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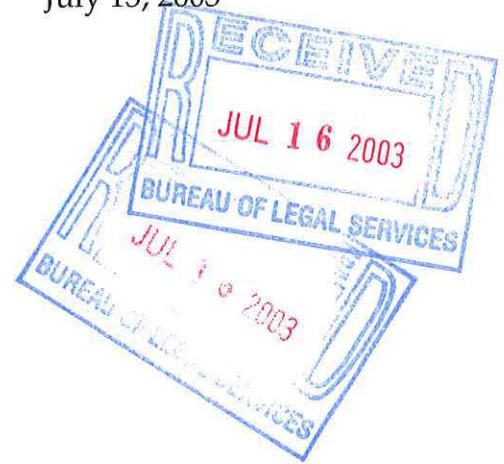
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July 15, 2003

VIA FEDEX

Ms. Linda Meyer
Wisconsin Department of Natural Resources
Bureau of Legal Services
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707-7921



Dear Linda:

This letter records the understanding of Kerr-McGee Chemical LLC regarding the path forward recently agreed by Kerr-McGee and the Wisconsin Department of Natural Resources, with respect to resolution of claims that the WDNR might otherwise advance for damages for injury to natural resources in the Little Menomonee River area at the Moss-American Superfund Site. The agreed approach, whereby Kerr-McGee will include "enhancements" in its remedial design for the "river remedy," is described with particularity in the attachments to this letter. We have agreed that the criteria in Attachment 2 apply during the prescribed three-year maintenance and monitoring. However, if, at the end of this period, the performance criteria aren't being met, the maintenance and monitoring period will not be extended.

Assuming this letter and its attachments fairly summarize our clients' agreement, I would appreciate it if you could signal your concurrence by signing and returning the extra copy of this letter that I am enclosing.

Sincerely,



John T. Smith II

Encl.

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Assuming this letter and its attachments fairly summarize our clients' agreement, I would appreciate it if you could signal your concurrence by signing and returning the extra copy of this letter that I am enclosing.

Sincerely,

John T. Smith II

CONCUR BY:


Linda Meyer
Wisconsin Department of Natural Resources

Encl.

I. Purpose

Kerr-McGee Chemical, LLC (Kerr-McGee) and the Wisconsin Department of Natural Resources (WDNR or the Department) have discussed a possible release from natural resource damage claims with respect to the Moss-American Superfund site. Discussions have led to an agreement in principle that WDNR would grant a release from natural resource damage claims in exchange for a package of “enhancements” above and beyond the remedial action required in the Record of Decision. Under this agreement, a release of these claims by the Wisconsin Department of Natural Resources would be contingent upon Kerr-McGee's satisfaction of certain conditions. This document outlines these conditions, as well as a procedure for completing such a release.

II. Background

WDNR has suggested that Kerr-McGee augment its design team by including a firm with expertise in river restoration, such as Inter-Fluve, Inc. Kerr-McGee has advised WDNR that it proposes to engage Inter-Fluve to assist in Reach 2 and 3 stream channel design as specified in Inter-Fluve's scope of work for Reaches 2 and 3 (attachment 3). Inter-Fluve's assistance in development of a design for Reaches 2 and 3, together with enhancements in Reach 1, should provide a basis for WDNR's release of NRD claims for these three reaches.

The Department proposes to release natural resource damage claims in several steps. A “comfort letter” would be issued to Kerr-McGee as soon as possible after WDNR and U.S. EPA approve of a river restoration design for Reaches 2 and 3, consistent with the description of design enhancements in Attachment 2, Section 1. “Release letters” would be issued following a 3-year maintenance and monitoring period, or other agreed upon maintenance and monitoring period, as discussed in Attachments 1 and 2, unless the Department determines that the restoration work in Reaches 1, 2 and 3 has stabilized in less than 3 years.

The Department anticipates that a 3-year maintenance and monitoring period will be required to assure that the remedy and enhancements are maintained and stable after the end of construction and after the removal of the roads that have been constructed for Reaches 1, 2 and 3. This 3-year maintenance and monitoring period is consistent with that outlined in Appendix L of the 100% design for Reach 1. The 3-year maintenance and monitoring period for restoration measures in all areas of Reach 1 except areas affected by haul roads started on or about May 15, 2003, when trees were planted. There will be a separate 3-year maintenance and monitoring period for any areas where haul roads are removed or that are disturbed by road removal activities. A separate letter may be issued for each reach, or an overall (Reach 1-3) letter might be issued, depending on schedules and circumstances.

