



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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

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101 South Webster Street
Madison, Wisconsin 53707-7921
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September 29, 1998

268091890, AW/GENCL

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Joseph Dindorf
Hein-Werner Corporation
2120 North Pewaukee Road
Waukesha, WI 53188

CASETRACK ID# 98-SEEE-056
FID# 26809189

SUBJECT: Order #98-SEEE-056

Dear Mr. Dindorf:

Enclosed is a special order issued by the Department of Natural Resources concerning a hazardous substance discharge at property formerly owned by Hein-Werner Corporation, located at 1005 Perkins Avenue, in the City of Waukesha, Waukesha County, Wisconsin. If a contested case hearing on this order is desired, a written request for a hearing must be submitted to the Secretary of the Department no later than 30 days after the date of this letter.

If you have any questions, please contact Environmental Enforcement Specialist David Dahms at (414) 263-8670 or Attorney Judy Ohm at (608) 266-9972.

Sincerely,

Brenda B. Hagman

Brenda B. Hagman, Director
Office of Environmental Enforcement
Bureau of Law Enforcement

enclosure

c: BRR/3
Judy Ohm LS/5
David Dahms SER
Hiram J. Buffington - Snap-On Tools, 2801, 80th Street, Kenosha, WI, 53141
Dominic Giuffre - Mallory Improvements, 6635 S. 13th Street, Milwaukee, WI 53221

BEFORE THE
STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Alleged Discharge)
of a Hazardous Substance on property)
located at 1005 Perkins Avenue in the)
City of Waukesha, Waukesha County,)
Wisconsin)

ORDER NO. 98-SEEE-056
FACILITY ID NO. 26809189

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (Department) bases Order No. 98-SEEE-056.

FINDINGS OF FACT

1. Mallory Improvements owns the property located at 1005 Perkins Avenue, NE 1/4, NE 1/4, Section 2, Township 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin (Site).
2. The site was owned by the Hein-Werner Corporation from 1968 to 1981 at which time Hein-Werner operated a manufacturing facility at the site. During the 1970s, Hein-Werner disposed of paint line wastes by burying the wastes in excavated pits at the site.
3. Winter Hess, former Environmental Warden for the Department, conducted an investigation of Hein-Werner in 1995. During the investigation Hess obtained statements from several former employees who stated that paint wastes were buried in excavated pits. Hess also obtained records from the Waukesha County Fire Department. These records indicate that the Waukesha Fire Department responded to two fires from the pits on two occasions in 1974. During these fires, the Waukesha Fire Department noted five gallon paint cans in the excavated pits. In addition, staff from the Department noted partially buried drums during site visits.
4. Mike Ellenbecker, Southeast Region Hazardous Waste Investigator, collected samples of the drum waste on December 20, 1994. Results of this sampling indicate that the wastes contained elevated levels of heavy metals. One of the samples contained lead concentrations that indicate the material is hazardous waste. In addition, Mike Ellenbecker collected soil samples at the site on March 10, 1997. All six samples contained elevated levels of heavy metals. A list of these samples are attached with this document.
5. On August 20, 1997, Scott Ferguson, Southeast Region Hydrogeologist, issued a responsible party letter both to Hein-Werner Corporation and Mallory Improvements.
6. The Department did not receive adequate response from either party and Notices of Violation were issued to both Hein-Werner Corporation and Mallory Improvements. An enforcement conference was held with Hein-Werner on July 1, 1998. Mallory Improvements did not attend the enforcement conference.

CONCLUSIONS OF LAW

1. Paint wastes and their constituents are "hazardous substances" as defined by s. 292.01(5), Wis. Stats.
2. Hein-Werner, as person who caused the discharge of a hazardous substance, under s. 292.11(3), Wis. Stats., is required to take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state.
3. Under s. 292.11(7)(c), Wis. Stats., the Department has the authority to issue Special Orders to the person possessing or controlling a hazardous substance that has been discharged, or who caused the discharge, to fulfill the duty imposed by s. 292.11(3), Wis. Stats., and chs. NR 700 to 726, Wis. Adm. Code."
4. This Order is necessary to accomplish the purposes of s. 292.11, Wis. Stats., and chs. NR 700 to 726, Wis. Adm. Code, and is enforceable through prosecution by the Attorney General under ss. 299.95 and 299.97, Wis. Stats., and ch. NR 728, Wis. Adm. Code.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Department of Natural Resources therefore orders Hein-Werner Corporation to do the following:

1. Within thirty (30) calendar days after the effective date of this Order, provide the Department with the name of the qualified environmental consultant who will be conducting the investigation and remediation required by this Order.

