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Con 12-15  
MWG Coal Gas

IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:

MIDWEST GAS, a Division of  
Iowa Public Service Company

CONSENT ORDER  
NO. 91-

ARTICLE 1. JURISDICTION

This Consent Order is entered into by Midwest Gas, a division of Iowa Public Service Company (hereinafter "Midwest Gas") and the Department of Natural Resources (hereinafter the "Department") pursuant to Iowa Code sections 455B.387, 455B.392, and 455B.399. In accordance with Iowa Code section 455B.387(3), Midwest Gas does not admit any statements, including but not limited to the findings of fact or conclusions of law made herein that might be construed as implying that Midwest Gas is liable for any violation of state or federal laws or regulations. Midwest Gas will not, however, contest the Director's jurisdiction to enforce the terms of this Consent Order in accordance with section 455B.388 and actions brought by the Attorney General at the Department's request pursuant to section 455B.391, or any other applicable provisions of Iowa law.

ARTICLE 2. STATEMENT OF PURPOSE

1. Midwest Gas and the Department agree that the mutual objectives of this Consent Order are: (1) to identify real estate within Iowa which may have deposits of wastes from the operations of former manufactured gas plant facilities that were owned or operated by Iowa Public Service Company, or its predecessors or affiliates, including Iowa Gas Company, (2) to conduct investigations at such sites to determine the nature and extent of contaminants, industrial or other waste that may exist or remain at such site(s), (3) to evaluate the threat, if any, to the public health and environment caused by the release or threatened release of the contaminants, industrial or other wastes, (4) to identify cross contamination from origins other than from former manufactured gas plant facilities, (5) to identify all potentially responsible parties (PRP'S), and (6) if necessary, to initiate remedial action by the PRP's to prevent or mitigate the release or the threat of release of contaminants or industrial or other wastes from the site(s) to the extent necessary to protect the public health and environment at the lowest cost possible.

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2. The initial sites (hereinafter "site", or "sites") that are to be subject to this Consent Order are specified in Appendix "A", and Appendix "B", which are attached hereto and made a part hereof. The sites specified in Appendix "A" are the sites at which Midwest Gas shall conduct a Preliminary Assessment. The exact location and boundaries of the sites at Appendix "A", and the relationship of Midwest Gas, and its predecessors and affiliates have yet to be fully resolved. Accordingly, Appendix "A" may be modified by either party, upon thirty (30) days advance notice, with supporting documentation for such modification. The sites specified in Appendix "B" are the sites at which Midwest Gas proposes to conduct a Site Investigation following completion of the Site Assessment and upon receipt of an Order which grants site access and names all PRP's with an interest, past or present in the real estate comprising the site. Appendix "B" may be modified by mutual agreement of the parties, upon thirty (30) days advance notice, with supporting documentation for such modification.

### ARTICLE 3. STATEMENT OF FACTS

1. The origin of Iowa Public Service Company started with the Sioux City Gas Light Company, a manufacturer and distributor of manufactured gas for public utility purposes in Sioux City, Iowa organized January 20, 1872.

2. The origin of Iowa Gas Company started with Capital City Gas Light Company, a manufacturer and distributor of manufactured gas for public utility purposes in Des Moines, Iowa, organized September 10, 1875. A prior utility, the Des Moines Gas Company was the original manufacturer and distributor of manufactured gas for public utility purposes in Des Moines, Iowa. The Des Moines Gas Company was organized March 9, 1857, and was terminated by foreclosure action commenced in 1875.

3. Iowa Public Service Company subsequently expanded its public utility gas operations by internal growth, direct acquisitions, purchases and mergers. Manufactured gas plant operations were phased out by the advent of natural gas transmission services to the various communities in Iowa.

4. In 1985, Iowa Public Service Company acquired the public utility gas operations of Iowa Gas Company. All of the public utility gas operations of the acquired corporations, including those of Iowa Public Service Company, have been transferred to Midwest Gas.

5. Iowa Public Service Company, Iowa Gas Company, and their respective predecessor corporations have either owned or operated manufactured gas plant facilities, or owned sites which were used by other parties as manufactured gas plant facilities to produce manufactured gas for public utility gas sales.

6. Midwest Gas, presently provides gas utility service at retail to 208 Iowa communities. The gas utility operations of the former Iowa Gas Company and of Iowa Public Service Company are conducted by Midwest Gas.

