

**SETTLEMENT AGREEMENT CONCERNING
FORMER VILLAGE OF GRAFTON LIME KILN PARK LANDFILL
AND THE WEST PLUME**

WHEREAS, this Settlement Agreement (the "Agreement") is hereby made and entered into as of this 14th day of December, 1999, by and between the Village of Grafton, Wisconsin, a municipal corporation (hereinafter the "Village"), and Milwaukee Sign, Inc. and Ozaukee Real Estate Associates L.L.C. (collectively, "O.R.E."); the Village and O.R.E. are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Village of Grafton (the "Village") is a "political subdivision" as defined in Section 292.35(1)(d), Stats., and is an "owner or operator" as defined in Section 292.35(1)(c), Stats., of the Lime Kiln Park Landfill (the "Site") located off Green Bay Road, just south of the intersection of Falls Road and Green Bay Road and as more particularly described on Attachment 1, hereof; and

WHEREAS, the Site is a "site or facility" as defined in Section 292.35(1)(f), Stats.; and,

WHEREAS, the Village contends O.R. E. is owner and operator of an alleged separate source of groundwater contamination side gradient of the Site, which alleged source is referred to as the "West Plume"; and

WHEREAS, the Village provided water to residents within the alleged West Plume and downgradient of O.R.E.'s property (the "Property") as required by an

Administrative Order by Consent ("AOC") entered into between the Village and USEPA; and

WHEREAS, the Village alleges that the West Plume originates at the property in the Village owned by Ozaukee Real Estate L.L.C. with the street address of 2076 First Avenue (the "Property"), an allegation which O.R.E. disputes; and

WHEREAS, investigation and remediation of the West Plume has or will cost the Village in excess of \$400,000; and

WHEREAS, the Village has prepared an interim response/emergency action, investigation, remedial design and remedial action (collectively "RA") for the Site and the West Plume; and

WHEREAS, O.R.E. disputes the existence of and its liability and/or responsibility for conditions resulting from the alleged West Plume as asserted by the Village, but to avoid the costs, delay and uncertainty of litigation and associated disruption of the normal activities of Milwaukee Sign, the Village and O.R.E. have entered into this compromised Agreement pursuant to Section 292.35, Stats., without any admission of liability and/or responsibility on their part to the State or others with regard to the Site or the West Plume; and

WHEREAS, the Village and O.R.E. desire to settle their dispute.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the

receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

TERMS OF THE AGREEMENT

1. Purpose and Use of Agreement. This is a binding Settlement Agreement between O.R.E. and the Village concerning the matters addressed herein. The obligations assumed herein by O.R.E. and the Village reflect a variety of factors, including, but not limited to the allocation of costs between previous owners of real estate the Property, the costs and uncertainties of future litigation or negotiation, the allocation of costs between the alleged West Plume and the plume(s) emanating from the Site, the potential for costs and liability in contribution actions brought pursuant to Section 292.35(9)(f), Stats., or other statutory or common law, causes of action the inability to distinguish the relative environmental impacts caused by the plumes and the benefits to the public health and welfare and the environment of funding and supporting the RA. The Village's and/or O.R.E.'s performance hereunder shall not be construed as an admission of, nor be utilized in any fashion as indicating any responsibility concerning the conditions at the Site or the West Plume or lands adjacent thereto or any liability or responsibility for, the past, present or future conditions at the Site or lands adjacent thereto.

2. Responsible Party's Covenants.

A. Payment.

(i) On or before December 31, 1999, O.R.E. shall pay Fifty Thousand Dollars (\$50,000) by cash, money order, or certified or cashier's check payable and delivered to the Village of Grafton, Village Administrator at the following address:

P.O. Box 125
1971 Washington Street
Grafton, WI 53024-0125

B. Assignment. O.R.E. hereby assigns to the Village all rights, entitlement, causes of action and claims arising out of the Site or the West Plume under the CERCLA and sec. 292.35, Wis. Stats. that O.R.E. may have against all previous owners or operators of the Property. The Village may, at its sole discretion, direct and control the prosecution and final disposition of any such assigned claims.

C. Cooperation. O.R.E. shall cooperate fully in the defense or prosecution of any assigned claim relating to the Site and/or the West Plume, including, but not limited to, the provision to the Village of any and all records related to the West Plume in O.R.E.'s possession or under its control.

