U.S. Department of Justice

Environment and Natural Resources Division

LJG:JML
DJ # 90-7-2-532
Joshua M. Levin
Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986

Telephone (202) 514-4198
Facsimile (202) 514-5168

August 6, 1997

VIA FIRST CLASS MAIL

RECEIVED
FEB 18 1997
By

Rett Nelson, Esq.
Assistant Regional Counsel - Region V
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Mail Code C-29A
Chicago, IL 60604-3590

RE: Gary Development Co. v. U.S. EPA, Case No. 2:96CV489RL (N.D. Ind.)

Dear Rett:

As we have discussed, enclosed please find a copy of the final consent decree, as approved by the Court and filed on July 30. I have called Gary Development's counsel to ensure that they are aware of the entry. Gary's counsel, Lisa Goldner, assures me that a check will be forthcoming within the time provided under the decree.

Please contact me if you have any questions. I am happy to have contributed to the resolution of this matter.

Sincerely,

Assistant Attorney General
Environment and Natural Resources Division

By: Joshua M. Levin
Trial Attorney
Environmental Defense Section
(202) 514-4198

Enclosure

AO 450

Levin
REFERENCE 54
Page 2

United States District Court

97 JUL 30 1:48

Northern District of Indiana

Gary Development Company, Inc.
Plaintiff

JUDGMENT IN A CIVIL CASE

v.

Case No. 2:96-cv-489

United States Environmental Protection Agency
Defendant

[ ] **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered pursuant to the terms of the Consent Decree.

This document entered pursuant to Rules 79(A) and 58 of the Federal Rules of Civil Procedure on:

Dated: July 30, 1997

Stephen R. Ludwig, Clerk

By Stephen R. Ludwig
Deputy Clerk

90-7-2-532

RECEIVED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

GARY DEVELOPMENT COMPANY, INC., Plaintiff, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendant.	Case No. 2:96CV489 RL

CONSENT DECREE

I. INTRODUCTION

WHEREAS, Plaintiff, Gary Development Company, Inc. ("Gary Development") owns certain real property at 479 North Cline Avenue in Lake County, Gary, Indiana, hereinafter referred to as the "Site;"

WHEREAS, Gary Development owns and operates a landfill on said above property;

WHEREAS, Gary Development officially ceased operations and stopped accepting waste on August 31, 1989;

WHEREAS, on May 30, 1986, Region 5 of the United States Environmental Protection Agency ("EPA") issued a Complaint and Compliance Order against Gary Development, alleging that the company had unlawfully accepted hazardous waste for disposal at the landfill which had neither achieved interim status under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C §§ 6901-6992k, nor obtained a RCRA permit;

WHEREAS, the Indiana State Board of Health, the predecessor to the Indiana Department of Environmental Management, referred the alleged violations asserted in the May 30, 1986 Complaint and Compliance Order to Region 5 of EPA for enforcement;

WHEREAS, on April 8, 1996, and after a hearing on the matter, the administrative law judge issued a Decision and Order in favor of EPA ("April 8, 1996 Decision and Order");

WHEREAS, on June 21, 1996, Gary Development appealed the April 8, 1996 Decision and Order to EPA's Environmental

Appeals Board ("EAB");

WHEREAS, on August 16, 1996, the EAB dismissed the appeal as untimely;

WHEREAS, on September 16, 1996, Gary Development commenced a civil action in the United States District Court for the Northern District of Indiana captioned Gary Development Company, Inc. v. United States Environmental Protection Agency, Case No. 2:96CV489 RL ("Civil Action");

WHEREAS, Gary Development alleges in the Civil Action that the EAB wrongfully dismissed its appeal as untimely and requested the Court to reverse the August 16, 1996 decision of the EAB and to remand the case for consideration of the merits of its appeal;

WHEREAS, EPA believes that the EAB properly dismissed Gary Development's appeal as untimely under applicable regulations, 40 C.F.R. Part 22;

WHEREAS, Gary Development has represented to EPA that it does not have sufficient financial resources to comply with the April 8, 1996 Decision and Order;

WHEREAS, the Indiana Department of Environmental Management has been informed of the Consent Decree; and

WHEREAS, Plaintiff Gary Development and Defendant, the United States of America, on behalf of its agency, EPA, hereby agree to compromise and resolve their differences, and thereby avoid the expense and inconvenience of further litigation concerning Gary Development's demands and allegations, and in so

doing to settle, discontinue, and end the present action pending between them on the terms and conditions set forth below.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. Gary Development and the United States agree that the United States District Court for the Northern District of Indiana has subject matter jurisdiction over the matters alleged in this civil action and this Consent Decree. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. The Parties to this Consent Decree are Plaintiff, Gary Development Company, Inc. and Defendant, the United States of America, on behalf of its agency, the United States Environmental Protection Agency ("EPA").