7. Any claim(s) arising out of the former operation of manufactured gas plant facilities owned or operated by Iowa Public Service Company or predecessor corporations, including but not limited to Iowa Gas Company, will be administered by Midwest Gas. For the purpose of this Consent Order, all sites listed at Attachment A, or as modified pursuant to this Consent Order shall be considered as a claim brought by Department against Midwest Gas.

8. Because of the nature of the manufacture of gas, various by-products and substances were produced or handled which contain constituents now classified, or subject to classification, under state and federal law, as hazardous. These statutory provisions, including Iowa Code section 455B.392, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. Section 9607(a)) impose strict liability on persons having control of hazardous substances.

9. Midwest Gas has been notified by the Department with respect to a number of former manufactured gas plant sites, and the nature and duration of certain of the past operations of Midwest Gas, and its affiliated corporations, suggest that some response action may be appropriate.

#### ARTICLE 4. CONCLUSIONS OF LAW

1. The Department maintains that the Sites are "abandoned or uncontrolled disposal sites" as defined in Iowa Code section 455B.411(1) which may have been used for the disposal of coal tar waste or industrial or other wastes prior to their regulation under Iowa Code Chapter 455B Part 5.

2. The Department maintains that the waste previously described as coal tar wastes and oxide box wastes, and the constituents thereof, if located at the sites, are "hazardous substances", "industrial wastes", or "other wastes" as defined in Iowa Code sections 455B.381(1), 455B.171(2), and 455B.171(3).

3. The Department maintains that the past, present or potential migration of the hazardous substances, from the site(s) may constitute an actual and/or threatened "release" and a "hazardous condition" as defined in Iowa Code sections 455B.381(9) and 455B.381(2), respectively.

4. The Department maintains that Midwest Gas is a "person" as defined in Iowa Code section 455B.171(10).

5. The Department maintains that the present migration of hazardous substances, industrial wastes or other wastes from the site(s) into any water of the state without a permit issued by the Director would constitute a "prohibited discharge" as set out in Iowa Code section 455B.186.

6. The Department maintains that Midwest Gas is a "person having control over hazardous substances" as defined in Iowa Code section 455B.381(8) to the extent it owns or otherwise controls a site(s) upon which hazardous substances from former manufactured gas plant operations have been disposed.

#### ARTICLE 5. DETERMINATIONS

1. Based on the Statement of Facts and Conclusions of Law set forth above, Department has determined that the actual or potential release of hazardous substances from the disposal or processing actions of former manufactured gas plant facilities into the waters of the state from the site(s) may constitute a hazardous condition. The actions required by this Consent Order are in accordance with Iowa Code, and the rules of Department under Rule 567--Chapter 133 (455B.455E) Iowa Administrative Code (IAC), and are necessary to protect the public health and the environment.

2. Midwest Gas has entered into this Consent Order without admitting or denying the allegations, findings or conclusions in this Consent Order, and on the understanding that nothing herein constitutes an adjudication with respect to any such allegation, finding or conclusion.

3. For the purposes of this Consent Order, Midwest Gas admits the jurisdiction of the Department with respect to the matters set forth in this Consent Order and consents to the entry of this Consent Order.

4. To resolve this matter without the necessity for litigation, Midwest Gas has agreed to conduct a Preliminary Assessment at the sites set out at Appendix "A", and as provided in ARTICLE 6, may be ordered to conduct Site Investigation(s) to

determine the nature and extent of the problem presented by the release or threatened release of hazardous substances, industrial wastes, and other wastes to groundwater at the site(s).

#### ARTICLE 6. ORDER AND CONSENT

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

1. Midwest Gas agrees to develop work plans subject to the approval of the Department, and to conduct a Preliminary Assessment to identify real estate which either had a manufactured gas plant(s) or property which has been used for the disposal of coal tar wastes (hereinafter "wastes") originating from such manufactured gas plant(s). The real estate to be subjected to the Preliminary Assessment shall include all property(s) which had a manufactured gas plant(s) or which received wastes originating from plant(s) which are listed at Appendix A. The Department shall determine the sequence in which the sites shall be assessed by Midwest Gas.

