

THE LANDFILL CLEANUP INSURANCE RECOVERY PROJECT

1997 PROGRESS REPORT TO THE LEGISLATURE

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1997 PROGRESS REPORT TO THE LEGISLATURE: The Landfill Cleanup Insurance Recovery Project

EXECUTIVE SUMMARY

In 1994, the Legislature took a bold and innovative step in formulating a unique solution to the longstanding problem of delayed and expensive cleanup at the State's closed municipal solid waste landfills. The Legislature sought to accomplish a fair, effective and speedy means to effect cleanup while avoiding the transaction costs and complicated litigation that plagues the traditional Superfund approach. The Landfill Cleanup Act (the Act) that was passed that year directed the State to take over the cleanup and long term care of 106 of these landfills within the Closed Landfill Program. To pay for this ambitious program, the Legislature enacted a waste collection fee and authorized the sale of general obligation bonds. Additionally, after two years of study by the Attorney General, the Legislature passed amendments to the Act in 1996 creating the Insurance Recovery program. This program facilitates the collection of money related to insurance policies issued to policyholders that provided coverage for the environmental response costs now being borne by the State instead of the parties that disposed of waste at these sites. See Minn. Stat. § 115B.441- .445.

The purpose of the 1996 amendments to the Landfill Cleanup Act is to provide the framework for the State and insurers to resolve the State's claims for environmental response costs related to qualified landfills; to create a fair and efficient settlement process that provides insurers with an opportunity to settle claims based upon a reasonable approximation of the insurers' potential coverage exposure; and to afford the State a fair opportunity to recover its claims by legal action if carriers do not settle. This report summarizes the progress made by the Attorney General's Office (AGO) and the Minnesota Pollution Control Agency (MPCA) ("the agencies") in implementing this Insurance Recovery program.

Building the Foundation

Over the past two years, the agencies have accomplished a great deal in building the foundation upon which settlements with the insurance carriers can be achieved, and have already recovered or saved the State \$2.86 million through this program. The agencies have gradually increased the number of staff dedicated to this project (attorneys, legal assistants, pollution control specialists, hydrologist), and they are undertaking the extensive information gathering effort on available insurance coverage and site information, and communicating with insurance carriers about the settlement program. We anticipate the same level of staffing dedicated to the ongoing work and negotiations of the Insurance Recovery project during the remainder of FY 1998 and FY 1999.

The Insurance Recovery amendments map out the steps needed to be taken by the agencies and the insurance carriers to resolve the State's claims for environmental response costs. This work has been monumental in scope, and is unprecedented for a state government. This effort has included extensive information gathering on companies' potential insurance policies and waste disposal records, verifying that insurance coverage by the insurance carriers, developing an allocation method to apportion the State's claims for costs among the various carriers, and issuing settlement offers. The agencies anticipate collecting information on **32,000** general liability and excess insurance policies from up to **7,500** businesses and municipalities associated with the landfills by the end of 1998. More specifically, as described in Minn. Stat. § 115B.442-.443, the agencies' tasks have included:

- * **Identifying landfills:** The staff identified a subset of 22 landfills from the 106 total landfills within the Closed Landfill Program with which to begin identifying insurance policy and waste disposal information. These 22 landfills were selected because they represent at least 60 percent of the Closed Landfill Program total costs, a statutory criterion for reaching global settlements with carriers, and because these landfills represent a cross-section of types and locations of landfills in the program.

- * **Identifying potential insurance policyholders (PIPs) and their insurance:** The staff identified PIPs related to the 22 selected landfills and their insurance coverage. This effort has included sending and analyzing the responses to approximately 200 Requests for Information at each landfill site to insured parties and insurance carriers, resulting to date in the collection of over 23,000 potential insurance policies from over 530 different insurance companies, from approximately 4,000 potential insurance policyholders.

- * **Finalizing cost estimates:** The MPCA completed its estimation of the total costs likely to be incurred by the State over the next thirty years for cleanup and maintenance of these sites. These costs include the current and future costs for remediation measures, reimbursements to parties that already paid past cleanup costs, and natural resource damages.

- * **Formulating an allocation method:** The agencies needed to create a method by which a fair share of the State's total environmental response costs and natural resource damages could be apportioned among the PIPs and their insurance carriers, and generate settlement offers to the individual carriers. The allocation method was completed and incorporated with the collected information in August of 1997.

Moving Forward to Settlements

The AGO and MPCA completed the first settlement under the 1996 Insurance Recovery amendments in August 1997 when Iowa National Mutual Insurance Company agreed to a global settlement with the State (covering all 106 landfills in the program) for \$1.06 million. Iowa National was in liquidation at the time and was agreeable to using a

formula based on both policy information and market share data in arriving at the final settlement amount.

The MPCA and AGO also successfully negotiated a \$1.8 million "buy-out" agreement with Waste Management, Inc. for its share of expected insurance proceeds for the Anoka Landfill, as part of its large, multi-state lawsuit with its insurance carriers. Under this agreement, the MPCA will deduct \$1.8 million from what otherwise would have been paid to Waste Management for its eligible reimbursable response costs. The agencies also negotiated a formula for future payment of insurance proceeds by Browning Ferris Inc. for the Flying Cloud Landfill when BFI concludes settlements with its carriers in its multi-state, multi-site insurance recovery effort.

The agencies selected the Oak Grove Landfill as the first facility to be the subject of a multi-carrier settlement offer and sent separate offers to 43 insurance groups, representing 76 companies, during late October and November, 1997. The agencies are beginning the negotiation process with several of these carriers now.

Looking to the Future

The agencies' work thus far on the Insurance Recovery effort provides a broad and effective foundation of information for additional settlement offers and successful settlement negotiations with carriers in 1998 and 1999. The State has made tremendous progress in completing the work outlined in the 1996 legislation to establish "a fair and efficient settlement process" that is "based upon a reasonable approximation of the insurers' potential coverage exposure" as contemplated by the law. Other states are already considering adopting this model for protecting the environment in a cost-effective way while spreading costs fairly among those parties with responsibility. This program provides insurance carriers an unprecedented opportunity to resolve a large amount of outstanding environmental liability and obtain a broad and final release from future claims for all 106 landfills. We are now at the point where insurance carriers need to show the same leadership and creativity that helped create this unique process in 1996 by working together with the State to achieve efficient, speedy, and cost-effective resolution of these environmental claims.

The MPCA and AGO have thus far recovered or saved the State over **\$2.86 million**, which is more than double what has been appropriated by the Legislature for FY 1997 and 1998 to administer the insurance recovery program. In addition, the agencies have laid the foundation for negotiating larger recoveries over the next few years. There are no recommendations at this time for any legislative changes to this program. The need for future legislative remedies, if any, will largely depend on the results of settlement negotiations between carriers and the State prior to the next legislative session.

I. INTRODUCTION

This report is prepared and submitted to the Minnesota Legislature in accordance with the reporting requirements in 1996 Minn. Laws, ch. 370, sec. 6. That section directs the Attorney General and the Commissioner of the Minnesota Pollution Control Agency to report to the finance division of the Senate Environment and Natural Resources Committee and the House of Representatives Environment and Natural Resources Committee concerning the results achieved in carrying out the settlement and recovery process established under the Landfill Cleanup Act (Act). It also directs that the Attorney General and Commissioner shall include any recommendations for further legislation that they believe will assist in accomplishing the goals of the Act.

The landfills addressed by the Act had been one of the most problematic categories of "Superfund" sites because of the nature of the waste brought to the sites and the large number of entities that contributed that waste, especially small quantity contributors. The Act is viewed by many as a positive alternative to the traditional Superfund approach to landfill cleanup in which governmental agencies must either compel responsible parties to do the cleanup or use public money to clean up the sites and then sue responsible parties for the costs. These actions tended to prompt further "contribution action" lawsuits by major responsible parties against smaller ones, thus escalating transaction costs.¹

In 1994, the Attorney General's Office (AGO) was directed by the Legislature to conduct a wide-ranging evaluation of the proposed insurance voluntary buy-out program included in the 1994 Act. The purpose of the insurance provisions was to assure that insurance carriers who issued coverage to responsible parties for landfill cleanup costs would pay a fair and reasonable share of the cleanup costs now assumed by the State under the Act. The AGO reported the results of its evaluation in the "Report on Insurance Recovery Under the Landfill Cleanup Act" in January, 1996. The AGO Report concluded that the buy-out program, which was initially based on insurance industry market share allocations, was inadequate to address the concerns of the insurance industry or the needs of the State. Based on the recommendations of the AGO, and with the active participation of members of the insurance industry and policyholders in the legislative process, the Legislature overwhelmingly passed the Insurance Recovery amendments to the Act on March 26, 1996. See Minn. Stat. § 115B.441-.445.

The purpose of the amendments, as stated in Minn. Stat. § 115B.441(b) is to provide the means for the State and insurers to resolve the State's claims for environmental response costs related to qualified landfills; to create a fair and efficient settlement process that provides insurers with an opportunity to settle claims based upon a reasonable approximation of the insurers' potential coverage exposure; and to afford the State a fair

¹ The legal entanglements presented by this collateral litigation have received additional national attention recently, as evidenced by a March 1997 Wall Street Journal article entitled "Superfund ensnares thousands of small firms in legal nightmare, fueling overhaul drive," as well as a "60 Minutes" episode in November 1997 on the same topic. Both agencies provided information to CBS on Minnesota's new program in response to the network's news magazine report.

opportunity to recover its claims by legal action if carriers do not settle. The most significant changes to the program were (1) the basis for determining the insurance industry's share of cleanup costs was changed to fairly approximate the insurance carriers' actual indemnity exposure rather than their premium-based market share, and (2) the State was given the authority to bring a direct action suit against carriers that fail to successfully negotiate a settlement with the State.

While representatives of the insurance industry expressed general support for the goals of the legislation, they initially opposed certain details of the changes introduced in 1996. AGO and industry representatives eventually came to an agreement on the language of the legislation as it proceeded through the legislative process. A number of business organizations, such as the Chamber of Commerce, the Minnesota Waste Association, and the Business Landfill Coalition were supportive of the legislation. The final legislation passed with overwhelming legislative support.

