

**PRELIMINARY
APPENDIX FOUR**

Part A Permit Application

BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
AUG 26 1993

In the matter of:

United Musical Instruments, U.S.A.,)	Consent Order
Inc.,)	
an Indiana corporation,)	No. <u>D-47-93</u>
)	
RESPONDENT.)	
)	
)	
_____)	

TABLE OF CONTENTS

	PAGE
I. JURISDICTION AND PERSONS BOUND	1
A. Jurisdiction	1
II. STATEMENT OF PURPOSE AND LIMITATION OF SCOPE	3
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW	4
A. Findings of Fact	4
B. Conclusions of Law	6
IV. WORK TO BE PERFORMED AND COMPLIANCE SCHEDULE	7
A. Newly-Discovered Releases And Threats To Health And Environment	8
B. Existing Single-Well Pump-And-Treat System Start Up:	9
C. Groundwater Monitoring For Purposes Of RCRA Compliance	10
1. GW MONITORING AT EXISTING WELLS TO WHICH ACCESS CURRENTLY IS ALLOWED	10
2. GW MONITORING AT EXISTING WELLS TO WHICH ACCESS PREVIOUSLY HAS BEEN DENIED	11
3. ADDITIONAL GW MONITORING WELLS	11
4. BEST EFFORTS REQUIRED TO OBTAIN ACCESS	13
D. Groundwater Monitoring Of Domestic Water Supply Wells	13
1. MONITORING OF DOWNGRADIENT DOMESTIC WATER WELLS	14
E. Submittal of Part B Post-Closure Permit Application	14
V. SUBMISSIONS/NOTIFICATIONS/AGENCY APPROVAL/ADDITIONAL WORK	15
A. Written Submissions And Required Distributions	15
B. Directors' Review Process and Required Approvals	16
1. REVIEW OF DOCUMENTS	16
2. APPROVAL/DISAPPROVAL OF DOCUMENT	17
C. Quarterly Progress Reports, Monitoring Reports, and Miscellaneous Reports	18
1. QUARTERLY PROGRESS REPORTS	18
2. MONITORING REPORTS	18
3. MISCELLANEOUS REPORTS	20
D. Signatories and Certifications	20
E. Technical Qualifications and Document Stamps	20
F. Computation Of Time	20

TABLE OF CONTENTS
(Continued)

	<u>PAGE</u>
VI. MISCELLANEOUS ACTIVITIES AND REQUIREMENTS	21
A. Directors' Visits, Inspections, and Entry	21
B. Sampling, Data, and Document Availability	22
C. Record Preservation	22
D. Penalties for Delayed or Inadequate Performance	23
E. Dispute Resolution	24
F. Force Majeure and Excusable Delay	26
G. Reservation of Rights	28
H. Other Claims and Parties	30
I. Other Applicable Laws	31
J. Subsequent Modifications	32
K. Termination and Satisfaction	32

BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

In the matter of:

United Musical Instruments, U.S.A.,)	Consent Order
Inc.,)	
an Indiana corporation,)	No. <u>D-47-93</u>
)	
RESPONDENT.)	
)	
_____)	

CONSENT ORDER

This Consent Order is made and entered into by and between the Arizona Department of Environmental Quality ("ADEQ") and United Musical Instruments, U.S.A., Inc. ("UMI"), an Indiana corporation.

INTRODUCTION

The parties to this Consent Order agree that this Consent Order has been negotiated by the parties in good faith and after arms-length negotiations, that implementation of the Consent Order will expedite the initiation of the remedial measures described herein and will avoid prolonged and complicated litigation, and that this Consent Order is fair, reasonable, and in the public interest.

I. JURISDICTION AND PERSONS BOUND

A. Jurisdiction

1. The Director of ADEQ has jurisdiction over the subject matter of this action and is authorized to issue this order pursuant to the Arizona Revised Statutes ("A.R.S.") § 49-923.A (Compliance Order) and § 49-142 (Environmental Nuisance Cease and Desist Order).

2. To effectuate the mutual objectives of ADEQ and UMI and to resolve the matter constructively and without litigation, UMI consents to the actions required by this Consent Order and will not contest ADEQ jurisdiction regarding this Order.

3. UMI agrees that ADEQ has the right to enforce this Consent Order. Neither this consent nor anything in this Consent Order or any document incorporated herein by reference shall constitute an admission by UMI of any legal or factual matters set forth herein, which matters UMI specifically denies. By signing this Consent Order, ADEQ acknowledges that UMI does not admit, accept or intend to acknowledge any liability or fault with respect to the conditions at or around the UMI facility at 1310 West Drive in Nogales, Arizona.

B. Persons Bound

1. This Consent Order shall apply to and be binding upon UMI and its officers, directors, employees, agents, successors and assigns.

2. UMI shall give notice of this Consent Order to any successor in interest prior to transfer of ownership or operation of the facility and shall notify the Director thirty (30) calendar days prior to such transfer. No change in ownership or corporate or partnership status relating to the facility will in any way alter UMI's responsibility under this Consent Order.

3. Persons are bound upon the effective date of this Consent Order. The effective date of this Consent Order shall be the date this Consent Order is signed by ADEQ and UMI. If such signatures occur on different dates the latter shall be the effective date of this Consent Order.

II. STATEMENT OF PURPOSE AND LIMITATION OF SCOPE

In entering into this Consent Order the mutual objectives of the ADEQ and UMI are to provide for certain investigation and remediation of contaminated groundwater to be undertaken during that period of time before the UMI facility at 1310 West Fairway Drive in Nogales, Arizona (the "Facility") applies for and is issued a Resource Conservation and Recovery Act ("RCRA") Part B post-closure permit.

The Facility has completed closure of its RCRA hazardous waste management units and will remain under the "interim status" requirements of A.A.C. 18-8-265 [40 CFR 265]^{1/} until such time as a RCRA Part B post-closure permit is issued to the facility. Before such a permit can be applied for, processed, and issued, ADEQ and UMI wish to provide for certain additional investigation and remediation of contaminated groundwater associated with previous, and now discontinued, operations at the Facility. This Consent Order is intended to provide a means of promptly providing for the implementation of certain necessary interim corrective measures at the Facility, as well as for additional investigation of the contaminated groundwater and an evaluation of the effectiveness of the interim corrective measures to be undertaken.