If a release is issued before the agreed-upon maintenance and monitoring has been completed, it will be conditioned upon the continued maintenance and monitoring of the river restoration as required under the agreed-upon performance standards and maintenance and monitoring plans in Attachments 1 and 2, for the river reaches covered by the release.

Attachment 1 - Criteria for NRD Release for Reach 1

1. Wetland Restoration, and Invasive and Non-Native Plant Species Control:

a. **Performance Standards for Plantings** for wetland restoration, and invasive and non-native plant species control:

1. In July and September of 2003, and again in September 2004 and September 2005, the areas in Reach 1 where restoration work has been conducted will be inspected to determine if the following performance standard has been met: a minimum of 75% native and maximum 25% non-native species.
2. After 2 complete growing seasons, there should be 80% survival of planted trees and shrubs, and after 3 complete growing seasons, there should be 80% survival of ground cover.

b. **Annual Inspection and Control.** In addition to the reporting specified in Item 1.3 of the Reach 1 Operation and Maintenance Plan (Appendix L, Reach 1 100% Design), Kerr-McGee and WDNR agree that:

- KMC and WDNR will jointly inspect the areas in Reach 1 where restoration work has been conducted as early as July 14, 2003, in order to determine to what extent the restoration work in Reach 1 meets the performance standards in paragraph 1.a. In any locations deemed not to comply with these standards when this first inspection is conducted, Kerr-McGee shall implement a pro-active invasive and non-native plant species control plan for the remainder of the 2003 growing season that shall include at a minimum 2 mowings of seeded areas, potentially some spot-spraying of herbicide, and re-seeding of herbicide-treated areas and areas with insufficient growth of native vegetation with an agreed-upon seed mix. KMC and WDNR will jointly inspect the areas in Reach 1 where restoration work has been conducted again in September, 2003, in order to determine to what extent the restoration work in Reach 1 meets the performance standards in paragraph 1.a. at that time. In any locations deemed not to comply with these standards when this second inspection is conducted, Kerr-McGee shall continue implementation of its pro-active invasive and non-native plant species control plan for the 2004 growing season, including at a minimum 2 mowings of seeded areas, potentially some spot-spraying of herbicide, and re-seeding of herbicide-treated areas and areas with insufficient growth of native vegetation with an agreed-upon seed mix. KMC and WDNR will jointly inspect the areas in Reach 1 where restoration work has been conducted again in September, 2004, or at another mutually agreed-upon time, in order to determine to what extent the restoration work in Reach 1 meets the performance standards in paragraph 1.a. at that time. In any locations deemed not to comply with these standards when this third inspection is conducted, Kerr-McGee shall continue implementation of its pro-active invasive and non-native

plant species control plan for the 2005 growing season, including at a minimum 2 mowings of seeded areas, potentially some spot-spraying of herbicide, and re-seeding of herbicide-treated areas and areas with insufficient growth of native vegetation with an agreed-upon seed mix. KMC and WDNR will jointly inspect the areas in Reach 1 where restoration work has been conducted again in September, 2005, or at another mutually agreed-upon time, in order to determine if any other invasive and non-native plant species control work is needed in the remainder of 2005, including potentially some spot-spraying of herbicide, and re-seeding of herbicide-treated areas and areas with insufficient growth of native vegetation with an agreed-upon seed mix.

- Kerr-McGee will increase the specialty grass species seeding rate to 10 lbs per acre with no species comprising more than 25% of the mixture.
- Kerr-McGee will increase the specialty forb species seeding rate to 4 lbs per acre.
- Kerr-McGee will revise the cover crop to include annual rye at 20 lbs per acre or oats at 60 lbs. per acre.

2. **Maintenance and Monitoring** of design "enhancements" for Reach 1 that were previously approved by WDNR, channel stabilization, and wetland restoration and invasive and non-native plant species control for Reach 1, shall be implemented as required in the "Operation and Maintenance Plan, River Remediation (Reach 1), Moss-American Site, Milwaukee, WI," dated July 26, 2002, that was included as Appendix L of the Reach 1 100% Design Document. The 3-year maintenance and monitoring period for restoration measures in all areas of Reach 1 except areas affected by haul roads started on or about May 15, 2003, when trees were planted. There will be a separate 3-year maintenance and monitoring period for any areas where haul roads are removed or that are disturbed by road removal activities.