Under the Insurance Recovery amendments, the Minnesota Pollution Control Agency (MPCA) and the AGO are directed to work cooperatively gathering insurance policy and waste disposal information regarding persons connected to the qualified landfills that are included in the Closed Landfill Program. Coverage information from these policies, considered in conjunction with past, present and future costs estimated to be incurred by the MPCA for cleanup and long-term care of all 106 qualified landfills, as well as Natural Resource Damages, are used to make settlement offers and reach settlement agreements with the individual insurance carriers.

This report summarizes the progress made by the AGO and MPCA in gathering, evaluating, and organizing the information needed to initiate negotiations with the insurance carriers about the State's environmental claims, and outlines the steps already taken to begin the negotiations, settlement and recovery. The following sections: **Information Gathering, Cost Estimation, Allocation and Settlement, Completed Settlements, Information Dissemination, and Future Direction**, include more detail on the work the MPCA and AGO have completed since passage of the Insurance Recovery amendments.

II. INFORMATION GATHERING

The heart of the Insurance Recovery project is the large database of information created by the AGO and MPCA ("the agencies") during the past two years. The settlement offers that are contemplated under the legislation need to be supported by adequate and accurate information about the variety of costs the State has assumed under this program, the parties that brought waste to the landfills, their potential available insurance policies and their terms and conditions, and the insurance companies that wrote policies for these parties. All of this information comes into play in apportioning the costs of the program fairly among the insurance carriers so that settlements can be reached. The following sections describe more fully how the agencies have collected and analyzed this information.

A. Identifying Landfills

The first step in the insurance recovery project, as directed by Minn. Stat. § 115B.442, subd. 1, was that in May of 1996, the agencies identified ten landfills for which the agencies would begin to gather insurance and waste disposal information from potential policyholders and insurance carriers. The AGO and MPCA identified twelve additional landfills for which the staff would also begin to gather insurance and disposal information. The estimated past and future costs at these twenty-two (22) landfills represent at least 60 percent of the Closed Landfill Program costs. Reaching agreement on settlements for landfills representing 60 percent of total program costs is the legislative prerequisite for allowing the MPCA and AGO to negotiate “global” settlements with carriers for liability at all 106 landfills. The twenty-two landfills² identified (with their county location) are:

Anoka-Ramsey (Anoka) **	Kummer (Beltrami)
Becker County (Becker) **	Mankato (Blue Earth)
Bueckers #1 (Stearns)	Northwoods (St. Louis)
Crosby Amer. Prop. (Dakota)	Oak Grove (Anoka)
Dakhue (Dakota)	Olmsted County (Olmsted)
East Bethel (Anoka)	Red Rock (Mower)
Faribault County (Faribault) **	St. Augusta (Stearns)
Freeway (Dakota)	City of Wadena (Wadena)
Hopkins (Hennepin)	Washington County (Washington)
Isanti/Chisago (Isanti)	Waste Disposal Engin. (Anoka)
Korf Brothers (Pine) **	Woodlake (Hennepin) **

In choosing which sites to include in the mix, the agencies sought to include a cross-section of sites by size, amount of response action costs, location (metro and out-state), and a mix of PIPs tied to the site. The agencies also looked at the extent of available information regarding waste generators (i.e. hauler customer lists, previous RFI recipients) for the sites.

B. Identifying Potential Insurance Policyholders

A critical step in the State’s process of constructing meaningful settlement offers for insurance carriers is identifying potential insurance policyholders (“PIPs”) and their relevant insurance coverage, as well as connecting these PIPs to specific landfills. The Insurance Recovery amendments provide authority and procedures for the State to identify PIPs, including requesting information from them or others to establish their waste disposal history and potential insurance coverage. Minn. Stat. § 115B.442, subds. 2, 3.

The State has reviewed a number of sources of information to help identify PIPs. For example, for individual landfills staff members have searched owner/operator records

² Landfills with asterisks are those where businesses associated with waste disposal at the site have not yet received Requests for Information from the State.

for names of haulers or entities that had their waste brought to the landfill. Staff have compiled hauler customer lists and hauler transport records. They have looked through MPCA records for companies that were previously identified as "potentially responsible parties" through a prior Superfund action. The State was also able to identify PIPs through depositions of various owners or haulers taken in earlier MPCA actions. Some responsible party groups have provided names of companies that were identified as having brought waste to a landfill. In some instances staff have reviewed city officials' and county solid waste officers' records, and used Secretary of State records to identify companies located within a certain geographical distance from a landfill. Business directories for individual cities have been searched at the Minnesota Historical Society for companies doing business during relevant time periods. All these sources have been used to identify persons from whom policy and disposal information would be requested.

C. Identifying Potential Insurance Coverage

Once a group of PIPs has been identified for a specific landfill, the agencies formulate more detailed requests for information (RFIs) to send to these companies. The staff have sent approximately 200 RFIs per site to owners, operators, haulers and other businesses (waste generators) associated with specific landfills. To date, the MPCA and AGO have sent RFIs to businesses associated with 17 of the 22 above-listed landfills. We anticipate having sent RFIs for all the sites by July 1, 1998.

The disposal and insurance information provided in response to these RFIs are analyzed and entered into a computer database developed in 1995 and shared by the MPCA and AGO. This relational database is used to summarize policy information and has been instrumental in developing carrier and policy allocation estimates for the costs at each landfill. These allocations are used in generating and presenting settlement offers to individual insurance carriers regarding specific landfills or in negotiating "global" settlements.

Based on the current pace of information gathering activities, we estimate that the MPCA and AGO will receive by the end of December, 1998, information concerning an estimated **32,000** general liability and excess insurance policies from up to **7,500** businesses associated with the qualified landfills. (Some of these businesses are associated with several landfills.) This is clearly a massive undertaking, and one that is unprecedented nationally. The volume of information amassed presents both challenges and opportunities for the State and carriers in their negotiations.

Many insurance carriers identified by the AGO and MPCA as having insured parties associated with any of the qualified landfills have received a separate RFI from the AGO. This RFI asks the carriers to verify such information as a policy number, insured's name, and information about any prior settlements, if applicable, for each of the insureds (PIPs) discovered to date. An initial RFI was sent to 64 out of 112 carrier groups in the fall of 1996, although not all responded. All carriers will receive a more comprehensive RFI this spring. One misconception held by some carriers is the impression that the list of PIPs

that the carriers received in their initial RFI was a static list of insureds, not subject to change. However, the State is continuously identifying additional PIPs and additional policies at all the 22 identified landfills, as well as other sites.

The following table presents the current and projected status of the data collection portion of the Insurance Recovery Effort.

Table 1: Entries in Insurance Study Database, as of December 1, 1997

	<u>Current Entries</u>	<u>Projected Entries -12/98</u>
Insurance Group Total	141	160
Insurance Carrier Total	642	650
Insurance Policy Total	27,380	32,000
Qualified Landfills	106	106
Targeted Landfills	22	22
Estimated PIPs	6,430	7,500
Disposal Date Totals	6,530	7,500
Waste Types Identified	231	250
Hauler/Arranger Total	600	700
Generator Total	6,180	7,200

III. COST ESTIMATION

The 1996 amendments direct the MPCA to determine the current total estimated amount of environmental response costs incurred and to be incurred by the MPCA, including reimbursements to parties that previously paid for cleanup, at all 106 qualified landfills. This cost total is the amount that the State needs to recoup through its three funding mechanisms of the solid waste management tax, general obligation bonds, and recovery of insurance funds, and forms the basis for the dollar amounts the State is seeking in its settlement offers to the insurance carriers. The cost estimates developed by the MPCA fall into four categories, which are discussed in greater detail below: 1) landfill-specific fixed costs as identified in the MPCA 1994 Closed Landfill Assessment Report; 2) reimbursement for costs previously paid by other parties; 3) "projected risk" costs; and 4) natural resource damages. The MPCA's cost estimates for the Oak Grove Landfill will be used as an illustrative example.

A. Landfill-Specific Fixed Costs

In the MPCA 1994 Closed Landfill Assessment Report, the agency attempted to quantify for the Legislature the anticipated activities and estimated costs, by landfill, the State would be accepting if the MPCA were to take over the long-term care of all 106 landfills projected to be included in the Closed Landfill Program. Such projected activities and costs included, for example, groundwater and gas monitoring, general site maintenance, and operation of existing on-site remediation systems for 30 years.³ The

³ The anticipated costs reported by the MPCA in the 1994 "Closed Landfill Assessment Report" were calculated in 1993 dollars. Current costs have been recalculated in 1996 dollars using the Federal Reserve

Report also attempted to identify obvious or known construction needs for such remediation activities as enhanced covers and active gas extraction systems.⁴ The estimate for these fixed costs at Oak Grove in the 1994 Report was \$4,184,800.

B. Reimbursements

In the Landfill Cleanup Act, the Legislature approved the reimbursement by the MPCA of landfill owners, operators and responsible party groups who had previously expended monies regarding qualified landfills. These reimbursement monies are part of the total costs to the State of administering the Landfill Cleanup Program and are included in the dollar amounts that make up the settlement offers to insurance carriers. Not included in the reimbursement totals are monies spent for legal or administrative costs, or monies required under the permit for proper site closure when expended by the owner or operator. Pursuant to the Act, the MPCA has reviewed and finalized all reimbursement requests by October 15, 1997. Under a separate agreement, the State is also reimbursing the federal Environmental Protection Agency for its oversight costs. At Oak Grove, these reimbursements added an additional \$6,298,743 to the total. The State also spent an additional \$340,000 for the acquisition and demolition of nearby residences. This puts the total "fixed costs" for the Oak Grove Landfill at \$11,260,645 in 1996 dollars.

