



OFFICIAL NOTICE AND AGENDA

Notice is hereby given that the Public Works Committee of the City of Stoughton, Wisconsin will hold a regular Public Works Meeting as indicated on the date, time and location given below.

Meeting of the: **Public Works Committee of the City of Stoughton**
Date /Time: **Thursday, August 19, 2021 at 6:00 pm**
Location: **This meeting will be Held Virtually**
Join the meeting from your computer, tablet or smartphone:
<https://global.gotomeeting.com/join/688821861>
You can also dial in using your phone - (646) 749-3122
Access Code: 688-821-861

Members: Tom Majewski, Lisa Reeves, Fred Hundt, Rachel Venegas, Kay Rashka, Kathy Engelberger, and Mayor Tim Swadley

Item # CALL TO ORDER

1. Communications
2. Approve Minutes of the July 15, 2021 Meeting

Item # OLD BUSINESS

3. Update on the Friends of the Stoughton Prairies Task Force Structure and Maintenance Plan
4. Review Round-about Landscaping Options on Hwy 51

Item # NEW BUSINESS

5. Discuss the Amundsen Park Superfund Site Use Restrictions and Maintenance
6. Future Agenda Items
 - a. Minimum Terrace Width for New Development
 - b. Minimum Landscape Maintenance Standards for Commercial Properties
 - c. Pedestrian Safety Features at Round-about
 - d. Tour of the Public Works Facility
7. Adjourn

ADJOURNMENT

cc: Council Members, City Leadership Team, City Attorney Matthew P. Dregne, Library Administrative Assistant Sarah Monette, City Clerk Holly Licht, Tim Onsager Stoughton School District, Judi Krebs, stoughtonreporter@wcinet.com, stoughtoneditor@wcinet.com, Stoughton Newspaper/WI State Journal/Capital Times

NOTE: AN EXPANDED MEETING MAY CONSTITUTE A QUORUM OF THE CITY COUNCIL

Public Works Committee
Thursday, July 15, 2021
(Hybrid in-person and Virtual Meeting)

Members Present: Tom Majewski, Fred Hundt, Lisa Reeves, Kathy Engelberger, Kay Rashka and Mayor Swadley

Absent/Excused: Rodney Scheel & Kay Rashka

Staff: Public Works Director Brett Hebert and Jennifer Wagner – Administrative Assistant

Guests:

Call to Order: *Majewski* called the meeting to order at 6:03 PM

1) **Communications:**

- *Hebert* there needs to be restoration done at Mandt Park due to the Fair. The repairs are set to start next week.
- *Swadley* wanted to thank *Hebert* for taking the time help out with Rodney's work load in his recent absence and really appreciates all the effort he has put forth.

2) **Approve June 17, 2021 Meeting Minutes:** Motion by Hundt seconded by Reeves to approve the minutes. Motion carried 5-0.

Old Business:

3) **Update on the Friends of the Stoughton Prairies Task Force Structure and Maintenance Plan:**

Hebert acknowledged that *Engelberger* has really head up this task force and put a lot of time and effort in putting together a plan; in defining a purpose of the task force and putting together a schedule. The task force will consist of 3 citizens, for a 3 year term, 1 City staff employee and 1 Public Works Committee Member to meet monthly to do work at each prairie location. This task force is really looking for a partnership with The City and will be a work in progress as it progresses. *Engelberger* has also taken pictures of each prairie to share with residents to help better inform them of the work that will be done.

Motion by Hundt, seconded by Reeves to create the task and go to Council for approval.
Motion carried 5-0

New Business:

4) **Update on the fencing at Veterans Park Pickle ball Court:**

Hebert presented pictures of the current Pickle ball Court; he inspected the fencing and found it to be in good shape so no repairs or improvements are needed at this time.

5) Review and Approve the Parks Tree Planting Approval Form:

Hebert presented an approval form for stakeholders to sign off on. Once the form is filled out, the City Forrester would work with the applicant and then it would go to the Parks Recreation Director to review & approve. All planting and caretaking of the approved trees will be done by the City Forrester.

Motion by Reeves, seconded by Hundt to approve the form. Motion carried 5-0

6) Review and Recommend Round-about Landscaping for Future DOT Round-about Installation on Hwy 51:

Hebert stated there will be three different round-abouts going in next year and presented picture samples of different landscaping ideas from different municipalities; looking for feedback for recommendations. He mentioned they don't all have to be the same and can differ from one another.

Rashka suggested the idea of growing into the work and doing it in phases because the first idea may not work. She also encouraged the use of art sculptures and checking with local artists for work due to its low maintenance cost.

Majewski brought up a concern that what may be decided on may not be taken care of and wants to ensure there is money in the budget for upkeep.

Discussion on this topic will continue monthly as there is time to make a decision because the round-abouts won't go in until 2022.

7) Future Agenda Items:

Update on Prairie Maintenance Plan

Revisit Round-about Recommendations

Minimum Terrace Width for New Development

Minimum Landscape Maintenance Standards for Commercial Properties & parking lots

Pedestrian Safety Features at Round-abouts

Tour of the Public Works Facility

8) Adjourn: Motion to adjourn by Hundt, seconded by Reeves to adjourn the meeting at 7:40 pm. Motion carried 5-0.

Respectfully submitted by Jen Wagner

DOT Round-about Landscape Design Layout Options



Welcome to Stoughton

Hwy B and on 138



Center Tree with Native Plantings

Hoel and Silverado

51 and 138

51 and Roby





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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
and)
)
STATE OF WISCONSIN)
)
Plaintiffs,)
)
v.)
)
CITY OF STOUGHTON,)
)
Defendant.)

12

DOCKET
FILE

U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

AUG 13 1997

CLERK

NUMBER

Judge Crabb

Civil No. 96-C-887-C

CONSENT DECREE

I. BACKGROUND

A. Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), commenced this action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. Plaintiff State of Wisconsin commenced this action pursuant to Section 107

Copy of this document has been provided to Attys Cameli, Peterson and Kuhlmann this 14th day of August, 1997
By D. Howe

Deputy Clerk

of CERCLA, 42 U.S.C. § 9607, and Section 292.31, Wisconsin Statutes, formerly 144.442, Wisconsin Statutes.

B. The complaint filed by plaintiff United States seeks reimbursement of costs incurred by the United States at the Stoughton Municipal Landfill site in Stoughton, Wisconsin (hereafter "the Site") and seeks performance of studies and response work by the Defendant at the Site in conformity with U.S. EPA's Record of Decision ("ROD") for the Site and the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"). The complaint filed by plaintiff State of Wisconsin seeks reimbursement of costs incurred by the State of Wisconsin at the Site.

C. The complaints allege that the Defendant is the current owner of the Site, that the Defendant owned the Site at the time of disposal of hazardous substances at the Site, that there was a release or threatened release of hazardous substances at the Site, and that these releases or threatened releases caused the United States and the State to incur response costs at the Site.

D. Plaintiffs and Defendant agree that a settlement of this action and the entry of this Consent Decree are in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving the claims asserted by the United States and the State against Defendant in this action.

E. The remedial action will be implemented by EPA. The State will contribute fifty percent of the cost of the remedial action as its cost share. The purpose of this Consent Decree is

to provide for Defendant's payment of a share of the cost of the remedial action and the United States' and the States' other response costs. The Defendant's payment is based upon an analysis by the U.S. EPA and the State of the ability to pay of the Settling Defendant, as a municipality, after taking account of its other municipal responsibilities.

F. Other than the Defendant and those potentially responsible parties (PRPs) which have previously resolved their liabilities to the United States and the State for the Site, neither the United States nor the State has identified any other PRPs at the Site. Neither the United States nor the State has a present intention to bring suit against any other person to recover response costs incurred with respect to the Site or to compel performance of any response actions at the Site.

