

MAY 09 1995

AGREEMENT BETWEEN  
WAUSAU PAPER MILLS COMPANY  
AND THE TOWN OF TEXAS

WHEREAS, Wausau Paper Mills Company (WPM), a corporation engaged in the manufacture of paper within the Village of Brokaw (the Village), intends to develop a new solid waste landfill (Cell 4A) for the disposal of papermill sludge, and

WHEREAS, Cell 4A will be developed on land owned by WPM immediately north of the Village limits in the SE  $\frac{1}{4}$  quarter of the NW  $\frac{1}{4}$  of Section 35, T30N, R7E, of the Town of Texas (the Town), Marathon County, Wisconsin (the Site), and

WHEREAS, WPM and the Town have engaged in negotiations as provided for in Section 144.445, Wis. Stats., and

WHEREAS, the parties wish to delineate issues and obligations relating to the operation of Cell 4A,

NOW, THEREFORE, the parties, by their duly authorized representatives, agree as follows:

1. Noise Reduction and Control. WPM shall reduce and control noise associated with construction and operation of Cell 4A, especially as it relates to vehicles and equipment utilized for construction, filling, and mining activities. WPM shall maintain all equipment and vehicles in good repair paying special attention to maintaining the proper operation of mufflers and exhaust systems

on all vehicles and equipment. Where permitted by law, WPM shall minimize noise from horns and backup beepers on associated vehicles and equipment. The objective of this paragraph is to minimize interference with residential activities caused by noise in the vicinity of Cell 4A, the pelletizing plant, and routes used to transport sludge.

2. Hours of Operation. There shall be no limitation on hours of transport, mining, and filling between October 1 and April 30 of the following year. From May 1 through September 30, however, no sludge or leachate may be transported to the pelletizing plant and no pellets, fluff, sludge or leachate shall be transported to or from Cell 4A or the pelletizing plant, between the hours of 5:00 p.m. to 6:00 a.m. the next day except when an emergency shipment is required to comply with applicable DNR regulations. Similarly, no filling or mining activities shall take place from 5:00 p.m. to 6:00 a.m. the next day from May 1 through September 30 except when an emergency shipment is required to comply with applicable DNR regulations.

3. Odor and Gas Control. WPM shall employ an active gas collection system similar in performance and efficiency as is currently in use for Cell 3 with a gas burning device able to handle gases extracted off of wet sludge. Odor control measures in use during operation of Cell 3 (which currently includes a geomembrane) shall also be utilized for Cell 4A. WPM shall monitor the subsurface for landfill gas through monitoring wells located

between the landfill in general (Cells 1, 2, 3, and 4A) and homes in the Village with a combustible gas meter when and as directed by DNR. WPM shall promptly provide copies of all test results to the Town and the Village. WPM shall not stockpile sludge at the pelletizing plant except as may be necessary for normal operating requirements of the pelletizing plant itself.

4. Site Surface Water Collection and Disposal. WPM shall maintain the sedimentation basin in accordance with all applicable DNR requirements to assure the effective management and discharge of surface water originating outside the limits of fill. If the sedimentation basin lies within the zone of influence of some future water supply well for Village residents, WPM shall consider an alternate design for the sedimentation basin that would replace the seepage cell with a direct discharge to surface waters. The method of surface water discharge will thereafter be modified by WPM if and as required by DNR in order to facilitate the siting of a new municipal well for the Village.

5. Erosion Control. WPM shall, with all due diligence, install and maintain effective erosion control measures at Cell 4A, during both construction and operation, including but not limited to silt fencing and vegetation as may be required by applicable state law or local/County ordinance. WPM shall inspect the site for evidence of erosion daily during construction and thereafter as required by DNR. WPM shall inspect the site whenever there is a storm or rain event or other weather conditions that could cause significant

erosion. Upon the occurrence of any measurable storm event which is likely to cause a significant runoff condition and/or the development of any significant soil displacement, WPM shall, within one week thereafter, apply all corrective measures necessary to correct erosion and to prevent further erosion to the berm around Cell 4A. WPM shall make a written record of the nature and extent of all significant erosion and the corrective measures taken. WPM shall provide copies of all such records to the Town and Village at least quarterly.