UMI recognizes that this Consent Order is intended to address only the specific elements of investigation and remediation described herein. It explicitly does not relieve UMI of its future regulatory obligations to apply for a RCRA Part B post-closure permit and to perform any required post-closure activities at the Facility. In entering into this Consent Agreement, UMI acknowledges and agrees that ADEQ retains and reserves its authority as set forth in Section VI.H. of this Consent Order, regarding Reservation Of Rights.

^{1/} Code of Federal Regulations Title 40 Part 260 et. seq. (1991 Edition) was adopted by reference and parts modified by the A.A.C. R18-8-260 et. seq. (9/30/91) and its 10/06/92 amendment.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

ADEQ has made the following findings of fact and conclusions of law, none of which may be considered to be admissions by UMI.

A. Findings of Fact

1. UMI owns and operates the Facility, which is located at 1310 West Fairway Drive in Nogales, Arizona. The Facility is used for the manufacturing of musical instruments.

2. On August 18, 1980, C.G. Conn, Ltd., a predecessor-in-interest to UMI, submitted to the United States Environmental Protection Agency ("EPA") a notice of its hazardous waste activity at the Facility, as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). On November 19, 1980, C.G. Conn Ltd. submitted to EPA a RCRA Part A permit application as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to treat, store or dispose of hazardous waste at the facility. The Part A application identified treatment in a tank and disposal in a surface impoundment of certain wastes which are regulated under RCRA and under A.A.C. R18-8-201 et seq. as hazardous wastes. Consequently the facility obtained interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), and A.A.C. R18-8-270 [40 CFR § 270.70].

3. The Facility instituted certain groundwater monitoring activities in order to comply with the interim status

requirements of Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), and A.A.C. R18-8-265 [40 CFR Part 265, Subpart F]. This monitoring detected contamination in the groundwater indicating that the surface impoundment might be affecting groundwater quality.

4. Upon detection and confirmation of this contamination, C.G. Conn Ltd., and subsequently its successor-in-interest UMI, investigated and began remediation of the contamination. The surface impoundment was excavated and closed in order to provide necessary source control. This closure was conducted pursuant to a closure plan which was approved by ADEQ on December 2, 1986. On February 1, 1988, ADEQ notified UMI that closure had been completed under RCRA and the Arizona Hazardous Waste Management Act. Although certified as closed, the Facility, pursuant to A.A.C. R18-8-265(A) [40 CFR §265.1(b)], will remain under the RCRA interim status standards of 40 CFR Part 265 and A.A.C. R18-8-265 until a RCRA Part B post-closure permit is issued.

5. The actions required by this Consent Order are necessary to protect human health and the ecological environment. Groundwater is the water source for vegetation, streams, lakes, transpiration, human consumption, and agriculture. The groundwater affected is a drinking water aquifer. The Nogales Wash is a "protected use" area as defined by A.A.C. R18-11-208.

B. Conclusions of Law

1. The Facility is a "facility" within the meaning of A.A.C. R18-8-260.C [40 CFR § 260.10].

2. The Facility is subject to the interim status requirements of Section 3005(e) of RCRA, 42 U.S.C. §6925(e), and A.A.C. R18-8-265.A [40 CFR § 265] and A.A.C. R18-8-270.A [40 CFR §270 Subpart G]. The Facility has completed closure of its RCRA hazardous waste management units. However, this closure did not relieve the Facility of its post-closure care obligations or its obligations to address groundwater contamination caused by operation of the surface impoundment prior to its closure. The Facility will remain under the "interim status" requirements of A.A.C. R18-8-265 [40 CFR 265] until such time as a RCRA Part B post-closure permit is issued to the facility pursuant to A.A.C. R18-8-270.A [40 CFR Part 270, Subpart B].

3. There has been a release of hazardous wastes or hazardous waste constituents from the surface impoundment at the Facility. Addition of a groundwater extraction and treatment system at the Facility to treat hazardous waste contained in the contaminated groundwater to be extracted is necessary, within the meaning of A.A.C. R18-8-270.A [40 CFR §270.72(a)(3)], to prevent a threat to human health and the environment because of an emergency situation and so is a change which may be made during interim status.

4. Further investigation of groundwater quality is necessary in order to complete fully the groundwater quality

assessment required by A.A.C. R18-8-265.A [40 CFR §265.93(d)(4)]. As a consequence, the Facility is in violation of Arizona's Hazardous Waste Management Act ("AHWMA"), A.R.S. §49-921 et seq., and the rules promulgated thereunder, and the groundwater contamination at the Facility constitutes an environmental nuisance dangerous to the public health pursuant to A.R.S. §49-141(8). In evaluating the abatement of the environmental nuisance, ADEQ will utilize the RCRA corrective action program for interim status facilities for the protection of human health and the environment. Corrective action is allowed during interim status pursuant to A.A.C. R18-8-270.A [40 CFR § 270.72(a)(5) and § 270.72(b)(5)].

IV. WORK TO BE PERFORMED AND COMPLIANCE SCHEDULE

THE DIRECTOR HEREBY ORDERS and UMI agrees that UMI shall perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with the applicable requirements of the Arizona Hazardous Waste Management Act, A.R.S. §49-921 et seq., and the rules promulgated thereunder as A.A.C. R18-8-260 et seq. [40 CFR Part 260 et seq.]; the groundwater monitoring requirements for RCRA interim status hazardous waste management facilities set forth in A.A.C. R18-8-265.A [40 CFR Part 265 Subpart F and §265.118(c)(1)]; and applicable EPA guidance documents which include: "Test Methods for Evaluating Solid Waste" (SW-846, September 1986).

A. Newly-Discovered Releases And Threats To Health And Environment

1. In the event UMI identifies during performance of the actions required under this Consent Order a threat to human health or the environment from the Facility that requires immediate action to mitigate the threat, UMI shall immediately notify ADEQ orally and in writing within seven (7) days, summarizing the immediacy and magnitude of the threat to human health or the environment. Within thirty (30) days of notifying ADEQ, UMI shall submit to ADEQ a written report containing a description of the threat and its cause; the period the threat was in existence and if the threat has not been mitigated, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of this threat. The measures used to mitigate this threat are to be consistent with and integrated into any long term solution regarding groundwater contamination at the Facility.

B. Existing Single-Well Pump-And-Treat System Start Up:

1. A Groundwater Remediation System Start Up Plan ("Plan") shall be submitted by UMI to ADEQ within thirty (30) days of the effective date of this Consent Order. The Start Up Plan shall include a) a plan for testing the integrity of the existing groundwater extraction and treatment system ("System") at the Facility; b) a schedule for start-up of the System; and c) certification that the following permits or agreements regarding

the System are currently in effect and have been updated as required: the Arizona Department of Water Resources Poor Quality Groundwater Withdrawal Permit (P-518472); ADEQ Office of Water Quality Groundwater Quality Protection Permit (G-0004-12); ADEQ Office of Air Quality ("OAQ") Installation Permit (45002); an ADEQ OAQ Operating Permit, if issued to the Facility; and the City of Nogales/C.G. Conn Golf Course Agreement dated August 17, 1988.