C. Landfill-Specific Projected Future Costs

The third category of costs included in the total that will be apportioned to carriers are those attributable to long-term remediation measures that are likely to be needed in the future. The MPCA in its 1994 Closed Landfill Assessment Report indicated the possibility of additional remedial actions becoming necessary at certain landfills if the current or proposed remedy in the Assessment Report was unsuccessful or inadequate in controlling contamination or addressing human health concerns. Actual cost estimates for these additional potential remedial actions were not included in the 1994 Report due to the preliminary nature of many of these recommendations, but were discussed generally in the Cover, Landfill Gas, Surface Water or Ground Water Recommendations sections.

When the State accepted full, long-term oversight for the 106 sites within the Closed Landfill Program, it incurred a very weighty responsibility in accepting a potential host of unforeseen environmental problems that may not be fully identified or understood for many years. The costs to the State of this long-term responsibility need to be reflected in the settlement negotiations because of the full and immediate release the State will be providing to insurance carriers for all known and unknown claims and policyholders at these sites. Regulatory standards may become more restrictive, or remediation protocols may become more sophisticated. Some observers have suggested that even these new

Consumer Price Index (CPI). The CPI used for each year subsequent to 1993 is: 3.5 percent in 1994, 3.3 percent in 1995 and 3.3 percent in 1996.

⁴ A copy of a generic cost worksheet describing all parameters the MPCA considered in developing this Report can be found in its 1994 Closed Landfill Assessment Report. See Appendix B.

MPCA estimates for future costs may be too low, noting that there are issues such as the potential link between landfill gases and global warming which may cause significant additional costs to the State to remediate.

In order to provide finality to the settlement offers being generated for insurance carriers, the MPCA has now included a cost estimate for this projected future risk. This anticipated "risk" cost estimate is based on the probability of occurrence that some number of additional remedial actions, including such activities as enhanced landfill covers, increasing compliance boundaries and construction of additional or more sophisticated active gas or groundwater extraction systems, will be required at some still-to-be-determined portion of these landfills.⁵ Some of these additional remediation actions have already been identified as necessary, or costs have already been incurred, since completion of the 1994 Assessment Report. At the Oak Grove Landfill, these projected future costs address, in part, the likely potential that a more sophisticated active gas extraction system would need to be designed, constructed and operated, at a cost of \$8,353,398.

D. Natural Resource Damages

Under Minn. Stat. § 115B.443, subd. 6, an insurance carrier may request that natural resource damages (NRD) be included in any settlement between the State and that carrier so that any liability for damages to the State's resources is resolved with finality at the same time as the other costs. The legislation directs the MPCA and the AGO to determine an amount to be added to the State's settlement offer that would be sufficient to address any State claim for NRD at the appropriate sites. The MPCA has developed a method to calculate NRD at affected landfills for the value of contaminated groundwater associated with a specific landfill. This groundwater is a valuable resource which has been lost to the State. At the Oak Grove landfill, the MPCA has calculated natural resource damages to groundwater to be \$574,273.

Additionally, the MPCA and AGO are working with the Department of Natural Resources (DNR), the co-trustee of Minnesota's natural resources under the Minnesota Environmental Response and Liability Act (MERLA), to further assess potential damage calculations related to other resources such as loss of wetland habitat and biota. The State agencies anticipate developing a memorandum of understanding which memorializes the

⁵ Some insurance carriers have indicated confusion on the discrepancy between long-term care site-specific costs estimates presented in the 1996 Closed Landfill Annual Report and the cost estimates presented to the carriers in current settlement offers. The reason for this difference in cost estimation is that the 1996 Report reflected the MPCA's projection of costs for the maintenance of these landfills for 50 years, rather than 30 years as originally identified in the 1994 Assessment Report. Upon further consideration, the MPCA determined that operation and/or maintenance of an inadequate remedy for 50 years served no purpose and that a method to quantify projected risk of installing more adequate remediation systems or addressing future, and as yet unanticipated, regulatory standards over a 30 year period was more appropriate. Thus, the current settlement offers reflect the 30 year cost projection. The MPCA has determined that its aggressive approach to cleanup of these landfills, combined with their generally early closing dates, has made determining operation and maintenance costs for greater than 30 years at these sites generally unnecessary.

interaction of the MPCA and DNR regarding the appropriate financial accounting for natural resource damage settlements under this program.

E. Program Totals

Using the Oak Grove Landfill example, the total costs which the State has included in the allocation for settlement with insurance carriers at Oak Grove are:

\$11,260,645	Fixed Costs
\$ 8,353,398	Projected Future Risk Costs
\$ 574,273	NRD (optional)

\$19,614,043	Total without NRD
\$20,188,316	Total with NRD

Looking at all 106 sites within the Closed Landfill Program, the MPCA has calculated, as of December 31, 1997, the current total estimated amount of environmental response costs incurred and to be incurred by the State, including "fixed" and "risk" costs (in 1996 dollars) for all qualified landfills is:

\$ 521,960,753 Total without NRD
\$ 569,960,753 Total with NRD

It is important to keep in mind that the agencies do not expect to recover the entire amount of these costs from insurance carriers. The stated purpose of the legislation was to collect only a fair and reasonable share of the cleanup costs now assumed by the State from carriers who issued coverage to responsible parties. The State recognizes that a portion of these total costs must be absorbed and paid for through the other funding mechanisms, which are the current tax on waste disposal and the bonding initiative. As an example, the State will be absorbing costs that are attributable to parties that disposed of waste at landfills but who do not have evidence of insurance coverage for certain years.

IV. ALLOCATION AND SETTLEMENT

Once an initial round of insurance information is gathered from the PIPs and the carriers, the Insurance Recovery amendments direct the agencies to select one or more insurers who have provided potential coverage to PIPs, and make settlement offers with respect to one or more of the 22 qualified landfills. Minn. Stat. § 115B.443, subd. 2. The AGO is directed to send written notice of the settlement offer to the carriers together with an explanation of how the offer was calculated. As explained in more detail below, the agencies chose the Oak Grove Landfill as the first site to be the subject of a settlement offer. Selecting a single site for the first offer gives the agencies the opportunity to propose a method for calculating settlement offers that is based on actual policies, disposal and response cost information, and to obtain the views of insurance carriers and others on the State's approach. The following discussion outlines the approach taken by the State in

allocating recoverable response costs among insurance carriers who receive a settlement offer.

A. The Allocation Process

In order to make appropriate settlement offers, the State needs to have a means by which to apportion the costs the State is incurring by taking over landfill cleanup among the various insurance carriers at the different sites. The Legislature gave some direction as to how the State should accomplish that apportionment. In the 1996 amendments, the Legislature shifted away from a "market share" allocation (which was proposed in the 1994 Act) to cost apportionment based on the carriers' actual indemnity exposure. This set in place a more complicated procedure for calculating settlement offers. At the insurance industry's insistence, the Legislature deleted most of the detailed procedures for allocation that were originally included in the 1996 bill, thus leaving it to the State to formulate a fair approach. The State worked to craft a method for calculating settlement offers that took into account information on actual policies, disposal and response cost information, and then allocated the liability for those costs between PIPs as well as between insurance carriers.

Under the Minnesota Environmental Response and Liability Act, under which landfill cleanup costs have previously been recouped, the State may seek joint and several liability from responsible parties. The State was never required to allocate costs before, and in principle need not do so here. However, to facilitate a fair approach to settlement and avoid some of the disproportionate cost payments that can arise under joint and several liability, the State has decided to allocate costs.

The agencies have formulated an allocation method that (1) is flexible, to deal with the ever-increasing base of new insurance information, (2) is sufficiently accurate, so that carriers and the State would accept that a settlement figure represents a realistic apportionment of the carriers' exposure, and (3) fairly represents a carrier's actual indemnity exposure. Unlike individual insurance claims proceedings that involve one policyholder with one policy and one occurrence, the State is attempting to present settlement offers involving scores of policies (and policyholders) over multiple years at many sites, in one package deal. This has benefits for insurers, including a decrease in their transaction costs, but is more complex than other claims that insurers ordinarily deal with, necessitating a different approach by the carriers in analyzing these offers.

The result is a comprehensive allocation method that includes a variety of elements such as total landfill costs, a specific number of years of landfill operation over which to spread the costs, a sufficiently large pool of PIPs for each landfill, weighting factors for each PIP's share depending on the type and volume of waste generated, and the years in which a PIP disposed of waste at the landfill. A discount was also offered for insurance policies that are shown by the carriers to include an exclusion for "sudden and accidental" pollution.

Pursuant to Minn. Stat. § 115B.443, the agencies included a detailed explanation of the formula for the settlement offer allocation when it was mailed to the insurance carriers. See Appendix A. There are several specific points that deserve highlighting because they appear to raise concerns with some carriers.

1. Years of Allocation

First, a critical part of the allocation is determining the appropriate number of years over which to spread the State's incurred costs at the landfill. Under current Minnesota case law regarding environmental insurance claims, absent proof to the contrary, cleanup costs are spread equally in each of the "allocation years." The State or any other party may seek unequal allocation by presenting facts to justify an unequal allocation. Second, the relevant period of years begins when the pollution first occurs, and ends either when the pollution is discovered or when cleanup has begun.⁶ In addition, although this issue has not been directly addressed by the courts in Minnesota, other pro rata jurisdictions (similar to Minnesota) do not allocate costs to years when insurance for a risk became unavailable. The insurance industry's introduction of the "sudden and accidental" pollution exclusion into general liability policies in the mid-1970s in effect made environmental insurance coverage for most damages related to landfills unavailable for policyholders, and therefore the allocation may appropriately exclude those years after 1976, as was done in the Oak Grove offer.

2. Effect of Prior Settlements

In calculating the landfill costs to be allocated to PIPs and carriers, the State subtracted the amount of money already received by the State in settlements under this program (such as Iowa National - see below). See Minn. Stat. § 115B.443, subd. 9. As the State continues to negotiate settlements, subsequent allocations will reflect the reduction in the State's costs.