2. The Preliminary Assessment shall include: (1) a review of all available public records to establish the ownership and operational history of the manufactured gas plant(s), (2) a real estate description for property which formerly had either been used as a manufactured gas plant facility or for the deposit of wastes from such operation (hereinafter referred to as "Sites"), (3) the identification of potential cross contamination of the Site(s) by pollutants from source(s) or origins other than from manufactured gas plant operations, and (4) the identity of any potentially responsible parties (hereinafter "PRP's") that may have responsibility for wastes or pollutants at the site(s).

a. The Preliminary Assessment shall, to the extent practicable, be conducted pursuant to the procedures set forth in Rule 567--Chapter 133 (455B.455E) IAC, Rules for Determining Cleanup Actions and Responsible Parties. Following Department approval of the Preliminary Assessment work plans, Midwest Gas shall furnish a Preliminary Assessment Report for each site to the Department. A draft Preliminary Assessment Report shall be submitted by Midwest Gas to Department for not less than three (3) sites each calendar quarter until all sites at Appendix A have been completed. Any deficiencies noted in the draft Preliminary Assessment Report by the Department shall be reasonably corrected by Midwest Gas so long as they are substantial and materially important to the recommendations or findings.

b. Notwithstanding the prospective identification of PRP's by Midwest Gas in the Preliminary Assessment Report, no administrative or judicial determination of responsibility or liability has been made as to any individual PRP. The PRP determination in the Preliminary Assessment Report will be independently evaluated by Department. The final determination that any individual party is a PRP, for the administrative purposes of Department, is expressly reserved to Department.

3. Midwest Gas does not waive its right to maintain the confidentiality of legal opinion or legal memorandum developed by counsel on this Consent Order, or on any work conducted under this Consent Order.

4. The Director may, after acceptance of a Preliminary Assessment Report on any site listed at Appendix "B", order Midwest Gas and /or other PRP's to develop work plans subject to the approval of Department and to conduct a Site Investigation to determine the nature and extent of the wastes and contaminants, if any, and the risk to the public health and environment which may be caused by the release or threatened release of the wastes and contaminants. The Order shall grant the right of entry pursuant to Iowa Code section 455B.394 to Midwest Gas to allow Midwest Gas and other PRP's to conduct the activities as required for the Site Investigation. The Order shall name as respondents, all PRP's with an interest, past or present in the real estate comprising the site(s).

5. The work plans for the Site Investigation shall include: (1) a surface soil characterization plan, (2) a groundwater characterization plan, and (3) a subsurface soil characterization plan. Monitoring well(s) or more extensive tests may be conducted under site specific plans. Each Site Investigation Work Plan approved by Department shall be conducted pursuant to the following:

- a. Quality Assurance Project Plan (QAPP), Health and Safety Plan (HSP), and Data Quality Objectives (DQO) with specific information as to the site.
- b. General QAPP, HSP and DQO may be developed for use on all sites.

6. Upon receipt of the Department's written final approval of the Site Investigation Work Plan, Midwest Gas and the PRP's named in the Order shall conduct the site investigation in accordance with the approved Site Investigation Work Plan and the schedule therein.

7. Midwest Gas (and the PRP's, as appropriate) shall submit to Department the Site Investigation Report in accordance with the schedule in the Work Plan. The Site Investigation Report shall cover the following items:

- a. A legal description of the site.
- b. Location of hazardous substances at the site.
- c. The area or extent of contamination.
- d. Identification of possible risk(s) to the environment and public health.
- e. Evaluation of containment or remedial or other response alternatives.
- f. Work Plans for a Remedial Investigation and Feasibility Study (RI/FS) as appropriate.

8. Upon approval of the Site Investigation Report by Department, the approved Report shall be incorporated as part of this Consent Order.

9. Midwest Gas shall rank each site according to the risk established by the Electrical Power Research Institute ("EPRI") FIRST software program or other mutually agreed software ranking program, to assist in the ranking of the site(s) in priority for further activity. The ranking order established by the software program will be considered by the Director in determining the sequence of further investigation of the sites under subsequent consent order(s).

10. Midwest Gas shall submit to Department quarterly progress reports; each progress report shall be submitted on or before the 30th calendar day of the month following the first full calendar quarter being reported. Each Progress Report shall detail the status of Midwest Gas compliance with this Consent Order. At a minimum, these progress reports shall: (1) identify the site; (2) describe the actions which have been taken toward achieving compliance with this Consent Order; (3) include an explanation of any non-compliance with any approved work plan(s), schedule(s) or investigation(s) and actions taken or to be taken to rectify non-compliance; and (4) include a summary of major actions which are scheduled for the next quarter.

