

THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

BY-LAW NO. 90-52

A BYLAW TO AUTHORIZE AN AGREEMENT BETWEEN THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT REGARDING THE LANDS LOCATED IN SMITHVILLE, IN THE TOWNSHIP OF WEST LINCOLN, BEING COMPOSED OF PART OF LOT 6, CONCESSION 8 AND 9 (MASTER INDUSTRIAL AND ENGINEERING SERVICES LIMITED PROPERTY), AND APPROXIMATELY LOT 9, SMITHVILLE INDUSTRIAL PARK.

WHEREAS the Council of the Corporation of the Township of West Lincoln deems it expedient to enter into an agreement with Her Majesty the Queen in right of Ontario as represented by the Minister of the Environment with regard to conditions for the cleanup of property located in Smithville, in the Township of West Lincoln, being composed of Part of Lot 6, Concessions 8 and 9 (Master Industrial and Engineering Services Limited property), and approximately Lot 9, Smithville Industrial Park; and to provide for the lease of such lands from the Corporation of the Township of West Lincoln.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN enacts as follows:

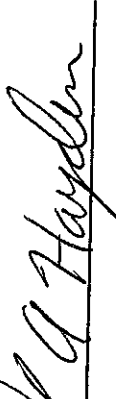
1. That the Corporation of the Township of West Lincoln enter into a lease hereto attached as Schedule A with Her Majesty the Queen in right of Ontario as represented by the Minister of the Environment for the lease of the said lands owned by the Corporation of the Township of West Lincoln.
2. The Corporation of the Township of West Lincoln enter into an agreement dated November 8, 1989, hereto attached as Schedule B with the Ministry of the Environment regarding conditions for the cleanup of the said lands.
3. The Mayor and the Clerk be authorized to sign the above mentioned lease and agreement and to affix the corporate seal of the Corporation of the Township of West Lincoln.

BY-LAW READ A FIRST TIME THIS 20TH DAY OF AUGUST, 1990.

MAYOR



CLERK



BY-LAW READ A SECOND AND THIRD TIME AND PASSED THIS 20TH DAY OF AUGUST, 1990.

MAYOR



CLERK



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READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
20TH DAY OF AUGUST, 1990.

THIS LEASE made in quadruplicate as of the 1st day of July, 1989.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

Herein called the "landlord"

OF THE FIRST PART

AND: HER MAJESTY THE QUEEN in right
of Ontario as represented by
the Minister of The Environment

herein called the "tenant"

OF THE SECOND PART

PREMISES

WITNESSES that in consideration of the rents reserved to be paid by the tenant and the covenants and agreements herein contained to be observed and performed by the landlord and the tenant, the landlord hereby demises and leases to the tenant the land, herein called the "lands", located in Smithville, in the Township of West Lincoln being composed of Part of Lot 6, Concession 8 and 9, and being more particularly described in Schedule "A" Parts I and II.

TERM

TO HAVE AND TO HOLD for and during the term, herein called the "term" of three years commencing on the 1st day of July, 1989 and ending on the 30th day of June, 1992 renewable therefrom on an annual basis until all P.C.B. cleanup is completed, on the contaminated site.

RENT

YIELDING AND PAYING therefore yearly and every year during the term to the landlord the sums set out below. Payable annually in advance of lawful money of Canada to the landlord at Township of West Lincoln, P.O. Box 400, 318 Canboro Street, Smithville, Ontario, L0R 2A0 or at such other place as the landlord may hereafter designate in writing. The first such payment shall be made immediately upon the execution of this lease and shall include all rent due and payable for the period prior to July 1, 1989 and the rent due for the period from July 1, 1989 to June 30, 1990.

The rent shall be calculated according to the formula set out in Schedule C attached hereto.

It is recognized that the rental amount shown on this lease does not include an amount equivalent to "Grants in lieu of taxes". The initial rental payment will include an additional amount for the 1990 taxes. If this agreement is renewed in accordance with clause 3 under "provisos" on page 4, the taxes for the renewal year will be separate from the rental amount and made as soon as possible after the establishment of the rate unless the rate is known at the time of renewal.