IV. DEFINITIONS

3. The following terms shall have the following definitions when used in this Agreement:

A. "Civil Action" means Gary Development Company, Inc. v. United States Environmental Protection Agency, Case No. 2:96CV489 RL.

B. "Gary Development" means Gary Development Company, Inc., its divisions, officers, directors and employees.

C. "EPA" shall mean the United States Environmental Protection Agency.

D. "Site" means the real property located at 479 North Cline Avenue in Lake County, Gary, Indiana, and owned and operated by Gary Development.

E. "United States" shall mean the United States of America, its department, agencies, and instrumentalities.

V. SETTLEMENT OF DISPUTED CLAIMS

4. This Consent Decree was negotiated and executed by Gary Development and the United States in good faith to avoid prolonged and complicated litigation and to further the public interest.

5. This Consent Decree represents a fair, reasonable and equitable settlement in light of the facts of

the case and projected costs of litigation.

6. Nothing in the Consent Decree shall be construed as an admission or acknowledgment of liability or responsibility whatsoever on the part of any party hereto or, their past and present agents, its divisions, subsidiaries, officers, directors, representatives and employees, each of whom expressly denies all liability, responsibility, or wrongdoing of any nature.

7. This Consent Decree constitutes the entire settlement between the Parties.

VI. OBLIGATIONS OF GARY DEVELOPMENT

8. Gary Development shall pay $86,000 as a civil penalty within fifteen (15) days after the effective date of this Consent Decree.

9. The payment in Paragraph 8 shall be made by certified check, payable to the "Treasurer, United States of America." The check shall be mailed to:

U.S. EPA
Region V
Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673.

The face of the check shall be clearly marked with "Gary Development Company, Inc." and "Docket No.: RCRA V-W-86-R-45." Notice that payment has been mailed to the United States, including copies of the payment and transmittal of payment, shall be

sent to:

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail code C-29A
Chicago, Illinois 60604-3590

Chief, Environmental Defense Section
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986

10. Gary Development shall not claim a Federal income tax deduction or credit covering all and any part of the civil penalty paid the U.S. Treasury.

11. As soon as practicable, but no later than 30 days after the effective date of this Consent Decree, Gary Development shall create an irrevocable trust titled "Gary Development Company Landfill Fund Trust" ("GDCLF Trust") and designating the Indiana Department of Environmental Management as a beneficiary.

12. The Parties agree that Gary Development must create the trust fund in a federally insured financial institution. For purposes of the creation of the trust, the Parties agree that Gary Development shall use the attached Trust Agreement. See Attachment A.

13. Simultaneous with the creation of the GDCLF Trust, Gary Development shall pay $20,000 into the GDCLF

Trust account. Gary Development will pay an additional $20,000 into the GDCLF Trust account fifteen (15) days thereafter, or a total of forty-five (45) days after the effective date of this Consent Decree.

14. The GDCLF Trust shall be irrevocable, and Gary Development shall not retain any interest whatsoever in the corpus or proceeds of the trust.

15. The Parties agree that all monies in the GDCLF Trust shall be used solely for the purposes of performing a landfill closure and post-closure care activities in accordance with 329 IAC 3.1-10-1 and 3.1-10-2, incorporating by reference 40 C.F.R. Subpart G and section 265.310, and any amendments that may be made to these sections of the Indiana Administrative Code, a groundwater quality assessment program in accordance with 329 IAC 3.1-10-1 and 3.1-10-2, incorporating by reference 40 C.F.R. Subpart F, and any amendments that may be made to these sections of the Indiana Administrative Code, remediation of contamination and/or the prevention of the release of hazardous substances at the Site.

16. The parties agree that the terms of settlement reflected in this Consent Decree have been limited because of Gary Development's financial inability

to perform closure and post-closure activities required by the May 30, 1996 Complaint and Compliance Order, as indicated in the "Declaration of William Nanini In Support Of Consent Decree Between Gary Development Company, Inc. And The United States Environmental Protection Agency," attached hereto as Attachment B. Therefore, in the event that Gary Development files a petition for relief under the United States Bankruptcy Code and has not previously complied with the requirements of this Consent Decree in paragraphs 8-14 above, then notwithstanding any other provision of this Consent Decree, the parties agree that the United States may seek to enforce or pursue all causes of action that it has against Gary Development under the May 30, 1986 Complaint and Compliance Order for the performance of landfill closure and post-closure activities. The parties further agree that in the event that Gary Development files such a petition for relief prior to its compliance with paragraphs 8-14 of this Consent Decree, it shall, on the date the petition is filed, provide Region 5 of EPA with written notice on the date the petition is filed. Such notice shall be mailed to the following address:

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

17. Gary Development shall provide EPA with a copy of its federal and state tax returns on an annual basis as long as the company is in existence. Gary Development shall provide a copy of the tax returns within fifteen (15) days of filing the originals with the Internal Revenue Service and/or the state's Department of Treasury.

