



MEMORANDUM OF AGREEMENT

Between

Wisconsin Electric Power Company (d.b.a. We Energies)

And

Wisconsin Department of Natural Resources

This Memorandum of Agreement ("MOA") is entered into by and between the Wisconsin Department of Natural Resources (WDNR) and Wisconsin Electric Power Company (d.b.a. We Energies) pursuant to Wis. Stat. 292.11(7)(d).

This MOA documents the process agreed between WDNR and We Energies for:

- 1) Determining the extent of impacts and the adequacy of response measures for releases of mineral insulating oil (MIO) containing concentrations of polychlorinated biphenyls (PCB's) less than 50 ppm to unsaturated soils resulting from spills or other incidental discharges from electrical equipment in We Energies' electrical distribution system; and,
- 2) Handling and disposal of soils or debris generated in conjunction with routine construction, excavation or equipment repair/replacement activities on We Energies electrical distribution and industrial support facilities.

FOR AND IN CONSIDERATION of the terms and conditions set forth below, WDNR and We Energies hereby agree as follows:

D) BACKGROUND AND GENERAL AGREEMENTS

WHEREAS, this Agreement establishes a process for the safe and efficient handling and disposal of materials having relatively minor chemical impacts generated in conjunction with routine equipment repair or replacement and construction activities at operating We Energies facilities.

WHEREAS, WDNR and We Energies have worked cooperatively to establish a consistent and efficient process by which MIO releases with PCB concentrations of less than 50 ppm to soils from electrical distribution equipment can be characterized, remediated and reported in a predictable and efficient manner while being protective of human health and the environment.

WHEREAS, WDNR and We Energies recognize that due to its unique toxicological and physio-chemical characteristics, standard approaches for determining an acceptable

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residual concentration level (RCL) for the mixture and measuring of MIO concentrations in soils as specified in applicable WDNR regulations are not feasible for MIO containing PCB concentrations of less than 50 ppm and as such the procedures specified in this Agreement shall govern same.

WHEREAS, WDNR and We Energies acknowledge and agree that a collaborative process among government, business, ratepayers and the public to reach consensus in establishing a protective, efficient and practicable alternative process for achieving the above objectives is in the parties' and the public's best interests.

WHEREAS, WDNR and We Energies agree that the following approach set forth herein for the materials that are the subject hereof satisfies the requirements for Investigation, Notification, Remediation and Reporting of Environmental Contamination under the WAC NR 700 series regulations, is protective of human health and the environment, is in compliance with Wisconsin Hazardous Substances Spills Law (§ 292.11, Stat.) and will meet the goals and objectives of this MOA.

WHEREAS, WDNR and We Energies acknowledge that each party enters into this Agreement on a voluntary basis.

II) PROCESS FOR IMPLEMENTING IMMEDIATE RESPONSE ACTIVITIES FOR NON-HISTORIC SPILLS OR INCIDENTAL RELEASES OF MIO CONTAINING PCB CONCENTRATIONS OF LESS THAN 50 PPM FROM WE ENERGIES-OWNED ELECTRICAL DISTRIBUTION EQUIPMENT

- 1) Immediately upon determining a release has occurred, We Energies shall confirm the PCB content of the MIO released from equipment via one or more of the following methods, any or all of which are deemed acceptable by WDNR:
 - a) Markings, date of manufacture or other confirmatory information on the exterior and/or nameplate of the equipment generating the release;
 - b) Chlor-in-oil field screening analysis of the oil by qualified personnel using a kit capable of quantifying PCBs at or below 50 ppm;
 - c) Review of We Energies' internal documentation and database records containing historic testing results and other information on the subject equipment or oil; and/or
 - d) Laboratory confirmation analysis of PCB content by We Energies Laboratory Services.
- 2) Following confirmation that PCB content of the MIO is less than 50 ppm using one or more of the above methods, standard spill response procedures will be followed as dictated by site-specific conditions and health and safety requirements.