TENANT'S COVENANTS

The tenant covenants with the landlord as follows:

1. To pay rent;
2. Not to assign this lease or sublet the lands without the prior written consent of the landlord which consent shall not be unreasonably withheld;
3. Not to injure or remove trees and shrubbery.
4. Not to allow any refuse, garbage or other loose or objectionable material to accumulate on or about the lands or premises thereon.
5. Not to do or omit or permit to be done or omitted on the lands anything which would be deemed a nuisance; other than such operation as required in keeping with the P.C.B. cleanup.
6. To comply with all Statutes, Regulations and By-laws of any Dominion, Provincial or Municipal authority which in any way affect the lands or premises or the use and occupation thereof, and the provisions of the Health Protection and Promotion Act and the rules and regulations of the Board of Health applicable to the lands or premises;
7. To indemnify and save harmless the landlord from and against any and all claims including, without limiting the generality of the foregoing, all claims for personal injury or property damage, arising from the conduct of any work or by or through any act or omission of the tenant, or any assignee, subtenant, agent, contractor, servant, employee, invitee or licensee of the tenant, and against and from all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon;
8. To permit the landlord to enter on the lands at any reasonable time or from time to time for the purpose of inspecting the state of repair;
9. To repair according to notice in writing, reasonable wear and tear and damage by fire, lightning and tempest only excepted;
10. To leave the lands in a level and clean condition.

LANDLORD'S COVENANTS

The landlord covenants with the tenant as follows:

1. For quiet enjoyment;
2. To permit the tenant, its servants, agents, employees, licensees and invitees to have access to and egress from the lands in common with others entitled thereto.

PROVISOS

1. All personal property of any kind or description whatsoever on the lands shall be at the tenant's sole risk, and the landlord shall not be liable for any claims resulting from damage to or loss of such property;
2. If the tenant erects temporary buildings pursuant to Schedule "B", it shall provide water, hydro and sanitary facilities at the expense of the tenant; any structures and services will meet the landlord's standards (other than zoning by-laws) which are currently in force and any structures will be removed from the lands by the tenant upon the expiry of this lease.

3. The tenant shall have the option to renew this lease for further periods of one year under the same terms and conditions for the periods of renewal only. Rental review, if required, will be at three year intervals as long as this lease is in force;
4. It is agreed and understood that in the event of the Township selling any of the property in the leased area for a purpose allowed within the 250 metre buffer zone, the rental will be adjusted downward to reflect the decreased rental area, and will be adjusted on a pro-rated basis.
5. This lease is subject to the terms and conditions of the Agreement, dated November 8, 1989, between the Minister of the Environment and The Township of West Lincoln. (copy of the agreement attached), shown as Schedule "B" hereto attached. Where this Agreement conflicts with Schedule "B", the said Schedule "B" shall prevail.
6. Schedules A, B, and C and sketch "A" are incorporated as part of this lease.
7. Any notice required to be given to the tenant shall be sufficiently given if delivered to the tenant personally or sent by registered mail addressed to the tenant in care of the Manager, Land Management Branch, 15th floor, 777 Bay Street, Toronto, Ontario M5G 2E5 or such other address as the landlord is from time to time advised in writing by the tenant and such notice shall be deemed to have been received by the tenant on the third business day after the date of mailing;
8. Any notice required to be given to the landlord shall be sufficiently given if delivered personally or sent by registered mail addressed to the landlord at Township of West Lincoln, P.O. Box 400, 318 Canboro Street, Smithville, Ontario, L0R 2A0, or such other address as the tenant is from time to time advised in writing by the landlord and such notice shall be deemed to have been received by landlord on the third business day after the date of mailing;
9. This lease and everything herein contained shall extend to, bind and enure to the benefit of the successors or assigns (as the case may be) of the parties hereto;
10. This lease shall not be binding upon the landlord until it has been executed by or on behalf of the Minister of the Environment.

IN WITNESS WHEREOF the parties hereto have executed this lease.

THE CORPORATION OF THE TOWNSHIP
OF WEST LINCOLN



Mayor

c/s



Clerk

HER MAJESTY THE QUEEN in right
of Ontario as represented by
The Minister of the Environment

SCHEDULE "A"

PART I.

All and singular that certain parcel or tract of land and premises, situate, lying and being in the Township of West Lincoln, in The Regional Municipality of Niagara (formerly in the Township of South Grimsby, in the County of Lincoln) and being composed of Part Lot 6, in the eighth and ninth concession of the said Township of South Grimsby, containing 45 acres + as shown shaded on attached Sketch "A" and being lots 7, 7A, 8, 18, 19, 20, 21, 22, 23, 24, 25 & 26 including the undeveloped road allowances north and south of Spring Creek Road.

PART II.

Approximately Lot 9, Smithville Industrial Park.

All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of West Lincoln, in the Regional Municipality of Niagara (formerly in the Township of South Grimsby, in the County of Lincoln) and being composed of Part Lot 6, in the 8th and 9th Concession of the said Township of South Grimsby containing 6.25 acres plus or minus as shown hatched on attached Sketch "A".