2. The Director shall review this Plan pursuant to Section V.B. of this Consent Order for major deficiencies. ADEQ's allowance of the start up of the existing System is not ADEQ's implicit approval of the System as the only remediation necessary to address groundwater contamination.

3. Within sixty (60) days of approval of the Plan, UMI shall begin to implement the integrity testing and schedule for start-up. Upon start-up and after, the System shall be operated in accordance with the permits and agreements identified in the certification portion of the Plan.

C. Groundwater Monitoring For Purposes Of RCRA Compliance

To complete its determination of the rate and extent of migration and of concentrations of hazardous waste and hazardous waste constituents required for its groundwater quality assessment and to assist in demonstrating the effectiveness of the groundwater extraction and treatment system to be operated

pursuant to Section IV.B. of this Consent Order, the following groundwater monitoring will be performed:

1. **GW MONITORING AT EXISTING WELLS TO WHICH ACCESS CURRENTLY IS ALLOWED:** Groundwater quality shall be sampled in the following wells installed at and adjacent to the Facility to which access currently is allowed and which are designated on Figure 1 to this Consent Order as: UMW-1; DMW-4; DMW-5; DMW-5D; DMW-6; and DMW-8. These samples shall be taken quarterly, commencing with the first quarter after the effective date of this Consent Order, and shall be analyzed on a quarterly basis for volatile organic compounds ("VOCs") by EPA Method 601/602 and on an annual basis for common ions and trace metals by EPA Method 200.7. Water levels shall be measured in each of these wells quarterly. UMI shall report on all monitoring data collected during a calendar quarter as set forth in Section V.C.2. of this Consent Order.

2. **GW MONITORING AT EXISTING WELLS TO WHICH ACCESS PREVIOUSLY HAS BEEN DENIED:** UMI shall use its best efforts, as that term is defined in Section IV.C.4. of this Consent Order, to secure access to allow groundwater quality to be sampled at the following wells adjacent to the Facility and designated on Figure 1 to this Consent Order as: DMW-1; DMW-2; DMW-3; and DMW-7. These wells previously were installed by UMI outside the property boundaries of the Facility as part of UMI's assessment of groundwater quality under A.A.C. R18-8-265.A [40 CFR § 265.93(d)(4)]. However, access to sample these wells historically has been denied to UMI and ADEQ.

a. If access required to undertake this sampling is obtained within forty-five (45) days of the effective date of this Consent Order, UMI will take samples during that calendar quarter and all calendar quarters thereafter in which access is allowed and shall analyze these samples and report on the monitoring data collected as required in Section IV.C.1 of this Consent Order.

b. If UMI using its best efforts is unable to obtain the access required to undertake this sampling within forty-five (45) days of the effective date of this Consent Order, UMI shall promptly notify ADEQ and shall include in that notification a summary of the steps UMI has taken to attempt to obtain access. ADEQ may, as it deems appropriate, assist UMI in obtaining access.

3. **ADDITIONAL GW MONITORING WELLS:** Within thirty (30) days of the effective date of this Consent Order, UMI shall submit to ADEQ a plan for installing and sampling additional groundwater monitoring wells necessary to define the extent and degree of groundwater contamination emanating from the Facility ("Additional Wells Plan"). In proposing the location of additional wells, the Additional Wells Plan will take into consideration whether it will be possible for UMI using best efforts, as that term is defined in Section IV.C.4. of the Consent Order, to obtain the necessary permission for access to the locations.

a. Sampling and Reporting: The Additional Wells Plan shall provide for groundwater to be sampled and the

monitoring data collected to be reported on as required in Section IV.C.1 of this Consent Order.

b. Plan Implementation: The Director shall review the Additional Wells Plan for deficiencies. UMI shall not begin to implement the Additional Wells Plan without the approval of the Director. Any disputes regarding the Additional Wells Plan are to be resolved using the dispute resolution provisions of Section VI.F. of this Consent Order.

i. If access required to install the wells described in the Additional Wells Plan is obtained within thirty (30) days of the date upon which UMI is allowed under this subsection to implement the Plan, UMI will take samples during the first calendar quarter in which this occurs and in all calendar quarters thereafter in which access is allowed and shall analyze these samples and report on the monitoring data collected as required in Section IV.C.1 of this Consent Order.

ii. If UMI using its best efforts is unable to obtain the access required to install the wells described in the Additional Wells Plan within thirty (30) days of the date upon which UMI is allowed under this subsection to implement the Plan, UMI shall promptly notify ADEQ and shall include in that notification a summary of the steps UMI has taken to attempt to obtain access. ADEQ may, as it deems appropriate, assist UMI in obtaining access.

4. **BEST EFFORTS REQUIRED TO OBTAIN ACCESS**: To the extent that work required by this Consent Order and any approved plans prepared pursuant hereto must be done on property

not owned or controlled by UMI, UMI will use its "best efforts," as required by Section 3004(v) of RCRA, 42 U.S.C. § 6924(v), to obtain site access agreements from the present owner(s) of such property. The term "best efforts" shall include, at a minimum, a certified letter from UMI to the present owners of such property requesting access agreements to permit UMI and ADEQ and its authorized representatives access to such property. In the event UMI notifies ADEQ that agreement for site access have not been obtained, ADEQ may, as it deems appropriate, assist UMI in obtaining access. Nothing in this Section of the Consent Order limits or otherwise affects ADEQ's right of access and entry pursuant to applicable law.

D. Groundwater Monitoring Of Domestic Water Supply Wells

1. MONITORING OF DOWNGRADIENT DOMESTIC WATER WELLS:

Groundwater quality shall be sampled in the closest downgradient to the Facility domestic water supply wells.

a. If UMI using best efforts, as that term is defined in Section IV.C.4. of this Consent Order is able within to obtain the access required to undertake this sampling within forty-five (45) days of the effective date of this Consent Order, UMI will take samples during that calendar quarter and all calendar quarters thereafter in which access is allowed and shall analyze these samples for VOCs by EPA Method 502.2 and report on the monitoring data collected as required in Section IV.C.1 of this Consent Order. In addition, UMI also shall provide copies

of this monitoring report to the owners of the downgradient wells.

b. If UMI using its best efforts is unable to obtain the access required to undertake this sampling within forty-five (45) days of the effective date of this Consent Order, UMI shall promptly notify ADEQ and shall include in that notification a summary of the steps UMI has taken to attempt to obtain access. ADEQ may, as it deems appropriate, assist UMI in obtaining access.