G. The Defendant by entering into this Consent Decree does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over the parties to this Decree, pursuant to Sections 106, 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345. The parties agree to be bound by the terms of this Decree. The complaint

filed by the United States states a claim upon which relief may be granted under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). The complaint filed by the State of Wisconsin states a claim upon which relief may be granted under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Section 292.31 Wisconsin Statutes, formerly 144.442, Wisconsin Statutes.

Venue is proper in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c).

III. DEFINITIONS

Terms not otherwise defined herein shall have their ordinary meaning unless defined in CERCLA or in the NCP, in which case the definition in CERCLA or the NCP shall control.

Whenever the following terms are used in this Decree, the following definitions apply:

"Consent Decree" or "Decree" means this Consent Decree and all appendices and exhibits hereto;

"Defendant" shall mean the City of Stoughton;

"Interest" shall mean interest at the rate specified for the year 1997 on investments of the Hazardous Substances Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a);

"Parties" shall mean the United States, the State of Wisconsin, and the City of Stoughton;

"Plaintiffs" shall mean the United States and the State of Wisconsin;

"Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site signed on September 30, 1991, by the Regional Administrator, EPA Region V, all changes and amendments to the ROD, and all attachments thereto;

"Response Action" shall mean all removal and remedial actions, including enforcement actions related thereto, conducted or to be conducted with regard to the Site by the United States, U.S. EPA, and the State pursuant to CERCLA or section 292.31 or 292.11, Wisconsin Statutes.

"Response Costs" shall mean all costs of Response Actions, including but not limited to, all pre-judgment interest, direct and indirect costs, whether incurred prior to or subsequent to the entry of this Consent Decree, incurred by the United States, U.S. EPA or the State of Wisconsin with regard to the Site;

"Selected Remedy" shall mean that remedy to be implemented at the Site selected by U.S. EPA in the ROD, and any changes or amendments to the ROD, as more fully described in the Statement of Work, the Remedial Design Plan and the Remedial Action Plan for the Site including but not limited to any decision(s) to remediate groundwater pursuant to the criteria regarding groundwater contingencies described in Section IX of the ROD;

"Settling Defendant" shall mean the City of Stoughton;

"Site" shall mean the property located in the City of Stoughton, as illustrated by Appendix A, which is attached hereto and incorporated in this Consent Decree;

"State" shall mean the State of Wisconsin;

"United States" shall mean the United States of America;

"U.S. EPA" shall mean the United States Environmental Protection Agency.

IV. PARTIES BOUND

1. This Consent Decree shall apply to and be binding upon the Settling Defendant, and upon its elected and appointed officials, employees, successors, and assigns in their official capacities. This Consent Decree also applies to and is binding upon the United States and the State of Wisconsin. Each person who executes this Consent Decree on behalf of the Settling Defendant certifies that he or she is fully authorized to enter into this Consent Decree and to execute and to bind legally the Settling Defendant to this Consent Decree. Settling Defendant agrees not to oppose entry of this Decree by the Court and not to challenge any provision of this Decree. Settling Defendant further agrees not to contest the Decree's validity in any subsequent proceeding arising from this Decree.

V. REIMBURSEMENT OF RESPONSE COSTS

2. As reimbursement of the United States' response costs, Settling Defendant shall pay to the United States the sum of \$750,000 in principal and interest, in three (3) equal annual installments. The first installment of \$250,000 shall be paid within thirty (30) days of entry of this Consent Decree (the Anniversary Date). The second installments shall be paid on or

before the Anniversary Date in 1998, and shall be the sum of \$223,764 plus accrued interest. The third installment shall be paid on or before the Anniversary Date in 1999, and shall be the sum of \$236,518 plus accrued interest. All payments to the United States shall be transmitted by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Site Identification number 05H2, DOJ number 90-11-2-784C, and the U.S.A.O. file number _____. Payment shall be made in accordance with instructions provided by the United States to the Settling Defendant after Settling Defendant's execution of the Consent Decree. Any EFTs received at the U.S. DOJ lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

3. On the same day that Settling Defendant makes its payments pursuant to the above paragraph, the Settling Defendant shall send notice of its payments to:

John H. Tielsch
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V (C-29A)
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590

William E. Muno
Director, Superfund Division
U.S. Environmental Protection Agency
Region V
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590

Joel M. Gross
Chief, Environmental Enforcement Section
United States Department of Justice
Environment and Natural Resources Division
Ben Franklin Station
P.O. Box 7611

Washington, DC 20044

4. As reimbursement of the State's response costs, Settling Defendant shall pay to the State of Wisconsin the sum of \$750,000, in three (3) equal annual installments of \$250,000. The first installment shall be paid within thirty (30) days of entry of this Consent Decree (the Anniversary Date). The second and third installments shall be paid on or before the Anniversary Date in 1998 and 1999. All payments to the State shall be by certified check or cashier's check. Each check shall be made payable to the Wisconsin Department of Natural Resources and shall reference the Stoughton Municipal Landfill Site. Defendant shall forward each check to:

Mark Giesfeldt, Bureau Director
RR-3
Bureau of Remediation and Redevelopment
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, Wisconsin 53707-7921

VI. ACCESS

5. Commencing upon the date the Defendant signs the Decree, the Defendant agrees to provide the United States, the State, and their authorized representatives, including U.S. EPA's and the State's contractors upon presentation of credentials, access at all reasonable times to the Site and any other property owned or controlled by Defendant to which access is required for

the purpose of conducting any activity related to this Consent Decree or to the Selected Remedy including, but not limited to:

- a. Verifying any data or information submitted to the United States or the State;
- b. Conducting investigations relating to contamination at or near the Site;
- c. Obtaining samples;
- d. Planning and implementing response actions at or near the Site;
- e. Operating and maintaining the Selected Remedy; and
- f. Assessing Defendant's compliance with the Decree.

6. Settling Defendant shall use best efforts to obtain for the United States, the State, and their respective representatives, including U.S. EPA's and the State's contractors, unrestricted access to properties adjacent to the Site for the purpose of conducting any activity related to this Consent Decree or to the Selected Remedy. U.S. EPA retains all rights, including its rights under CERCLA Section 104, 42 U.S.C. § 9604, to obtain access to any property for the purpose of conducting any activity related to this Consent Decree or to the Selected Remedy, and nothing in this Consent Decree shall preclude U.S. EPA from exercising its authority under CERCLA Section 104 or any other authority for obtaining access to any adjacent property at any time before or after entry of this Decree by the Court.

VII. ACCESS TO INFORMATION

7. For a period of ten years from entry of this consent decree, Settling Defendant shall provide to the United States and the State, upon request, copies of all documents and information within its possession, custody, or control or that of Settling Defendant's contractors or agents, relating to activities at the Site, including, but not limited to, correspondence, deeds, information relevant to facts concerning implementation of the Selected Remedy, or other documents or information related to the Site.

8. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 40 C.F.R. § 2.203(b) and NR 2.19, Wisconsin Administrative Code. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by the State will be afforded the protection specified in NR 2.19, Wisconsin Administrative Code. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA and the State, or if U.S. EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or NR 2.19, Wisconsin Administrative Code, the public may be given access to such

documents or information without further notice to Settling Defendants.

b. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

9. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

VIII. INSTITUTIONAL CONTROLS

10. Settling Defendant shall draft, execute, and record deed restrictions acceptable to the United States which will

prohibit any future use of the Site which would be inconsistent with or detrimental to the Selected Remedy, including, but not limited to, prohibitions on the construction of structures on the fenced portion of the Site, prohibitions on locating drinking wells anywhere on Site or on property owned by the Defendant between the Western boundary of the Site and the Yahara River, as described in Appendices B and C, and prohibitions on the use of the fenced portion of the Site, as described on Drawing No. 6, Final Cover System, attached hereto as Appendix D, for recreational purposes. Such deed restrictions shall be substantially similar in form and content to the deed restrictions attached hereto as Appendices B and C.

IX. STIPULATED PENALTIES

11. If any amounts due to the United States or the State under this Consent Decree are not paid by the required date, the Settling Defendant shall pay as a stipulated penalty, \$100 per day for each day such payment is late.