11. Unless otherwise stated in this Consent Order, three (3) copies each of the work plans, draft or final Preliminary Assessment Report, the Site Investigation Report, and two (2) copies of each set of laboratory analyses and all other documents to be submitted pursuant to this Consent Order shall be sent to

Department's Project Coordinator, as designated in ARTICLE 8. Two (2) copies each of all documents originating from the Department, including approvals, other correspondence and all other notifications to be submitted to Midwest Gas shall be sent to the Midwest Gas Project Coordinator, as designated in ARTICLE 8.

12. In the event of any Department disapproval of a submitted Report or disapproval of a submitted Work Plan, Department shall send Midwest Gas a Notice of Disapproval delineating the deficiencies, recommending revisions to the activity to cure the deficiency, and recommending modifications to the scheduled work as appropriate. Thereafter, Midwest Gas shall amend and resubmit to Department revised reports or work plans to cover the deficiencies noted, and to revise the schedules to accommodate the additional or modified activity.

13. In the event of subsequent disapproval of such revised reports or proposed additional or modified work to resolve the deficiencies noted by Department, and the inability of Department and Midwest Gas to reach agreement with respect to the proposed correction of such noted deficiency, Department retains the right to conduct such additional or modified work pursuant to its authority under Iowa Code and/or undertake any judicial or other relief available to it by law.

#### ARTICLE 7. PERMITS

1. The implementation of this Consent Order may require the issuance of governmental permits, authorizations or orders (hereinafter referred to as "permit") by Department or other federal, state, and local agencies. The Department shall cooperate with Midwest Gas and support Midwest Gas to obtain required governmental permits to conduct the work. This Consent Order is based upon the expectation that the terms and conditions of said permits will be issued consistent with the response activities contained in this Consent Order. Department will supply Midwest Gas with a list of any and all permits required by the state for performance of this work.

2. Midwest Gas shall notify Department of all non-Department permits which are needed to implement the requirements of this Consent Order as soon as Midwest Gas becomes aware of the need for the permit. Midwest Gas shall provide Department with a copy of all such permit applications at the time that the application is submitted to the entity issuing the permit.



3. If a permit is not issued, is issued or is renewed in a manner which is materially inconsistent with the requirements of the Site Investigation Work Plan, or other work conducted under this Consent Order, Midwest Gas shall notify Department of its intention to propose modifications to the Submittal(s). Notification by Midwest Gas of its intention to propose modifications because of permit restrictions shall be given Department within seven (7) days of receipt by Midwest Gas of notification that (1) a permit will not be issued; (2) a modified or conditional permit has been issued or reissued; or (3) a final judicial determination by the court of original jurisdiction with respect to issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention, Midwest Gas shall submit to Department its proposed modifications to the Submittal(s) with an explanation of its reasons in support thereof.

4. Department shall review and approve, disapprove or modify Midwest Gas's proposed modifications to the Submittal(s) in accordance with this Consent Order. If Midwest Gas submits proposed modifications prior to a final judicial determination of any appeal taken on a permit needed to implement this Consent Order, Department may elect to delay review of the proposed modifications until after such final judicial determination is entered. If Department elects to delay review, Midwest Gas shall not be required to adhere to the previously established work schedules, but shall otherwise endeavor to continue implementation of this Consent Order.

5. During any judicial review of any permit needed to implement this Consent Order or during review of any of the proposed modifications by Midwest Gas as provided in Section 3, above, and during any subsequent judicial proceedings, Midwest Gas shall continue to implement those portions of the Submittal(s) which Department determines can be reasonably implemented pending final resolution of the issues in dispute.

6. Notwithstanding any provision of this Consent Order to the contrary, MWG shall not be required to perform under this Consent Order if such action will violate any permit, authorization, or order or requires a permit which has not been issued.

#### ARTICLE 8. DESIGNATED PROJECT COORDINATORS

1. Within seven (7) days after the effective date of this Consent Order, Midwest Gas and Department shall each designate a Project Coordinator and an Alternate Project Coordinator. The Project Coordinator so designated by each of the parties hereto shall be responsible for overseeing the duties and

responsibilities of their respective party identified herein. The Alternate Project Coordinator shall assume the duties of the Project Coordinator in the absence or unavailability of the Project Coordinator. It is understood, however, that the project coordinator of one party shall have no responsibility for overseeing the discharge of the responsibility of the other party. Communications between the Department and Midwest Gas and their respective contractors and subcontractors, and all documents, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators, and the Alternate Project Coordinators, to the maximum extent possible.

2. Department and Midwest Gas each has the right to change their respective Project Coordinator and Alternate Project Coordinator. Such change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the effective date of the change.

