

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

November 2, 2000

Mr. Darrell Hofland, Administrator
Village of Grafton
P.O. Box 125
Grafton, WI 53024-0125

Subject: Village of Grafton - Approved Contract for Landfill Pilot Program Reimbursement

Dear Mr. Hofland:

Enclosed is a copy of the above-noted Contract with original signatures. The Village should receive a check for the first reimbursement (\$324,000.00) within the next week to 10 days. If you do not receive it within that time let me know.

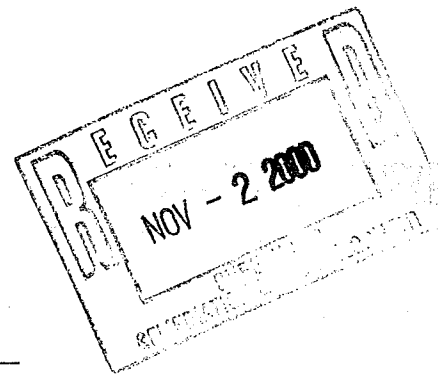
Please give me a call if you have any questions on the above at 608-267-2465.

Sincerely,

Marie Stewart, Program Coordinator
Bureau for Remediation & Redevelopment

CC: Charles "Buck" Sweeney – Michael, Best & Friedrich, P.O. Box 1806, Madison, WI 53071-1806
Bob Strous – RR/3
Judy Ohm – LS/5
Lakshmi Sridharan – SER
John Feeney - SER

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES



IN THE MATTER OF:

Village of Grafton – “Lime Kiln” Landfill
(Pre WDNR Licensing)

CONTRACT:

No. _____

WHEREAS, the Village of Grafton owns property formerly utilized as a municipal and industrial waste disposal landfill (hereinafter the “Landfill”) situated in “Lime Kiln Park” in the Village of Grafton, Wisconsin (the “Village”) and more particularly described in Exhibit A attached hereto; and,

WHEREAS, the Wisconsin Department of Natural Resources (“WDNR”) has a cost share pilot program for municipalities that are addressing contamination at and from municipally-owned landfills through use of the local governmental unit negotiation and cost recovery process, under section 292.35, Wis. Stats. (hereinafter the “Process”). The memo outlining the pilot program, dated September 8, 1997, from Mark Giesfeldt, WDNR (hereinafter the “Memo”), is attached hereto as Exhibit B; and,

WHEREAS, the Village is utilizing the Process to address contamination at the Landfill; and,

WHEREAS, the WDNR informed the Village by letter, on or about October 7, 1997, that it was offering the Village the opportunity to participate in the pilot program, provided certain conditions are met as described in greater detail in the letter (hereinafter the “Letter”), a copy of which is attached hereto as Exhibit C; and,

WHEREAS, the Letter required that the Village and WDNR execute a contract incorporating the terms and conditions of the Reimbursement; and,

WHEREAS, the purpose of this Contract is to fulfill that requirement of the Letter and to outline the terms and conditions for WDNR’s payment of the Reimbursement to the Village.

NOW, THEREFORE, in consideration of and in exchange for the Village’s use of the Process and compliance with the Preliminary Remedial Action Plan (Investigation Report), dated January, 1999 and approved by WDNR on June 8, 1999, the promises and mutual understandings and covenants contained herein, as well as in the Memo and the Letter, and intending to be bound legally hereby, the Village and WDNR, by their authorized representatives, enter into this Contract.

I. PARTIES BOUND

- A. The WDNR and the Village enter into this Contract (the "Contract").
- B. This Contract shall apply to and be binding upon the undersigned parties and their respective agents, officers, and employees.

II. WDNR REIMBURSEMENT

- A. To assist with the complete implementation of the Preliminary Remedial Action Plan (Investigation Report), as approved by WDNR on June 8, 1999, WDNR agrees to provide the Village with Reimbursement in an amount of \$400,000 for "Eligible Costs" as defined in this paragraph, provided that the terms and conditions of this Contract are met. Nothing herein prohibits or prevents WDNR from issuing Reimbursement in a greater amount should further pilot program funding become available. "Eligible Costs" under this Contract are costs associated with evaluating the performance of natural attenuation of groundwater contaminants at the Landfill consistent with the terms and conditions of the Preliminary Remedial Action Plan (Investigation Report), hereinafter "Eligible Costs", including surveying, "GeoProbe" installation, groundwater monitoring well installation and monitoring, conversion of several private water wells to groundwater monitoring wells and monitoring, installation and monitoring of 2 leachate head wells, analytical costs and data evaluation. In addition, WDNR shall have the discretion to consider other related costs for reimbursement under this Contract.
- B. The Village represents and warrants that the following criteria have been or will be met for this project:
 - 1. All response work will comply with the requirements of the NR 700, Wis. Adm. Code rule series and the provisions of the Process.
 - 2. The Village of Grafton, as a municipality, owns the property.
 - 3. This pilot funding is a part of a larger funding package and is not the sole funding source for the remediation project.
 - 4. WDNR reserves the right to pursue cost recovery for state funds against responsible parties who have not entered and do not enter into a settlement agreement with the Village or accept the umpire's recommendation as part of the Process.
- C. WDNR shall pay to the Village a total of Four Hundred Thousand Dollars (\$400,000), as Reimbursement of the Eligible Costs, which meet with the