18. Gary Development shall bear its own costs and attorneys' fees for all matters resolved by this Consent Decree.

VII. OBLIGATIONS OF EPA

19. Except as provided for in Section X (Reopener), EPA shall not seek administrative or civil judicial enforcement of the injunctive relief contained in its May 30, 1986 Complaint and Compliance Order issued to Gary Development.

20. Upon payment as provided in Paragraph 8, EPA agrees that the penalty payment required by the April 8, 1996 Decision and Order is fully satisfied.

21. Upon payment as provided in Paragraph 8, EPA waives its right to initiate a civil judicial action to seek any penalties resulting from Gary

Development's failure to comply with the May 30, 1986 Complaint and Compliance Order.

22. EPA shall bear its own costs and attorneys' fees for all matters resolved by this Consent Decree.

VIII. RELEASE AND COVENANT NOT TO SUE

23. In consideration of EPA's agreement not to seek administrative or civil judicial enforcement of the May 30, 1986 Complaint and Compliance Order, Gary Development hereby forever releases, discharges and covenants and agrees not to assert any and all claims, causes of action, or demands of any kind whatsoever in law or in equity which it may have had, or may now or hereafter have, against the United States, including its departments, agencies and instrumentalities, based upon matters which have been asserted, or which could have been asserted, in the Civil Action.

IX. RESERVATION OF RIGHTS

24. Notwithstanding Paragraph 23 above, nothing in this Consent Decree shall be construed as a waiver of any rights which the Parties to this Consent Decree may have in a suit to enforce the terms of this Consent Decree.

25. Nothing in this Consent Decree, nor any negotiations, discussions, or proceedings conducted herewith, shall constitute an admission

of any liability on the part of either Gary Development or EPA or of the merit or lack of merit of any claims or defenses made by Gary Development or EPA. Nor shall this Consent Decree, or any negotiations or proceedings conducted herewith, be offered or received in evidence or used in any proceedings against either Gary Development or EPA for the purpose of establishing proof of any fact including but not limited to the environmental conditions of the Site, excepting proof of the existence, validity and enforceability of this Consent Decree or its terms.

26. The agreements of EPA in paragraphs 19-22 do not pertain to any matters other than those expressly provided therein. As to all other matters, this Consent Decree is without prejudice to, and the United States expressly reserves, all claims or rights relating to the release, threat of release or presence of hazardous substances, toxic substances, contaminants, pollutants or wastes at the Site. This reservation includes, but is not limited to, the claims or rights of EPA and any Federal natural resource trustee under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42

U.S.C. §§ 9601 et seq., or under any other federal environmental law.

X. REOPENER

27. The Parties agree that if Gary Development, or its successor, or any of its shareholders, directors, or officers, individually, conduct profit making activities of whatever kind, including the sale of any portion of the property owned by Gary Development, with the exception of the sale of the personal property and/or equipment owned by Gary Development and sold for the purposes of satisfying the terms of this Consent Decree set forth in Paragraph 13, this Consent Decree may be reopened by EPA solely to renegotiate the terms of the GDCLF Trust for the purpose of supplementing the requirements of Paragraphs 11-16, above. The request to reopen shall be made in writing.

28. Gary Development agrees to provide Region 5 of EPA notice thirty (30) in advance of any sale of property, with the exception of the sale of the personal property and/or equipment owned by Gary Development and sold for the purposes of satisfying the terms of this Consent Decree set forth in Paragraph 13. Such notice shall be sent to the following address:

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code D-8J
Chicago, Illinois 60604-3590

29. Within 30 days of the completion of the sale of the personal property and/or equipment owned by Gary Development and sold for the purposes of satisfying the terms of this Consent Decree set forth in Paragraph 13, Gary Development shall provide EPA with an accounting of the net proceeds from the sale(s). Such accounting shall be sent to:

Arlene Haas
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C29-A
Chicago, Illinois 60604-3590

Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code D-8J
Chicago, Illinois 60604-3590

30. If the Consent Decree is reopened in accordance with Paragraph 27 and the Parties are unable to

reach an agreement within 120 days of the date of the letter requesting reopener, the Parties agree to discuss alternative dispute resolution. If an agreement cannot be reached within 10 days with respect to participation in alternative dispute resolution, the Parties agree to submit their dispute to the Court.

31. In any such civil judicial proceeding described in Paragraph 30 above, Gary Development, its successors, and its shareholders or directors individually, agree not to challenge the validity of the May 30, 1986 Complaint and Compliance Order.