Settlements between a PIP and its carrier prior to the passage of the 1996 Landfill Cleanup Act amendments do not affect the amount of the State's claim against the settling PIP and carrier unless the PIP applied for reimbursement from the MPCA for the same costs paid by the insurer. In the latter event, the PIP was required to disclose its prior settlement and reduce its reimbursement request accordingly. To that extent, a prior PIP/carrier settlement would have reduced the State's total costs and thus reduced the amount allocated for settlement here.

Where a PIP settles with its insurer after the passage of the 1996 amendments, the State has the statutory ability to approve such settlements to protect its interests. Either the State will approve the settlement while accepting some share of the payment, or it will reserve its rights to independently pursue the carrier for costs. (See section V.B. "Settlements Between PIPs and Their Insurers" for a fuller discussion of these options.)

⁶ The agencies are working under the premise that the pollution at these sites occurred when waste disposal first began, regardless of the date that a permit was first issued.

3. Selection of PIPs for the Allocation

In fashioning a reasonable allocation formula, the agencies determined which PIPs to include, keeping in mind that the State, pursuant to the law, will settle on behalf of all known and unknown policyholders. The number and scope of PIPs included in the offer affects the proportional share each carrier is assigned. This is obviously a critical matter in the settlement negotiation. The State's goal has been to amass enough insurance and waste disposal information for a large enough pool of PIPs so that a sufficiently representative cross-section of both the PIPs and carriers tied to a site is present in the allocation. In the case of Oak Grove, the State preliminarily identified 594 PIPs during the past 18 months. This number was reduced to 127 PIPs in the settlement offer allocation because a large percentage of them fell into the four categories identified in the offer as being inappropriate for inclusion.

The settlement offer describes the four categories of excluded PIPs: (1) PIPs for whom there is insufficient evidence of a liability connection to the Oak Grove site (although the PIP may be identified at other sites); (2) PIPs who, prior to the passage of the Landfill Cleanup Act, settled with their carrier(s), released carrier(s) from liability associated with Oak Grove, and have documented the settlement(s); (3) PIPs whose corporate status may make recovery unavailable (e.g. dissolved or bankrupt corporations); (4) PIPs whom the State was ultimately unable to locate. See Appendix A.

The State did include PIPs in the allocation where the agencies have evidence that the PIP disposed of waste at the landfill, but where there was no evidence of insurance in some of the years in which they disposed of waste. For those PIPs, the State is "absorbing" those costs for those years where insurance coverage is not documented. This uninsured share of the costs can be significant. In the Oak Grove settlement offers, for example, over 25 percent of the allocated costs were absorbed by the State up front, before negotiations with the carriers have even begun.

B. Oak Grove Settlement Offer

In September and October of 1997, the AGO sent the first round of settlement offers to carriers identified as providing coverage to PIPs that disposed of waste at the Oak Grove Landfill. Oak Grove was chosen as the first site for which settlement offers would be generated because it had the most complete base of information among all the landfills at that time, there had been strong cooperation by PIPs in verifying information through the RFI process, there was interest exhibited by the stakeholders, and the site had high visibility given the controversial threat of litigation that occurred in prior years. Ultimately, 43 carrier groups representing 76 individual carriers were sent offers, which included a detailed explanation of how the allocation and offer were calculated. A sample of the Oak Grove settlement offer is included as Appendix A to this report.

This offer was intended by the agencies to provide a starting point for discussions with the carriers. In addition to negotiating over specific dollar amounts of a settlement at

this site, the agencies wanted to engage the insurance carriers in a dialogue about the framework for allocating liability of costs that the State developed, in order to refine it, if necessary, as the approach the State and carriers will use for future settlement offers at other landfill sites. The Oak Grove offer has become the initial focal point for assessing the carriers' interest in negotiating settlements with the State.

C. Insurance Carrier Reactions

As of January 1, 1998, 30 of the 43 carrier groups had responded in writing or by telephone to the Oak Grove settlement offer. Many of the responses have followed a typical format for claims resolution, identifying gaps in information about the policies, asking for follow up information, and questioning the calculation of costs. Some of the carriers have already made inquiries about pursuing global settlements, one has made an offer for resolving the Oak Grove site liability, and a number of carriers are proceeding cautiously and may wish to engage in a large degree of fact-finding over the specifics of the PIPs identified as being insured and the costs calculated by MPCA before discussing any settlement options with the State. While caution may be understandable at the beginning, the State is looking to the carriers to show leadership and creativity to help achieve the type of efficient, streamlined resolution of the carriers' liability at these sites, with a reduced expenditure of transaction costs, as intended by the Legislature in the 1996 amendments.

D. Global Settlements

The Insurance Recovery legislation contemplates the possibility of resolving the carriers' liability at all 106 sites in a "global settlement." Minn. Stat. § 115B.443, subd. 7. If an insurer has entered into settlement(s) with the State for sites which represent at least 60 percent of the total estimated environmental response costs, the Act allows the AGO and MPCA to settle with an insurer for its proportional share of the remaining 40 percent of the aggregate costs. The State has been gathering insurance and waste disposal information at the initial 22 sites that represent 60 percent of the total costs, so that it may effectively negotiate global settlements with carriers that request it.

The most challenging task will obviously be to arrive at an agreed upon methodology for calculating a carrier's approximate share of costs for all 106 sites, based on the information collected to date, as well as the information available to the insurers. The agencies have been exploring alternative methods to reach a fair and reasonable approximation of global coverage exposure, as contemplated by the legislation. Minn. Stat. § 115B.441(b)(2).

The carriers that are seriously interested in reaching an early global settlement with the State will need to actively work with the agencies to find innovative ways to calculate settlement amounts based on existing information without driving up transaction costs for both sides. The benefit to the carriers of negotiating a global settlement lies in both the

resolution of a large volume of outstanding liability, as well as the finality assured by the State's broad and final release of all known and unknown claims for all 106 sites.

Since the agencies have not yet completed the development of insurance information at all 22 landfills, it could take more time to develop global settlement offers based solely on insurance policy data, without using market share information. For those carriers interested in expediting global settlements, it is possible to develop a hybrid approach that utilizes both the large volume of existing insurance information and market share information to reach an acceptable global settlement. Currently this is the type of allocation method in use with the carriers who are in liquidation, and it was this method that was used successfully in the Iowa National settlement.

V. COMPLETED SETTLEMENTS

A. Iowa National

In August of 1997, the State received its first settlement check under the Insurance Recovery program from Iowa National Mutual Insurance Company. The relatively small carrier had been in liquidation for years, and the settlement was part of a final resolution of outstanding claims before the liquidation trustee. The AGO and MPCA negotiated a **\$1.06 million** global settlement for resolution and release of claims at all 106 landfill sites. The settlement amount was derived from a hybrid formula using both the coverage information from the State's data base and market share data.

B. Settlements Between PIPs and Their Insurers

Minnesota Statute § 115B.444, subd. 2 provides that the insurance recovery legislation does not affect the right of a policyholder to bring an action against, or enter into a settlement with, its insurer for any claim for which the State has a right of direct action against the insurer. The State has the option, however, to intervene in any suit in which the policyholder seeks to recover a claim from the insurer which affects the State's rights. Alternatively, a policyholder may not enter into a settlement which releases an insurer from any claims for which the State has an action, unless the Attorney General has given prior written approval and the policyholder agrees to assign to the State any settlement amount received from the insurer that is attributable to the State's claim.

Since the passage of the 1996 amendments, the State has intervened to protect its interests in one pending action between a policyholder and its insured, Onan Corporation v. Continental Insurance Company. The action was settled prior to trial; under the settlement document the State has preserved its rights against Continental for future claims concerning Onan's policies. Additionally, the State has approved two minor settlements between an insured and its carriers, and is in the process of negotiating approval on two larger settlements. These settlements tend to arise from large, multi-site litigation by PIPs against their insurers in a number of forums.

In addition to the settlement with Iowa National, the second significant settlement for the State came in October 1997 in the form of an agreement with Waste Management, Inc., which is a large PIP at a number of sites in Minnesota as well as nationwide. Waste Management has been involved in complex litigation with a number of its insurance carriers in a large lawsuit in New Jersey. As part of that suit involving claims at over a hundred sites around the nation, the company expected to settle policies that may cover any claims for several Minnesota sites, including the Anoka landfill. The State ultimately agreed as part of the Anoka Landfill Binding Agreement to allow Waste Management to settle its future share of the insurance recovery at the Anoka Landfill by providing the State with **\$1.8 million**.

The State was faced with a similar problem with Browning Ferris, Inc. (BFI) at the Flying Cloud Landfill. BFI has been involved in complex multi-state, multi-site negotiations with multiple carriers. As part of its Binding Agreement, the State agreed to a formula that would be applied to any future monetary settlements reached between BFI and its carriers. The State will receive a share of the insurance proceeds based on that formula. Although the final dollar amount of the State's share of the proceeds is unknown at this time, the State has confidence that BFI has significant incentive to aggressively pursue and reach settlements with its carriers.

The goal and preferred avenue of the Insurance Recovery program is for the State and the insurance carriers to deal directly with each other in settling outstanding coverage liability. In that respect, the Waste Management and BFI settlements were atypical in that they came, or will come, via the PIP rather than from the insurance carrier directly. However, given the protracted litigation in which Waste Management and BFI were involved, this was a significant gain for the State and the Landfill Cleanup program with minimal transaction costs. There may be a few other large companies that are involved in out-of-state litigation and complex settlements for which it is most efficient for the State to negotiate its fair share of insurance recovery from the company rather than the insurer.

C. Insurance Carriers in Liquidation

The State has identified more than two dozen carriers through this program that are currently in liquidation. Iowa National was the first one with which the State has settled. The State has six more offers pending with the respective liquidators. These offers are likely to move more slowly because their liquidation schedules are not as expedited as was Iowa National's. The agencies believe it is possible that more final agreements can be reached, but the timing of such agreements is largely out of our hands at this point.