6. Maintenance of Landfill Internal Structures. WPM shall assure that the leachate collection system is cleaned in accordance with NR § 506.07(4)(c). Written reports regarding all such measures shall be promptly provided to the Town and Village.

7. Waste Placement. In order to prevent damage to the geomembrane liner from the deposition and removal of waste, waste placement and removal will be conducted in accordance with all requirements imposed by DNR. If consistent with DNR approval, the following measures will apply. Waste shall be placed beginning at the edge of the active phase with the waste subsequently pushed out and over the drainage blanket. In the extraction or mining of waste, waste shall be removed beginning at the end of the phase and pulled out from on top of the waste. The deposition and mining of waste shall be conducted so as to avoid working on or interfering with the drainage blanket. As an additional preventive measure, yellow polyethylene warning strips shall be placed every eight feet

(center to center) on top of the drainage layer located immediately above the geomembrane liner.

8. Standing Committee. A Standing Committee shall be formed to monitor operation and development of the landfill as well as compliance with this Agreement. The Committee shall be advisory only with authority to make recommendations and observations to WPM and the Town.

A. Membership. Membership on the Committee shall consist of one (1) member appointed by the Marathon County Board, one (1) member appointed by the Town of Maine, two (2) members appointed by the Village of Brokaw, at least one of whom must also serve on the Village Board, two (2) members appointed by the Town of Texas, at least one of whom must serve on the Town Board, and two (2) members appointed by WPM. Each member appointed by a governmental body shall reside within the jurisdiction of that governmental body. Each member of the Committee shall serve for a term of three years. The Committee shall elect, from among its members, an individual to function in the capacity of chairperson. For any action taken by the Committee, unless otherwise expressly provided, a majority vote (more than 50%) of Committee members present is required. Each governmental body shall be entitled to appoint one designated alternate for each Committee member who may be sent to any meeting of the Committee to exercise its full rights of

membership. WPM shall be entitled to send any designated alternate to meetings of the Committee to exercise its full rights of membership.

B. Replacement and Removal. A Committee member may voluntarily resign at any time and a replacement shall promptly be appointed consistent with Paragraph A. A member representing the Town of Maine, the Town of Texas, or the Village of Brokaw shall automatically be removed from the Committee effective upon the date that such member no longer resides in the municipality corresponding to his/her appointment. Any Committee member, except members appointed by WPM, may be removed upon a vote of five (5) members of the Committee.

C. Quorum. Three (3) members shall constitute a quorum. For a quorum to be present, however, at least one representative appointed by WPM, one appointed by the Village of Brokaw, and one appointed by the Town of Texas must also be present.

D. Meetings and Expenses. The Committee shall meet as necessary but not less than quarterly unless otherwise agreed upon by the Committee. The Committee may establish a schedule for meetings. Special meetings of the Committee may be called by any member upon seventy-two (72) hours written notice. The public may attend any Committee meeting. Any written notice called for in this Agreement shall be deemed effectively provided when

either personally delivered or sent by mail to all members at the addresses listed by them with the Committee. WPM shall cover administrative expenses of the Committee, such as postage and copying costs, up to a maximum of \$250 per year. The site, date and time of all Committee meetings shall be determined by the Committee.

E. Access to Site. The Committee and/or any designated representative of the Town or the Village may inspect Cell 4A any time from 8:00 a.m. to 5:00 p.m., Monday through Friday, when WPM can provide personnel to accompany such inspections. The Committee or designated representative may inspect Cell 4A at any other time with reasonable advance notice to WPM when WPM can provide personnel to accompany such inspections. WPM shall act in good faith to provide appropriate personnel for inspections on a timely basis. This provision shall not constitute a waiver of any police power the Town may otherwise lawfully exercise.

F. Committee Activities. The activities of the Committee shall include without limitation the following:

- The Committee shall monitor the comment procedure described in Paragraph 9.
- The Committee may review whether Cell 4A is being operated according to WPM's approved plan of operation or applicable state law including current DNR operating requirements and the requirements of this Agreement.