E. Submittal of Part B Post-Closure Permit Application

UMI shall submit within one hundred eighty (180) days of the completion of the Additonal Wells Plan required by Section IV.C.3. of the Consent Order and receipt of an acknowledgement from ADEQ that the rate and extent of migration of groundwater contamination emanating from the Facility has been determined a complete post-closure Part B permit application.

V. SUBMISSIONS/NOTIFICATIONS/AGENCY APPROVAL/ADDITIONAL WORK

A. Written Submissions And Required Distributions

1. UMI shall submit to ADEQ and EPA all reports and results of sampling and/or tests or other data required by this Consent Order in accordance with the schedules contained in the Consent Order and any approved plans prepared pursuant hereto.

2. Unless otherwise specified, reports, notices, or other submissions required under this Consent Order shall be in writing and shall be sent by hand delivery or certified mail, return receipt requested, to:

a. For ADEQ:

Thomas "Greg" Romero
ADEQ Primary Project Coordinator
Hazardous Waste Compliance Unit
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Mike Naber
ADEQ Alternate Project Coordinator
Hazardous Waste Compliance Unit
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Jeff Trembly
Office of Water Quality
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

b. For EPA:

U.S. Environmental Protection Agency
Attn: Chris Heppe, Permits Liaison (H-2-2)
75 Hawthorne Street
San Francisco, California 94105

c. For UMI:

Don Benscoter
Director of Operations - Nogales
United Musical Instruments U.S.A. Inc.
1310 West Fairway Drive
Nogales, Arizona 85621

With a copy to:

Carolyn R. Kneibler
Project Manager
Woodward-Clyde Consultants
500 12th Street, Suite 100
Oakland, California 94607

B. Directors' Review Process and Required Approvals

1. REVIEW OF DOCUMENTS - ADEQ shall review any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order.

a. The Director reserves the right to review all plans, reports, and other documents within forty-five (45) calendar days of receipt of the submittal.

b. The Director reserves the right to extend the forty-five (45) calendar day review timeframe if additional time is necessary to complete a proper review of submitted documents. The Director shall notify UMI of such an extension first by telephone and then with a written statement. Accordingly, the schedules of implementation established by this Consent Order will be adjusted to reflect such modifications.

c. The Director reserves the right to review the document for only major deficiencies during the required reviews. A Notice with minor deficiencies may follow after forty-five (45) calendar days in which all deficiencies must be corrected as directed.

2. APPROVAL/DISAPPROVAL OF DOCUMENT - After review, the Director shall either approve or disapprove the document in writing:

a. If the Director disapproves the document, the Director shall either (1) notify UMI in writing of the deficiencies and reasons for disapproval, and specify a due date for submittal of a revised document thirty (30) calendar days

after receipt of notification, or (2) revise the document (This revised document becomes the approved document) and notifies UMI of the revisions.

b. In the event the Director disapproves the document or revises the document, UMI may invoke the procedures for dispute resolution set forth in Section VI.F. of this Consent Order.

c. The time period for completion of any work and/or obligations affected by the dispute being pursued under Section VI.F. of this Consent Order shall be extended upon the reasonable request of either ADEQ or UMI for a period of time not to exceed the actual time taken to resolve the dispute.

C. Quarterly Progress Reports, Monitoring Reports, and Miscellaneous Reports

1. QUARTERLY PROGRESS REPORTS: Beginning with the first complete calendar quarter following the effective date of this Consent Order, UMI shall provide the Director with progress or status reports for every quarter by the fifteenth day of the following quarter (e.g. quarterly status reports), until full compliance with Section IV of this Consent Order is achieved.

a. The written quarterly progress reports shall describe what measures have been taken during that quarter to perform the requirements of the Consent Order and shall include, at a minimum:

i. A description of the work completed;

ii. Summaries of all findings, including summaries of laboratory data;

iii. Summaries of all problems or potential problems encountered during the reporting period and actions taken to rectify problems; and

iv. Projected work for the next reporting period.

2. **MONITORING REPORTS:** UMI shall report on the monitoring of groundwater quality as follows:

a. Monitoring of Groundwater Quality: All monitoring data collected during a calendar quarter pursuant to Sections IV.C. and IV.D. of this Consent Order shall be due no later than the 28th day of the month following the completed reporting period as indicated below:

<u>Monitoring Data For</u>	<u>is due by</u>
1st Quarter (Jan, Feb, Mar)	April 28
2nd Quarter (Apr, May, Jun)	July 28
3rd Quarter (Jul, Aug, Sep)	October 28
4th Quarter (Oct, Nov, Dec)	January 28

i. An annual report shall be submitted for each calendar year no later than March 1 following the close of that reporting period and shall include for those wells to be monitored pursuant to Section IV.C. of the Consent Order the information required by A.A.C. R18-8-265.A. [40 CFR § 265.94(b)(2)].

3. **MISCELLANEOUS REPORTS:** Copies of other miscellaneous reports, logs, and data (i.e. inspection reports, drilling logs and laboratory data, etc.) shall be made available to the Director upon request.

D. Signatories and Certifications

1. Any plan, report or other item submitted by or on behalf of UMI pursuant to this Consent Order shall be signed and certified in accordance with A.A.C. R18-8-270.A [40 CFR § 270.11].

E. Technical Qualifications and Document Stamps

1. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer (P.E.) or geologist (P.G.) with expertise in hazardous waste site cleanup. On or before the effective date of this Consent Order, UMI shall notify the Director in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Order.

2. All technical work submitted to the Director shall either be stamped by a Registered Professional Geologist (P.G.) and/or a Professional Engineer (P.E.), as appropriate.

F. Computation Of Time

1. In computing any period of time prescribed or allowed by this Consent Order, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal and State legal holidays shall be

included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

VI. MISCELLANEOUS ACTIVITIES AND REQUIREMENTS

A. Directors' Visits, Inspections, and Entry

1. The Director or any Director representative, may at any time, upon presentation of credentials, enter at reasonable times and freely move about all property at the facility for the purpose of, inter alia: inspecting records and documents required by this Consent Order; reviewing the progress of UMI in carrying out the terms of this Consent Order; conducting at reasonable times such sampling and tests as the Director or its representative deem necessary in order to assure compliance with this Consent Order; and verifying at reasonable times the reports and data submitted pursuant to this Consent Order to the Director by UMI. UMI shall permit such persons to inspect and copy at reasonable times all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this paragraph, and shall comply with all approved health and safety plans. This right of entry shall be in addition to, and not in limitation of or substitution for, ADEQ's rights under applicable law, including A.A.C. R18-8-280.A.