Office of the
Minister

Ministry
of the
Environment

SCHEDULE 'B'

TOWNSHIP OF WEST LINCOLN

Date	Nov 14/89
Per	[Signature]

SMITHVILLE, ONTARIO

135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5
416/323-4359

07M1801

November 8, 1989

The Corporation of the Township of West Lincoln
Box 400, 318 Canboro Street
Smithville, Ontario
L0R 2A0

Dear Sirs:

Re: PCB Cleanup - Smithville, Ontario

Pursuant to discussions between our representatives, we propose to proceed with the activity described below in the manner set out below. If the Corporation of the Township of West Lincoln ("the Township") is in agreement, please indicate by signing a copy of this letter where indicated and return it to me.

The Ministry of the Environment's ("the Ministry") general objective, with which we understand the Township concurs, is the management of the contaminated waste which may be found in the soil and groundwater both in and around the property of Master Industrial and Engineered Services Limited at Part Lot 6, Concession 9, Township of West Lincoln, Regional Municipality of Niagara, known as the Northern Part of Lot 7, Smithville Industrial Park being approximately 121.9 metres x 66.4 metres (0.18 ha) in size, ("the site"), which management activities involve an ongoing securing and control of contaminated waste, destruction of secured PCB wastes by a mobile facility, remediation of contaminated wastes which may not be suitable for destruction. The task of arranging for the carrying out of this activity has fallen to the Ministry. This has required, among other things, an exemption under the Environmental Assessment Act.

In addition to the matters set out in that exemption order, the following principles will be applicable:

1. Additional structures to those mentioned in item 1 of the Agreement dated May 1, 1986 between the Township and the Minister of the Environment ("the Minister") may be required on the site as a result of the Groundwater Remedial Action Program which is now part of the activities to be arranged by the Ministry.
2. Except as otherwise agreed, activities on land owned by the Township which are leased pursuant to the provisions of section 4 of this agreement, ("the adjacent land"), will be restricted to activities not related to PCB decontamination. Such activities may take place without further approval from the Township; however, the Township shall be notified and kept informed of the Ministry's use of these lands.
3. Whenever it is considered necessary to carry out operations on the adjacent land which are related to or involved with PCB contamination, those activities will not take place without prior approval of the Township. Activities such as the erection of new structures on the adjacent land are the kind of activities which will require prior approval of the Township.
4. Since the Ministry's proposed operations will prevent other uses being made of the adjacent land until the clean up is complete and any final disposal operations which may take place at the site are complete, we will instruct the Ministry of Government Services to acquire affected land owned by the Township on our behalf. Our instructions will be to acquire it on a lease incorporating the following principles:
 - (a) The Township will be paid a fair rent based on the market value of the land as developable industrial land disregarding any constraints that may be placed on it by the presence on the site or the adjacent land of PCBs or other wastes originating from operations on the site.

- (b) In determining market value, allowance will be made in favour of the Township for the delay which might occur in the development of the adjacent land as a result of its being subject to the lease.
- (c) The rent will be subject to periodic redetermination so that if market value rents, determined on the same basis as in clause (a), rise above the initial rate of rent, the higher rate will be paid.
- (d) The rent will include an amount equivalent to grants in lieu of taxes under the Municipal Tax Assistance Act, provided that there is to be no double payment of both grants and an amount under this clause.
- (e) The Township will be compensated for reasonable conveyancing, legal, surveying, registration or similar costs in connection with entering into the lease.
- (f) In the event it is agreed it is necessary for the Crown to use any part of the adjacent land for purposes related to the activities contemplated by this agreement, and if it is the wish of the Township, the Crown will purchase such land in accordance with the principle clauses (a), (b) and (e) above. In this event, the Township shall have the same rights to reacquire the land as set out in paragraph 6 with respect to the site.
- g) The lands leased pursuant to the agreement with the Township dated May 1, 1986 will continue to be leased but the rent will be re-negotiated as of August 1, 1988 in accordance with the principles set out in clauses (a), (b), (c), (d) and (e) above.
- h) All of Lot 9 in the Industrial Park will be leased by the Ministry effective September 1, 1987.

- I) All of Lots 20, 21 and 22 in the Industrial Park will be leased by the Ministry as of August 1, 1988 if they are not presently being so leased.

