

Briefing Paper on Possible EPA Actions Against  
Waters Instruments, Inc. concerning the  
Laubenstein Property in Saukville, Wisconsin

Facts:

1. Freeman Chemical Corp. ("Freeman") is conducting corrective actions under RCRA §3008(h) to remedy contamination of parts of its plant site in Saukville, Wisconsin, as a result of releases of hazardous waste constituents during past plant operations. It is working with EPA and the Wisconsin DNR and plans soon to complete most of these corrective actions and to sign a consent order with EPA and DNR.

2. The Laubenstein property adjoins the Freeman plant site to the west. From 1951 through 1971, Northern Signal Company, an electrical parts manufacturer, owned and conducted operations on this property. It used trichloroethylene ("TCE") for degreasing metal parts and disposed of waste TCE sludge on the property. The TCE apparently contaminated shallow groundwater beneath the property, and a 450' deep well on the property apparently allowed TCE to reach the deep aquifer. Freeman voluntarily repaired the well in the fall of 1986 to prevent further contamination of the deep aquifer from leakage through the well. Waters Instruments, Inc. ("Waters") purchased the stock of Northern Signal Company in the early 1970's, but has taken no actions to remedy TCE problems at the site.

3. DNR and Freeman have had discussions with Waters about Waters' assuming responsibility to investigate and remedy problems from the TCE contamination on the Laubenstein property. Waters has been unwilling, however, to assume that responsibility.

4. EPA and DNR have conducted a Preliminary Assessment under CERCLIS of the Laubenstein property and have scheduled a Site Investigation this summer. Thus, the site has not yet been scored under the Hazard Ranking System for possible listing on the National Priorities List.

5. In Freeman's view (and, we think, DNR's and EPA's too), it would be better to remedy problems with the Laubenstein property as part of the RCRA corrective action currently underway rather than under the CERCLA process. The principal reason is that the RCRA corrective action could take place much more quickly than the CERCLA response action. Another reason is that the costs of the corrective action would probably be lower.

6. Freeman and DNR have not been successful in persuading Waters to assume its responsibilities for problems with the Laubenstein property.<sup>1/</sup> They therefore urge that EPA discuss this matter with Waters.

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<sup>1/</sup> Waters has offered to pay some funds to Freeman if Freeman will do the work and assume virtually all responsibility.

Waters' legal liability for environmental problems with the Laubenstein property.

1. If EPA, DNR or Freeman acted under CERCLA, Waters would be legally liable for costs related to cleanup of releases of TCE on the Laubenstein property under CERCLA §107(a). The reason is that it was an owner or operator of a facility at the time of disposal of the TCE.<sup>2/</sup> Waters is thus liable to EPA, DNR and private parties (e.g., Freeman, Village of Saukville et al.) for any costs to investigate and remedy those problems at the site. Its liability is strict, joint and several. If Freeman were to pay for cleanup of the property, it would have a contribution action against Waters under CERCLA §113(f).

2. Under CERCLA, EPA could (a) investigate and remedy problems at the site under §104 and then seek reimbursement from Waters for all its costs; (b) provide Waters with the opportunity to investigate and remedy problems with EPA oversight; or (c) order Waters to investigate and remedy problems under §106, with the risk that Waters could be responsible for treble damages if it unreasonably refuses to take these actions. Remedial investigation and feasibility studies generally cost at least \$500,000, and remedial actions, several million dollars.

3. EPA could sue Waters under RCRA §7003 for Waters' past disposal of hazardous waste on the property that "may present an imminent and substantial endangerment to health and the environment."

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<sup>2/</sup> Waters is responsible for Northern Signal's actions since, we understand, it purchased the stock and thus, both assets and liabilities of Northern Signal.

4. Under the 1984 amendments to RCRA, a citizen (e.g., Freeman, Village of Saukville or even DNR) could commence a citizen suit against Waters based on §7003. RCRA §7002.

5. Waters is probably liable for a common law public nuisance because its releases of TCE have contaminated the Village's groundwater and drinking water supplies. Waters is probably liable to Freeman for a private nuisance because its releases of TCE interfere with Freeman's use and enjoyment of its property.

6. Waters may be liable under Wisconsin law for contamination of groundwaters especially if that groundwater is a public drinking water supply. Wisc. Code §144.265, 147.21 and 23.

7. EPA could bring an action against Waters under the Safe Drinking Water Act because the TCE is in or likely to enter a public water supply and "may present an imminent and substantial endangerment to health." SDWA §1431.

Waters' exposure and options.

1. Exposure:

Waters is clearly at substantial risk under the various provisions referred to above. Freeman has acted responsibly to remedy problems caused by its plant operations, but Freeman will not assume, nor can Waters reasonably expect Freeman to assume, responsibility for contamination which Waters caused and for which Waters is legally responsible for. CERCLA §107(e)(1).

2. Options:

Waters' options are essentially two:

- (a) If EPA and DNR are forced to address problems at the Laubenstein property under CERCLA, Waters will be the only or, at the least, the primary responsible party for the site. The investigation costs could be \$0.5 to \$1.0 million, and the remedial costs, several million dollars. The CERCLA remedial action would probably take several years and extensive management time and expense. This course would inevitably lead to litigation.
- (b) If Waters agrees to undertake or participate in a RCRA corrective action for the Laubenstein property, the actions could probably be completed much more quickly, and the costs should be substantially lower.