#### ARTICLE 9. QUALITY ASSURANCE

Midwest Gas shall use quality assurance, quality control, and chain of custody procedures as specified in the approved Quality Assurance Project Plan and approved Field Sampling Plan throughout all sample collection and analytical activities. Midwest Gas may use qualified employees for sample collection and analytical activities. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Midwest Gas shall:

1. Allow Department personnel and/or Department authorized representatives access, for auditing purposes, during normal work hours, to the laboratory(s) and to personnel utilized by Midwest Gas for analyses and sample collection/field work.

2. Utilize laboratory(s) for analyses that perform such analyses according to methods approved in advance by Department or methods deemed satisfactory as specified in the QAPP.

3. Require that laboratory(s) utilized by Midwest Gas will, upon request by Department, perform analyses of samples provided by Department to demonstrate the quality of each laboratory's analytical data, and to participate in a quality assurance/quality control (QA/QC) plan.

ARTICLE 10. SAMPLING ACCESS AND DATA DOCUMENT AVAILABILITY

1. Midwest Gas shall make available to Department the results of all sampling and other data generated by Midwest Gas, or on the behalf of Midwest Gas, with respect to the implementation of this Consent Order. Upon request of Department, all laboratory deliverables, such as analytical results and QA/QC results and calculations, shall be submitted to Department. All results of field tests and other data shall be submitted to Department in the Site Investigation Reports as described in ARTICLE 6 of this Consent Order.

2. At the request of Department, Midwest Gas shall allow split or duplicate samples to be taken by Department and/or their authorized representative, of any samples collected by Midwest Gas pursuant to the implementation of this Consent Order. Department shall coordinate with Midwest Gas not less than five (5) working days in advance of any sample collection activity Department intends to duplicate.

3. Upon notice, and in accordance with Iowa Code section 455B.103(4), and to the extent Midwest Gas has control or ownership of the site, Midwest Gas will allow Department to enter and move about at the Site(s) at all reasonable times for the purposes of: inspecting records, operating logs, and contracts, directly related to the Site, reviewing the progress of Midwest Gas in carrying out the provisions of this Consent Order, conducting such tests as Department deems necessary, using a camera, sound recording, or other documentary type equipment, and verifying the data submitted to Department by Midwest Gas. Department shall comply with all applicable HSP requirements while on the Site(s). Midwest Gas will, upon request, permit Department to inspect and copy records, files, photographs, documents, and other writings, including all sampling and monitoring data, that directly pertains to work undertaken pursuant to this Consent Order. Midwest Gas reserves the right to object to any and all unreasonable searches, inspections or seizures Department or their authorized representative may attempt. At any time Midwest Gas believes the inspection request of Department to be unreasonable, Department shall cease the attempted activity complained of and pursue its legal remedies under said section.

4. Midwest Gas may assert a business confidentiality claim covering part or all of the information submitted pursuant to the terms of this Consent Order in the manner set out in Iowa Code Chapter 22.7. The information covered by such a claim will be disclosed by Department only to the extent, and by the means of the procedures, set forth in Rule 561--Chapter 2 (455B) IAC. Such a claim may be made by placing on the information, at the time it is submitted to Department. a cover sheet, stamped or

typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by Department. If confidential treatment is sought only until a certain date or until occurrence of a certain event, the notice should so state. If no such claim of confidentiality accompanies the information when it is received by Department, it may be made available to the public by Department without further notice to Midwest Gas.

5. At least five (5) working days notice shall be given to Midwest Gas if Department requests the presence of Midwest Gas's technical consultants or representatives of any contractor or subcontractor during such inspection.

6. All internal memorandums, letters and other such material of Midwest Gas, not submitted to Department, between its directors, officers, engineers, attorneys, project coordinator and alternate project coordinator, and employees are deemed confidential by Midwest Gas. Department does not admit these documents are privileged for the purpose of discovery.

#### ARTICLE 11. RECORD PRESERVATION

1. For the purpose of this ARTICLE, "Records" shall mean all original copies of field notes, testing and sampling results; and final copies of documents, drawings and tabulations prepared by Midwest Gas, their employees, agents or contractors to satisfy the requirements of this Consent Order.

2. Midwest Gas shall preserve their Records during the pendency of this Consent Order and for a minimum of six (6) years after the termination of this Consent Order. Thereafter, Midwest Gas shall notify Department in writing thirty (30) calendar days prior to destruction of any such Record. Upon request of Department, within such thirty (30) day period, Midwest Gas shall make available to Department such Records.