5. The Ministry has instructed the Ministry of Government Services to take all necessary steps, including expropriation if necessary, to acquire the site, notwithstanding the considerable expenses that are attached to it, in order to avoid possible interference with the Crown's operations by persons who may claim an interest in the site. Her Majesty The Queen in Right of Ontario intends to own the site prior to a Certificate of Approval being issued under the Environmental Protection Act for destruction of the PCB wastes.

6. When the operations on the site have been completed and it has been restored to a clean condition so that it may be used for industrial purposes and if the Crown proposes to dispose of it, the Township will be given the first right to acquire it at market value (or lower if the Crown proposes to dispose of it at less than market value).

7. Any adjacent land that is excavated will be returned as close as practicable to its original condition, so as to ensure that it has the ability to bear foundations for industrial buildings.

8. Grants in lieu of taxes will be paid on any land occupied by the Crown, except as set out in clause 4(d). No reduction of assessed values (on which grants are based) will be claimed for grant purposes because of any negative factors associated with the presence of PCB's or waste as set out in clause 4(a).

9. The Crown will reimburse the Township for its reasonable expenses in connection with these matters on the following principles:

- (a) Expenses for legal fees in connection with this matter will be paid at \$170.00 per hour;

- (b) Expenses of technical advisors to give advice on the appropriateness of the proposals by the Ministry's consultant will be paid at between \$80.00 and \$120.00 per hour;
- (c) Such reasonable miscellaneous costs to the Township as the Ministry agrees from time to time will be paid;
- (d) Any increase in legal fees shall be approved on behalf of the Ministry by the Director of the Legal Services Branch and shall reflect the rates at which the Government is paying outside lawyers for such services;
- (e) Any increase in fees for the Township's technical advisors shall be subject to approval on behalf of the Ministry of the Environment by the Regional Director and shall reflect the rates at which the Government is paying outside consultants for such services.

10. The Crown will be responsible for any liability incurred by the Township as a result of any clean up activities undertaken by the Crown and will indemnify and save the Township harmless from such liability.

11. In the event the Township does not agree on the appropriateness of any clean up activities proposed by the Ministry or its consultant, we will negotiate how the clean up is to proceed. In the event of a failure to agree, the activities will be incorporated into an order to which the Township will be a party so that the Township may have the right to proceed to an Environmental Appeal Board hearing if it wishes.

12. The Ministry will operate and maintain the interim storage facility at the site until such time as all contaminated wastes are destroyed or removed from the site, either for disposal or storage at some other facility and the ownership and management of the site will remain with the Crown throughout.

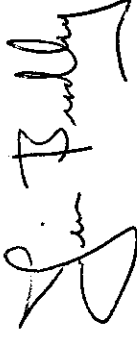
13. The site shall only be used as an interim storage facility for any wastes which are presently on the property and for contaminated soil or other materials from the clean up operation until they are destroyed or removed for permanent disposal elsewhere. No other wastes shall be brought to the site even in the event of an emergency without the Township's consent. The temporary storage building presently on the site will be cleaned to acceptable standards upon completion of the project, and if so cleaned may remain rather than be removed.
14. Any waste on the site that can be legally destroyed on the site or destroyed or stored at any other location, whether in Ontario or not, shall be destroyed or removed from the site as soon as feasible. The site will, therefore, only be used to store wastes until some other legal option is available.
15. The Township shall have the right of inspection of the site and any associated records at any time on reasonable notice.
16. The Ministry shall be permitted to construct two test shafts 3 metres in diameter on the road allowance which is located between the site and the Industrial Park described as Lot 7A, as shown on the drawing prepared by Proctor & Redfern as No. A1-88444-L1, a copy of which is annexed hereto with the locations of the proposed test shafts highlighted in orange.
17. The Ministry shall be permitted to locate a long term water treatment facility on Industrial Park Lot 7A, as highlighted in blue on the Proctor & Redfern drawing No. A1-88444-L1. The said water treatment plant is to be used to treat groundwater and, if required, water from the Incineration Facility during the incineration of PCB wastes and PCB contaminated soil.
18. The Ministry and the Township agree that it shall be a mutual objective to have the destruction of all liquid PCB wastes on site completed on or before December 31, 1989 and

the destruction of all solid PCB wastes on site completed on or before July 31, 1991, consistent with the provisions of Order in Council No. 2674/88 exempting the storage and destruction of these wastes from the provisions of the Environmental Assessment Act.

This Agreement is subject to the Ministry being able to obtain all necessary approvals and exemptions.

If you are in agreement, please sign the copy of this letter below.

Sincerely,



Jim Bradley
Minister

Enclosure

AGREED:

The Corporation of the Township of West Lincoln

per: _____


MAYOR

CLERK