VI. INFORMATION DISSEMINATION

The MPCA has placed all information regarding the Insurance Recovery program, such as fact sheets, the proposed methods of allocation, landfill cost identification, the generic settlement offer for Oak Grove, and press releases on its Internet site (<http://www.pca.State.mn.us/cleanup/landfills.html>). This information has been reviewed

by a number of insurance carriers to help them understand the emphasis of the Insurance Recovery program and remain current regarding MPCA activities in this area.⁷

The MPCA and the AGO have issued several press releases notifying businesses and insurance carriers of the Insurance Recovery legislation, their responsibilities under the statute, and completed settlements. Additionally, interested parties are continually being updated on the progress of the Insurance Recovery effort.

VII. FUTURE DIRECTION

The AGO and MPCA staff who have been working on the Insurance Recovery effort are generally pleased with the progress made in laying the foundation for what is hoped will become a series of successful settlement negotiations with the insurance carriers. The agencies have been able to compile a large volume of insurance and waste disposal information and organize it in a manner that makes it possible to determine fair and reasonable approximations of insurance carrier liability, as directed by the legislation. The first settlements have been reached, both with a carrier and with individual PIPs, and the first round of settlement offers for a specific site have been generated. The agencies remain optimistic that the insurance carriers will now do their part to make this program a successful model of how the complex and contentious aspects of cost recovery for closed municipal landfills can be simplified and resolved to the benefit of the State, the carriers, and the citizens and businesses of the state who are helping to fund the State's landfill cleanup program through the solid waste management tax.

A. Settlement Negotiations

It is difficult to predict at this stage how many settlements the State may be able to finalize in 1998. Because of the possible complexity of these negotiations with respect to such factors as cost allocation, a large volume of PIPs, natural resource damages and the number of individual policies involved, it is assumed that these negotiations will be rather lengthy. While the State expects that the unique nature of this program and its paradigm shift away from a traditional itemized claims analysis should ultimately result in faster and less costly settlement negotiations, the initial process of adjustment by the carriers to this new system may take some time. Regardless, the agencies expect there will be a number of settlements reached as a result of the initial Oak Grove offer. It is also difficult to predict at this stage how many "global" settlements will be reached, beyond individual settlements for the Oak Grove site. A number of carriers are clearly interested in discussing settling their entire liability for all 106 sites, but the largest hurdle is coming to agreement on the best means of extrapolating a fair and appropriate global settlement amount based on the data compiled thus far.

While the agencies have been able to collect a vast amount of information already, a large amount of data remains that has the potential to be collected. As this data-gathering

⁷ This report will also be available on the Internet site.

continues, however, the State and insurance carriers will continue to incur administrative or transaction costs. The agencies hope to begin shifting staff time away from the intensive data gathering and instead supporting the specific settlement discussions. The settlement process must remain focused on the overall stated purpose of the legislation -- to create a fair and efficient settlement process that provides the opportunity to settle claims based on a *reasonable approximation of the insurer's potential coverage exposure*. This goal requires that those at the negotiating table be flexible and creative in deriving that approximation, rather than demanding the same strict levels of evidence and documentation that have driven past litigation between carriers and their policyholders. If there is a true dedication to this shared outcome, more completed settlements should be seen before the end of 1998.

B. Direct Actions

The Insurance Recovery legislation allows the State to bring direct court actions to recover its claim for response costs from carriers who do not reach settlements with the State after having an opportunity to settle. To date, the State has not initiated any direct actions because we have not yet commenced formal negotiations pursuant to a settlement offer. Over the next twelve months, as we proceed with negotiations initiated by the Oak Grove settlement offer, the State will evaluate where and with whom the State may need to take the more serious step of initiating litigation to resolve landfill insurance claims. While our primary goal is to reach satisfactory settlements with carriers, the State will not hesitate to initiate direct actions as appropriate to protect the State's interests.

C. Program Costs and Future Appropriations

The legislature appropriated \$704,000 for each Fiscal Year in 1997, 1998 and 1999. The appropriation was divided between the AGO and MPCA, with the bulk of the FY 1997 and 1998 funds paying for staff time to work on the information gathering, cost estimation, and development of the settlement offers. We have hired two outside consulting attorneys to advise the State on different aspects of insurance law, as well as maintained the computer support for the extensive database of insurance and waste disposal information. As noted above, the program has already recovered or saved the State over \$2.86 million, which is twice the expenditures to date.

We anticipate using the remainder of the FY 1998 funds to gather, analyze, and organize additional insurance information and launch more settlement discussions. At this point, it is less clear how the FY 1999 appropriation will be allocated, as it depends on the success of the settlement process based on the data gathered thus far. If carriers and the State can craft acceptable settlements based largely on the kind of data gathered to date and avoid litigating the State's claims, we can wind down the insurance reconstruction portion of the project perhaps by the end of 1998 calendar year and focus on completing the settlements. Other scenarios involving significant additional information gathering to bolster settlement efforts or commencing litigation against carriers could require major shifts of expenditures that would increase the cost of any recoveries.

D. Legislative Recommendations

One of the requirements in 1996 Minn. Laws, ch. 370, sec. 6. is that the Attorney General and the MPCA Commissioner should include in this report any recommendation for legislative changes that may be necessary with the program. As described above, the bulk of the work of the past two years has been in collecting and organizing a vast amount of insurance and waste disposal information, and formulating our settlement approach. The legislative framework which allows us to accomplish these tasks has largely been sufficient.

Since we are just about to begin negotiating settlements for the Oak Grove Landfill, it is too early to assess where there may be problems that may only be best addressed through legislative amendments, and the agencies have no recommendation for legislative changes at this time. We believe that the 1996 law as currently written can succeed in achieving a fair recovery of landfill cleanup costs from insurers while providing carriers with a release of liability of unprecedented scope. The key to that success is the willingness of carriers to modify the standard settlement approach used with individual policyholders in favor of a more simplified and less information-intensive approach to concluding a statewide settlement for all 106 landfills in the Minnesota program. If this does not occur, the agencies may be back before the Legislature in the 1999 legislative session with requests for legislative modification of the Insurance Recovery program.

APPENDIX A

GENERIC SETTLEMENT OFFER FOR OAK GROVE LANDFILL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

NOTICE TO _____
OF A SETTLEMENT OFFER AND EXPLANATION UNDER
THE MINNESOTA LANDFILL CLEANUP ACT

With this document the Attorney General of the State of Minnesota gives written notice of a settlement offer in the amount of \$ _____ and an explanation of this settlement offer to you, _____, pursuant to the Minnesota Landfill Cleanup Act, Minn. Stat. § 115B.443, subd. 2 (1996) (the "Act"). This settlement offer concerns claims for environmental response costs related to the Oak Grove Sanitary Landfill ("Oak Grove"). As required by the Act, this settlement offer is based on an evaluation of the potential coverage determined to be available for environmental response costs related to Oak Grove under policies issued by you to "potential insurance policyholders" ("PIPs"). The Commissioner of the Minnesota Pollution Control Agency ("the Commissioner") and the Attorney General performed this evaluation of potential coverage.

The PIPs and policies under which potential insurance coverage exists are identified in **Attachment A**. The settlement offer concerns the Oak Grove Sanitary Landfill which is a qualified facility under the Act. Minn. Stat. § 115B.39, subd. 2(j). The MPCA has assumed responsibility for environmental response actions at Oak Grove pursuant to Minn. Stat. § 115B.40, subd. 7(b).

In accordance with Minn. Stat. § 115B.443, subd. 1, the Commissioner has estimated the environmental response costs for Oak Grove under the Landfill Cleanup Program. The estimate of \$19,614,043 covers all environmental response costs "incurred and to be incurred by the state" for Oak Grove. This amount includes reimbursements of response costs paid or to be paid by MPCA under section 115B.43. Under the Act PIPs remain liable for these costs to the extent of any insurance coverage. Minn. Stat. § 115B.40, subd. 7(b)(2)(i). Claims for payment of these costs accrue to the State. The Act establishes a process under which the State and insurance carriers can resolve these claims by negotiation. Minn. Stat. § 115B.443. If these negotiations fail, it also establishes a "state action" provision which allows the State to bring an action against a carrier directly to recover these costs. Minn. Stat. § 115B.444, subd. 1.

In addition to the costs identified above, the Act permits carriers and the State to settle claims associated with natural resource damages related to a qualified facility such as Oak Grove. Minn. Stat. § 115B.443, subd. 6. The Commissioner estimates that there are \$574,273 in natural resource damages at Oak Grove. A cost estimate covering both natural resource damages and environmental response actions equals \$20,188,316.

Attachment B contains terms of the State's settlement offer and an explanation of how the State arrived at these terms with respect to Oak Grove. The terms of the settlement offer are in conformity with Minn. Stat. § 115B.443, subds. 5 to 10.

This notice also notifies you, if you have not already been notified, of one or more potential occurrences for which the policyholders identified in **Attachment A** may be legally responsible at Oak Grove and which resulted in property damage during the coverage years of the policies identified in **Attachment A**.

Within 30 days of this notice, the Attorney General, pursuant to Minn. Stat. § 115B.443, subd. 4, will make a reasonable effort to notify policyholders who may be affected by these negotiations with you. If you know of any policyholder who might be affected by this settlement offer who has not been identified on **Attachment A**, please notify the Attorney General as soon as possible.

You have up to 60 days from receipt of this offer to evaluate this offer. Minn. Stat. § 115B.443, subd. 3. The State requests that you notify the Attorney General's Office before the end of the 60-day period if you are interested in entering negotiations with the State. After 60 days have passed, the State may commence formal settlement negotiations with you. Minn. Stat. § 115B.443, subd. 5. During the 60-day period we welcome questions from you and may contact you to discuss the negotiation process.

This notice, settlement offer, explanation, and accompanying materials are covered by section 115B.443, subd. 3, which provides "any settlement offer or any proposal, statement, or view expressed or document prepared in the course of negotiation under this section shall not be considered an admission by any party and shall not be admissible in evidence in any judicial

proceeding affecting matters subject to settlement negotiation, provided that any matter otherwise admissible in a judicial proceeding is not made inadmissible by virtue of its use in negotiation under this section."