12. All penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. Following U.S. EPA's or the State's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, U.S. EPA or the State may give Settling

Defendant written notification of the same and describe the noncompliance. U.S. EPA or the State may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding paragraph regardless of whether U.S. EPA or the State has notified the Settling Defendant of a violation.

14. All penalties owed to the United States hereunder shall be due and payable within 30 days of the Settling Defendant's receipt from U.S. EPA of a demand for payment of the penalties. All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Superfund Accounting, P.O. Box 70753, Chicago, Illinois, 60673, and shall reference CERCLA Number Site/Spill ID Number 05H2 and DOJ Case Number 90-11-2-784C. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XV (Notice) of this Consent Decree.

15. All penalties owed to the State hereunder shall be due and payable within 30 days of the Settling Defendant's receipt from the State of a demand for payment of the penalties. All payments under this Section shall be paid by certified check or cashier's check made payable to the State of Wisconsin. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the State as provided in Section XV (Notice) of this Consent Decree.

16. If Settling Defendant fails to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, plus interest as defined in Section III. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to paragraph 14 or 15.

17. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

X. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

18. In consideration of the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 19, 21 and 22, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, and the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA and Sections 292.31 and 292.11, Wisconsin Statutes, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree, unless and until Settling Defendant fails to comply with the

requirements of Section V. (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon notice to Settling Defendant of completion of the Selected Remedy by U.S. EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

19. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right of either Plaintiff to institute proceedings in this action or in a new action, or the right of U.S. EPA to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States or the State for additional costs or response, if, subsequent to notice to Settling Defendant of completion of the Selected Remedy:

- (I) conditions at the Site, previously unknown to the U.S. EPA, are discovered, or
- (ii) information, previously unknown to U.S. EPA, is received, in whole or in part, after the notice of completion,

and these previously unknown conditions or this information together with other relevant information indicate that the Selected Remedy is not protective of human health or the environment.

20. For purposes of paragraph 19, the information and the conditions known to U.S. EPA shall include only that information and those conditions set forth in the Record of Decision and the administrative record supporting the Record of Decision, and any information received by U.S. EPA prior to notice of completion of the Selected Remedy.

21. The covenants not to sue by the United States set forth above pertain only to matters specified in paragraph 18. The United States expressly reserves, and this Decree shall be without prejudice to, all rights of the United States against the Settling Defendant with respect to all other matters, including, without limitation, any claims against the Settling Defendant under CERCLA for injunctive relief, for response costs, or for penalties or damages not covered by this Decree, including, without limitation, the following:

1. Claims of the United States for liability arising from the past, present or future disposal, release, or threat of release of hazardous substances outside of the Site;
2. Claims of the United States for liability for damages for injury to, destruction of, or loss of natural resources;
3. Claims for criminal liability;
4. Claims based on a failure by the Settling Defendant to meet any requirement of this Consent Decree;

5. Claims arising from claims against the United States by any person or entity for damages, reimbursement, or compensation arising from or relating to Settling Defendant's actions under this Decree; and
6. Claims of the United States for interest on the foregoing.

22. The covenants not to sue by the State set forth above pertain only to matters specified in Paragraph 18. The State expressly reserves, and this Decree shall be without prejudice to, all rights of the State against the Settling Defendant with respect to all other matters, including, without limitation, any claims against the Settling Defendant under CERCLA for response costs, or for penalties or damages not covered by this Decree, including, without limitation, the following:

1. Claims of the State for liability arising from the past, present or future disposal, release, or threat of release of hazardous substances outside of the Site;
2. Claims of the State for liability for damages for injury to or destruction of, or loss of natural resources;
3. Claims for criminal liability;
4. Claims based on a failure by the Settling Defendant to meet any requirement of this Consent Decree;

5. Claims arising from claims against the State by any person or entity for damages, reimbursement, or compensation arising from or relating to Settling Defendant's actions under this Decree; and

6. Claims of the State for interest on the foregoing.

23. In any subsequent administrative or judicial proceeding initiated by the United States or the State pursuant to Paragraphs 19, 21 or 22 for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in this Consent Decree.

24. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

25. Nothing in this Consent Decree is intended as a covenant not to sue or a release from liability for any person or entity not a signatory to this Consent Decree. The United States and the State expressly reserve all claims, demands and causes of

action, both judicial and administrative, present, past, and future, in law and equity, against any person or entity not a party to this Decree for any matter arising at, or relating in any manner to, the Site.

XI. COVENANTS BY SETTLING DEFENDANT

26. Subject to the reservations in Paragraph 27, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Site or this Consent Decree, including, but not limited to, any claim for damages, reimbursement, or compensation arising from or on account of obtaining or maintaining access to or use of (by purchase, lease, condemnation, or otherwise) the Site or any other property. Settling Defendant also covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State for any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA §§ 106(b)(2), 111, 112, or 113, or any other provision of law, any claim against the United States or the State, pursuant to CERCLA Sections 107 and 113 related to the Response Costs, or any claims arising out of response activities at or adjacent to the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). Except as stated in Paragraph 23, nothing in this

Consent Decree shall be deemed a waiver by Settling Defendant of its right to defend any claim made by the United States or the State which either has reserved under this Consent Decree.

27. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on U.S. EPA's selection of response actions. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

XII. CONTRIBUTION PROTECTION

28. With regard to claims for contribution against Settling Defendant for Response Costs, the Parties hereto agree that, upon receipt by U.S. EPA and the State of the payments required by the

Consent Decree, Settling Defendant is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" in this settlement. "Matters addressed" shall mean all costs incurred and to be incurred by the United States, the State, or any other person in connection with Response Actions taken or to be taken in connection with the Site.

XIII. CERTIFICATION OF SETTLING DEFENDANT

29. Settling Defendant certifies that, to the best of its knowledge and belief, it has provided U.S. EPA all information currently in its possession, custody, or control, or in the possession, custody, or control of its officials, employees, contractors, or agents, which relates in any way to the ownership, operation, generation, treatment, composition, characteristics, transportation, or disposal of hazardous substances at or in connection with the Site, and that the information so provided accurately reflects Settling Defendant's best information about the kind and quantity of hazardous substances delivered by it to the Site or to another for transport to the Site. The Settling Defendant further certifies that it has provided to U.S. EPA a full and complete response to any U.S. EPA request for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). If this certification is subsequently determined to be false, the Settling Defendant shall pay stipulated penalties as provided in Section IX (Stipulated

Penalties) of this Decree. Such stipulated penalties shall not constitute liquidated damages and shall not in any way foreclose U.S. EPA from pursuing any other causes of action arising from Settling Defendant's false certification. If Settling Defendant discovers additional information or documents relating to the subjects identified above, Settling Defendant shall immediately notify U.S. EPA and the State, and shall provide the information or documents to U.S. EPA and the State, subject to the assertions of confidentiality available under Paragraph 8, above.

XIV. NOTICE

30. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, U.S. EPA, the State, and the Settling Defendant, respectively.

As to the United States:

Joel M. Gross
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station

Washington, D.C. 20044
Re: 90-11-2-784C

John H. Tielsch
Assistant Regional Counsel
United States Environmental Protection Agency
Region V (C-29A)
Chicago, Illinois 60604

Anthony Rutter
Remedial Project Manager
United States Environmental Protection Agency
Region V (HSR-6J)
Chicago, Illinois 60604

As to the State:

Linda Meyer
Staff Attorney
Bureau of Legal Service
Mail Code LS/5
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707

Mark Giesfeldt
Bureau Director
Bureau of Remediation and Redevelopment
Mail Code RR/3
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, Wisconsin 53707

As to Settling Defendants:

Mayor Helen J. Johnson
City of Stoughton
381 E. Main Street
Stoughton, WI 53589

Mr. Michael Skibinski
City Attorney
City of Stoughton
384 E. Main Street
P.O. Box 90
Stoughton, WI 53589

XV. RETENTION OF JURISDICTION

31. The Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XVI. EFFECTIVE DATE

32. This Consent Decree shall become effective upon the date of its entry by this Court.

XVII. PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State each reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts and considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to entry of this Consent Decree without further notice from Plaintiffs other than as required by the Federal Rules of Civil Procedure.