G. Documents. WPM shall provide to the Committee copies of all reports and monitoring data supplied to DNR regarding Cell 4A as well as documentation relating to the comment procedure described in Paragraph 9 and all other documentation required by this Agreement. Copies of all such documents shall be sent simultaneously to the Town and Village.

H. Relation to Cell 3 Standing Committee. With the consent of the Village and the Town of Maine, the activities of the Cell 3 Standing Committee shall be merged into and become a part of the Standing Committee formed pursuant to this Agreement provided, however, that the surviving Committee operates under the terms and conditions in the 1987 "Agreement Between Wausau Paper Mills, Village of Brokaw and Town of Maine" on all matters regarding Cell 3.

9. Comment Procedure. WPM shall maintain a procedure for receiving comments about all aspects of Cell 4A and related activities, which procedure shall be in place within sixty (60) days after execution of this Agreement. This procedure shall include the following elements:

A. WPM shall maintain a telephone line dedicated to receiving comments from local residents. This line shall be equipped with an answering machine capable of recording: (i) comments made and (ii) the time and date such comments are recorded. An opening message shall



apprise the caller of his/her right to discuss each comment with a WPM representative and to receive a formal response within forty-five (45) days if expressly requested by the caller in the recorded comment. WPM may also use this device to pre-record a message for each caller describing events that may be of interest to local residents.

- B. WPM shall provide to each commentator a opportunity to discuss his/her comment with a representative of WPM within fourteen (14) days.
- C. WPM shall provide a written response to each comment for which a formal response is expressly requested by the commentator within forty-five (45) days.
- D. WPM shall identify specific contact person(s) to whom all requests for information and comments shall be directed and reviewed. The WPM representative(s) so appointed shall strive at all times to assure that channels of communication are open and that residents of the Town and Village have access to persons knowledgeable regarding Cell 4A operations.
- E. WPM shall tabulate and retain a summary of each call or written comment including: (a) a brief summary of each call, (b) the time and date of each call, (c) whether a response was requested, and (d) if so, the outcome of such request. Such summaries or a transcript of each

call shall be provided to the Village, the Town, and DNR on a monthly basis.

F. WPM shall prepare a written summary of the process for registering comments suitable for distribution to local residents.

G. Any resident of the Town or Village who feels that a complaint has not been resolved may notify the Standing Committee for further review and deliberation consistent with Paragraph 8.F.

10. Arbitration. Any dispute regarding matters expressly covered by this Agreement, including but not limited to compliance with the obligations of this Agreement, may be submitted to arbitration by any party to this Agreement in accordance with the Wisconsin Arbitration Act, Chapter 788, Wis. Stats. The cost of such arbitration shall be borne equally by the parties to the dispute.

11. Orientation. A copy of this Agreement shall be provided to all WPM employees, contractors or subcontractors who perform services in connection with Cell 4A. WPM, at its expense, shall conduct an orientation class to familiarize those individuals working on Cell 4A with the terms of this Agreement. Upon completion, each individual shall sign a statement acknowledging completion of the class and his/her understanding of this Agreement.

12. Expenses. WPM shall pay to the Town \$20,000 for the Town's otherwise unreimbursed, reasonable expenses, including but not

limited to legal and consulting fees, incurred during negotiations regarding this Agreement.

13. Limitation on Landfill Contents. Only sludge pellets, sludge, and fluff produced by WPM from its pulp and paper operations in Brokaw, or other materials specified in the approved plan of operation for Cell 4A, shall be placed in Cell 4A.

14. Notices Regarding Emergency Situations. In the event of an emergency under Paragraphs 2 or 3 above, or in any other emergency situation, WPM shall immediately notify the Village President and the Town Chair of the nature of the emergency.

15. Recycling and Reduction of Wet Sludge and Pellets. WPM shall work in good faith to promote and utilize economically feasible methods to recycle and reduce the quantities of wet sludge and pellets placed into Cell 4A.