approval of WDNR, in installments, as set forth below. If any portion of the remedial action at the Landfill is not completed by the Village, and the Responsible Parties, in compliance with the requirements of the Preliminary Remedial Action Plan (Investigation Report), WDNR's obligation to pay the remainder of the Four Hundred Thousand Dollars (\$400,000) shall be suspended until compliance is achieved. Each installment shall be made payable to, and shall be mailed or delivered to the Village, as set forth immediately below:

1. Three Hundred Twenty-Four Thousand Dollars (\$324,000.00) shall be paid to the Village within 30 days after the department receives two signed copies of the Contract.
 2. Seventy-Six Thousand Dollars (\$76,000.00) shall be paid to the Village in quarterly installments for Reimbursement of monitoring and other eligible expenses. Payments shall be made to the Village within 30 days after submittal of adequate documentation of costs to the Department.
 3. Nothing herein prevents WDNR from issuing Reimbursement installment payments to the Village simultaneously, provided the Village complies with the conditions hereof.
- D. Nothing in this Contract shall be deemed to waive the right of WDNR to seek cost recovery under the authority of sec. 292.11, Wis. Stats. or any other State statute for the Reimbursement paid under this Contract from any Responsible Parties who did not contribute funding for this project pursuant to a settlement agreement with the Village or otherwise pursuant to the Process. The Village will reasonably cooperate with WDNR in any efforts by WDNR to recover the state's cost share from such nonsettling Responsible Parties.

III. SUBMISSION OF DOCUMENTS

- A. The Village shall submit such documentation of Eligible Costs that the WDNR shall reasonably require to substantiate the request for Reimbursement of costs covered by this Contract (the "Supporting Documents").
- B. At a minimum, the Supporting Documents shall include:
 1. A copy of the January, 1999, Preliminary Remedial Action Plan (Investigation Report) and any revisions.

2. A copy of the invoices received by the Village, for the natural attenuation-related activities proposed as Eligible Costs, and documentation of payment of those invoices.
3. A copy of the Deed for the landfill property.

C. Supporting Documents shall be submitted to:

John Feeney
Wisconsin Department of Natural Resources
Southeast Regional Office
4041 N. Richards Street
Milwaukee, WI 53212

Robert Strous, Chief
Fiscal and Program Evaluation Section
Bureau for Remediation & Redevelopment
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

D. Documents and Reimbursement sent by the WDNR to the Village under this contract shall be submitted to:

Mr. Darrell Hofland, Village Administrator
P.O. Box 125
Grafton, WI 53024

With a copy to:

Mr. Charles "Buck" Sweeney
Michael Best & Friedrich LLP
P.O. Box 1806
Madison, WI 53701

IV. EFFECTIVE DATE

This Contract shall be executed by the Village before being executed by WDNR. When WDNR executes this Contract, the WDNR shall enter an effective date immediately below the WDNR's signature which shall be a minimum of five (5) but not greater than ten (10) business days after the date of mailing (first class postage prepaid) by the WDNR to the Village of a fully executed copy of the Contract.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By: George E. Meyer
George E. Meyer, Secretary
Department of Natural Resources

Date: 10/23/00

VILLAGE OF GRAFTON

By: Richard J. Leach
Richard J. Leach, Village President
Village of Grafton

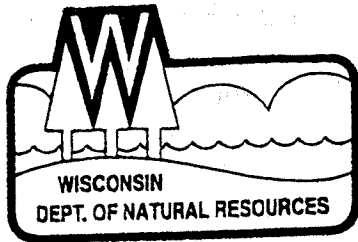
Date: October 17, 2000

EXHIBIT A

Part of the West Half of the Northeast Quarter (W ½ of the NE ¼) of
Section 25, Township 10 North, Range 21 East, Ozaukee County, Wisconsin.
(Street address of Green Bay Road).