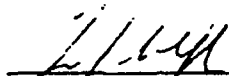
ENTERED this 12th day of August, 1997.

Barbara P. Craft
United States District Judge

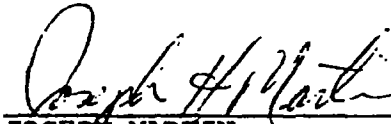
THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. City of Stoughton and State of Wisconsin v. City of Stoughton, relating to the Stoughton Site.

FOR THE UNITED STATES OF AMERICA

5/1/97
Date


By: 
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

5/5/97
Date

By: 
JOSEPH MARTIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044
(202) 514-2750

PEGGY ANN LAUTENSCHLAGER
United States Attorney
Western District of Wisconsin

6/5/97
Date

By: 
MARK CAMELI
Assistant United States Attorney
Western District of Wisconsin
120 North Henry Street
Room 420
Madison, Wisconsin 53703

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. City of Stoughton and State of Wisconsin v. City of Stoughton, relating to the Stoughton Site.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

April 28, 1997
Date

By: David H. Adamkus
for VALDAS V. ADAMKUS
Regional Administrator
United States Environmental
Protection Agency

4/4/97
Date

By: John H. Tielsch
JOHN H. TIELSCH
Assistant Regional Counsel
United States Environmental
Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

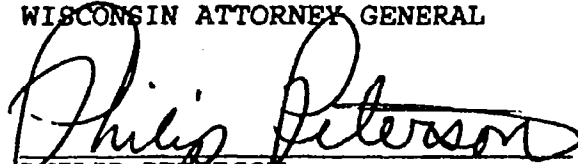
THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. City of Stoughton and State of Wisconsin v. City of Stoughton, relating to the Stoughton Site.

FOR THE STATE OF WISCONSIN

JAMES E. DOYLE
WISCONSIN ATTORNEY GENERAL

May 28, 1997
Date

By:



PHILIP PETERSON
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in United States v. City of Stoughton and State of Wisconsin v. City of Stoughton, on behalf of:

Settling Defendant, City of Stoughton, Wisconsin.

3/27/97
Date

City of Stoughton
Name of Settling Defendant

381 East Main Street
Address

Stoughton, WI 53589
City, State, Zip Code

608-873-6677
Telephone Number

By: Helen J. Johnson
Name of Officer (Type)

Helen J. Johnson
Signature of Officer

Mayor
Title

(Place corporate seal and acknowledgment of authority of officer to sign here)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process and the name and address of this Settling Defendant's counsel.

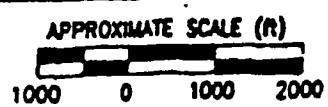
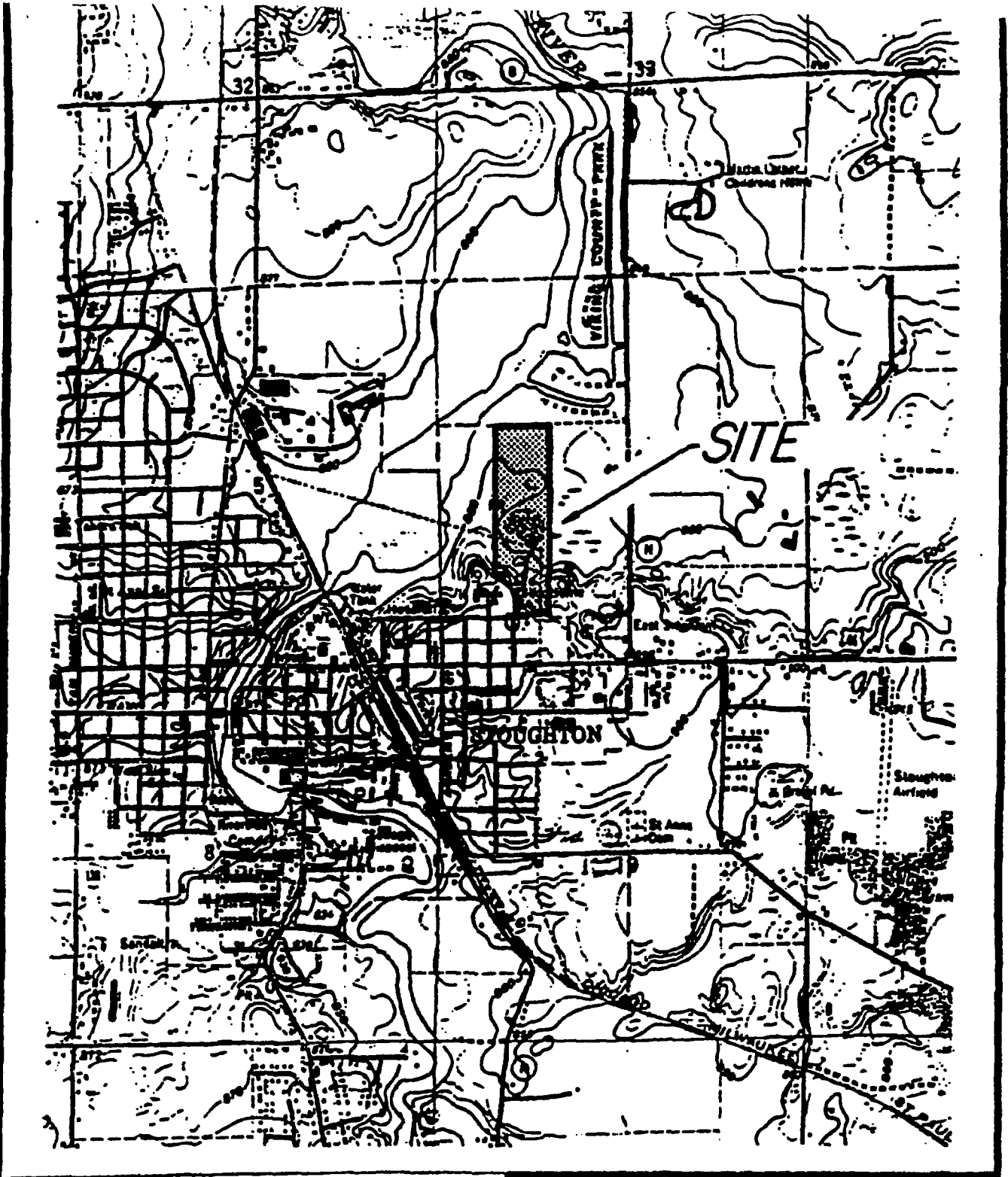
Agent for Service of Process

Attorney Walter Kuhlmann
Name

Boardman, Suhr, Curry & Field
One S. Pinckney St.
Address

Madison, WI 53703
City, State, Zip Code

Prior Notice to all parties shall be provided by the above Settling Defendant of any change in its identify or address or its agent for service of process.