16. Transportation of Sludge and Pellets.

- A. Sludge transported on behalf of WPM shall be transported in appropriate vehicles or containers designed to eliminate or minimize odors and spillage on Village streets, to eliminate or minimize the deposit of dust and mud from transport vehicles, and to eliminate or minimize the damage to or destruction of Village streets due to the weight or chemical composition of sludge transported.
- B. For purposes of illustration, but without limitation, every open transport vehicle or container shall be

covered by a tarpaulin or other flexible or rigid full cover. Payment by WPM or its contractor for the extra costs of street cleaning shall be sufficient compliance with this section regarding deposit of sludge, dust or mud on streets and roads. In case of any damage caused by vehicles operating within or around Cell 4A, including those vehicles transporting sludge, dried sludge or pelletized sludge, vehicles may be re-routed. The cost of extra maintenance or repairs or improvement of the route necessitated by hauling or landfill operations shall be borne by WPM. The parties shall periodically inspect and monitor the effects of transport vehicles on the transport route.

17. Successor to Village of Brokaw. Should the Village of Brokaw cease to exist and should the property which is now located within the Village of Brokaw become part of the Town of Texas, all benefits and rights conferred upon the Village by this Agreement shall inure to the benefit of the Town.

18. No Limit to Liability or Authority.

A. This Agreement does not limit any liability which WPM may have with respect to adverse environmental impacts. The Town does not represent nearby or adjoining landowners for purposes of settlement of any claim for damages whatsoever, whether past, present or future, arising out of operation of Cell 4A. The Town does not limit, waive

or settle any claims for damages, whether existing now or arising in the future, as to any governmental or proprietary interest of any person or entity.

B. This Agreement shall not be construed as any waiver of any governmental authority with respect to traffic, parking or maintenance of governmental property, or the health, safety or welfare of persons within the government's jurisdiction.

19. Hold Harmless. WPM agrees to hold harmless and indemnify the Town from any claim whatsoever made against the Town for its actions relating in any fashion to the operation, design, or approval of the solid waste landfill. The Town may examine bonds or insurance policies obtained by WPM, if any, intended to cover environmental damage.

20. Annual Payment.

A. Payment. WPM shall make an annual payment to the Town beginning in 1996 and continuing until final closure of Cell 4A. The annual payment shall include a lump sum of \$12,000 adjusted as set forth below. Also, for any net tonnage addition to Cell 4A exceeding 12,000 tons per calendar year, the annual payment shall include \$1.00 for each ton over 12,000 tons per calendar year. Both the lump sum figure (\$12,000) and the tonnage fee (\$1.00 per ton) shall be adjusted annually in 1997 and thereafter in accordance with the Consumer Price Index for the Milwaukee Metropolitan Area using the January 1, 1996 Consumer Price Index

for that area as the base figure. Payment shall be made to the Town's general fund and shall be tendered by January 31 immediately after the end of each calendar year.

B. Net Tonnage Calculation. WPM shall weigh all waste going to Cell 4A and provide an accounting to the Town of the annual tonnage, both into and out of Cell 4A, upon which the annual payment is based. The accounting shall be provided along with the payment itself as set forth in subparagraph A above. The "net tonnage addition" shall be the difference between the cumulative tonnage of waste in Cell 4A at the beginning of the year compared to the cumulative tonnage of waste in the Cell 4A at the end of the year.

21. Local Property Owners.

A. First Appraisal. WPM shall commission an appraisal of residential property located at the addresses set forth on Attachment A ("Local Property Owners") if requested in writing by a Local Property Owner within sixty (60) days after the effective date of this Agreement. Such appraisals shall take into account all existing conditions relevant to valuation, but they must exclude any consideration relating to the actual construction or operation of Cell 4A. Such appraisals shall be obtained by WPM at its expense ("First Appraisal").

B. Second Appraisal. At any time during operation of Cell 4A, and assuming that a First Appraisal was duly requested, the Local Property Owner can request in writing that another appraisal be obtained by WPM at WPM's expense. Such appraisal shall again

take into account all existing conditions including, this time, any considerations relating to construction and operation of Cell 4A ("Second Appraisal"). Thereafter, the appraiser shall allocate the difference between the First Appraisal and the Second Appraisal, if any, to appreciation/depreciation of the residential property under review, the existence of Cell 4A, and any other applicable factors. If an adverse impact to the property value can fairly be attributed to Cell 4A, WPM shall compensate the Local Property Owner for such amount in a lump-sum payment within ninety (90) days of the Second Appraisal.