Dated: _____

HUBERT H. HUMPHREY III
Attorney General
State of Minnesota

MICHELLE E. BEEMAN
Assistant Attorney General
Atty. Reg. No. 218352

JOHN K. LAMPE
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ATTORNEYS FOR STATE OF MINNESOTA

ATTACHMENT A

PIPS AND POLICIES

OF

_____ AT
OAK GROVE LANDFILL

ATTACHMENT B

SETTLEMENT OFFER AND EXPLANATION
FOR

_____ AT
OAK GROVE LANDFILL

SETTLEMENT OFFER
AND EXPLANATION OF SETTLEMENT OFFER
CONCERNING THE OAK GROVE SANITARY LANDFILL

The Commissioner of the Minnesota Pollution Control Agency ("Commissioner" or "MPCA") and the Attorney General of the State of Minnesota hereby make a Settlement Offer to you, _____, pursuant to the Minnesota Landfill Cleanup Act, Minn. Stat. § 115B.443, subd. 2 (1996)(the "Act"). The Commissioner has determined that you provided potential insurance coverage for environmental response costs to Potential Insurance Policyholders ("PIPs") identified under Minn. Stat. § 115B.442 and associated with the Oak Grove Sanitary Landfill (hereinafter "Oak Grove" or "the Landfill"). The Commissioner has estimated that the amount of environmental response costs incurred and to be incurred by the MPCA at Oak Grove is \$19,614,043. This amount forms the basis of the settlement offer to you and the other insurance carriers concerning Oak Grove.

You may also elect to settle potential claims related to natural resource damages. Minn. Stat. § 115B.443, subd. 6. The Commissioner has estimated that \$574,273 would compensate the State for natural resource damages at Oak Grove. The total estimate for settlement of claims for both environmental response costs and natural resource damage equals \$20,188,316.

Explanation

As required by section 115B.443, subd. 2, the Attorney General and the Commissioner have based this settlement offer for Oak Grove on three considerations. First, the Commissioner and the Attorney General gathered information to show a likely link between the PIPs identified in **Attachment A** and environmental response costs associated with Oak Grove. Second, the Commissioner and the Attorney General conducted an evaluation of the potential coverage available for environmental response costs under policies issued by you to the PIPs identified in **Attachment A** who are associated with Oak Grove. This evaluation includes an allocation of environmental response costs to identified coverage. Third, the Commissioner and the Attorney General based this settlement offer on the total estimated state environmental response costs for Oak Grove, as determined under section 115B.443, subd. 1. These three considerations are summarized below in Part A. In addition, Part A explains the basis for the settlement of natural resource damages claims. Part B explains other terms of the settlement including the scope of the release from liability by the State.

The settlement offer described in this document has been computed based on the circumstances of your policyholders, the coverage you provided to your policyholders, and the facts surrounding Oak Grove. The State will consider your comments and suggestions about the methods used to calculate this offer as part of the negotiations with you. One of the goals of the negotiations is to arrive at a mutually agreed upon method of calculating future settlement offers to you under the Act. The settlement offer should therefore not be interpreted to represent the

only way in which future settlement offers to you concerning other landfills will be computed. This settlement offer does not in any way limit the claims or method of calculating claims which the State could pursue in the event that no settlement is reached between you and the State.

A. The Offer for Oak Grove:

1. Determination of Total Costs for Oak Grove

The MPCA has determined that the total environmental response costs for which the State could potentially bring claims against insurance carriers under the Landfill Cleanup Act at Oak Grove are \$19,614,043. **Table I** provides a brief description of Oak Grove and explains how these costs are calculated.

These environmental response costs include (a) past response costs including amounts paid or to be paid to PIPs for reimbursement under Minn. Stat. § 115B.43, paid or to be paid to the United States Environmental Protection Agency (EPA) under the Agreement entered with EPA pursuant to Minn. Stat. § 115B.40, subd. 7(b)(1), and costs incurred by the MPCA in taking response actions; (b) future response costs the MPCA plans to expend over the next 30 years based upon current information about the condition of the Landfill and upon current cleanup requirements; and (c) estimated future response costs which the MPCA has a substantial risk of incurring for the long-term care of the Landfill for which the MPCA is assuming responsibility. **Table I** also includes an amount of \$574,273 attributable to natural resource damages at Oak Grove.

2. Determination of Your Share of These Costs

Your settlement amount is based on an allocation of liability for the Oak Grove environmental response costs among the PIPs identified by the MPCA. Liability for these costs is based on the application of state and federal environmental laws and the Act. These laws generally impose strict, joint, and several liability on persons responsible for a release of hazardous substances into the environment. The allocation of liability performed as part of this offer is intended to fairly approximate each insurance carrier's share of the claims concerning the Landfill. In the first step in this environmental liability allocation we determined the persons among whom environmental liability will be allocated. Under the Landfill Cleanup Act, once the state assumes responsibility for environmental response actions for a landfill, the Commissioner may seek recovery of environmental response costs from a responsible person "to the extent of insurance coverage held" by that responsible person. Minn. Stat. § 115B.40, subd. 7(b)(2)(i).

The MPCA and the Attorney General's Office have gathered information about the PIPs at Oak Grove as defined in Minn. Stat. § 115B.442, subd. 2. This information has been used to determine each carrier's potential share of cleanup costs and other associated damages under insurance coverage held by those PIPs.

Based on the information gathered thus far, the MPCA and the Attorney General have identified the following four categories of PIPs for whom no insurance coverage for cleanup costs at Oak Grove appears to be available and *who will not* be included in the allocation of liability: (1) PIPs for whom there is insufficient evidence of a liability connection to Oak Grove; (2) PIPs who prior to the passage of the Landfill Cleanup Act settled with their carrier(s), released the carrier(s) from liability associated with Oak Grove, and have documented the settlement(s); (3) PIPs whose corporate status may make recovery unavailable (e.g., dissolved or bankrupt corporations); (4) PIPs whom the State was unable to locate. These categories of PIPs have been excluded from the allocation process at Oak Grove.

Out of the 594 PIPs initially sent requests for information at Oak Grove, 467 PIPs have been eliminated using these criteria (of whom 205 represent PIPs the State was unable to locate). This leaves 127 PIPs for the allocation. **Attachment A** identifies your PIPs which will be included in the Oak Grove allocation. The State reserves the right to take into account new information (such as unreported settlements) that may affect the settlement offer amount.

3. Determining The Years Over Which Costs Will Be Allocated

The State's allocation of liability also takes into account the years of operation of Oak Grove, the years in which activities of the PIPs connected them to the Landfill, and other factors. First, we determined the years to which cleanup costs will be allocated at the Oak Grove site. Those years are designated as the "allocation years." The earliest potential allocation year is the first year in which waste was deposited at the Landfill. In the case of Oak Grove, disposal began in 1967, approximately four years before the Landfill obtained a state permit. The MPCA has determined it is reasonable to assume that property damage in the form of ground water contamination began to occur in the year when disposal began based upon the hydrogeologic character of landfill sites in Minnesota.

The last allocation year is 1976. This year was chosen for two reasons. First, this is the year in which contamination at the Oak Grove landfill was first discovered or became manifest. Using the date of discovery of contamination for purposes of allocating cleanup costs is consistent with Minnesota case law. See, e.g., Domtar, Inc. v. Niagara Fire Ins. Co., 563 N.W.2d 724, 732 (Minn. 1997).

Second, we chose 1976 because of the introduction by the insurance industry in the early 1970s of the sudden and accidental pollution exclusion. The insurance industry has characterized the sudden and accidental exclusion as eliminating coverage for pollution exposures at landfills. (Whether this is the case depends on future judicial decisions on such issues as personal injury coverage as discussed below.) If the position of the insurance industry is sustained on the effect of the sudden and accidental pollution exclusion, however, coverage may have become generally unavailable as early as 1971. When insurance for a risk is unavailable after a date, courts in "pro-rata" jurisdictions, such as Minnesota, have not allocated costs to those years when

policyholders have purchased liability coverage (i.e., have not deliberately chosen to go "bare") but have been unable to obtain coverage for a specified liability risk. See Stonewall Ins. Co. v. Asbestos Claims Management, 73 F.3d 1178, 1203-04 (2d Cir. 1995) (cited with approval in Domtar, 563 N.W.2d at 733 n. 5). Although this means that the allocation could be cut off as early as 1971, the State will assume for settlement purposes that 1976, as opposed to an earlier year, is the last allocation year. However, should settlement negotiations fail under the Act, the State may base its claims on different assumptions about the availability of coverage.

Thus the allocation years for Oak Grove are 1967 to 1976. Over this ten year period environmental response costs will be presumed, for settlement purposes, to be continuous and evenly spread. Northern States Power v. Fidelity & Cas. Co. of New York, 523 N.W.2d 657, 664 (Minn. 1994). Therefore \$1,961,404 in cleanup costs are assigned to each allocation year at the Oak Grove Site, as reflected in **Table II**.

4. Determining How Costs Will Be Allocated Among PIPs In A Given Year

We determined the amount of costs that should be allocated to a PIP in a given allocation year at the Oak Grove landfill. We assign a share of liability to a PIP beginning in the first allocation year when the activities of the PIP connect the PIP to the Landfill. For a waste generator or transporter that would be the year when the PIP likely brought waste or had waste brought to the landfill. Thus, the initial disposal date is the first allocation year for that PIP. The first allocation year for each of your PIPs is identified in **Table III**. The last allocation year for a PIP is either 1976 or the last year of activity connecting the PIP to the Landfill, whichever comes first.

Next, we determined how much a PIP will share in the cleanup costs in a given allocation year. This amount depends on two key factors: the PIP's inclusion in one of the "Tiers" identified below and the number of PIPs identified within an allocation year. In determining the Tier of a PIP we considered the type of business engaged in by the PIP and the amounts of hazardous substances, pollutants or contaminants that type of business would typically produce.