Ref: USGS, 7.5-MINUTE STOUGHTON QUADRANGLE, DANE CO., WISCONSIN

ENSRTM

ENSR CONSULTING AND ENGINEERING

FIGURE I-1
SITE LOCATION MAP
STOUGHTON CITY LANDFILL
STOUGHTON, WISCONSIN

DRAWN: JDG	DATE: 3/6/90	PROJECT NUMBER: 6885-002
APP'VD:	REVISION:	DRAWING NUMBER:

APPENDIX B

DECLARATION OF RESTRICTIONS

In Re: A part of the Northwest 1/4 and Northeast 1/4 of the Southwest 1/4, and a part of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 in Section 04, Township 05 North-Range 11 East, City of Stoughton, Dane County, Wisconsin more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E; Thence N02°00'55"W 693.20 along the West line of said Section 04 to the North right-of-way line of Ridge Street; Thence N89°44'15"E 3.93 feet along said North line; Thence N88°51'30"E 1302.95 feet along said North line of Ridge Street to the West right-of-way line of Amundson Parkway; Thence N01°41'46"W 890.08 feet along the West right-of-way line of Amundson Parkway to the point of beginning of this description;

Thence N75°08'00"W 527.77 feet;

Thence N02°04'20"W 946.60 feet to the East-West Quarter line of Section 04;

Thence continuing N02°04'20"W 688.49 feet;

Thence N89°10'07"E 683.24 feet;

Thence S02°54'40"E 667.82 feet to the East-West Quarter line of Section 04;

Thence S02°04'20"E 1143.57 feet;

Thence N75°08'00"W 196.52 feet to the point of beginning of this description;

This parcel contains 1,183,668 square feet or 27.17 acres.

Tax Parcel No. 58-0511-043-8500-5;58-0511-042-9340-8

WHEREAS, the City of Stoughton, a Wisconsin Municipal Corporation, is the owner of the above-described property; and

WHEREAS, it is the desire and intention of the property owner to impose on the property restrictions which are consistent with Section VIII of the Consent Decree entered by the District Court of the Western District of Wisconsin in United States of America v. City of Stoughton, Case No. 96C887C and the Record of Decision (ROD) adopted by the United States Environmental Protection Agency (U.S. EPA) for the Stoughton Municipal Landfill;

NOW, THEREFORE, by this instrument there are created, declared and established at the property the following restrictive covenants and requirements, which shall, unless amended, run with the land and remain in full force and effect from the date hereof, irrespective of any sale, conveyance, alienation, or other transfer of any interest or estate in such property.

1. Restrictions on the Property. The following restrictions shall apply to the property:
 - a. No water wells, other than monitoring wells, shall be located on the property.

- b. Owner shall not use the property or take any action at the property that may interfere with the performance of remedial work required by the Consent Decree or the Record of Decision.
- c. Owner shall not take any activity on the property which may damage or impair the effectiveness of any remedial action component constructed for or installed pursuant to the Consent Decree or the ROD.
- d. No buildings, wells, pipes, roads, ditches or any other structures shall be installed, constructed, removed or used within the area which is both (i) located on the property, and (ii) within the fence installed pursuant to the ROD, except as approved by the U.S. EPA as consistent with the Consent Decree and the ROD.
- e. No recreational use within the fence installed pursuant to the ROD.
- f. There shall be no residential use of the property.

2. **Termination of Restrictions.** These restrictions shall continue in full force and effect until all remedial action, clean-up, and performance standards have been met at the Stoughton Municipal Landfill, or until such time as the U.S. EPA issues a determination in writing, or the court rules to either modify or terminate the restrictions, in response to a petition from the owner(s) of the property, as provided below.

3. **Enforcement of Restrictions.** The owner, its successors and assigns, at any time violates, threatens or attempts to violate, or fails to faithfully observe or perform each of the foregoing restrictions and covenants upon the property, it shall be lawful for U.S. EPA, the State of Wisconsin or the City of Stoughton, in addition to other remedies available under law or equity, to institute and prosecute appropriate proceedings, judicial or other, at law or in equity for the wrong done, threatened or attempted.

4. **Copy of Restrictions.** A copy of these restrictions shall be provided by the owner(s) of the property to all respective successors, assigns and transferee of the property.

5. **Petition to Modify or Terminate Deed Restrictions.** The owner(s) of the property may petition the Regional Administrator of the U.S. EPA, Region V, or his or her delegate, to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and any proposed additional uses of the property. Any proposed modification or terminations must not be inconsistent with the requirements set forth in the Consent Decree.

The property owner(s) shall provide to the City of Stoughton and the State of Wisconsin a copy of any petition for modification or termination of deed restriction submitted to the U.S. EPA. Any party may object to the proposed use of the property on the grounds that such use is not consistent with the Consent Decree, or may result in human exposure to exceedances of the clean-up standards required by the Record of Decision. Any party so objecting shall notify the owner(s) of the property, the U.S. EPA, and the State of Wisconsin in writing, within thirty (30) days of receipt of the petition. The Regional Administrator may allow or deny the owner's petition for modification or termination in whole or in part.

6. **Severability.** If any provision of this Declaration of Restriction is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof. All such other provisions shall continue unimpaired in full force and effect.

7. **Conflict of Laws.** If any provision of this Declaration of Restrictions is also the subject of any law or regulation established by any federal, state or local government, the stricter of the two standards shall prevail.

8. **Harmonious Construction.** No provision of this Declaration of Restriction shall be construed so as to violate any applicable zoning laws, regulations or ordinances. If any such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail, unless they are inconsistent with CERCLA.

The undersigned person executing this Declaration of Restrictions on behalf of the owner of the property represents and certifies that she is duly authorized and has been fully empowered to execute this Declaration.

IN WITNESS WHEREOF, the owner of the property has caused this Declaration of Restrictions to be executed on this ____ day of _____, 1997.

OWNER
City of Stoughton

By: _____
Helen J. Johnson, Mayor

By: _____
Judy A. Kinning, Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to before me
this ____ day of _____, 1997.

Notary Public, State of Wisconsin
My commission _____

This document was drafted by and after recording should be returned to:
Lawrie J. Kobza
Boardman, Suhr, Curry & Field
P.O. Box 927
Madison, WI 53701-0927

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APPENDIX C

DECLARATION OF RESTRICTIONS

In Re: A part of the Southwest 1/4 of the Northwest 1/4 and a part of the Northwest 1/4 of the Southwest 1/4 in Section 04, Township 05 North-Range 11 East, City of Stoughton, Dane County, Wisconsin more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55"W 693.20 along the West line of said Section 04 to the North right-of-way line of Ridge Street; Thence N89°44'15"E 3.93 feet along said North line; Thence N88°51'30"E 1302.95 feet along the North line of Ridge Street to the West right-of-way line of Amundson Parkway; Thence N01°41'46"W 890.08 feet along the West right-of-way line of Amundson Parkway; Thence N75°08'00"W 527.77 feet to the point of beginning of this description;

Thence continuing N75°08'00"W 837.24 feet;

Thence N01°58'41"W 1072.41 feet more or less to the centerline of the bed of the Yahara River;

Thence in a Northeasterly direction along said riverbed centerline N49°33'49"E 495.65 feet more or less to the North line of the South 1/2 of the Northwest 1/4;

Thence N89°10'07"E 410 feet more or less along said North line to a point which is N02°04'20"W 1615.01 feet from the point of beginning.

Thence S02°04'20"E 668.49 feet to the East-West Quarter line;

Thence continuing S02°04'20"E 946.60 feet to the point of beginning of this description.

This parcel contains approximately 1,139,371 square feet or 26.2 acres.

Tax Parcel No. 58-0511-043-8600-4;58-0511-042-9190-0

WHEREAS, the City of Stoughton, a Wisconsin Municipal Corporation, is the owner of the above-described property; and

WHEREAS, it is the desire and intention of the property owner to impose on the property restrictions which are consistent with Section VIII of the Consent Decree entered by the District Court of the Western District of Wisconsin in United States of America v. City of Stoughton, Case No.96C887C and the Record of Decision (ROD) adopted by the United States Environmental Protection Agency (U.S. EPA) for the Stoughton Municipal Landfill located to the east of the property;

NOW, THEREFORE, by this instrument there are created, declared and established at the property the following restrictive covenants and requirements, which shall, unless amended, run with the land and remain in full force and effect from the date hereof, irrespective of any sale, conveyance, alienation, or other transfer of any interest or estate in such property.