XI. REPRESENTATIONS

32. The Parties hereto represent that they are the sole possessors of all the claims or causes of action being released and that they have not assigned or otherwise transferred said claims or causes of action.

33. Gary Development represents that there are no liens on the property as of the date of this Consent Decree.

34. EPA represents that it has informed Indiana Department of Environmental Management, and the Watershed and Non-Point Source Program Branch and the Water Enforcement and Compliance Assurance

Branch of the Water Division of Region 5 of EPA of this Consent Decree.

35. All Parties agree that this Consent Decree is entered into by them pursuant to and with the assistance of competent legal advice. They further acknowledge that they have read and fully understand each and every provision of this Consent Decree and the Attachments hereto.

36. Each party hereto warrants and represents to the others that its representative who is executing this Consent Decree has the authority to bind its principal to the terms and conditions contained in this Consent Decree.

XII. INTENT TO CONTRACT AND BIND SUCCESSORS

37. This Consent Decree constitutes the final and entire understanding and agreement of the Parties with respect to its subject matter, and no other statements, promises, terms, representations or inducements, oral or written, by either party, shall be binding or valid.

38. This Consent Decree shall be binding upon the Parties hereto, and upon their successors and assigns, any parent or subsidiary or affiliated companies, shareholders, officers, directors, representatives and trustees.

XIII. GOVERNING LAW

40. This Consent Decree shall be administered, construed, and enforced according to the laws of the United States of America.

XIV. ENFORCEMENT OF CONSENT DECREE

41. Gary Development and the United States agree that the Court shall retain jurisdiction over this Consent Decree until the requirements of the Consent Decree have been satisfied. In any action brought by Gary Development or the United States to enforce this Consent Decree, each party shall retain whatever defenses are available to it under law.

XV. EFFECTIVE DATE

42. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

IN WITNESS WHEREOF, the Parties hereto enter into this Consent Decree.

ON BEHALF OF GARY DEVELOPMENT COMPANY:

Stephen B. Cherry

STEPHEN B. CHERRY, ESQ.
LISA MCKINNEY GOLDNER, ESQ.
Bose McKinney & Evans
135 North Pennsylvania Street
Suite 2700
Indianapolis, IN 46202

Dated: July 7, 1997

WARREN D. KREBS, ESQ.
Dutton & Overman, P.C.
710 Century Building
36 South Pennsylvania Street
Indianapolis, IN 46204-2963

Dated: 7-9-97

William Nanini
President and Director
Gary Development Company, Inc.

Dated: 7-3-97

ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Lois A. Schiffer
Assistant Attorney General
Environment & Natural Resources Division

JOSHUA LEVIN
Trial Attorney
U.S Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-4198

Dated: 6/30/97

OF COUNSEL:

ARLENE R. HAAS
Assistant Regional Counsel
Region V
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Mail Code C-29A
Chicago, IL 60604-3590

BARBARA E. PACE
Office of General Counsel
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

Dated: 7/30/97

ATTACHMENT A

TRUST AGREEMENT FOR
GARY DEVELOPMENT COMPANY LANDFILL FUND

This Trust Agreement is made among Gary Development Company, Inc. ("Gary Development") and National City Bank of Indiana, as Trustee of the Trust, which shall also be known as the Gary Development Company Landfill Fund Trust ("GDCLF Trust"), for the benefit of the Indiana Department of Environmental Management ("IDEM"), the Beneficiary.

WHEREAS, Gary Development owns and operates a landfill at 479 North Cline Avenue in Lake County, Gary, Indiana (the"Site");

WHEREAS, Gary Development officially ceased operations and stopped accepting waste on August 31, 1989;

WHEREAS, on May 30, 1986, Region 5 of the United States Environmental Protection Agency ("EPA") issued a Complaint and Compliance Order against Gary Development, alleging that the company had unlawfully accepted hazardous waste for disposal at the landfill which had neither achieved interim status under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, nor obtained a RCRA permit;

WHEREAS, the Indiana State Board of Health, the predecessor to the IDEM, referred the alleged violations asserted in the May 30, 1986 Complaint and Compliance Order to EPA, Region 5 for enforcement;

WHEREAS, on April 8, 1996, the administrative law judge issued a Decision and Order in favor of EPA ("April 8, 1996 Decision and Order");

WHEREAS, on June 21, 1996, Gary Development appealed the Decision and Order to EPA's Environmental Appeals Board ("EAB");

WHEREAS, on August 16, 1996, the EAB dismissed the appeal as untimely;

WHEREAS, on September 16, 1996, Gary Development commenced a civil action in the United States District Court for the Northern District of Indiana captioned Gary Development Company, Inc. v. United States Environmental Protection Agency, Case No. 2:96CV489 RL ("Civil Action");