INVESTIGATION WORK PLAN

2. Within forty-two (42) calendar days after the effective date of this Order, submit a site investigation work plan to the Department, for Department review and approval. The investigation work plan shall be designed to define the extent and degree of horizontal and vertical soil and groundwater contamination resulting from the discharge of paint wastes and solvents at the site. The investigation work plan shall comply with the requirements of ch. NR 716, Wis. Adm. Code, and all applicable federal and state laws. The investigation work plan shall include a schedule for implementing the investigation.
3. If the Department requires modifications to the site investigation work plan, modify the investigation work plan to address the Department's comments within twenty (20) calendar days after the date of the Department's notification. The Department may place conditions in the approval of the investigation work plan.
4. Within thirty (30) calendar days after the Department's approval of the site investigation work plan, conduct the investigation in compliance with the terms and conditions of the Department's plan approval, ch. NR 716, Wis. Adm. Code and all applicable federal and state laws.

INVESTIGATION REPORT

5. Within ninety (90) calendar days after the completion of sampling performed in accordance with the site investigation work plan submit a site investigation report to the Department of the findings of the investigation in compliance with the requirements of s. NR 716.15, Wis. Adm. Code.
6. If the site investigation work plan approved by the Department under this Order is not sufficient to fully define the degree and extent of the contamination, the site investigation report shall include a proposal for an additional site investigation work plan for Department review and approval. The additional site investigation work plan contained within the site investigation report shall be designed to complete the investigation and shall include a proposed schedule for implementing the additional site investigation work plan.
7. If the Department requires modification of the site investigation report, modify the investigation report to address the Department's comments within twenty (20) calendar days after receipt of the Department's notification. The Department may place conditions in the approval of the site investigation report.
8. If an additional site investigation work plan is required as part of the site investigation report, conduct the additional site investigation, upon approval of the site investigation report, and report to the Department as directed by the conditions of the site investigation report approval.

REMEDIAL ACTION

9. If no additional site investigation work plan is required as part of the site investigation report, and soil contamination levels require action under ch. NR 720, Wis. Adm. Code, or groundwater contamination levels require action under chs. NR 140 and NR 726, Wis. Adm. Code, submit to the Department, for Department review and approval, a remedial action plan for remediation of soil and groundwater contamination within forty-five (45) calendar days after the Department's approval of the site investigation report. The remedial action plan shall comply with the requirements of chs. NR 720, 722, and 724, Wis. Adm. Code., and all applicable federal and state laws.
10. If the Department requires modification of the proposed remedial action plan, modify the remedial action plan to address the Department's comments within twenty (20) calendar days after receipt of the Department's notification. The Department may place conditions in the approval of the remedial action plan.
11. Within thirty (30) calendar days after the Department's approval of the remedial action plan, conduct the remedial action in compliance with the terms and conditions of the Department's approval, chs. NR 720, 722 and 724, Wis. Adm. Code, and all applicable federal and state laws.

INTERIM ACTION

12. If interim action is required by ss. NR 708.11 or 708.13, Wis. Adm. Code, select the necessary interim action and submit to the Department an interim action plan for Department review and approval prior to implementation of the interim action. The interim action plan shall include a schedule for implementing the interim action.
13. If interim action is required under paragraph 12 of this Order, conduct the interim action according to the terms and conditions of the Department's approval and all applicable federal and state laws.

NOTIFICATION OF SAMPLING

14. Notify the Department, in writing, at least fifteen (15) calendar days prior to any sampling performed under any work plan required by this Order.

REPORTING

15. Submit written monthly progress reports to the Department by the tenth (10th) of each month following the effective date of this Order. These monthly progress reports shall:
 - a. Describe the actions which have been taken toward achieving compliance with this Order during the preceding month.
 - b. Include tabulated results of sampling, testing, an updated groundwater contour map if groundwater sampling has been conducted during the preceding month and all other data generated during the preceding month.
 - c. The following additional information shall be submitted every third month:
 - i. Summary Tables for all historical groundwater quality and elevation data related to each well.
 - ii. Graphs of all historical groundwater chemistry data related to each monitoring well. At a minimum, these graphs shall be drawn depicting ch. NR 140, Wis. Adm. Code, Preventive Action Limit and Enforcement Standard Exceedances for the compounds of concern.
 - iii. Evaluation of the effectiveness of the site investigation and the remedial action and recommendations for improvements
16. Mail or deliver copies of each report, plan or other submittal required by this Order to:

Mr. Scott Ferguson
Wisconsin DNR Southeast Region
P.O. Box 12436
Milwaukee, WI 53212
(2 copies)

RIGHT TO AMEND

17. The Department reserves jurisdiction to amend this Administrative Order by issuing a second Order if such action is necessary for the protection of public health, safety or welfare or the environment. If the Department issues a second Order, then Hein-Werner Corporation will have the right to appeal the provisions of the second order.

NOTICE OF APPEAL RIGHTS

This order shall become effective unless a written request for a hearing to contest the issuance of this Order, or any of its terms, is filed with the Department within 30 days after the date this Order is mailed. All hearing requests shall be filed either by delivery to the Office of the Secretary of the Department at 101 South Webster Street, Madison, Wisconsin, or by certified mail addressed to the Office of the Secretary, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707. If a hearing is requested, the Order shall not become effective until the administrative law judge has issued a decision affirming or modifying the Order. This notice is provided pursuant to s. 227.48(2), Wis. Stats.