1. **Restrictions on the Property.** The following restrictions shall apply to the property:
 - a. No water wells, other than monitoring wells, shall be located on the property.
 - b. No buildings, wells, pipes, roads, ditches or any other structures shall be installed, constructed, removed or used within the area which is both (i) on the property and (ii) within the fence installed pursuant to the ROD, except as approved by the U.S. EPA as consistent with the Consent Decree and the ROD.
 - c. No recreational use within the fence installed pursuant to the ROD.
2. **Termination of Restrictions.** These restrictions shall continue in full force and effect until all remedial action, clean-up, and performance standards have been met at the Stoughton Municipal Landfill, or until such time as the U.S. EPA issues a determination in writing, or the court rules to either modify or terminate the restrictions, in response to a petition from the owner(s) of the property, as provided below.
3. **Enforcement of Restrictions.** The owner, its successors and assigns, at any time violates, threatens or attempts to violate, or fails to faithfully observe or perform each of the foregoing restrictions and covenants upon the property, it shall be lawful for U.S. EPA, the State of Wisconsin or the City of Stoughton, in addition to other remedies available under law or equity, to institute and prosecute appropriate proceedings, judicial or other, at law or in equity for the wrong done, threatened or attempted.
4. **Copy of Restrictions.** A copy of these restrictions shall be provided by the owner(s) of the property to all respective successors, assigns and transferees of the property.
5. **Petition to Modify or Terminate Deed Restrictions.** The owner(s) of the property may petition the Regional Administrator of the U.S. EPA, Region V, or his or her delegate, to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and any proposed additional uses of the property. Any proposed modification or terminations must not be inconsistent with the requirements set forth in the Consent Decree.

The property owner(s) shall provide to the City of Stoughton and the State of Wisconsin a copy of any petition for modification or termination of deed restriction submitted to the U.S. EPA. Any party may object to the proposed use of the property on the grounds that such use is not consistent with the Consent Decree, or may result in human exposure to exceedances of the clean-up standards required by the Record of Decision. Any party so objecting shall notify the owner(s) of the property, the U.S. EPA, and the State of Wisconsin in writing, within thirty (30) days of receipt of the petition. The Regional Administrator may allow or deny the owner's petition for modification or termination in whole or in part.
6. **Severability.** If any provision of this Declaration of Restriction is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof. All such other provisions shall continue unimpaired in full force and effect.
7. **Conflict of Laws.** If any provision of this Declaration of Restrictions is also the subject of any law or regulation established by any federal, state or local government, the stricter of the two standards shall prevail.
8. **Harmonious Construction.** No provision of this Declaration of Restriction shall be construed so as to violate any applicable zoning laws, regulations or ordinances. If any such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail, unless they are inconsistent with CERCLA.

The undersigned person executing this Declaration of Restrictions on behalf of the owner of the property represents and certifies that she is duly authorized and has been fully empowered to execute this Declaration.

IN WITNESS WHEREOF, the owner of the property has caused this Declaration of Restrictions to be executed on this ____ day of _____, 1997.

OWNER
City of Stoughton

By: _____
Helen J. Johnson, Mayor

By: _____
Judy A. Kinning, Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to before me
this ____ day of _____, 1997.

Notary Public, State of Wisconsin
My commission _____

This document was drafted by and after recording should be returned to:
Lawrie J. Kobza
Boardman, Suhr, Curry & Field
P.O. Box 927
Madison, WI 53701-0927

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ATTACHMENT TO CONSENT DECREE

SITE ACCESS AGREEMENT

(Re: Paragraph 5 of Consent Decree for Stoughton Landfill)

This Site Access Agreement is made as of this _____ day of _____, 1997, by and between the City of Stoughton, Dane County, Wisconsin, a Municipal Corporation, (hereafter "City"), the United States of America (hereafter "United States"), and the State of Wisconsin (hereafter "State").

WHEREAS, the City owns a parcel of real property located to the west of the Stoughton Municipal Landfill and to the east of the Yahara River, more specifically described in the legal description set forth in Exhibit A (hereafter "Property"); and

WHEREAS, the United States and State will be taking certain remedial actions on the Stoughton Municipal Landfill site located to the east of the Property in accordance with the Consent Decree approved by the Federal District Court in United States v. City of Stoughton, Case No. 96C887C, Western District of Wisconsin, and the Record of Decision for the Stoughton Municipal Landfill; and

WHEREAS, the United States and State needs access to the Property in order to facilitate the remediation of the Stoughton Municipal Landfill; and

WHEREAS, in the Consent Decree the City has agreed to give such access;

NOW, THEREFORE, in accordance with the Consent Decree and in order to facilitate the United States' and the State's remediation of the Stoughton Municipal Landfill, the parties agree as follows.

1. **Right of Access.** Except as provided in paragraph two, the City of Stoughton hereby grants, warrants, and conveys to the United States, its employees, agents, contractors, and subcontractors, and to the State, its employees, agents, contractors, and subcontractors, access to the Property at all reasonable times for the sole purposes of:

- a. gaining access to the Stoughton Municipal Landfill, placing construction equipment on the Property, placing and/or constructing one or more offices or construction trailers on the Property, and constructing a temporary access road, until the construction on the Stoughton Municipal Landfill performed pursuant to the Record of Decision is completed; and
- b. constructing and maintaining monitoring wells on the Property, and constructing, sampling and maintaining extraction wells on the Property (if required by the Record of Decision), and constructing a groundwater treatment facility on the Property (if required by the Record of Decision), until the completion of the remediation performed pursuant to the Record of Decision.

2. **No Access to Area Near Path.** If a public bike or pedestrian path is subsequently located or built on the Property, U.S. EPA and WDNR will use their best efforts to avoid interference with such paths.

3. **Notice.** The United States and the State shall give the City prior notice of its intent to enter the Property whenever it is practicable to do so, and in advance of the entry to the extent reasonable and practicable. Such notice shall be not less than fourteen (14) days with regard to the commencement of major construction on the Property.

4. **Restoration of Property after Activities are Completed.** Upon completion of the activities, the United States and the State shall restore the Property to the condition similar to its condition at the time the United States and State first accessed the Property.

5. **Successors and Assigns.** This Agreement shall be binding upon the U.S., the State and the City, and their respective successors and assigns.

In WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

City of Stoughton

By: _____
Helen J. Johnson, Mayor

By: _____
Judy A. Kinning, Clerk

United States of America

By: _____
Printed Name _____

State of Wisconsin

By: _____
Printed Name _____

EXHIBIT A TO SITE ACCESS AGREEMENT

A part of the Southwest 1/4 of the Northwest 1/4 and a part of the Northwest 1/4 of the Southwest 1/4 in Section 04, Township 05 North-Range 11 East, City of Stoughton, Dane County, Wisconsin more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55"W 693.20 along the West line of said Section 04 to the North right-of-way line of Ridge Street; Thence N89°44'15"E 3.93 feet along said North line; Thence N88°51'30"E 1302.95 feet along the North line of Ridge Street to the West right-of-way line of Amundson Parkway; Thence N01°41'46"W 890.08 feet along the West right-of-way line of Amundson Parkway; Thence N75°08'00"W 527.77 feet to the point of beginning of this description;

Thence continuing N75°08'00"W 837.24 feet;

Thence N01°56'41"W 1072.41 feet more or less to the centerline of the bed of the Yahara River;

Thence in a Northeasterly direction along said riverbed centerline N49°33'49"E 495.65 feet more or less to the North line of the South 1/2 of the Northwest 1/4;

Thence N89°10'07"E 410 feet more or less along said North line to a point which is N02°04'20"W 1615.01 feet from the point of beginning.

Thence S02°04'20"E 668.49 feet to the East-West Quarter line;

Thence continuing S02°04'20"E 946.60 feet to the point of beginning of this description.

This parcel contains approximately 1,139,371 square feet or 26.2 acres.