D. Release and Covenant Not To Sue By O.R.E. O.R.E. hereby (i) releases the Village, its representatives, departments, utilities, staff, elected officials, attorneys, and their successors and assigns from and

against any and all causes of action and claims O.R.E. may have that are associated with, arise from or are related to the Site and West Plume and O.R.E.'s payment hereunder; (ii) covenants not to sue or bring any civil, judicial or administrative action against the Village or any of its representatives, departments, utilities, staff, elected officials, attorneys, and their successors or assigns on any claim available under state, federal or common law for damages, costs, fees, expenses or liabilities associated with, arising from or related to the Site or West Plume; and (iii) agrees that O.R.E. has no claim or right to any response costs the Village recovers from the State or other PRPs, including, but not limited to, Rexnord, Inc. and Badger Meter, Inc., for either the Site or the West Plume. This release, covenant not to sue and assignment of rights shall not prevent or be construed as intending to prevent O.R.E. or any of their partners, officers, shareholders or operators or their successors and assigns from bringing an action against the former owners or operators of the Property, including but not limited to Rexnord, Inc. and Badger Meter, Inc., or their parent companies, subsidiaries, divisions (past or future) (collectively hereinafter REXNORD and BADGER), for any claim which O.R.E. may have against REXNORD and BADGER related to real estate misrepresentations, fraud or other causes of action based on contract and any contamination not related to the

West Plume by BADGER or REXNORD or their failure to disclose the same to O.R.E. This release and covenant not to sue shall not apply to any claims O.R.E. may have as a result or consequence of any material breach of this Agreement by the Village. This release and covenant not to sue does not apply to any claim or lawsuit asserted by any third-party alleging property damage or bodily or personal injury arising from, associated with, or related to the Site.

E. Adequacy of RAP. O.R.E. represents and warrants that it asserts no objection to and otherwise assents to the Village's design and implementation of the RAP and the RA taken and to be taken at the Site and with respect to the West Plume. Such assent by O.R.E. shall not be construed in any context to be a guaranty or warranty of the adequacy or effectiveness of the RA taken and to be taken by the Village at the Site or with respect to the West Plume.

3. Village's Covenants.

A. Implementation of RAP and RA. The Village hereby covenants to take any and all activities necessary to adequately implement, construct, pay for, operate, maintain and monitor any investigation or RA at the Site pursuant to the terms and conditions of this Agreement, the June 8, 1999 Closure Plan Modification Approval and any and all current and future plan approvals, conditions and requirements of the Wisconsin Department of Natural Resources.

The Village covenants to apply the payment made pursuant to Paragraph 2(A) hereof to offset the costs of implementing the RA for the West Plume.

B. Release, Indemnification and Covenant Not to Sue by The Village.

In consideration for, and upon receipt of, (i) the full payment set forth in Paragraph 2(A) hereof, and (ii) the covenants of O.R.E. made pursuant to this Agreement, and (iii) provided that O.R.E. is in material compliance with and otherwise not in material default under this Agreement, the Village hereby covenants not to sue or bring any civil, judicial or administrative action against O.R.E. (or any of their partners, officers, shareholders, agents, employees or attorneys or their successors and assigns) for any claims available to the Village under applicable federal, state, local or common laws for any past or future costs incurred or to be incurred by the Village to implement, construct, pay for, and complete the RA pursuant to the terms and conditions of this Agreement, the June 8, 1999 Closure Plan Modification Approval, and any and all current and future plan approvals, conditions and requirements of the Wisconsin Department of Natural Resources and further agrees to indemnify, defend, and hold O.R.E. (or any of their partners, officers, shareholders, agents, employees or attorneys or their successors and assigns) harmless from and against any claims for contribution to the RA brought or

asserted by or on behalf of any party, claimant or entity except as otherwise provided herein. This release, indemnification and covenant not to sue shall not apply in the event of any material breach of this Agreement by O.R.E. The release, indemnification and covenant not to sue granted by the Village to O.R.E. (or any of their partners, officers, shareholders, agents, employees or attorneys or its successors or assigns) is not limited to that protection provided by Section 292.35(7), Stats. The Village's release, indemnification of and covenant not to sue O.R.E. does not extend to or include any claims or lawsuits asserted at any time by any third party hereto alleging property damage or bodily or personal injury other than as set forth in this Agreement. The Village covenants not to sue O.R.E. or any of their officers, owners, shareholders, partners, employees, attorneys or agents, including their successors and assigns, in a suit by any third party (including any governmental authority) in any action concerning the West Plume, its sources or source area. The Village agrees hereby that it (and all of its representatives, employees, agents or officials and their successors and assigns) will take no action to request, encourage, or suggest to the Wisconsin Department of Natural Resources, the USEPA, any other governmental authority with jurisdiction over soil or groundwater contamination or any citizen (or group of citizens) to undertake or

require the undertaking of any investigation, remediation or other action regarding the West Plume, its sources or source areas.

4. No Admission of Liability. The Parties acknowledge and agree that entering into this Agreement in no way constitutes and may not be used in any context, in or outside of litigation, as an admission that either party is liable for all or any specific portion of the RA costs for the Site or the West Plume or any other liability of any kind in connection with the Site or West Plume, except to the extent such liability arises out of the terms, conditions, undertakings or requirements of this Agreement. This Agreement may be introduced into evidence by either party in any action to enforce the terms of this Agreement.