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- a) If reportable pursuant to NR 706, the incident will be reported to WDNR via the Wisconsin spills hotline at 1-800-943-0003.
 - b) Immediate response actions, such as securing access to impacted surfaces and vegetation, containment of free liquids and decontamination of impacted surfaces (including excavation), will be immediately implemented as needed.
 - c) Soils with visual or olfactory signs of impacts will be removed to the extent practicable.
 - d) Confirmation sampling of excavated areas, if any, will be conducted and the samples will be analyzed for MIO residual via the PetroFlag™ method (USEPA SW-846 Method 9074) by a qualified Environmental Professional.
 - e) Additional post-removal confirmation sampling and analysis may be conducted on a case-by-case basis or as directed by the regional WDNR Spills Coordinator, as applicable.
 - f) In addition to the response actions listed above, the acceptable residual contaminant level/performance standard for residual MIO in all settings is 1,000 ppm. Based on previous testing performed by We Energies and received by WDNR, the presence of MIO at levels at or below 1000 ppm is presumed to result in PCB concentrations in the soil of less than 1 ppm. If results in any area indicate residual levels greater than 1,000 ppm or other visual or olfactory signs of residual impacts remain in the limits of the excavation, additional soils will be removed, unless safety or system reliability constraints would preclude such further removal.
 - g) Excavated materials, debris, wash water, personal protective equipment or other materials will be properly containerized, labeled and disposed of under appropriate profiling at a licensed waste disposal facility.
 - h) If reportable, the incident and subsequent response actions will be documented in correspondence submitted to WDNR within 45 days per specifications of NR 708.
 - i) The location will be backfilled with clean fill and restored/landscaped to the pre-release condition to the extent practicable.
- 3) If it is determined that the PCB content of the MIO is greater than 50 ppm, response procedures outside of this MOA will be followed, consistent with applicable Federal and State statutes and regulations.

III) PROCESS FOR HANDLING AND DISPOSAL OF CONSTRUCTION OR EXCAVATION MATERIALS GENERATED DURING ROUTINE MAINTENANCE AND REPAIR ACTIVITIES AT OPERATING ELECTRICAL DISTRIBUTION OR SUPPORT FACILITIES OWNED BY WE ENERGIES

- 1) Prior to initiating soil excavation, We Energies shall confirm the PCB content of the MIO in equipment in the immediate vicinity of the repair/replacement project via one or more of the methods described in Section II(1), above.

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- 2) One or more spatially representative soil samples will be collected from the area(s) to be excavated or disturbed and submitted for waste profiling analysis, as directed by the selected waste disposal facility.
- 3) If no information exists to suggest a previous discharge has occurred (e.g., spill records, visual or olfactory indications) and the results indicate detected constituents, if any, are at or below RCLs (or background concentrations in the absence of a constituent-specific RCL) as may be defined in applicable provisions of the WAC NR 700 series regulations, then no notification, investigation, response actions or reporting is required.
- 4) The materials will be profiled and properly managed. Appropriate documentation of the materials' disposition will be maintained by We Energies and provided to WDNR, upon request.
- 5) Following completion of equipment replacement or repair, the area will be backfilled with material appropriate to the ongoing use of the facility (including the possible reuse of non-impacted excavated materials on site).
- 6) If profiling results indicate one or more constituents occur at levels exceeding RCLs, if visual or olfactory evidence of a historic release is discovered during site maintenance work, or if a release occurs during the performance of repairs or site maintenance work, notification pursuant to the specifications of NR 706 shall occur and all applicable provisions contained in the NR 700 rules series would be followed.

IV) PAYMENT OF FEES

We Energies agrees to pay WDNR all appropriate fees associated with the preparation and execution of this Agreement as specified in applicable sections of WAC NR 749. Payments shall be made by check to the Department of Natural Resources and submitted to the Remediation and Redevelopment Program office responsible for the review and approval.

V) EFFECTIVE DATE

This Agreement shall be executed by We Energies prior to being executed by WDNR. The effective date of this Agreement shall be the date on which WDNR executes the Agreement.

VI) SUBSEQUENT AMENDMENTS

This Agreement may be amended by mutual agreement between WDNR and We Energies. Such amendments will be based upon periodic review meetings between WDNR and We Energies to assess the implementation of the processes set forth in this

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Agreement. Any such amendments shall be in writing, signed by WDNR and We Energies and shall have as the effective date being the date such amendment(s) is signed by WDNR.

VII) TERMINATION OF THE AGREEMENT

Either party can terminate this agreement 60 days after providing written notice to the other party.

NOW, THEREFORE, IN WITNESS WHEREOF, the parties, by their signatures, shall cause this Agreement to be executed on the date(s) specified.

Signed for and on behalf of:

Wisconsin Electric Power Company (d.b.a. We Energies)

By: Bruce W. Ramme Date: 12/14/11

Bruce W. Ramme
Vice President – Environmental

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By: [Signature]

for Cathy Stepp - Secretary

Effective Date: 12/19/11