Tax Parcel No. 58-0511-043-8600-4;58-0511-042-9190-0

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**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 20 __, by and between the CITY OF STOUGHTON, WISCONSIN, ("Grantor"), having an address of _____, and WISCONSIN DEPARTMENT OF NATURAL RESOURCES ("Grantee"), having an address of _____

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the County of Dane, State of Wisconsin, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property");

WHEREAS, the Property is part of the City of Stoughton Landfill Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 18, 1985;

WHEREAS, in a Record of Decision dated September 30, 1991, and an Explanation of Significant Differences dated February 1996 (the "ROD"), the EPA Region Five (5) Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions: excavation of wastes outside the area of main waste disposal and placement of these materials under a landfill cap; placement of a solid waste landfill cover (cap) system over the waste disposal area; placement of a fence around the cap, or slightly within the edges of the cap; land use restrictions to prevent the installation of drinking water wells within 1200 feet of the Property boundary and to prevent residential development of the Property; long term groundwater monitoring; extraction and treatment of groundwater if necessary.

. The remedial action has been implemented at the Site;

WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and

monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment;

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

WHEREAS, the Grantor and Grantee intend that the provisions of this Environmental Protection Easement and Declaration of Restrictive Covenants also be for the benefit of the United States, a third party beneficiary; and

WHEREAS, the Grantee, Wisconsin Department of Natural Resources, is acquiring this interest pursuant to s. 292.31(7), Wis. Stat.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of [the remedial action performed at the Site by the Grantee and the EPA under the Consent Decree in the case of United States and State of Wisconsin v. City of Stoughton, United States District Court for the Western District of Wisconsin, Docket No. 96-C-887, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this instrument that the EPA and its successors and assigns as Third Party Beneficiary shall have the right to enforce the terms of this instrument.

3. Third Party Beneficiary: Grantor on behalf of itself and its successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA and its successors and assigns shall be the Third Party Beneficiary under this instrument.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land for the benefit of the Grantee and are binding upon the Grantor including its successors, transferees, assigns or other persons acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

a. No water wells, other than monitoring wells, shall be located on the Property.

b. Grantor shall not use the Property or take any action at the Property that may interfere with the performance of remedial work required by the Consent Decree or the Record of Decision.

c. Grantor shall not take any activity on the Property which may damage or impair the effectiveness of any remedial action component constructed for or installed pursuant to the Consent Decree or the Record of Decision.

d. No buildings, wells, pipes, roads, ditches or any other structures shall be installed, constructed, removed or used within the area which is both (i) located on the Property and (ii) within the fence installed pursuant to the Record of Decision, except as approved by the EPA as consistent with the Consent Decree and the Record of Decision.

e. There shall be no recreational use of the Property within the fence installed pursuant to the ROD.

f. There shall be no residential use of the Property.

5. Modification of restrictions: Any request for modification or rescission of this instrument shall be made to the Grantee and the EPA at the address given below. This instrument may be modified or rescinded only with the prior written approval of the EPA and the Grantee. Grantor on behalf of its successors, transferees, assigns or other persons acquiring an interest in the Property agrees to file any EPA approved and WDNR approved modification to or rescission of this Environmental Protection Easement and Declaration of Restrictive Covenants with the appropriate Registrar of Deeds and a certified copy shall be returned to the EPA and the Grantee at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby grants to the Grantee for its use an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing, operating and maintaining the response actions in the ROD, including but not limited to those actions generally described herein;
- b) Verifying any data or information submitted to EPA or the State of Wisconsin;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions that the EPA determines i) that such actions are necessary to protect public health or the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and ii) will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

7. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

8. EPA Entry, Access, and Response Authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law. The Grantor and Grantee consent to officers, employees, contractors, and authorized representatives of the EPA entering and having continued access to this property for the purposes described in paragraph 6.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. Notice requirement: Grantor agrees to include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 20 __, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 20 __, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AS GRANTEE AND THE UNITED STATES OF AMERICA AS THIRD PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement: The Grantee and the EPA as Third Party Beneficiary shall be entitled to enforce, individually or jointly, the terms of this instrument by resort to specific

performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee or the EPA as Third Party Beneficiary, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or the EPA as Third Party Beneficiary of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee or the EPA as Third Party Beneficiary under this instrument.

12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

13. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit B** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

Wisconsin Dept. of Natural
Resources
101 South Webster Street
Madison, WI 53703

To Third Party Beneficiary:

U.S. Environmental Protection Agency
Region Five Administrator
77 West Jackson Boulevard
Chicago, IL 60604

15. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state of Wisconsin.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the

purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are assignable, subject to the notice provisions hereof. However, the rights of the Grantee may be assigned only to a governmental entity with authority to assume the rights and obligations of that Grantee under the Consent Decree.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Wisconsin Department of Natural Resources and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS to be signed in its name.

Executed this _____ day of _____, 20__.

NAME OF GRANTOR

By: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this __ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of _____

My Commission Expires: _____.

This ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS is accepted this _____ day of _____, 20__.

STATE OF _____

WISCONSIN DEPT. OF NATURAL
RESOURCES

By: _____

Attachments:

EXHIBIT A
EXHIBIT B

legal description of the Property
list of recorded title encumbrances



8 2 1 2 1 0 9

Tx:8135127

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

DOCUMENT #

4717518

11/23/2010 2:01 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 13

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 10th day of November, 2010, by and between the CITY OF STOUGHTON, WISCONSIN ("Grantor"), having an address of 381 East Main Street, Stoughton, Wisconsin 53589, and WISCONSIN DEPARTMENT OF NATURAL RESOURCES ("Grantee"), having an address of 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707-7921.

RETURN TO: *

Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 178
Madison, WI 53701-1784

P.I.N.

281/0511-43-8690-6
281/0511-43-8885-1
281/0511-42-9340-8
281/0511-43-8600-4
281/0511-43-8500-5

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the County of Dane, State of Wisconsin, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property");

WHEREAS, the Property is part of the City of Stoughton Landfill Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 18, 1985;

WHEREAS, in a Record of Decision dated September 30, 1991, and an Explanation of Significant Differences dated February 1996 (the "ROD"), the EPA Region Five (5) Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions: excavation of wastes outside the area of main waste disposal and placement of these materials under a landfill cap; placement of a solid waste landfill cover (cap) system over the waste disposal area; placement of a fence around the cap, or

slightly within the edges of the cap; land use restrictions to prevent the installation of drinking water wells within 1200 feet of the Property boundary and to prevent residential development of the Property; long term groundwater monitoring; extraction and treatment of groundwater if necessary. The remedial action has been implemented at the Site;

WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment;

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

WHEREAS, the Grantor and Grantee intend that the provisions of this Environmental Protection Easement and Declaration of Restrictive Covenants also be for the benefit of the United States, a third party beneficiary; and

WHEREAS, the Grantee, Wisconsin Department of Natural Resources, is acquiring this interest pursuant to s. 292.31(7), Wis. Stat.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the remedial action performed at the Site by the Grantee and the EPA under the Consent Decree in the case of United States and State of Wisconsin v. City of Stoughton, United States District Court for the Western District of Wisconsin, Docket No. 96-C-887, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants. It is also the purpose of this instrument that the EPA and its

successors and assigns as Third Party Beneficiary shall have the right to enforce the terms of this instrument.

3. Third Party Beneficiary: Grantor on behalf of itself and its successors, transferees, and assigns and the Grantee on behalf of itself and its successors, transferees, and assigns hereby agree that the EPA and its successors and assigns shall be the Third Party Beneficiary under this instrument.

4. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land for the benefit of the Grantee and are binding upon the Grantor including its successors, transferees, assigns or other persons acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control.

a. No water wells, other than monitoring wells, shall be located on the Property.

b. Grantor shall not use the Property or take any action at the Property that may interfere with the performance of remedial work required by the Consent Decree or the Record of Decision.

c. Grantor shall not take any activity on the Property which may damage or impair the effectiveness of any remedial action component constructed for or installed pursuant to the Consent Decree or the Record of Decision.

d. No buildings, wells, pipes, roads, ditches or any other structures shall be installed, constructed, removed or used within the area which is both (i) located on the Property and (ii) within the fence installed pursuant to the Record of Decision, except as approved by the EPA as consistent with the Consent Decree and the Record of Decision.

e. There shall be no recreational use of the Property within the fence installed pursuant to the Record of Decision.

f. There shall be no residential use of the Property.