3. Midwest Gas shall enter into a written agreement with their agents, consultants, and/or contractors providing that they shall be required to maintain and preserve during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all Records as defined herein. Furthermore, Midwest Gas shall provide Department at least thirty (30) days notice and opportunity to take possession of said Records prior to their destruction.

## ARTICLE 12. RESERVATION OF RIGHTS

1. Midwest Gas expressly reserves the right to refuse to perform any acts or actions which are not deemed by Department as a response activity under the National Contingency Plan (40 C.F.R. Part 300), or which otherwise prejudice the right of Midwest Gas to seek contribution for such response action from any and all potentially responsible parties under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, 42 U.S.C. Section 9613), or under state law. In the event of such a refusal, Department reserves the right to pursue enforcement action.

2. It is agreed between the parties that Midwest Gas has undertaken these studies and actions under the direction of the State of Iowa as represented by Department and that Midwest Gas intends to continue such cooperation with Department in compliance with the terms of this Consent Order. The resolution of any issues subject to this Consent Order shall not set any precedent with respect to any legal or factual issue raised in any other dispute or litigation whether or not subject to this Consent Order, unless the Parties expressly agree otherwise in writing as to such legal or factual issue.

3. This Consent Order does not constitute and shall not be interpreted or construed as an admission by Midwest Gas of any liability under any federal, state or local law or that Midwest Gas is in violation of any laws, rules, regulations or ordinances or for any actions based in common-law.

4. Should it be determined subsequent to the entry of this Consent Order that additional tasks not mentioned in this Consent Order need to be accomplished, Department reserves the right to request Midwest Gas to perform these additional tasks. In the event Midwest Gas declines to perform any additional or modified tasks as directed or ordered by Department, Department reserves the right to pursue any enforcement action or injunctive relief. Midwest reserves the right to resist any such action.

5. Department and Midwest Gas expressly reserve any and all other rights and defenses that each may have whether arising in law or equity.

## ARTICLE 13. REIMBURSEMENT OF COSTS

1. Within thirty (30) calendar days of receipt of a contract issued by Department pursuant to Iowa Code section 455B.392, Midwest Gas shall agree to reimburse Department for excessive or extraordinary cost, but excluding salaries, incurred by Department with respect to this Consent Order. The contract

shall require quarterly payments by Midwest Gas, to be payable within thirty (30) calendar days of receipt of the accounting. The accounting shall be in sufficient detail to support the invoice(s) and the activities which resulted in such costs. A provision providing for the resolution of any dispute of the accounting, or the propriety of the costs shall be included in the contract.

2. Department reserves the right to bring action against Midwest Gas pursuant to applicable state law for the recovery of excessive or extraordinary cost, but excluding salaries, incurred by Department related to this Consent Order not reimbursed by Midwest Gas, as well as any other past and future costs incurred by the State of Iowa in conjunction with response activities at the site(s). Midwest Gas reserves the right to contest any such action brought by Department.

3. Department shall provide a budgetary estimate as to what it believes its reasonable response costs, including oversight costs will be prior to the commencement of each calendar quarter.

ARTICLE 14. COMPLETION OF PRELIMINARY ASSESSMENT  
AND/OR SITE INVESTIGATION

1. Upon acceptance by Department of the final Preliminary Assessment for a specific site, and the determination of the Director that Midwest Gas is not a potentially responsible party for any of the hazardous substances, industrial wastes, or other wastes at the site; and upon Midwest Gas's compliance with any reimbursement of costs due Department under ARTICLE 12, the Department shall issue certification to Midwest Gas that the responsibilities under this Consent Order have been completed and successfully discharged as to that specific site.

2. Upon acceptance by Department of the final Preliminary Assessment for a site, and the determination by the Director that Midwest Gas is a potentially responsible party for any of the hazardous substances, industrial wastes, or other wastes at the site; or that Midwest Gas (or its affiliated corporations) owns or controls the site; and no reasonable evidence of cross-contamination has been established from source(s) other than manufactured gas plant wastes, the Director shall require Midwest Gas in writing to proceed with the development of Work Plans to implement the Site Investigation as further set out at ARTICLE 6.