WHEREAS, Gary Development alleges in the Civil Action that the EAB wrongfully dismissed its appeal as untimely and requested the Court to reverse the August 16, 1996

WHEREAS, EPA believes that the EAB properly dismissed Gary Development's appeal as untimely under applicable regulations, 40 C.F.R. Part 22;

WHEREAS, Gary Development has represented to EPA that it does not have sufficient financial resources to comply with the April 8 1996 Decision and Order;

WHEREAS, EPA and Gary Development have entered into a Consent Decree in order to settle the Civil Action (the "Consent Decree");

WHEREAS, IDEM has been informed of the terms of the Consent Decree;

WHEREAS, Gary Development has agreed in the Consent Decree, among other things, to pay $40,000 into the GDCLF Trust established by this Trust Agreement;

WHEREAS, the sole purpose of the GDCLF Trust established under this Trust Agreement is to fund landfill closure and post-closure care activities, a groundwater quality assessment program, remediation of contamination and/or the prevention of the release of hazardous substances at the Site; and

WHEREAS, Gary Development, wishing to appoint National City Bank of Indiana, as Trustee of said funds, and National City Bank of Indiana, wishing to accept said appointment, and Gary Development wishing to establish the terms of said trust relationship, have entered into this Trust Agreement and desire to place same on the public record.

NOW THEREFORE, in consideration of the mutual promises, covenants, terms, conditions and agreements contained herein, the parties hereto agree as follows:

ARTICLE I
ESTABLISHMENT OF THE TRUST

Section 1.01 Name. The Trust created by this Trust Agreement shall be known as the "Gary Development Company Landfill Fund Trust," or "GDCLF Trust," and the business and affairs of the Trust may be transacted in that name.

Section 1.02 Trustee. The Trustee of the GDCLF Trust is the National City Bank of Indiana, 101 W. Washington Street, Suite 600 East, P.O. Box 5031, Indianapolis, IN 46255.

Section 1.03 Beneficiary. The Beneficiary of the GDCLF Trust is the Indiana Department of Environmental Management ("IDEM").

Section 1.04 Commissioner of IDEM. "Commissioner of IDEM" means the Commissioner of IDEM and the Commissioner of IDEM's authorized representatives.

Section 1.05. Transfer of Assets to Trust.

(a) Gary Development hereby absolutely and irrevocably assigns, conveys and transfers to the GDCLF Trust, for the benefit of the Beneficiary, $40,000 paid pursuant to paragraph 13 of the Consent Decree. Simultaneous with the creation of the GDCLF Trust, Gary Development shall pay $20,000 into the GDCLF Trust account. Gary Development will pay an additional $20,000 into the GDCLF Trust account fifteen (15) days thereafter.

(b) The $40,000 paid pursuant to the Consent Decree, plus any other funds, tangibles, intangibles, real or personal property paid or transferred into the GDCLF Trust from any other source, including any proceeds, revenues, or interest collected by or paid into the GDCLF Trust, shall collectively be referred to herein as the "Trust Assets."

(c) Gary Development has funded the GDCLF Trust pursuant to a requirement in the Consent Decree. With the exception of the obligation to establish and fund the GDCLF Trust as provided herein and in the Consent Decree, Gary Development shall have no rights, duties, obligations, liabilities, or fiduciary responsibilities of any kind in any way connected or related to the GDCLF Trust, or with management of the GDCLF Trust, the use of funds held in the GDCLF Trust, property acquired with GDCLF Trust funds, or activities, work, or projects funded by the GDCLF Trust. This Trust is irrevocable and Gary Development retains no interest whatsoever in the corpus or proceeds of this Trust.

Section 1.06. Acceptance of Trust. The GDCLF Trust Trustee hereby accepts the Trust imposed upon it by this Trust Agreement and agrees to observe and perform that Trust, upon and subject to the terms and conditions set forth herein, in a fiduciary capacity for the benefit of the Beneficiary.

Section 1.07. The Trust Assets. The GDCLF Trust Trustee shall hold all of the Trust Assets in trust, to be administered and disposed of by the GDCLF Trust Trustee pursuant to the terms of this Trust Agreement.

Section 1.08. Purpose of Trust. The GDCLF Trust is organized for the purpose of performing landfill closure and post-closure care activities in accordance with 329 I.A.C. 3.1-10-1 & 3.1-10-2, incorporating by reference 40 C.F.R. Subpart G & § 265.310, and any amendments that may be made to these sections of the Indiana Administrative Code; a groundwater quality assessment program in accordance with 329 I.A.C. 3.1-10-1 & 3.1-10-2, incorporating by reference 40 C.F.R. Subpart F, and any amendments that may be made to these sections of the Indiana Administrative Code; remediation of contamination and/or the prevention of the release of hazardous substances at the Site.