"Exhibit C"

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

October 7, 1997

Mr. Rodney L. Schroeder, President
Village of Grafton
1971 Washington Street
P.O. Box 125
Grafton, WI 53024-0125

Rodney
Dear Mr. Schroeder:

I am writing to you as a follow up to our discussions earlier this year and to my letter of July 29, 1997. Our discussions involved the possibilities of state cost sharing for investigation and remedial work at the Village's landfill (Lime Kiln Park). Recent developments have led me to initiate a limited pilot program to provide some state funds to assist in the remediation of a small number of municipal landfills. This is intended to be an interim measure until a cost share rule can be promulgated. Because of our earlier discussions, I wanted to make you aware of this pilot program, and if you believe you could qualify, I encourage you to contact Walt Ebersohl as soon as possible.

The Land Recycling Law (1984) established a political subdivision negotiation and cost recovery process under sec. 292.35, Wis. Stats., in order to allow municipalities to obtain contribution from other responsible parties who used the municipality's landfill. When the Land Recycling Law was drafted, it was envisioned that the negotiation and cost recovery process would expedite landfill cleanups by fairly distributing liability and providing incentives for parties to settle with the municipality for their portion of the cleanup costs. To date, only a few communities have pursued using the new process.

In order to gain additional information and experience regarding the political subdivision negotiation and cost recovery process, we are instituting a pilot program to provide some moderate state funds to those communities which have already started using that process. Funds will be provided through the bonding funds which DNR requested in the 1997-98 biennial budget. If the bonding money DNR requested is not realized when the budget is finalized, then I will have to re-evaluate this program, since DNR will not likely have funding available from other sources for the pilot program.

In order for the DNR to provide financial assistance to your community, the following general criteria would need to be satisfied:

1. The DNR's biennial budget request for bonding authority must be included in the final version of the budget and must contain sufficient funds for DNR to implement this pilot program.
2. The Village must follow the provisions of the political subdivision negotiation and cost recovery process, under sec. 292.35, Wis. Stats.

3. The Village must follow the provisions of ch. NR 700, et seq., since the Village will be required to conduct an investigation and prepare a remedial action plan in order to comply with the requirements of sec. 292.35, Wis. Stats. Please note that ch. NR 716 requires that the investigation adequately define the full degree, nature and extent of contamination at the site, rather than simply investigating within the boundaries of the landfill itself. In addition, ch. NR 716 requires that all pathways of contaminant migration be investigated. Chapter NR 722 Wis. Admin. Code covers the development of a remedial action plan and remedy selection.

4. The Village must comply with all requirements regarding the use of bonding money.

5. DNR reserves the right to pursue cost recovery for state funds against responsible parties who do not enter into an agreement or accept the umpire's recommendation as part of the negotiation and cost recovery process.

We welcome your participation in the negotiation and cost recovery process. It offers municipalities an opportunity to negotiate the implementation and design of a remedial action plan that will address all of the contamination from the landfill, with contribution of funds from all identified responsible parties. We look forward to cooperating with you in implementing a successful cleanup of the village's landfill. If you have any questions about the negotiation and cost recovery process, or wish to pursue participation in the pilot program, please contact Walt Ebersohl at 414-229-0864.

Sincerely,



George Meyer
Secretary

cc: Gloria McCutcheon - SER
Lakshmi Sridharan - SER
Jay Hochmuth - AD/5
Jim Schmidt - SER
Walt Ebersohl - SER
Bob Strous - RR/5

"Exhibit B"

State of Wisconsin

CORRESPONDENCE/MEMORANDUM

DATE: September 8, 1997

TO: George E. Meyer - AD/5
Jay Hochmuth - AD/5

FROM: Mark F. Giesfeldt - RR/3 *MFG*

SUBJECT: Proposal for Pilot Cost-Sharing Programs for Landfill Cleanup and Brownfields

FILE REF:

Introduction

Over the last year, multiple communities have made requests of our Department to use state cleanup dollars to assist in the cleanup of a landfill contaminating the environment. Also, several legislators have raised concern over the cost allocation process experienced at the Junker Landfill in St. Croix County and began discussions on legislative approaches to deal with landfill cleanups. These issues are all related to landfills, and we need to begin to take steps to deal with the landfill cleanup problem from a statewide perspective. Also, concern has been raised about delays in implementing the Governor's Brownfields initiative while both Commerce and DNR establish the components of the new program. The RR Management Team is requesting your input and concurrence on two proposals (Landfills and Brownfields) to begin to address these very important issues.

Landfill Proposal

To effectively deal with the landfill cleanup issue, we propose the following approach:

1. Establish an External Advisory Group (EAG) to work with the DNR on:

- a) Cost Share Criteria for inclusion in the NR 700 Rule Series. The Pink Sheet approved on December 11, 1996 for the rule is attached for your reference and will be revised to reflect this proposal.
- b) Legislative and/or other administrative approaches to address the landfill cleanup issues.