PIPs were classified in three Tiers based on the types and amounts of hazardous substances, pollutants and contaminants likely disposed of at Oak Grove by each PIP. Tier 1 PIPs are those typically producing small quantities of hazardous substances; Tier 2 PIPs are those typically producing moderate amounts of hazardous substances; and Tier 3 PIPs are those typically producing large amounts of hazardous substances. Example of the kinds of businesses in each Tier are:

Tier 1 = Food service, lodging, and retail sales activities such as: motels, restaurants, grocery stores, hardware stores, office supply stores, and dry cleaning retail outlets. PIPs in this Tier have a weighting factor of "1" assigned to them.

Tier 2 = Services providing activities such as: dry cleaners where cleaning is performed on site, automobile repair garages, gas stations, hospitals, doctor and dental offices, and haulers. PIPs in this Tier have a weighting factor of "2" assigned to them.

Tier 3 = Industrial activities such as: plastics manufacturing, chemical manufacturing, paint manufacturing, oil refineries, foundries, Tier 3 also includes landfill owners and operators. PIPs in this Tier have a weighting factor of "3" attached to them.

The Tier for each of your PIPs is identified in **Table III**.

The other factor in determining a particular PIP's share of the costs assigned to an allocation year is the number of PIPs in each allocation year and within each Tier. **Table IV** identifies the number of PIPs within each year, the percentage of the total costs assigned to each Tier based on the weighting factor applied to each Tier, and, finally, the costs assigned to each PIP within a Tier in each allocation year from 1967 to 1976.

Table V takes the information from **Table IV** and identifies the response costs allocated to each of your PIPs in a specific allocation year. This amount is identified in the first row of **Table V**.

5. Determining Insurance Coverage

Once costs assigned to each allocation year have been allocated to PIPs, the next step is to determine how much of the allocated costs are covered by insurance. Each liability policy providing coverage in an allocation year is considered to be triggered for this analysis. **Table V** illustrates the policy-by-policy analysis for each policy of each of your PIPs. This analysis considers evidence of the existence of a policy; applicable policy limits; provides a 75 percent discount for policies containing sudden and accidental pollution exclusions; deducts an amount for any known open retrospective premium plan; and deducts an amount for any applicable deductible or self-insured retention.

As to establishing the existence of a policy issued by a carrier to a given policyholder, the State considered all the evidence known to it at this time. This evidence includes: documentation establishing the likely existence of a policy such as a copy of the policy or parts of the policy, binders, certificates of insurance, and other records kept by the policyholder; statements by a policyholder as to its insurance carrier; the existence of a policy such as a workers compensation policy which, given the marketing practices of certain carriers, indicates the presence of a liability policy for that policyholder. The State intends to continue gathering additional information on the existence of coverage to supplement the policy information that it presently has.

As to the 75 percent discount for policies with the sudden and accidental pollution exclusion, the State reached this amount based on two considerations. First, many of the policies being considered in this allocation are ones issued in other states to large companies who did business in Minnesota. A court could adjudicate coverage under such insurance policies under the law of a jurisdiction other than Minnesota, where coverage may be determined more favorably to a policyholder. Second, many of the policies at issue in this allocation at Oak Grove had other forms of coverage in addition to comprehensive general liability coverage. For example, numerous policies contain personal injury coverage. Minnesota courts have not addressed whether personal injury coverage for trespass and nuisance actions might provide coverage for pollution events. Any one of these factors could nullify the effect of the pollution exclusion in a comprehensive general liability policy. Given these two considerations, the State has accorded the sudden and accidental pollution exclusion a 75 percent discount for settlement purposes. Pollution exclusions with other wording were handled on a case-by-case basis. As with other issues, the State reserves the right to prove in any future proceedings that releases at Oak Grove were sudden and accidental.

Based on the factors discussed above, the State calculated a settlement amount for each policy of a PIP. For costs allocated to a PIP for an allocation year in which no insurance coverage is identified, the settlement amount is zero. The amount at the bottom of each page of **Table V** is the settlement amount under each individual policy of each PIP.

6. Determination of Settlement Offer

The final table, **Table VI**, shows the amount of the State's offer based on coverage available under each of the triggered policies of each PIP. This amount is then totaled. This amount is the offer for the settlement of the claims under policies of all of your PIPs for environmental response costs at Oak Grove. An amount is also identified in **Table VI** for the settlement of natural resource damages. This amount is calculated by determining the percentage of the total estimated costs at Oak Grove represented by this settlement offer to you and multiplying that percentage by the total natural resource damages claim at Oak Grove. The last row contains the settlement offer amount for both environmental response costs and natural resource damages.

B. Other Terms of the Proposed Settlement

1. Any settlement reached between you and the State of Minnesota will release you and your policyholders, as specified in section 115B.443, subd. 8:

[t]o the extent of their insurance coverage under policies of that insurer, from all liability for all environmental response costs incurred and to be incurred by the state related to the qualified facility or facilities that are the subject of the settlement, including natural resource damages if addressed in the settlement. Except for claims excluded under subdivision 2, the settlement shall release a settling insurer and its policyholders from liability as described in this subdivision

under all insurance policies issued by the insurer, regardless of whether the policies or policyholders were identified by the commissioner or attorney general under section 115B.442.

No claims have been identified at this time which should be excluded from a settlement with you under section 115B.443, subd. 2. This subdivision permits the Attorney General to “exclude from a settlement offer claims relating to policyholders who are known by the attorney general to have claims against the insurer for coverage of environmental liability at locations other than qualified facilities, or who are actively litigating or settling claims against their insurers relating to any qualified facility.”

2. Under section 115B.443, subd. 9, you will not be liable for claims for contribution regarding the matters addressed in this settlement. As a condition of settlement, this section provides that a carrier must “waive its rights to seek contribution regarding matters addressed in the settlement or to bring a subrogation action against any other person for any amounts paid in the settlement.”

3. The settlement does not discharge the liability of any insurer other than you nor does it discharge the liability of a person (including your PIPs) to whom any other insurer has issued coverage to the extent of that coverage. Section 115B.443, subd. 9(b).

AG:93523 v1

TABLE I

OAK GROVE SANITARY LANDFILL

Site Location:

The site is located 5 1/2 miles west of Highway 65 on County Road 22 in the City of Oak Grove.

Ownership/Operation:

Private/Private

Fill Size:

The site consists of a 50 acre landfill containing approximately 2.5 million cubic yards of waste on a 158-acre permitted area.

Commencement of Operation:

Before state permits were required, the site was operated as a dump between 1967 and 1971. The site was permitted by the MPCA on August 12, 1971, in Section 28 of Township 33N, Range 24W (Oak Grove Township).

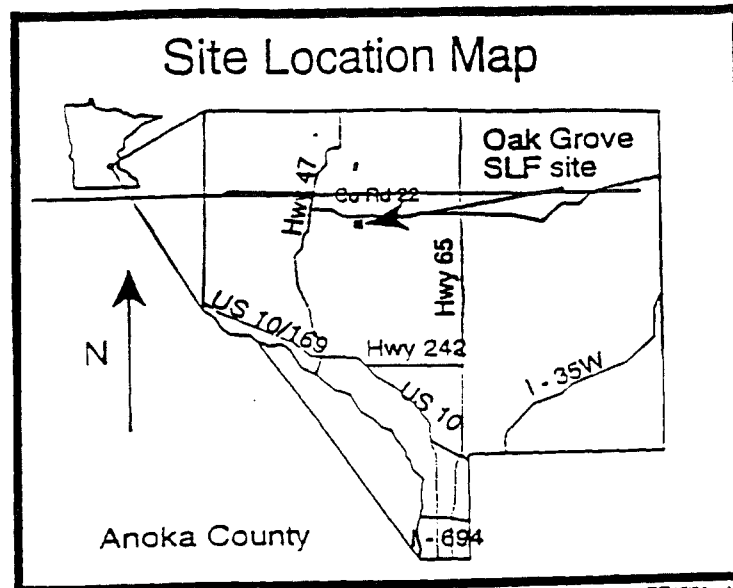
Site History Information:

Most of the waste consisted primarily of household trash. However, waste containing oil sludge from an oil recycling process, paint and solvent wastes, foundry wastes, metal sludges, organic compounds from pesticide manufacturing, cutting oils and lubricants, cleaning solvents, and inks are reported to have been buried at unknown locations in the landfill.

Due to improper management, the MPCA revoked the Oak Grove Landfill permit on May 25, 1976, but the revocation was stayed in District Court on September 9, 1976. Under a Stipulation Agreement Northwest Disposal was allowed to operate the landfill until it ceased accepting waste in December, 1983. The site was placed on the State and National Priorities Lists for Superfund sites.

The site was capped with a synthetic

County: Anoka
Legislative District: 50B
Solid Waste Permit Number: 43



geomembrane cover system in 1993. A limited active-gas extraction system was constructed in the fall of 1994.

Actions Under Landfill Cleanup Act:

The landfill owner and responsible party group entered into a Binding Agreement with the MPCA on March 5, 1996. The state has taken ownership of the property. The Oak Grove Landfill received a Notice of Compliance from the MPCA on April 17, 1996 and the landfill was delisted from the State and National Priorities Lists.

The responsible party group, owner and former operators have entered into reimbursement agreements with the MPCA and are currently being reimbursed for past environmental response costs excluding regulatory closure, legal and administrative costs. In addition, the MPCA has agreed to pay EPA for the close-out of EPA's cost recovery file for the landfill.

Current Assessment:**Cover Information:**

The landfill was capped with a synthetic geomembrane cover system. A surface water drainage system and passive gas vents were also installed at that time.

Landfill Gas Information:

A limited active-gas extraction system has been operated intermittently since 1994.

Surface Water Information:

The wetlands adjacent to the landfill have been contaminated by a number of organic and inorganic contaminants.

Ground Water Information:

The ground water contamination caused by this facility, which exceeds ground-water standards, currently is limited to the upper, surficial, aquifer which discharges into Cedar Creek.