B. Sampling, Data, and Document Availability

1. UMI shall make available to the Director all results of sampling, tests, or other data generated by UMI, or on its behalf, with respect to the implementation of this Consent Order. UMI shall submit these results as described in Section V.C.2. of this Consent Order. Similarly, upon request, the Director will make available to UMI the results of sampling or tests generated pursuant to this Order by the Director within ninety (90) calendar days after receipt that such results or data pass the Director quality assurance review.

2. UMI may assert pursuant to the provisions of A.A.C. R18-8.260.D.2.c. a claim of confidential trade secrets or financial data covering all or part of information submitted to the Director.

C. Record Preservation

1. UMI agrees that it shall preserve at the Facility, at any consultant's or contractor's business office, or at some other location approved by the Director during the pendency of this Consent Order and for a minimum of six (6) years after its termination or termination of any reissued order (whichever is latest), all records and documents in its possession or in the possession of its divisions, employees, agents, consultants, or contractors which relate in any way to this Consent Order or to hazardous waste management and disposal at the facility. At the

conclusion of six (6) years, UMI shall then make such records available to the Director for inspection or the Director's retention or shall provide copies of any such records to the Director. UMI shall notify the Director thirty (30) calendar days prior to the destruction of any such records and shall provide the Director with the opportunity to take possession of any such records.

2. By entering into this Consent Order, however, UMI does not waive or abridge its rights to claim that any information, documents, or communications generated in connection with or concerning or relating to the Consent Order may be privileged or otherwise protected from disclosure under the attorney-client privilege, the attorney work product doctrine, or any other privilege recognized by law.

D. Penalties for Delayed or Inadequate Performance

1. Unless there has been a written modification of a compliance date by ADEQ or excusable delay as defined under the "Force Majeure And Excusable Delay" provisions of Section VI.G. of this Consent Order, UMI may be subject to civil and or criminal penalties pursuant to A.A.C. R18-8-270.B and A.R.S. §§ 49-923 through 49-925. Compliance by UMI shall include completion of an activity under this Consent Order or a plan approved under this Consent Order or any matter under this Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order.

2. Should UMI fail to comply with a time requirement of any task required by this Consent Order, the period of noncompliance shall terminate upon UMI's performance of said requirement.

E. Dispute Resolution

1. The parties shall use their best efforts to resolve informally and in good faith, all disputes or differences of opinion relating to the conduct of activities under this Consent Order. If, however, disputes arise concerning this Consent Order, including but not limited to, approval of documents, scheduling of any work, or any other obligations assumed hereunder, which the parties are unable to resolve informally, UMI shall present a written notice of such dispute to the Director, within twenty (20) calendar days of its knowledge of the dispute. The written notice of dispute shall set forth the specific points of dispute, the position of UMI and the basis therefore, and any actions which UMI considers necessary to resolve the dispute.

2. Within twenty (20) calendar days of receipt of a written notice from UMI pursuant to Paragraph 1 of this Section, the Director shall provide a written response to UMI setting forth its position and the basis therefore. During the time period between receipt of the written notice from UMI and issuance of Director's written response, the parties shall

attempt to negotiate in good faith a resolution of the differences.

3. Following expiration of the time period described in Paragraph 2 above, if the Director concurs with the position of UMI, the dispute shall be deemed resolved in favor of UMI. UMI shall be provided with written notification of such dispute resolution, and this Consent Order will be modified to include any necessary extension of time or variances of work. No stipulated penalties will be due under these circumstances.

4. Following expiration of the time period described in Paragraph 2 above, if the Director does not concur with the position of UMI, Director shall resolve the dispute, based upon and consistent with the terms and objectives of this Consent Order, and shall provide a written statement of the dispute resolution which shall be incorporated into this Consent Order.

5. The provisions of this Consent Order are severable. During the pendency of the dispute resolution procedures set forth in this Section, the time period of completion of work and/or obligations to be performed under this Consent Order, which are affected by such dispute, shall be extended upon the reasonable request of either ADEQ or UMI for a period of time not to exceed the actual time taken to resolve the dispute. Other elements of the work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Consent Order. If any provision of this Consent Order is declared by a court of law to be invalid or

unenforceable, all other provisions of this Consent Order shall remain in full force and effect.

6. Upon resolution of any dispute, whether informally or using the procedures in this Section, UMI shall proceed with the work according to the statement of resolution which shall be incorporated into this Consent Order.

F. Force Majeure and Excusable Delay

1. UMI shall perform each requirement under this Consent Order within the time limits set forth or approved or established herein, unless the performance of the requirement is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes beyond the control of UMI, including its consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order, or interrupts performance of any activity which requires continuous operation. Such events do not include unanticipated or increased costs of performance, or changed economic circumstances, normal precipitation events. The financial inability of UMI to comply with the terms of this Consent Order shall not constitute a force majeure.

2. UMI must notify the Director in writing ten (10) calendar days after it becomes aware of events which it knows or should know constitute a force majeure. Such notice shall estimate the anticipated length of delay, including necessary

demobilization and re-mobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. UMI shall adopt all reasonable measures to avoid and minimize the delay. Failure of UMI to comply with any requirement of this paragraph for a particular event shall constitute a waiver of its right to request an extension of time to fulfill any obligation under this Consent Order relating to that event.

3. If UMI demonstrates to the Director that the delay has been or will be caused entirely by circumstances beyond UMI's control, which could not have been overcome by due diligence (a force majeure), the time for performance for that element shall be extended for a period equal to the delay resulting from such circumstances. The time for performance of any activity dependent on the delayed activity shall be similarly extended. This shall be accomplished through written amendment to this Consent Order pursuant to Section VI.K. Such an extension does not alter the schedule for performance or completion of other tasks required by the Consent Order unless these are also specifically altered by amendment of the Consent Order or underlying plan. In the event that the Director and UMI cannot agree that any delay or failure has been or will be caused entirely by circumstance not reasonable, foreseeable, and beyond the control of UMI, which could not have been overcome by due diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the

Dispute Resolution provisions of Section VI.F. of this Consent Order.