5. Dispute Resolution. Any disputes between and among the Parties as to the interpretation or implementation of this Agreement shall be submitted to the other party in writing, after which the Parties shall negotiate in good faith to attempt to resolve such dispute(s) for a period of thirty (30) days, after which such dispute(s) may be submitted to judicial resolution by either Party in an action to enforce or interpret this Agreement. Alternatively, if both Parties agree in writing, binding arbitration may be used instead of judicial enforcement. An agreement must be reached by the Parties as to the terms and conditions governing such arbitration. If no mutual agreement concerning arbitration terms and conditions can be reached forty-five (45) days after the Parties agree to seek binding arbitration, then either Party may resort to judicial enforcement.

6. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the Site and the West Plume and all prior discussions, drafts and writings are superseded by this Agreement and may not be used by any Party to vary or contest the terms of this Agreement.

7. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, except that any and all questions arising pursuant to CERCLA (42 U.S.C. Sections 9601, et seq.) shall be interpreted in accordance with CERCLA and other applicable federal law. The Parties agree that the Circuit Court of Ozaukee County shall have jurisdiction over the subject matter of this Agreement, as well as personal jurisdiction over the Parties, except to the extent federal jurisdiction may be applicable, in which case the proper venue for such proceeding shall be in the United States District Court for the Eastern District of Wisconsin.

8. Insurance. The Parties to this Agreement do not intend to make any agreement that will prejudice any party with respect to its insurers and, by entering into this Agreement, anticipate that the actions taken pursuant to this Agreement will benefit such insurers. If any insurer makes any claim that any aspect of this Agreement provides a basis for rejecting or limiting the insurance coverage of a Party to this Agreement, the Parties to this Agreement will attempt, consistent with the objectives of this Agreement, to return such Party to a position that will maximize the availability of insurance proceeds.

9. Exclusive Benefit. This Agreement is for the exclusive benefit of the Parties and their successors-in-interest and shall not be deemed to give any legal or equitable right, remedy or claim to any other entity or person.

10. No Joint Venture. This Agreement does not establish or evidence a joint venture or partnership between the Parties.

11. Modification. No modification or amendment may be made to this Agreement except in writing countersigned by both Parties.

12. Authority. Each of the Parties represent and warrant to the other that they have the full authority to enter into this Agreement and that all necessary procedures have been followed to authorize their representatives to enter into this Agreement.

13. Method of Execution. O.R.E. shall sign the signature page attached to this Agreement and return it with the payment required by paragraph 2(A) hereof to the Village whose address is set forth below. Upon confirmation of payment and execution, the Village Administrator shall thereafter execute and return to O.R.E. a fully executed version of this Agreement. The address of the Village Administrator is:

Darrell Hofland, Village Administrator
1971 Washington Street
Grafton, WI 53024-0125

14. Successors and Assigns. This Agreement shall be binding upon the Village and O.R.E. and shall be binding upon their successors and assigns. No

assignment or delegation of the obligation to discharge any obligation hereunder can be made without the prior written consent of both Parties.

15. Notice. All notices and other communications required by this Agreement shall be sent to the representative designated by the Party on the Party's signature page of this Agreement. Each party shall have the right to change its representative upon 30 days written notice to the Clerk of the Village.

16. Advice of Counsel. Each party to this Agreement represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement. In case of a dispute hereunder, such dispute shall not be resolved or determined in favor or against a Party in whole or in part, based on whether or not such Party has prepared this Agreement or any provision hereof.

17. Severability. If any term, provision, covenant, condition or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall be deemed severable therefrom, and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

SIGNATURE PAGE
TO THE VILLAGE OF GRAFTON LANDFILL SETTLEMENT
AGREEMENT FOR THE LIME KILN PARK SANITARY LANDFILL

IN WITNESS WHEREOF, the party set forth below, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement on behalf of the O.R.E. represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Dated: 12/27/99

MILWAUKEE SIGN, INC.

By: *R.B. Aiken*
Print Name: R.B. Aiken
Title: PRESIDENT

OZAUKEE REAL ESTATE
ASSOCIATES L.L.C.

By: *R.B. Aiken*
Print Name: R.B. Aiken
Title: PARTNER

Responsible Party's Designated Representative for Receipt of Notices and Information:

Name: AB Arkin

Title: President

Address: 2076 FIRST AVE, GRAFTON

Telephone No.: 414-375-5740

Facsimile No.: 414-375-5755

The Village Administrator and Village President, being duly authorized, in writing, by and on behalf of the Village of Grafton, hereby execute this Agreement on behalf of the Village of Grafton.

Dated: 12/23/99

VILLAGE OF GRAFTON

By: Darrell Hofland
Darrell Hofland, Village Administrator

Attest:

Paul A. Rin

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

Attest:

Paul A. Rin