Fixed Cost Description:

Fixed costs are those costs required to be paid by the state for the past and future long-term care of the landfill. These costs include groundwater monitoring, active gas extraction system operation and reimbursements.

Projected Cost Description:

Projected costs are state costs for which there is a significant probability of incurring if the current remedy becomes inadequate based on previously unknown conditions through regulatory standards or other conditions.

Natural Resource Damages:

Natural resource damages for the Oak Grove landfill are based on the compensable value of groundwater usage lost due to contamination from the landfill.

Further Recommended Actions:**Cover Recommendation:**

Additional topsoil may be required at selected locations.

Landfill Gas Recommendation:

An expanded and improved active-gas extraction system may be required based on monitoring data.

Surface Water Recommendation:

Continue to monitor the surface water sampling stations to assess the efficiency of the landfill cover.

Groundwater Recommendation:

Continue to monitor upper and lower aquifers to assess efficiency of landfill cover and limited active-gas extraction system.

Fixed Costs:**Future Costs:**

* 1994 Assessment Report Value
in 1996 dollars \$4,621,902

Past Costs:

* Approved Reimbursements \$6,298,743
(Includes EPA & RPs)

* Acquisition and Demolition
of nearby residences. \$340,000

Sub-total \$11,260,645

Projected Costs:

Comprehensive Active-gas
Extraction System Design,
Construction and Operation. \$8,353,398

Total (w/o NRD) \$19,614,043

Natural Resource Damages:

Compensable value of GW
use lost. \$574,273

Total (with NRD) \$20,188,316

TABLE II
RESPONSE COSTS ALLOCATED TO TRIGGER YEARS
(Oak Grove)

<u>YEAR:</u>	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Response Costs	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00	\$1,961,404.00

TABLE III
IDENTIFIED PIPS
FOR _____
(Oak Grove)

<u>PIP</u>	<u>RELEASE DATE</u>	<u>TIER</u>

TABLE IV
RESPONSE COSTS ALLOCATED TO EACH PIP WITHIN A TIER
(Oak Grove)

1967

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	7	5%	\$98,070	\$14,010
2	32	41%	\$804,176	\$25,131
3	28	54%	\$1,059,158	\$37,827
TOTALS	67	100%	\$1,961,404	\$1,961,418

1968

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	7	4%	\$78,456	\$11,208
2	32	41%	\$804,176	\$25,131
3	29	55%	\$1,078,772	\$37,199
TOTALS	68	100%	\$1,961,404	\$1,961,419

TABLE IV
RESPONSE COSTS ALLOCATED TO EACH PIP WITHIN A TIER
(Oak Grove)

1969

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	7	4%	\$78,456	\$11,208
2	39	42%	\$823,790	\$21,123
3	34	54%	\$1,059,158	\$31,152
TOTALS	80	100%	\$1,961,404	\$1,961,421

1970

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	8	4%	\$78,456	\$9,807
2	42	43%	\$843,404	\$20,081
3	35	53%	\$1,039,544	\$29,701
TOTALS	85	100%	\$1,961,404	\$1,961,393

TABLE IV
RESPONSE COSTS ALLOCATED TO EACH PIP WITHIN A TIER
(Oak Grove)

1971

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	9	4%	\$78,456	\$8,717
2	48	46%	\$902,246	\$18,797
3	35	50%	\$980,702	\$28,020
TOTALS	92	100%	\$1,961,404	\$1,961,409

1972

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	9	4%	\$78,456	\$8,717
2	54	48%	\$941,474	\$17,435
3	36	48%	\$941,474	\$26,152
TOTALS	99	100%	\$1,961,404	\$1,961,415

TABLE IV
RESPONSE COSTS ALLOCATED TO EACH PIP WITHIN A TIER
(Oak Grove)

1973

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	10	4%	\$78,456	\$7,846
2	56	46%	\$902,246	\$16,112
3	40	50%	\$980,702	\$24,518
TOTALS	106	100%	\$1,961,404	\$1,961,452

1974

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	10	4%	\$78,456	\$7,846
2	60	47%	\$921,860	\$15,364
3	41	49%	\$961,088	\$23,441
TOTALS	111	100%	\$1,961,404	\$1,961,381

TABLE IV
RESPONSE COSTS ALLOCATED TO EACH PIP WITHIN A TIER
(Oak Grove)

1975

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	10	4%	\$78,456	\$7,846
2	62	48%	\$941,474	\$15,185
3	42	48%	\$941,474	\$22,416
TOTALS	114	100%	\$1,961,404	\$1,961,402

1976

TIER	Numbers of PIPs in Tier	% of Response Costs Assigned to Tiers	Response Costs Assigned to Each Tier	Response Costs Assigned to Each PIP Within a Tier
1	11	4%	\$78,456	\$7,132
2	68	47%	\$921,860	\$13,557
3	47	49%	\$961,088	\$20,449
TOTALS	126	100%	\$1,961,404	\$1,961,431

TABLE V
POLICIES ISSUED BY INS. CO. _____ TO PIP _____.
(Oak Grove)

	1967	1968	1969	1970
Yearly Costs Allocated to PIP				
Applicable Policy Limit				
<u>Discounts:</u>				
Pollution Exclusion (%)				
Subtotal				
Retro. Premium				
Subtotal				
Deductible				
Subtotal				
Offer for Policy				

TABLE V
POLICIES ISSUED BY INS. CO. _____ TO PIP _____.
(Oak Grove)

	1971	1972	1973	1974
Yearly Costs Allocated to PIP				
Applicable Policy Limit				
<u>Discounts:</u> Pollution				
Exclusion (%)				
Subtotal				
Retro. Premium				
Subtotal				
Deductible				
Subtotal				
Offer for Policy				

TABLE V
POLICIES ISSUED BY INS. CO. _____ TO PIP _____.
(Oak Grove)

	1975	1976
Yearly Costs Allocated to PIP		
Applicable Policy Limit		
<u>Discounts:</u>		
Pollution Exclusion (%)		
Subtotal		
Retro. Premium		
Subtotal		
Deductible		
Subtotal		
Offer for Policy		

Total Offer For All Policies of PIP:	\$0.00
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TABLE VI
COVERAGE CHART FOR _____
(Oak Grove)

PIP	Settlement Amount
Total Offer For All PIP's:	\$0.00
NRD Amount	
Total Offer For All PIP Including NRD	\$0.00

APPENDIX B

CLOSED LANDFILL ASSESSMENT COST ANALYSIS SUMMARY



**CLOSED LANDFILL ASSESSMENT
COST ANALYSIS SUMMARY**

January 8, 1998

Site Name _____ Location _____

I. Construction Costs For Closure Upgrade

A. Description of Work

B. Cover Improvements (number of acres _____)

	Units	Quantity	Unit \$	Total
1. Mobilization				
2. Site Preparation				
3. Buffer				
4. Barrier 1				
5. Barrier 2				
6. Drainage Layer				
7. Rooting Soil				
8. Top Soil				
9. Seed, Fert., Mulch				
10. Drainage System				
Total Cost				

C. Site Security _____

Total = _____

D. G. W. Monitoring System _____

Total = _____

E. G. W. Remediation _____

Total = _____

F. Gas Control System _____

Total = _____

G. Off Site Disposal of Waste _____

Total = _____

H. Subtotal = B + C + D + E + F + G = _____

I. Contingency = .10 X Subtotal (H) = _____

J. Engineering Design + CQA = .10H = _____

K. Total Cost Closure Upgrade = H + I + J = _____

II. Post Closure Costs

A. Annual Site Inspection and Cover Maintenance (Acreage _____)

1. Site Inspection, Topographical Survey, Access and Site Security Maintenance, Documentation Total = \$2000.00

2. Mowing, Runoff Control System Maintenance, Revegetation, Erosion Repair = acres X \$230.00/acre = _____

3. Total Annual Post Closure Cost = 1 + 2 = _____

4. Total Post Closure Cost = Total An. X 30 yrs. = _____

B. Treatment System Operation and Maintenance

1. Ground Water

a. Annual Treatment Cost (Operation) = _____

b. Annual Maintenance Cost = _____

2. Gas Collection/Treatment

a. Annual Treatment Cost (Operation) = _____

b. Annual Maintenance Cost = _____

3. Leachate Collection/Treatment

a. Annual Treatment Cost (Operation) = _____

b. Annual Maintenance Cost = _____

4. Total = 1a + 1b + 2a + 2b + 3a + 3b = _____

5. Total Cost (30 Year) = Total annual X 30 = _____

C. Environmental Monitoring

1. Ground Water Monitoring (wells)

a. Cost Years 1-X = Wells X 3 Samples/yr. X \$ /Sample-Anal. = _____

b. Cost Years X-30 = Wells X Samples/yr. X \$ /Sample-Anal. = _____

c. Maintenance = \$ /yr. X 30 yrs. = _____

2. Surface Water Monitoring (sites)

a. Cost Years 1-X = Sites X 3 Samples/yr.X \$ /Sample-Anal. = _____

b. Cost Years X-30 = Sites X 3 Samples/yr.X \$ /Sample-Anal. = _____

3. Gas Monitoring (Wells/Probes)

a. Cost Years 1-X = Sites X Samples/yr.X \$ /Sample-Anal. = _____

b. Cost Years X-30 = Sites X Samples/yr.X/Sample-Anal. = _____

c. Maintenance =\$ /yr. X 30 yrs. = _____

4. Total Environmental Monitoring

1a + 1b + 1c + 2a + 2b + 3a + 3b + 3c + = _____

D. Total Cost (30 year) = A.4 + B.4 + C.4 = _____

III. Contingency Action Costs

A. Cover Repair (acres to be repaired) _____

Total = _____

B. Gas Control System _____

Total = _____

C. Ground Water Remediation _____

Total = _____

D. Miscellaneous (fire, explosion, weather related, leachate system failure, etc.) flat rate - 30 years. Total = \$90,000.00

E. Total = A + B + C + \$90,000.00 = _____

IV. Total Site Cost = I.K + II.D + III.E = _____

V. Additional Comments _____