5. Modification of restrictions: Any request for modification or rescission of this instrument shall be made to the Grantee and the EPA at the address given in paragraph 14 below. This instrument may be modified or rescinded only with the prior written approval of the EPA and the Grantee. Grantor on behalf of its successors, transferees, assigns or other

persons acquiring an interest in the Property agrees to file any EPA approved and WDNR approved modification to or rescission of this Environmental Protection Easement and Declaration of Restrictive Covenants with the appropriate Registrar of Deeds and a certified copy shall be returned to the EPA and the Grantee at the addresses listed below.

6. Environmental Protection Easement: Grantor hereby grants to the Grantee for its use an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing, operating and maintaining the response actions in the ROD, including but not limited to those actions generally described herein;
- b) Verifying any data or information submitted to EPA or the State of Wisconsin;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions that the EPA determines i) that such actions are necessary to protect public health or the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and ii) will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

7. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

8. EPA Entry, Access, and Response Authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law. The Grantor and Grantee consent to officers, employees, contractors, and authorized representatives of the EPA entering and having continued access to this property for the purposes described in paragraph 6.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. Notice requirement: Grantor agrees to include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 20___, RECORDED WITH THE REGISTER OF DEEDS FOR DANE COUNTY, WISCONSIN, AS DOCUMENT NUMBER _____, PAGES _____ THROUGH _____, ON _____, 20___, IN FAVOR OF, AND ENFORCEABLE BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AS GRANTEE AND THE UNITED STATES OF AMERICA AS THIRD PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement: The Grantee and the EPA as Third Party Beneficiary shall be entitled to enforce, individually or jointly, the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee or the EPA as Third Party Beneficiary, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or the EPA as Third Party Beneficiary of such term or of any

subsequent breach of the same or any other term, or of any of the rights of the Grantee or the EPA as Third Party Beneficiary under this instrument.

12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

13. Covenants: Grantor hereby covenants to and with the Grantee and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit B** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

14. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

City of Stoughton
381 East Main Street
Stoughton, WI 53589
Attn: City Clerk

To Grantee:

Bureau of Remediation and
Redevelopment
Wisconsin Dept. of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

To Third Party Beneficiary:

U.S. Environmental Protection Agency
Region Five Administrator
77 West Jackson Boulevard
Chicago, IL 60604

15. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state of Wisconsin.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are assignable, subject to the notice provisions hereof. However, the rights of the Grantee may be assigned only to a governmental entity with authority to assume the rights and obligations of that Grantee under the Consent Decree.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

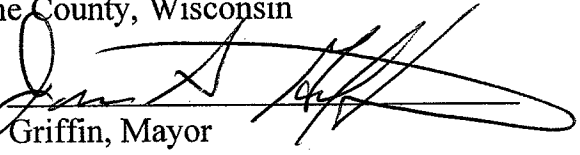
j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

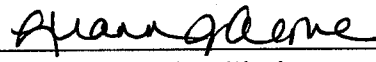
TO HAVE AND TO HOLD unto the Wisconsin Department of Natural Resources and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS to be signed in its name.

Executed this 22nd day of February, 2010.

NAME OF GRANTOR
CITY OF STOUGHTON
Dane County, Wisconsin

By: 
Jim Griffin, Mayor

By: 
LuAnn Alme, City Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF DANE

On this 22nd day of February, 2010, before me, the undersigned, a Notary Public in and for the State of Wisconsin, duly commissioned and sworn, personally appeared Jim Griffin and LuAnn Alme, known to be the Mayor and City Clerk of the City of Stoughton, Wisconsin, who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.



Notary Public, State of Wisconsin
My Commission Expires: 5-6-12

Tamarah Bader-Fleres

This ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS is accepted this 10th day of November, 2010.

STATE OF WISCONSIN

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By *Matthew J. Frank*, Deputy Secretary
Matthew J. Frank, Secretary *MJF*

STATE OF WISCONSIN

) ss

COUNTY OF DANE

Signed and sworn to before me
this 10th day of November, 2010

Daniel G. Graff
Daniel Graff
Notary Public, State of Wisconsin
My Commission expires: is permanent

Attachments: EXHIBIT A Legal Description of the Property
 EXHIBIT B List of Recorded Title Encumbrances

Drafted by:

John H. Tielsch
US Environmental Protection Agency
Office of Regional Counsel
77 West Jackson Blvd., #C-14J
Chicago, IL 60604-3511
312/353-7447

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A part of the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4, and a part of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 in Section 04, Township 05 North, Range 11 East, City of Stoughton, Dane County, Wisconsin, more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55" W 693.20 feet along the West line of said Section 04 to the North right-of-way line of Ridge Street;

Thence N89°44'14"E 3.93 feet along said North line;

Thence N88°51'30" E 1302.95 feet along said North line of Ridge Street to the West right-of-way line of Amundson Parkway;

Thence N01°41'46" W 890.08 feet along the West right-of-way line of Amundson Parkway to the point of beginning of this description;

Thence N75°08'00" W 527.77 feet;

Thence N04°04'20" W 946.60 feet to the East-West Quarter line of Section 04;

Thence continuing N02°04'20" W 668.49 feet;

Thence N89°10'7" E 683.24 feet;

Thence S02°54'40" E 667.82 feet to the East-West Quarter line of Section 04;

Thence S02°04'20" E 1143.57 feet;

Thence N75°08'00" W 196.52 feet to the point of beginning of this description.

AND

A part of the Southwest 1/4 of the Northwest 1/4 and a part of the Northwest 1/4 of the Southwest 1/4 in Section 04, Township 05 North, Range 11 East, City of Stoughton, Dane County, Wisconsin, more fully described as follows:

Commencing at the Southwest corner of said Section 04, T05N-R11E;

Thence N02°00'55" W 693.20 along the West line of said Section 04 to the North right-of-way line of Ridge Street;

Thence N89°44'15" E 3.93 feet along said North line;

Thence N88°51'30" E 1302.95 feet along the North line of Ridge Street to the west right-of-way line of Amundson Parkway;

Thence N01°41'46" W 890.08 feet along the West right-of-way line of Amundson Parkway;

Thence N75°08'00" West 527.77 feet to the point of beginning of this description;

Thence continuing N75°08'00" W 837.24 feet;

Thence N01°56'41" W 1072.41 feet more or less to the centerline of the bed of the Yahara River;

Thence in a Northeasterly direction along said riverbed centerline N49°33'49" E 495.65 feet more or less to the North line of the South 1/2 of the Northwest 1/4;

Thence N89°10'07" E 410 feet more or less along said North line to a point which is N02°04'20" W 1615.01 feet from the point of beginning;

Thence S02°04'20" E 688.49 feet to the East-West Quarter line;

Thence continuing S02°04'20" E 946.60 feet to the point of beginning of this description.

EXHIBIT B

LIST OF RECORDED TITLE ENCUMBRANCES

1. Reservations and conditions set forth in instrument recorded November 14, 1950 as Document No. 808415.
2. Electric line easement recorded June 2, 1952 as Document No. 835144.
3. Electric line easement recorded June 16, 1952 as Document No. 835868.
4. Annexation ordinance recorded May 21, 1980 as Document No. 1665960.
5. Reservations and conditions set forth in instrument recorded March 12, 1987 as Document No. 2002839.
6. Corrected ordinance recorded April 4, 1988 as Document No. 2073246.
7. Certificate in the matter of corporate limits recorded January 20, 2006 as Document No. 4154384.
8. Certificate in the matter of corporate limits recorded February 21, 2007 as Document No. 4283044.
9. Certificate in the matter of corporate limits recorded January 7, 2008 as Document No. 4386297.
10. Certificate in the matter of corporate limits recorded February 4, 2010 as Document No. 4632764.