Section 1.09. Intention to Create Trust. The parties to this Trust Agreement intend to create a trust and a trust relationship with the terms and conditions hereof and the terms and conditions of Indiana Law. Nothing set forth herein or in any provision of law shall be deemed

to create or give rise to a partnership, joint venture or any other business entity, including, but not limited to, a business trust, or principal and agent relationship between and among any of the parties hereto.

ARTICLE II

ADMINISTRATION OF THE TRUST

Section 2.01. Trustee's Powers. In administering the GDCLF Trust, the Trustee shall receive and hold the Trust Assets, shall have general administrative supervision of the operation of the GDCLF Trust, and shall conduct the business and activities of the GDCLF Trust in accordance with the instructions given to the Trustee by the Commissioner of IDEM.

Section 2.02. Engagement of Professionals. The Trustee may engage counsel, investment advisors and custodians, agents, accountants and consultants in protecting, defending, enforcing or performing the Trustee's rights and duties hereunder or in carrying out the activities directed to be undertaken by the Commissioner of IDEM.

Section 2.03. Taxes. The Trustee shall timely prepare and file such income tax and other returns and statements as are required to comply with the applicable provisions of the Internal Revenue Code and of any state law and the regulations promulgated thereunder and shall pay in full the taxes, if any, required to be paid by it. All taxes of any kind that may be assessed or levied against or in respect to the Trust shall be paid from the Trust Assets.

Section 2.04. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of the establishment of the GDCLF Trust, furnish to the Commissioner of IDEM a statement confirming the value of the Trust, a statement of all expenditures and income of the Trust and any other reports reasonably requested by the Commissioner of IDEM. Any securities in the Trust shall be valued at the market value as of no more than sixty (60) days prior to the anniversary date of the establishment of the GDCLF Trust.

Section 2.05. Payment of Expenses and Other Liabilities. The Trustee shall make all payments and execute all documents necessary to carry out those activities authorized by this Trust Agreement to be taken by the Trustee, and such other activities as directed or authorized by the Commissioner of IDEM. The Trustee may from time to time make provision by reserve or otherwise, out of the Trust Assets, for such reasonable amount or amounts as the Trustee may determine to be necessary or advisable to meet unascertained, unliquidated, or contingent administrative liabilities of the GDCLF Trust. Notwithstanding any other provision in this Trust Agreement, the Trustee shall provide twenty (20) days prior written notice to the Commissioner of IDEM of any expenses, fees, or costs, to be paid to, or for the benefit of, the Trustee.

Section 2.06. Compliance with Applicable Law. In carrying out the activities pursuant to this Trust Agreement, the Trustee shall comply with all applicable federal, state, and local laws and regulations.

ARTICLE III
FUNDS, PAYMENTS AND INVESTMENTS

Section 3.01. Investment Guidelines. Unless directed otherwise by the Commissioner of IDEM, the Trustee shall deposit or invest all Trust Assets in (a) securities or other obligations of a federal or state government, (b) time or demand deposits to the extent insured by an agency of federal or state government, or (c) mutual funds comprised solely of obligations of state or federal governments; except that the Trustee is authorized to hold uninvested cash awaiting investment or distribution for a reasonable time.

Section 3.02. Appointment of Custodian. The Trustee may, with the approval of the Commissioner of IDEM, appoint a financial institution to serve as the Custodian of the Trust Assets. In appointing a Custodian, the Trustee shall solicit from financial institutions proposals setting forth all fees, charges, and other costs for the Custodian's proposed services; and the Trustee, prior to entering into a written contract for the Custodian's services, obtain the approval of the Commissioner of IDEM as to the terms and conditions of the proposed written agreement with the Custodian.

Section 3.03. Trust Account and Segregated Account. The Trustee shall maintain the $40,000 received from Gary Development pursuant to the Consent Decree, as well as any income generated from the $40,000, in a Segregated Account held separately from moneys received from any other source, and shall apply the money received from Gary Development pursuant to the Consent Decree solely for the purposes described in Section 1.08 of this Trust Agreement.

ARTICLE IV
THE TRUSTEE

Section 4.01. No Duties Except as Specified in this Agreement or in Instructions. The Trustee shall not have any duty or obligation to take any action except as expressly provided by the terms of this Trust Agreement or in any directions given to the Trustee by the Commissioner of IDEM; and no implied duties or obligations shall be read into this Trust Agreement against Trustee.