The recommended membership for the EAG, at a minimum, would consist of representatives from the Alliance of Cities, Rice Lake and Waukesha; people familiar with landfill cleanup under RR such as Mark Thimke and John Robinson, environmental representatives and legislative representatives (Panzer, Harsdorf, Hubler, and Clausung all have expressed interest in this topic).

If the EAG decides to consider legislative approaches to fund or assist in the funding of landfill cleanups we should consider enlisting a contractor to gather data to better define the landfill cleanup program. Based upon preliminary discussions we had with Senator Clausung's and Representative Harsdorf's staff earlier this year, we lack data to properly define the scope of the landfill cleanup problem.

2. Establish a pilot program to assist in providing some level of financial assistance to municipalities who have requested funds for landfill cleanup and are involved with the Land Recycling Law's Negotiation/Cost Recovery process. This pilot would provide us with information on how to enhance the negotiation/cost recovery program and get to landfill cleanup more expeditiously.

The pilot program will utilize bonding dollars, not the cash in the Environmental Fund. We expect to receive \$15.5 million in bonding authority when the 1997-99 biennial budget is passed. Bonding can only be used for remedial construction that benefit the state, (e.g., protecting the groundwater). Contractual agreements with the municipality will provide reimbursements at certain milestones of the cleanup process which will follow the NR 700 rule series. This will hopefully provide incentives to proceed through completion. In addition, the RR Management Team has decided to limit workload associated with landfills. Municipal landfills involved in the negotiation/cost recovery process is one category of landfill cleanups the program will focus on.

To date, the following communities have requested financial assistance from the DNR for landfill cleanup work. Several communities are far enough along in the cleanup process to provide us with an established dollar figure. They are:

Waukesha:	\$1.5 million
Amery:	\$.35 million
Rice Lake	\$.75 million
Total	\$2.60 million

Other communities have requested money, but are not far enough along in the cleanup process to provide an accurate estimate (based on feedback from regional staff) but may not meet the previously discussed criteria. We will further evaluate whether these communities to confirm their status and, if they do, letters will be sent to these communities informing them of our intent to establish the pilot program and our commitment to work with them on providing some financial assistance.

The RR Management Team also recommends that there be a \$3.0 million cap on the pilot program which may mean we provide less than \$1.5 million to the City of Waukesha. Also, in all these cases, the money we are providing will only be a small percentage of the overall cost and at no time will we fund the entire remedy. Nor is it our intent for these monies to be construed as funding the orphan share for any landfill.

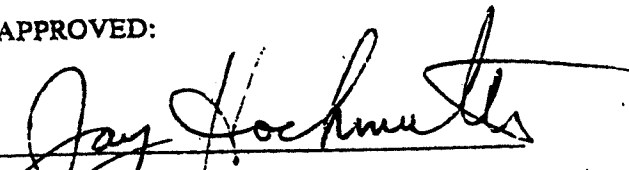
Brownfields Proposal

The RR Management Team also recommends the Department establish a pilot for those communities, that are counting on the financial opportunities in the budget bill to assist them in site cleanup and redevelopment in the near future. With the delay in enacting the budget, plus the time it will take us to get the DNR loan program operational in coordination with Commerce's implementation of its administered loan/grant program, municipalities wanting to move ahead within the next year may not be able to do so. Therefore, we propose to utilize \$2 to 3 million in bonding from the requested \$15.5 million in bonding requested in the FY 1997-99 Biennial Budget to provide assistance to municipalities that would otherwise have to wait based upon the budget and program implementation delay. The basic criteria we will consider are:

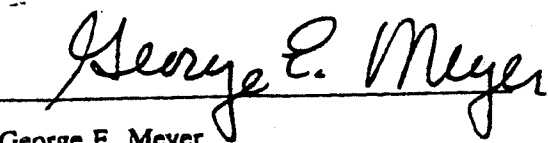
1. The municipality is not the responsible party.
2. The municipality will continue to pursue the Brownfields loans/grants, when available, per the new budget.
3. The funds from DNR are not to fund the majority of the cleanup work.
4. All bonding requirements must be met, as with the Landfill Pilot.
5. The municipality will enter into a contractual agreement with the Department.
6. NR 700 Rule Series will be followed.

Please let me know if you have any questions or comments on this proposal. Thank you.

APPROVED:


 Jay Hochmuth, Administrator
 Air and Waste Division

9/8/97
 Date


 George E. Meyer
 Secretary

9/15/97
 Date

attachment
 a:\pilot.mfg

cc: Program Attorneys
 RR Management Team