator Parties.

Most importantly, however, Newell has not identified a single issue in its statement that in any way diminishes the validity of the information that establishes Newell's legal liability and financial responsibility as the largest generator of hazardous substance bearing waste at the Newton Site. Newell agreed to as much in 1996. Now, with the post-1996 Case Activity Reports of Donald Vogt and Robert Hansen – and the sworn statement of Mr. Vogt, received today – directly linking Newell through its predecessors to weekly disposal of hundreds of gallons of hazardous substances, Newell's responsibility is only clearer.

In light of the fact that Newell previously bore the largest share of responsibility in the 1996 Settlement Agreement, and given that the post-1996 evidence further illuminates Newell's degree of responsibility, it is striking that the parties other than Newell are willing to negotiate in good faith based on the 1996 allocation, even though their relative culpability has, if anything, shrunk in light of the new evidence against Newell. The same could be said of the City's share relative to Newell.

The City expects the Umpire to hold Newell to account at the upcoming December 18, 2017 negotiation session. If an agreement in negotiation cannot be reached, the City expects the Umpire's ultimate recommendation on the appropriate contribution of funds by the Responsible Parties to place Newell at the top of the list of these parties.

18166047.2

December 23, 2013

Statement of Donald L. Vogt (DOB [redacted]

[redacted]

Manitowoc, WI 54220

[redacted]

I began summer employment at the Aluminum Specialty in June, 1965 and worked there that summer and the summer of 1966. I was assigned to the maintenance department. Part of my responsibilities was to load waste oil and benzene onto the truck and take it to the city gravel pit/dog pound on Hecker Road where the waste was dumped into a pit. The city would burn the waste I believe on a weekly basis. The waste I hauled was in 55 gallon drums and I would haul up to three barrels of waste oil and three barrels of benzene each week. The truck was a blue dump truck with short walls and a tailgate. We would tip the barrels onto their sides and remove the threaded caps to drain the liquid off the back of the truck. I was told by the workers on the maintenance crew that the contents were waste oil and benzene. I knew what benzene was because we used benzene to clean paint brushes as part of my employment with the Aluminum Specialty.

Workers I worked with on the permanent crew include our foreman Charlie Hettmann, Gordy Green, Ivan Fictum and John Franz – all now deceased. I also worked with another student, Dale Hodek who worked with me doing the dumping because it would take two men to tip the barrels and control them while they drained. I believe Dale went with me on most of the runs I made to dump the waste. Dale now lives in Green Bay.

My orientation to my summer job included one of the maintenance crew going with me to the pit and showing me where to dump the waste. Taking the waste was part of my routine and was usually done on a Friday as I recollect.

I drove the truck to the site. I would exit Hecker Road and drive about 200' before going down a small hill bending to my right. I drove about 300' and passed a dog pound on my right, wooden structures holding maybe 7- 10 dogs and painted white. I would then drive up an incline about 12-18 feet above the grade of the kennels with the road bending to my left. I remember a clump of trees on my right and the area to back the truck being just past the trees. The pit itself was round in shape with an earthen berm all around. We would let the waste run off the tailgate of the truck and the waste flowed down an earthen runway into the pit. The pit had liquid in it when I arrived, it was not muddy nor did it show signs of the liquid seeping into the ground. The road I believe continues beyond the pit but I never drove further than the spot where I backed to the pit. I remember that I did not cross the creek to get to the site. I made the runs to the pit from approximately the first week of June to the last week in August in 1965 and 1966. I worked the entire summer without vacation because I needed the money for school.

The job of hauling waste to the site was my job during the summer and it was done by the regular maintenance crew for the rest of the year. I was told other companies dumped their waste there but I never personally saw anyone else doing it while I was there. I

DV 1 of 2

believed this to be true because the amount of liquid in the pit far exceeded the amount I would dump there so it had to come from somewhere.

I was told the city would burn the waste off. I never was there when this was done but I did see heavy black smoke coming from this site on a few occasions.

I marked the route I drove on an aerial map and I also drew a map of what I remember being my route to the pit. I gave this to Warden Bob Stroess at my home on December 23, 2013.

Donald L. Vogt 12/23/2013 2:22 PM

Donald L. Vogt

12/23/2013 2:22 PM

Robert Stroess, witness