3. Upon acceptance by Department of the final Preliminary Assessment for a site, and the determination by the Director that Midwest Gas is a potentially responsible party for any of the hazardous substances, industrial wastes, or other wastes at the

site; but that Midwest Gas (or its affiliated corporations) do not own or control the site, no requirement will be made of Midwest Gas to proceed with the development of work plans to implement the Site Investigation as further set out at ARTICLE 6 until site access has been granted by current site owners to Department in a form which would allow Midwest Gas to proceed, without cost or expense for such right of access, as the designated representative of Department.

4. Midwest Gas shall not be obligated to pay, reimburse, or otherwise compensate the current owners of a site for any damage, business interruption, disturbance or other loss occasioned by conducting the Site Investigation. To the extent physical property is disturbed, Midwest Gas would be required to repair or restore the physical property to its condition as found.

5. Upon delivery to the Department of the final Site Investigation for a site, and upon Midwest Gas's compliance with ARTICLE 13, Reimbursement of Costs, the Department shall issue certification to Midwest Gas, that the responsibilities under this Consent Order have been completed and successfully discharged as to that specific site.

6. If additional site activities are deemed necessary or appropriate by the Department after review of the Site Investigation, the parties shall consider a subsequent Administrative Order on Consent which would address, among other items, the development and implementation of the Remedial Investigation/Feasibility Study (RI/FS), the inclusion of all potentially responsible parties into Administrative Order on Consent, further response actions, including administrative sanctions or litigation brought against recalcitrant PRP's, or other appropriate actions based on the Site Investigation Report.

#### ARTICLE 15. FORBEARANCE FROM ADDITIONAL STUDIES

Department agrees that the Site Assessment and/or Site Investigation activities being undertaken by Midwest Gas for each site constitute the only activities which Department presently is undertaking or is causing to be undertaken at the site(s). This paragraph shall not preclude the Department from undertaking or causing to be undertaken any Remedial Investigation/Feasibility Study (RI/FS) or other investigations that may be necessary to study conditions at or near the Site(s) which are unforeseen on the effective date of this Consent Order or which are determined to present a probable release of hazardous substances that may result in a threat to the public health or welfare or the environment. In the event that Department determines that such further investigations are necessary, Department agrees to use its best efforts to avoid duplication of the activities of

Midwest Gas under this Consent Order, and shall initiate such studies only after notice to Midwest Gas of the Department's intent and statement of facts supporting the need for such studies.

#### ARTICLE 16. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release of or by any party bound by this Consent Order whether or not a signatory to this Consent Order from any claim, cause of action or demand in law or equity against any person, firm, partnership, public or private corporation or other legal entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, industrial wastes or other wastes, hazardous wastes, hazardous constituents, pollutants or contaminants found at, taken to, or taken from the site(s).

#### ARTICLE 17. LIABILITY

Neither the State of Iowa nor Midwest Gas (or its affiliated corporations), nor any agent thereof shall be liable for any injuries or damage to persons or property from acts or omissions of the other party, nor its servants, receivers, trustees, successors or assigns, including but not limited to firms, corporations, subsidiaries, parent corporations, contractors, or consultants in carrying out activities required of the parties to this Consent Order and pursuant to this Consent Order. Neither the State of Iowa, nor any agency thereof shall be held out as a party of any contract entered into by Midwest Gas in carrying out activities pursuant to this Consent Order.

#### ARTICLE 18. EFFECTIVE DATE

The effective date of this Consent Order shall be the date last inscribed on the signature page.

#### ARTICLE 19. PENALTIES FOR NON-COMPLIANCE

Failure to comply with this Consent Order, without sufficient cause, may subject Midwest Gas to incur civil penalties.



## ARTICLE 20. SUBSEQUENT MODIFICATION

1. This Consent Order may be amended by mutual agreement of Department and Midwest Gas. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by Department and Midwest Gas.

2. Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by the Department, incorporated sequentially into this Consent Order.

## ARTICLE 21. PARTIES BOUND

1. This Consent Order shall apply to and be binding upon Department and Midwest Gas, their successors and assigns and upon all persons, contractors, and consultants acting under or for either Department or Midwest Gas.

2. Midwest Gas shall provide a copy of this Consent Order and any amendments thereto, to each contractor, sub-contractor, laboratory, and consultant retained to conduct any portion of the work performed by Midwest Gas pursuant to this Consent Order.