Section 4.02. Standard of Care; Exculpation. The Trustee shall exercise the rights and powers vested in it by this Trust Agreement. Neither the Trustee nor any of the Trustee's respective shareholders, directors, officers, employees, affiliates, agents, advisors, contractors, successors or assigns shall be liable for any actions taken or omitted to be taken under or in connection with this Trust Agreement, except to the extent that they have acted with negligence, bad faith, misconduct or willful disregard of the provisions of this Trust Agreement, or in breach of the fiduciary duties arising from or relating to this Trust Agreement.

Section 4.03. Indemnification. Except as provided in Section 4.02, above the GDCLF Trust shall be liable as primary obligor for, and shall defend and indemnify the Trustee and its officers, employees and agents from and against, any and all threatened, alleged, or actual

liabilities, obligations, losses, damages, taxes, claims, actions, and suits, brought as a result of any activities taken under or in connection with this Trust Agreement. In no event shall any owner-operator or responsible party under the State or Federal environmental laws be entitled to indemnification or contribution under this Trust Agreement.

Section 4.04. Fees and Expenses of the Trustee. The Trustee shall be entitled to a fee of $500 per year for managing the GDCLF Trust. In addition, the Trustee shall be entitled to reimbursement for reasonable out-of pocket expenses incurred by the Trustee hereunder, including reasonable fees and expenses of counsel, that are agreed to in writing in advance by the Commissioner of IDEM. The Trustee shall submit any proposed changes in the amount or rate of any fees to the Commissioner of IDEM for written approval. The Trustee shall have a lien on all unencumbered funds of the GDCLF Trust to secure all amounts owing hereunder to the Trustee, and the claims of the Trustee in respect thereof shall have priority over the rights of all creditors of the GDCLF Trust and Beneficiary for any and all amounts owed to the Trustee hereunder.

Section 4.05. Resignation of the Trustee. The Trustee or any successor Trustee may resign at any time by giving at least three months prior written notice to the Commissioner of IDEM, except that no resignation shall become effective prior to the appointment of, and acceptance of such appointment by, a successor Trustee approved in writing by the Commissioner of IDEM.

Section 4.06. Removal of the Trustee. The Commissioner of IDEM may at any time remove the Trustee with or without cause by giving prior written notice to the Trustee.

Section 4.07. Appointment of Successor Trustee. Any successor Trustee appointed by the Commissioner of IDEM shall execute an instrument accepting such appointment. Thereupon such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of the retiring Trustee in the Trust hereunder with like effect as if originally named herein. The retiring Trustee shall execute and deliver an instrument or instruments conveying and transferring to such successor all the estates, properties, rights, powers, and trusts of such retiring Trustee and all property and money held by the retiring Trustee hereunder.

ARTICLE V
GENERAL PROVISIONS

Section 5.01. Amendments. This Trust Agreement may be amended by an instrument in writing executed by the Trustee and the Commissioner of IDEM, provided, however, that no amendment shall be made to Sections 1.05(c) and 1.08 of the GDCLF Trust.

Section 5.02. Irrevocability. This Trust shall be absolutely irrevocable by Gary Development, and Gary Development shall not have any right or power to amend, modify, or revoke this Trust Agreement or any of its terms or provisions.

Section 5.03. No Legal Title in Trust by Beneficiary or Gary Development. Neither the Beneficiary in its capacity as Beneficiary nor Gary Development shall have legal title to any part of the Trust Assets.

Section 5.04. Notices and Directions. All notices, directions, requests and other communications to be made to the Commissioner of IDEM shall be sent in writing. All notices to be made to the Trustee by the Commissioner of IDEM shall also be made in writing.

Section 5.05. Severability. If any provision of this Trust Agreement, other than Section 1.08, is held to be illegal, invalid or unenforceable, all other provisions of the Trust Agreement remain in full force and effect, and the Trust Agreement shall be deemed amended to the extent necessary to make the provision enforceable while preserving the provision's intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objectives and economic result.

Section 5.06. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by a party hereto shall bind the successors and assigns of any party hereto.

Section 5.07. Termination of Trust. The GDCLF Trust and this Trust Agreement shall terminate when all funds subject to the Trust have been disbursed and the Commissioner of IDEM authorizes the Trustee in writing to terminate the GDCLF Trust.

Section 5.08. Governing Law. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement by and through the signatures of their authorized officials and representatives.

ON BEHALF OF THE NATIONAL CITY BANK OF INDIANA
TRUSTEE GARY DEVELOPMENT COMPANY
LANDFILL FUND TRUST:

_____ Dated: _____

MARY MARSH
Senior Vice President
National City Bank of Indiana
101 W. Washington Street
Suite 600 East
P.O. Box 5031
Indianapolis, IN 46255

ON BEHALF OF GARY DEVELOPMENT COMPANY:

_____ Dated: _____

STEPHEN B. CHERRY, ESQ.
LISA MCKINNEY GOLDNER, ESQ.
Bose McKinney & Evans
135 North Pennsylvania Street
Suite 2700
Indianapolis, IN 46202

_____ Dated: _____

WARREN D. KREBS, ESQ.
Dutton & Overman, P.C.
710 Century Building
36 South Pennsylvania Street
Indianapolis, IN 46204

ATTORNEYS FOR GARY DEVELOPMENT COMPANY, INC.