All hearing requests must be made in accordance with s. NR 2.05 (5), Wis. Adm. Code, and must identify the grounds for the petition and the desired modification or change to the Order and include information demonstrating the following:

1. The substantial interest of the petitioner which is injured in fact or threatened with injury by Department action or inaction;
2. That there is no evidence of legislative intent that this interest is not to be protected;
3. That the injury to the petitioner is different in kind or degree from the injury to the general public caused by Department action or inaction; and
4. That there is a dispute of material fact.

For judicial review of a decision, pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated at Madison, Wisconsin, this 29th day of September, 1998.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
FOR THE SECRETARY

By:

Brenda B. Hagman
Brenda B. Hagman, Director
Office of Environmental Enforcement
Bureau of Law Enforcement

**RESULTS OF SOIL SAMPLES COLLECTED FROM THE FORMER HEIN-WERNER
SITE LOCATED AT 1005 PERKINS AVENUE, WAUKESHA, WI**

<u>Sample Date</u>	<u>Collected By</u>	<u>Sample#</u>	<u>Result</u>
03/10/97	Ellenbecker	HW97-1	54 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-1	190 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-1	33,000 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-1	180 mg/kg, Lead, ICP
03/10/97	Ellenbecker	HW97-2	53 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-2	140 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-2	36,000 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-2	770 mg/kg, Lead, ICP
03/10/97	Ellenbecker	HW97-3	81 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-3	410 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-3	32,000 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-3	2,500 mg/kg, Lead, ICP
03/10/97	Ellenbecker	HW97-4	28 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-4	82 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-4	15,000 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-4	770 mg/kg, Lead, ICP
03/10/97	Ellenbecker	HW97-5	33 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-5	36 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-5	21,525 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-5	42 mg/kg, Lead, ICP
03/10/97	Ellenbecker	HW97-6	36 mg/kg, Barium, ICP
03/10/97	Ellenbecker	HW97-6	38 mg/kg, Chromium, ICP
03/10/97	Ellenbecker	HW97-6	36,000 mg/kg, Iron, ICP
03/10/97	Ellenbecker	HW97-6	79 mg/kg, Lead, ICP

**RESULTS OF SAMPLES COLLECTED FROM PAINT WASTE FOUND IN DRUMS
DEPOSITED AT THE FORMER HEIN-WERNER SITE LOCATED AT
1005 PERKINS AVENUE, WAUKESHA, WI**

<u>Sample Date</u>	<u>Collected By</u>	<u>Sample#</u>	<u>Result</u>
12/20/94	Ellenbecker	HW1	33 mg/kg, Arsenic, ICP
12/20/94	Ellenbecker	HW1	410 mg/kg, Barium, ICP
12/20/94	Ellenbecker	HW1	30,000 mg/kg, Chromium, ICP
12/20/94	Ellenbecker	HW1	14,000 mg/kg, Iron, ICP
12/20/94	Ellenbecker	HW1	5.42 mg/l, Lead, TCLP
12/20/94	Ellenbecker	HW2	28 mg/kg, Arsenic, ICP
12/20/94	Ellenbecker	HW2	890 mg/kg, Barium, ICP
12/20/94	Ellenbecker	HW2	18,000 mg/kg, Chromium, ICP
12/20/94	Ellenbecker	HW2	17,520 mg/kg, Iron, ICP
12/20/94	Ellenbecker	HW2	80,000 mg/kg, Lead, ICP

ENVIRONMENTAL ENFORCEMENT ROUTING MEMO

REPAIR AND REMEDIATION

ORDER

Case ID 98-SEEE-056 & 98-SEEE-057
FID# 26809189

DATE: July 29, 1998

TO:	Yes/No	Date	Comments
1. M. Giesfeldt - RR/3	<u>yes</u> <i>MFB</i>	<u>7/30/98</u>	Correct typo on pg 2
2.. J. Ohm - LS/5	<u>Yes</u> <i>JMO</i>	<u>8/4/98</u>	See suggested changes (on 1 st Order)
3. B. Hagman - EE/5	<u>not until</u> concerns addressed <i>BA</i>	<u>8/12/98</u>	If Hein-Werner wants this order, I want the order to be on consent. If H.W. refuses to sign a consent order, will they sign a spill agreement. Order should be for Snap-on Tools.
4. J. Hochmuth - AD/5	_____	_____	I'm concerned about Mallory and want to discuss w/ SER.
5. Charlene/Marty -EE/5	_____	<u>8/13</u> <i>Returned to Region.</i>	

SUBJECT: Review of the Southeast Region's Recommendation to issue an Order to Hein Werner Corp. and Mallory Improvements..

This is a final draft enforcement recommendation. **Please review and forward this package WITHIN THREE WORKING DAYS.**

If you have any questions about this package, please call Dave Dahms, Regional Environmental Enforcement Specialist, at 414-263-8670.

Conference call held w/ SER on Sept. 17 to discuss this case a why an order is being issued. Concerns addressed by SER
BA 9/28/98

Returned to SER
8/12/98
BA