Attachment 2 - Criteria for NRD Release for Reaches 2 & 3

1. **Design Enhancements**, similar to those included in Reach 1, as listed in paragraphs a. - g., will be incorporated into the design of Reaches 2 and 3. WDNR has agreed that the proposed river planform provided to WDNR by Weston on January 24, 2003 generally meets the objectives for enhanced sinuosity and channel length for Reaches 2 and 3.
 - a. increased channel length
 - b. increased channel sinuosity
 - c. increased connectivity of river channel with adjacent wetlands through berm removal or breaching
 - d. increased pool and riffle depths and frequencies within the new channel
 - e. enhanced revegetation plan using native plant species
 - f. enhanced erosion control materials
 - g. enhanced construction techniques to minimize spread of invasive and non-native species.

2. **Incorporation of a Company Specializing in River Restoration, such as Inter-Fluve, into Kerr-McGee's Design Team.** This criterion will be met by Kerr-McGee hiring Inter-Fluve, or another company specializing in river restoration, to assist in the design, as specified in the attached scope of work (attachment 3).

(Note: It is WDNR's understanding that Kerr-McGee has agreed that Inter-Fluve, Inc. and Kerr-McGee will review the design criteria (pp. 3-4) and the design procedures (U.S. ACOE Figure 3.6) described in WDNR's e-mail attachment dated January 30, 2003, as clarified in WDNR's February 24, 2003 letter to U.S. EPA's project manager, Russ Hart, among other things, to determine if the draft river restoration design for Reaches 2 and 3 can be improved to increase stability and, if possible, reduce cost, and insure that the enhancements and mitigation features will function and provide value over time.)

3. **Maintenance and Monitoring** of design "enhancements" for Reaches 2 and 3, and wetland restoration and invasive and non-native plant species control for Reaches 2 and 3, shall be as required in the Reach 2 and 3 100% river restoration design document, and shall be consistent with the following invasive and non-native plant species control plan:
 - Kerr-McGee will begin invasive and non-native plant species control work in the spring and summer following the completion of the river restoration construction work in Reaches 2 & 3. Kerr-McGee will hire a licensed professional to apply herbicide

that will effectively kill invasive species, with a minimum of two broadcast herbicide applications in the spring and summer of that first year, or at other mutually-agreed upon times, following the completion of construction. In November of that same year, the areas where herbicide has been applied shall be seeded with specialty seed. In the following year, the seeded areas shall be mowed a minimum of 2 times. In the third year after completion of construction, the seeded areas shall be mowed at least once. The contractor shall give the engineer, WDNR and U.S. EPA 2-working days notice prior to herbicide treatment. Applications shall be avoided to the extent possible 48-hrs prior to any precipitation event. Specialty seed shall not be applied to snow cover.

- Kerr-McGee will increase the specialty grass species seeding rate to 10 lbs per acre with no species comprising more than 25% of the mixture.
- Kerr-McGee will increase the specialty forb species seeding rate to 4 lbs per acre.
- Kerr-McGee will revise the cover crop to include annual rye at 20 lbs per acre or oats at 60 lbs. per acre.
- The Department anticipates that a 3-year maintenance and monitoring period will be required to assure that the remedy and enhancements are maintained and stable after the end of construction, and after the removal of the roads that have been constructed, for Reaches 2 and 3. There may be a separate maintenance and monitoring period for any areas where haul roads are removed or that are disturbed by road removal activities, if work is done in these areas after restoration measures have been completed in other portions of Reaches 2 and 3.



APPLIED RIVER AND
WETLAND RESTORATION
FOUNDED 1983

Attachment 3

May 20, 2003

Mr. Keith Watson
Project Manager
Kerr McGee Chemical, LLC
P.O. Box 25861
Oklahoma City, OK 73125

*RE: Moss-American Superfund Site Clean-Up, Little Menomonee River,
Milwaukee, Wisconsin*

Dear Keith:

Thank you for the opportunity to discuss and review enclosed proposal to work for the Little Menomonee River rehabilitation. Our primary effort is that of reducing construction and planning costs and satisfying the needs of the Wisconsin Department of Natural Resources (WDNR). The design for the Little Menomonee River rehabilitation should restore the desired function of the corridor to maximize benefit of Kerr McGee's expended resources and energies. Inter-Fluve is a national leader in river restoration with experience in constructing hundreds of miles of new channels in a myriad of environments. We understand the need to balance costs, risk and reward in an effort to maximize the ecological return on Kerr McGee's investment.