_____ Dated: _____

WILLIAM NANINI
President and Director
Gary Development Company, Inc.

ON BEHALF OF THE COMMISSIONER OF IDEM:

_____ Dated: _____

MICHAEL O'CONNER
Commissioner
Indiana Department of Environmental Management

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

GARY DEVELOPMENT COMPANY, INC., Plaintiff, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendant.	Case No. 2:96CV489 RL

DECLARATION OF WILLIAM NANINI IN SUPPORT OF CONSENT DECREE BETWEEN GARY DEVELOPMENT COMPANY, INC. AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I, William Nanini, pursuant to 28 U.S.C. § 1746, declare and state the following:

1. I am President, Director and a shareholder of Gary Development Company, Inc. ("Gary Development"). Gary Development is the plaintiff in the above-captioned and numbered case. I am fully authorized to submit this declaration on behalf of Gary Development.

2. I hereby state that Gary Development is not able to comply with the requirements set forth in EPA's May 30, 1986 Complaint and Compliance Order, beyond the compliance provided for in the Consent Decree agreed upon by Gary Development and EPA.

3. In connection with the parties' settlement discussions,

I acknowledge that the EPA has requested and obtained evidence of the financial condition of Gary Development. To the best of my knowledge, Gary Development has provided through its counsel and/or its accountants all requested necessary and relevant information to EPA, including financial documents concerning Gary Development's divisions, directors and employees, bearing on Gary Development's ability to comply with the requirements of EPA's May 30, 1986 Complaint and Compliance Order.

4. I understand that the EPA has agreed to certain terms of settlement, including the agreement that, assuming certain requirements of the settlement are fulfilled, EPA shall not seek administrative or civil judicial enforcement of the injunctive relief contained in its May 30, 1986 Complaint and Compliance Order. I further understand that EPA's agreement to the terms of settlement is expressly conditioned on the accuracy, truthfulness and completeness of the information provided to EPA by Gary Development through its counsel and/or its accountants, regarding Gary Development's financial condition.

5. To the best of my knowledge, the information provided to EPA regarding Gary Development's financial condition is accurate, truthful and complete.

6. I am aware of no plans, agreements or negotiations, beyond that previously disclosed to EPA, which would improve the financial condition of Gary Development and enable it to comply with the terms of the Decision and Order, beyond the compliance provided for in the Consent Decree agreed upon by Gary

United States
Environmental Protection
Agency

Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

EPA

Environmental NEWS RELEASE

Legal Contact: Rett Nelson
(312) 886-6666

Technical Contact: Mirtha Capiro
(312) 886-7567

Media Contact: William Omohundro
(312) 353-8254

For Immediate Release: August 28, 1997

No. 97-OPA199

EPA REACHES AGREEMENT WITH GARY DEVELOPMENT; INCLUDES $86,000 FINE

U.S. Environmental Protection Agency (EPA) Region 5 said today the U.S. Department of Justice has recently reached agreement on EPA's behalf with Gary Development Co., Inc., on alleged hazardous waste violations at the company's Gary, IN, landfill.

The agreement includes an $86,000 fine and the creation of a $40,000 cleanup trust fund for use in closing and cleaning up the landfill. Indiana Department of Environmental Management is the beneficiary of the fund.

The fund must be used only for closure and post-closure care activities, a ground-water quality assessment program, cleanup of contamination, and prevention of hazardous-substance releases.

The terms of the settlement have been limited because of the company's financial inability to do closure and post-closure work at the site, as required by a 1986 complaint and compliance order.

- more -

"EPA is committed to enforcing hazardous waste regulations to protect human health and the environment," said Joseph M. Boyle, chief of the regional Enforcement Compliance Asssurance Branch; Waste, Pesticides, and Toxics Division.

The agreement, or consent decree, was issued under authority of the Resource Conservation and Recovery Act at the U.S. District Court, Northern District of Indiana, Hammond.

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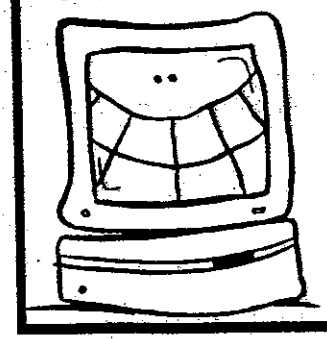

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