G. Reservation of Rights

1. The Director expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by UMI pursuant to Section IV.B. of this Consent Order. If additional information is discovered which indicates that the actions taken under this Consent Order are or will be inadequate to protect the public health, welfare, or the environment, or to conform with applicable federal or state laws, ADEQ shall have the right to require further action.

2. The Director hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to UMI's failure to comply with any of the requirements of this Consent Order, including without limitation the assessment of penalties under AHWMA. The Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Director has under RCRA, CERCLA, or any other statutory, regulatory, or common law enforcement authority of the United States. The entry of this Consent Order and UMI's consent to comply shall not limit or otherwise preclude the Director from taking additional enforcement action pursuant to AHWMA and Section VI.E. of this Consent Order should the Agency determine that such actions are

warranted. ADEQ shall have the right to take enforcement action for any and all violations of this Consent Order; and to take enforcement action for any and all violations of the AHWMA occurring after the entry of this Consent Order.

3. Compliance by UMI with the terms of this Consent Order shall not relieve UMI of its obligations to comply with other applicable local, State, or Federal laws and regulations. This Consent Order does not encompass issues regarding releases, contamination, sources, operations, facilities or processes not expressly covered by the terms of this Consent Order and is without prejudice to the rights of the State of Arizona or UMI arising under any federal or Arizona environmental statutes and rules with regard to such issues, including, without limitation, any authority or rights the State of Arizona or UMI may have pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601-9675, as amended), the Arizona Water Quality Assurance Revolving Fund statutes (Article 5 of Chapter 2 of Title 49, A.R.S.), or the State statutory emergency response authority (A.R.S. §§ 12-971 and 12-972).

4. The Director reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect human health and the environment. The Director may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. The Director reserves its right to seek reimbursement from

UMI for such additional costs incurred by the Director.

Notwithstanding compliance with the terms of this Order, UMI is not released from liability, if any, for the costs of any response actions taken by the Director.

5. If the Director determines that activities in compliance or in noncompliance with this Consent Order have caused or may cause a release of hazardous waste, hazardous constituents, or a pollutant or contaminant, or a threat to the public health or to the environment, the Director may order UMI to stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threat and/or undertake any actions which the Director determines is necessary to abate such release or threat.

H. Other Claims and Parties

1. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order 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 constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

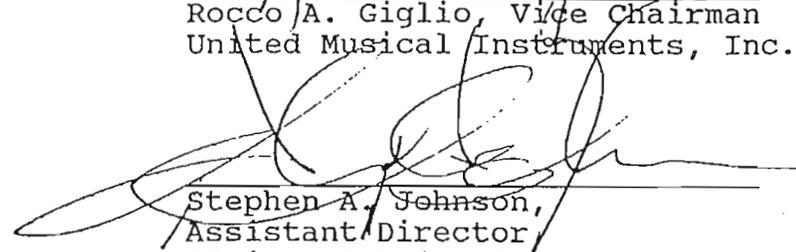
CONSENT TO ORDER

The undersigned, on behalf of UMI, hereby acknowledges that UMI was represented by legal counsel, and that he has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Director, agrees that UMI will abide by the same and waives any right to oppose entry of this Consent Order. The undersigned further certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind such party to this document.

Dated this 10th day of August, 1993.



Rocco A. Giglio, Vice Chairman
United Musical Instruments, Inc.



Stephen A. Johnson,
Assistant Director
Office of Waste Programs

DISTRIBUTION LISTING

Fully executed duplicate original Consent Order sent certified mail this 18 day of August, 1993 to:

Don Benscoter
Director of Operations-Nogales
United Musical Instruments U.S.A., Inc.
1310 Fairway Drive
Nogales, Arizona 85621

Copy of the foregoing Consent Order sent regular/interdepartmental mail this 18 day of August, 1993 to:

The Honorable Mary Macias
Mayor, City of Nogales
777 North Grand Avenue
Nogales, Arizona 85621

Carolyn A. Lown
Jackson, Tufts, Cole and Black
650 California St., 31st Floor
San Francisco, CA 94108

Chief Paredes
City of Nogales Fire Department
777 North Grand Avenue
Nogales, Arizona 85621

Ms. Carolyn Kneibler, Project Mgr
Woodward-Clyde Consultants
500 12th Street, Suite #100
Oakland, CA 94607-4014

Dr. Charles Hott, Dir. of Public Health
Santa Cruz County Health Department
2150 North Congress Drive
Nogales, Arizona 85621

ADWR PQGWW Permits Unit
Attn: Permit #P-518472

ADEQ OAQ Installation Permits Unit
Attn: Permit #45002

Paige Murphy-Young
Assistant Attorney General
Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007

ADEQ OWQ APP Permits Unit
Attn: Permit #G-0004-12

ADEQ Primary and Alternate Project Coordinators:

Thomas "Greg" Romero, Compliance Officer (Prim.)
Hazardous Waste Compliance Unit, ADEQ
3033 North Central Avenue
Phoenix, AZ 85012

Mike Naber, Permits Engineer (Alt.)
Hazardous Waste Permits Unit, ADEQ
3033 North Central Avenue
Phoenix, AZ 85012

Jeff Trembly
Office of Water Quality, ADEQ
3033 North Central Avenue
Phoenix, AZ 85012

U.S. Environmental Protection Agency, Region IX
Attn: Chris Heppe, Permits Liaison (H-2-2)
75 Hawthorne Street
San Francisco, CA 94105

JUL 26 1994

9

AMENDMENT TO CONSENT ORDER D-47-93

Section IV.C.2 shall be deleted in its entirety, and Section IV.C.1. of the Consent Order shall be modified as follows:

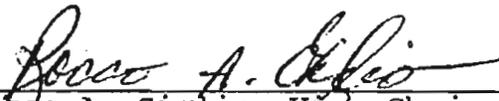
Groundwater quality shall be sampled in the following wells installed at and adjacent to the Facility to which access currently is allowed and which are designated on Figure 1 to this Consent Order as: UMW-1; DMW-1; DMW-2; DMW-3; DMW-4; DMW-5; DMW-5D; DMW-6; DMW-7; and DMW-8. Samples from UMW-1, DMW-1, DMW-2, DMW-4, DMW-7 and DMW-8 shall be taken quarterly and shall be analyzed on a quarterly basis for volatile organic compounds ("VOCs") by EPA Method 601. Until start up of the groundwater remediation system, samples from DMW-3, DMW-5, DMW-5D and DMW-6 shall be taken annually and shall be analyzed on an annual basis for VOCs by EPA Method 601. Following start up of the groundwater remediation system all wells shall be sampled and analyzed quarterly for VOCs by EPA Method 601. All wells shall be analyzed on an annual basis for common ions and trace metals by EPA Method 200.7. For all newly installed wells, as discussed in Section IV.C.3., the first samples following installation shall be analyzed for VOCs by EPA Method 601/602 to confirm the absence of target analytes. If Method 602 analytes are detected, subsequent quarterly samples shall be analyzed by EPA Method 601/602. If Method 602 analytes are not present, subsequent quarterly samples shall be analyzed by EPA Method 601, as discussed above. Water levels shall be measured in each of these wells quarterly. UMI shall report on all monitoring data collected during a calendar quarter as set forth in Section V.C.2. of this Consent Order.