C. Additional Provisions. The appraiser selected for performance under this Paragraph 21 shall be mutually acceptable to WPM and the Town. A Local Property Owner can invoke the Second Appraisal process described in subparagraph B above only once. This right is non-transferrable, provided, however, that it shall not be extinguished by inheritance if unused by the original owner(s).

22. Conditional Use Permit. The Town of Texas Zoning Ordinance has been in effect since 1968. It requires a conditional use permit for Cell 4A in its proposed location. Since all matters properly the subject of a conditional use permit are addressed in this Agreement and in the "Agreement between Wausau Paper Mills Company, the Village of Brokaw, and the Town of Texas" dated January 1995, resolving a contested case hearing before DNR on the Cell 4A feasibility study (collectively referred to in this paragraph as the "Agreements"), compliance with the Agreements

shall be deemed compliance with the conditional use requirements of the Zoning Ordinance for Cell 4A and related activities governed by the Agreements.

23. Miscellaneous.

- A. Headings. Titles to paragraphs are for informational purposes only, except where necessary to obtain an understanding of the contents of each paragraph.
- B. Successors. Each item of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Agreement pursuant to Section 144.445(11), Wis. Stats.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin and applicable Federal laws.
- D. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent to the persons named below or their designated successors by certified mail.

If to the Mill at:

Darrell W. Jeffries  
Environmental Manager  
Wausau Paper Mills Company  
Brokaw, Wisconsin 54417

To the Village at:

Village of Brokaw  
c/o Wayne Utecht, Village Clerk  
311 3rd Street  
Brokaw, Wisconsin 54417



And to the Town at:

Town of Texas  
c/o Lorraine Beyersdorf, Town Clerk  
T11111 North 73rd Street  
Wausau, Wisconsin 54403

- E. Modification. This Agreement constitutes the entire understanding of the parties hereto and no changes, amendments or alterations shall be effective unless signed by both parties.
- F. Waiver. A waiver by the other party of a breach or failure to perform shall not constitute a waiver of any subsequent breach or failure.
- G. Provisions Severable. If any provision of this Agreement shall be finally held or declared by a Court of competent jurisdiction, including any Appellate decision thereon, to be invalid, illegal or unenforceable under any law applicable thereto, such provisions shall be deemed deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provisions hereof.
- H. Force Majeure. No party to this Agreement shall be liable for failure to perform any duty or obligation that said party may have under this Agreement where such failure has been occasioned by an act of God, fire, strike, inevitable accident, war, court order or binding determination of a governmental agency, or any cause

outside the reasonable control of the party which has the duty to perform.

- I. Effective Date. This Agreement shall be effective when executed on behalf of both WPM and the Town. Each individual executing this Agreement represents that he/she has authority to do so on behalf of the party for whom he/she signs.

**WAUSAU PAPER MILLS COMPANY**

Date: May 5, 1995

*Thomas J. Henatt*  
VP & GM - P&W Div

**TOWN OF TEXAS**

Date: May 3, 1995

*Philip Walters*  
*Francis Beyersdagg*

# ATTACHMENT A

## Local Property Owners

Terry Kelb  
PO Box 146  
Brokaw, WI 54417

Donald Marthaler  
PO Box 105  
Brokaw, WI 54417

Russell Juers  
T150 County Road WW  
Wausau, WI 54403

Morris Brandenburg  
T181 County Road WW  
Wausau, WI 54403

Arthur Duranceau, Jr.  
T170 County Road WW  
Wausau, WI 54403

Michael Brendemuehl  
T180 County Road WW  
Wausau, WI 54403

Randy Helvey  
T222 County Road WW  
Wausau, WI 54403

Gerald Kittel  
T300 Split Rock Lane  
Wausau, WI 54403

John Kordus  
931 Edgewood Road  
Wausau, WI 54403