## ARTICLE 22. UNAVOIDABLE DELAYS

Unavoidable delays are such as result from causes which are reasonably beyond the control of either party to this Consent Order and will delay the performance of the Consent Order. Unavoidable delays include, but are not limited to, strikes, lockouts, labor disputes, fires, unavailability of materials, war, civil disturbance, inclement weather, and Acts of God. In addition, because the subject matter of this Consent Order relates to the identification and location of hazardous substances, industrial wastes and other wastes, unavoidable delays will include such additional time as may be reasonable or prudent to assure, in so far as practical, that appropriate precautions will be taken to assure the safety of workers and others in close proximity to the site. Both parties shall in good faith use such effort as is reasonable under the circumstances known to the party at that time to reschedule the work, or to remove or remedy the cause(s).

ARTICLE 23. TERMINATION AND SATISFACTION

1. The provisions of this Consent Order shall be deemed satisfied upon the receipt by Midwest Gas of written notice from the Department that Midwest Gas has demonstrated that all of the terms of this Consent Order have been completed. Such notice shall be granted with all deliberative speed. Midwest Gas may request that Department provide written notice for each site at which Midwest Gas has demonstrated that all of the terms of this Consent Order, as it relates to that site, have been completed. Such notice shall not be unreasonably withheld.

2. Department shall promptly and without unreasonable delay respond to all submitted plans, proposals, or submissions as required by this Consent Order.

\_\_\_\_\_  
LARRY J. WILSON, DIRECTOR  
DIRECTOR OF NATURAL RESOURCES

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PHILLIP D. EHM, Sr. Vice President  
MIDWEST GAS, a Division of Iowa  
Public Service Company

\_\_\_\_\_  
DATE

APPENDIX A\*  
TO  
CONSENT ORDER  
BETWEEN THE  
DEPARTMENT OF NATURAL RESOURCES  
AND  
MIDWEST GAS

Manufactured gas plant disposal sites under Preliminary Assessment.

1. Sycamore Street between Union and Elm Streets, Waterloo.
2. First and Cedar Streets, Waterloo. This site has been remediated under the jurisdiction of the Department, although closing documents have yet to be issued.
3. First Street and Gordon Drive, Sioux City.
4. First Street NE and Fourth Avenue NE, Le Mars.
- X 5. Lots 5 and 6, Block 28 of the original town of Fort Des Moines, Des Moines.
- X 6. Two Rivers Service Center area, Elm and SE Second Street, Des Moines.
7. Des Moines (as yet unidentified).
8. 3rd Avenue W. and South G. Street, Oskaloosa.
9. Broadway (Hwy. 59) and Corning Street, Red Oak.
10. 6th Avenue and Manti Streets, Shenandoah.
11. Part of Lots Four (4), Five (5), and Seven (7), Section Two (2), Township Sixty-seven (67) North, Range Four (4) West, Lee County, Fort Madison.
12. Dodge and Bluff Streets, Dubuque (a modified Preliminary Assessment and limited Site Investigation has been concluded by Midwest Gas on site(s)).
13. W. 23rd Street and Central Avenue, Dubuque.
14. Sixth Avenue NW and First Street NW, Waverly.
15. Park Street, Waterloo.
16. Fourth Avenue NW, Hampton.
17. Lots 5-10, Block 36, Perry.
18. 10th Avenue and D Street, Charles City.
19. 2nd Street NE and Corrine Avenue, Independence.
20. First and Lucas Streets, Eagle Grove.
21. Sheldon.

This list is not deemed complete and new sites or revised real estate descriptions will be developed through the Site Assessments conducted by Midwest Gas under the Consent Order. The 11th and Cedar Streets, Dubuque site under EPA lead is not included in this Consent Order.

\*Note: This initial list of sites is under review by Midwest Gas. A revised Appendix A will be provided for the Consent Order.

05/24/91  
GEJ

APPENDIX B\*  
TO  
CONSENT ORDER  
BETWEEN THE  
DEPARTMENT OF NATURAL RESOURCES  
AND  
MIDWEST GAS

Manufactured gas plant disposal sites to be brought under Site Investigation.

1. Sycamore Street between Union and Elm Streets, Waterloo.
2. First and Cedar Streets, Waterloo. This site has been remediated under the jurisdiction of the Department, although closing documents have yet to be issued.
3. First Street and Gordon Drive, Sioux City.
4. Two Rivers Service Center area, Elm and SE Second Street, Des Moines.

This list is not deemed complete and new sites or revised real estate descriptions will be developed through the Site Assessments conducted by Midwest Gas under the Consent Order.

\*Note: This initial list of sites is under review by Midwest Gas. A revised Appendix B will be provided for the Consent Order.

05/24/91  
GEJ