All other terms and conditions of the Consent Order are incorporated by reference and shall remain unaffected by the amendment described above.

AMENDMENT TO CONSENT ORDER D-47-93

The undersigned, on behalf of UMI, hereby acknowledges that UMI was represented by legal counsel, and that he has read the above Amendment in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Director, agrees that UMI will abide by the same and waives any right to oppose entry of this Amendment. The undersigned further certifies that he is fully authorized to enter into the terms and conditions of this Amendment and to execute and legally bind such party to this document.

Dated this 22 day of July, 1994.



Rocco A. Giglio, Vice Chairman
United Musical Instruments, Inc.



Ethel DeMarr, Director
Waste Programs Division

Fully executed duplicate original amendment sent certified mail this 27 day of July, 1994 to:

Don Benscoter
Director of Operations - Nogales
United Musical Instruments U.S.A., Inc.
1310 Fairway Drive
Nogales, Arizona 85621

Copy of the foregoing amendment sent regular/interdepartmental mail this 27 day of July, 1994 to:

The Honorable Mary Macias
Mayor, City of Nogales
777 North Grand Avenue
Nogales, Arizona 85621

Carolyn A. Lown
Jackson, Tufts, Cole and Black
650 California St., 31st Floor
San Francisco, CA 94108

Chief Paredes
City of Nogales Fire Department
777 North Grand Avenue
Nogales, Arizona 85621

✓ Leo Gentile
Woodward-Clyde Consultants
500 12th Street, Suite #100
Oakland, CA 94607-4014

Dr. Charles Hott, Dir. of Public Health
Santa Cruz County Health Department
2150 North Congress Drive
Nogales, Arizona 85621

ADWR PQGWW Permits Unit
Attn: Permit #45002

ADEQ OAQ Installation Permits
Attn: Permit #45002

Yvonne Hunter
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

ADEQ OWQ APP Permits Unit
Attn: Permit #G-0004-12

Linda M. Palumbo
Hazardous Waste Compliance Unit, ADEQ
3033 North Central Avenue
Phoenix, Arizona 85012

Rafael Velazquez
Hazardous Waste Permit Unit, ADEQ
3033 North Central Avenue
Phoenix, Arizona 85012

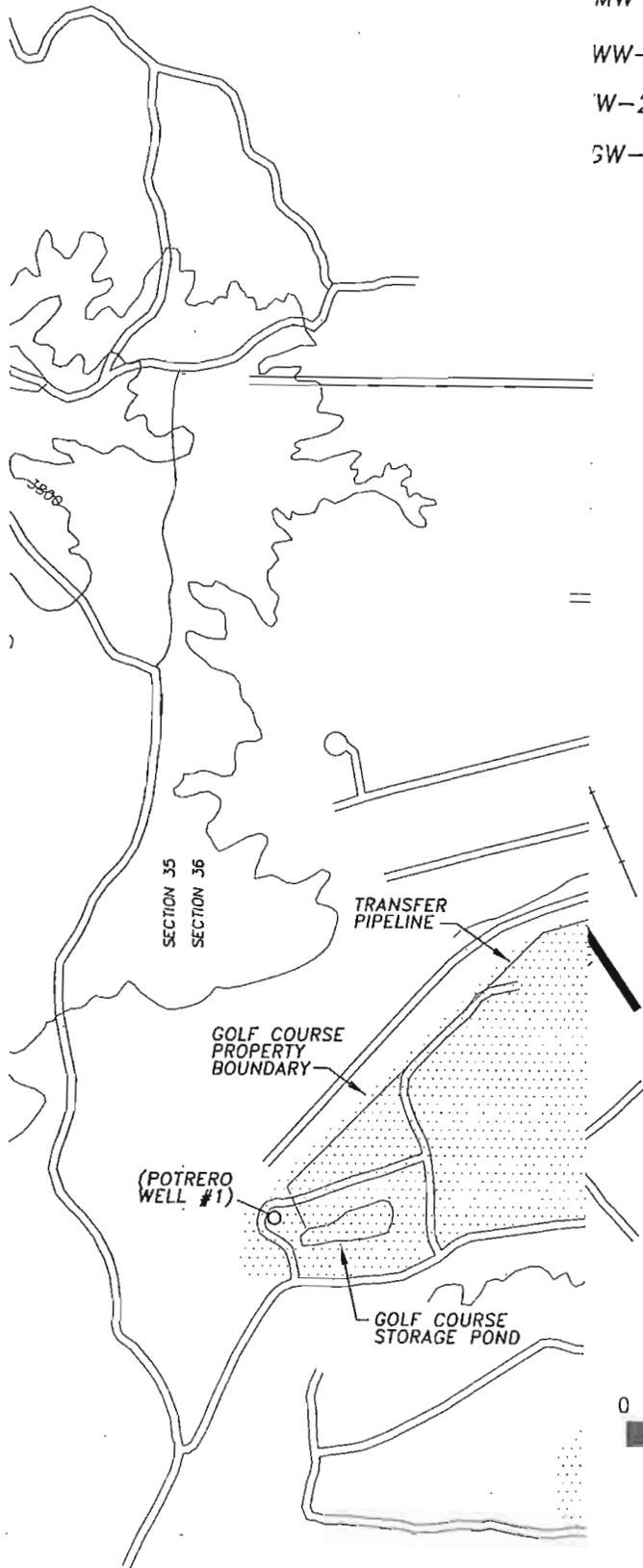
Bill Ruddiman
Remedial Investigations Hydrology Unit, ADEQ
3033 North Central Avenue
Phoenix, Arizona 85012

U.S. EPA, Region IX
Chris Heppe, Permits Liaison (H-2-2)
75 Hawthorne Street
San Francisco, CA 94105