Based upon our conversations, I have provided a draft scope of work that offers a basis for discussion and assistance in developing:

- Cost saving design and construction strategies and approaches
- Development of basis of design,
- Guidance for future installation.

I look forward to meeting with you tomorrow and the opportunity to work together. Let me know if you have any questions.

Sincerely,

Marty E. Rye, P.E.
Inter-Fluve, Inc.

124 E. Lake Street
Lake Mills, WI 53551
Fax 920.648.5535
www.interfluve.com
920.648.5500

APPROACH AND SCOPE OF WORK

BACKGROUND

As part of the Moss-American site remediation Kerr McGee is participating in the rehabilitation of the Little Menomonee River in Milwaukee, Wisconsin. The potential work has been separated into five reaches. Reach 1 was recently completed and the final design for Reaches 2 and 3 are scheduled to be completed this year. The construction activities associated with the rehabilitation of the river reaches can also entail an impact to the environment.

There is an opportunity to provide additional efficiency and cost savings for the proposed work. This efficiency would be realized by a modification in design elements and using proven construction methodologies that reduce the construction contractor's effort and meet the Wisconsin Department of Natural Resources goals.

However, there is also an opportunity to minimize the impacts of construction and perform construction activities that will provide an enhancement to the impacted area. The amount of mitigation effort and resources devoted to mitigate the impact of the construction activities can be minimized if the reconstructed portion of the Little Menomonee River corridor is considered to be rehabilitated to an enhanced condition by the regulatory agencies. Specifically, an understanding of the Natural Resource Damages (NRDA) with the Wisconsin Department of Natural Resources (WDNR) is a negotiated process.

Reach 1 of the Menomonee River rehabilitation met the expectations of the Environmental Protection Agency (EPA), Kerr McGee, and the WDNR for clean up of identified areas of contamination. However, the reconstructed system did not meet the expectations of the WDNR to consider the reconstructed area to be completely consistent with the criteria needed for full inclusion into reduction of the NRDA.

In effort to maximize the return on Kerr McGee's expended resources and effort, additional expertise and advice regarding the reconstruction of the Little Menomonee River is being considered. The goal of this expertise is to assist Kerr McGee in providing the WDNR with additional understanding of the basis of design and

incorporate elements that will maximize the ecological return on Kerr McGee's rehabilitation efforts.

SCOPE OF WORK

We have prepared a condensed draft scope of work that we feel will meet the technical requirements of Kerr McGee and the WDNR. The following outline provides a synopsis of work tasks currently envisioned. These are presented as a draft and can be refined as a result of discussions with Kerr McGee.

Phase 1: Cost Savings Design and Construction Strategies and Approaches

We will provide you with a memorandum outlining cost savings strategies for design and implementation of Reaches 2 and 3. These strategies will be related to the efforts in Reach 1 and the WDNR issues. This memorandum will provide the basis for the design approach.

Deliverables:

- Memorandum delivered to Kerr McGee
- Meetings with Kerr McGee, Weston, and the WDNR

Phase 2: Development of Basis for Design

Refine the project performance criteria, preliminary channel alignment, and communication with the Wisconsin Department of Natural Resources. This will be used to develop specific design elements and focus the design approach. Typical elements of the in-stream design such as:

- Fisheries and habitat goals regarding habitat complexity,
- flood conveyance requirements,
- allowable planform deformability, and
- canoe passage.

It also includes floodplain design considerations such as:

- wetland design focus for spawning, and other uses
- garter snake habitat and other uses
- revegetation goals
- recreational uses and opportunities such as fishing, bike trails, etc
- flood conveyance capacity

Finally, other items such as specific areas that need to be avoided due to contamination or natural features, constructability issues such as schedules enforced by external considerations, and other items.

A preliminary plan and profile will be developed for immediate field investigations for final design development.

Deliverables:

- Memorandum which includes the rough plan view of channel alignments and criteria for design and performance

Phase 3: Development of Final Design Element and Final Design Documents

Deliverables:

- Assisting Weston with the creation and production of final plans and specs. Role and responsibilities will be identified in Phase Two. Attached preliminary project schedule identifies action items.

Phase 4: Construction Oversight Assistants and Habitat implementation

Deliverables:

- Assisting Weston with the construction oversight and implementation specific channel and habitat components.