U.S. EPA, Region IX
Clint Seiter, HWMD (H-2-2)
75 Hawthorne Street
San Francisco, CA 94105

Operation Log
Groundwater Treatment System
UMI Nogales, Arizona

Signature		Date:									
		Day:									
		Time:									
Pressure Indicators	P&ID #	Normal range									
P1	PI-1	5-35 psi									
P2	PI-2	5-20 psi									
P3	PI-3	4-8 psi									
P4	PI-4	20-40 psi									
P5	PI-5	0-60 psi									
Air stripper #1 readings											
Photohelic	PPS-25	4.0-6.0									
Magnahelic	MPS-25	3.5-6.5									
Level Controller 1		60-80%									
High level LED	LSH-30	Off									
Low Level LED	LSL-30	On									
Water Level	Viewable in window										
Air stripper #2 readings											
Photohelic	PPS-35	4.0-6.0									
Magnahelic	MPS-35	3.5-6.5									
Level Controller 2		50-70%									
High level LED	LSH-40	Off									
Low Level LED	LSL-40	On									
Water Level	Viewable in window										
Flow Rates (gpm)											
Influent	FI-1	60-160									
Effluent	FI-2	50-250									
Totalizer											
Influent	FQI-1	N/A									
Effluent	FQI-2	N/A									
Water Level											
Tank #1	LI-1	2.5-7.5									
Tank #2	LI-2	2.0-8.0									
Pond Level (✓)	Water exiting discharge pipe Pond not full										
Gates Locked	Yes	No									
Evidence of Vandalism	Yes	No	If yes, explain.								
Evidence of corrosion (tanks and/or piping)	Yes	No	If yes, explain.								
Evidence of unplanned release of water	Yes	No	If yes, explain.								
Notes											



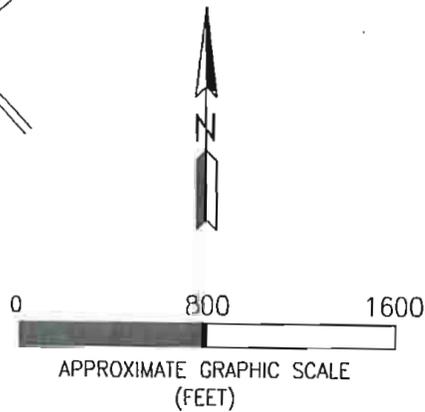
END

MW-4 UMI MONITORING WELL

WW-1 WATER SUPPLY WELL

W-2 EXTRACTION WELL

3W-13 ADEQ MONITORING WELL



MACTEC
 MACTEC ENGINEERING AND CONSULTING INC.
 3630 E. WIER AVE., PHOENIX, ARIZONA 85040
 PHONE: (602) 437-0250 FAX: (602) 437-3675

Figure 2-5
Monitoring Well Location Map
Revised 5/2/06 by MACTEC

CONN-SELMER INC.
 NOGALES, ARIZONA

DATE	05/2/06	SCALE	1"=800'
DRAWN BY:	MDF	FIGURE	
PROJECT No.		4972-03-2034	

Post-Closure Inspection Report Form
UMI Nogales, Arizona

Monitoring Wells

Well # _____

Inspection Date: _____

Inspector Name: _____

Weather Conditions: _____

Instructions: Circle "Y" or "N" as applicable. Comment where appropriate.

MONITORING WELLS:

Evidence of cracking or vandalism of concrete pad surrounding well head? Y N

If yes, please explain. _____

Is the security cap locked? Y N

If no, please explain. _____

Evidence of cracking or other abnormalities with the well casing? Y N

If yes, please explain. _____

Evidence of corrosion or deterioration of hinges on security cap? Y N

If yes, please explain. _____

Silt build up less than 0.1 inch? (**Annual check only**) Y N

Drawdown greater than 0.1 foot? (**Annual check only**) Y N

Signature

Date

Post-Closure Inspection Report Form
UMI Nogales, Arizona

Extraction Well

Well # _____

Inspection Date: _____

Inspector Name: _____

Weather Conditions: _____

Instructions: Circle "Y" or "N" as applicable. Comment where appropriate.

EXTRACTION WELL:

Well cover locked? Y N

If no, please explain. _____

Evidence of cracking in seals? Y N

If yes, please explain. _____

Integrity of concrete pad o.k? Y N

If no, please explain/ _____

Proper connection of electrical wires? Y N

If no, please explain. _____

Pressure differential across the strainer o.k (evidence of clogged strainer)? Y N

Signature

Date

Inspection Report Form for Storage Pond

Weather Conditions: _____

Inspector Name: _____

Inspection Date: _____

Instructions: Circle "Y" or "N" as applicable. Comment where appropriate.

Evidence of deterioration, malfunction, or improper operation of over-topping control system? Y N
If yes please explain:

Evidence of a sudden drop of water level in storage pond? Y N If yes, please explain:

Liner Integrity: Evidence of a tear, leaks, punctured liner, etc.? Y N If yes please explain:

Berm Integrity: Evidence of visible erosion/seepage? Y N If yes, please explain:

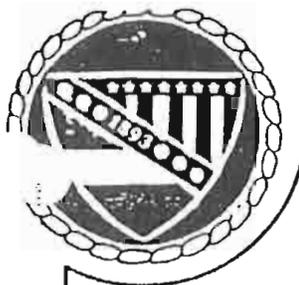
Security fence and warning signs in good condition, and gate locked? Y N If no, please explain:

At least 2 feet of freeboard? Y N If no, please explain:

Signature

Date

ATTACHMENTS



CITY of NOGALES

JOSEPH R. McKINNEY
CITY ATTORNEY

August 17, 1988

Hugh A. Holub, Esq.
3390 N. Campbell
Suite 132
Tucson, Arizona 85719

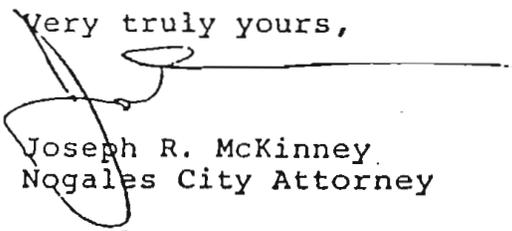
RE: City of Nogales/ C.G. Conn Golf Course Agreement

Dear Mr. Holub:

Pursuant to our recent telephone conversation wherein I informed you that the City was in agreement with the changes to the agreement referred to above, and pursuant to the instructions in your letter dated August 2, 1988, I am enclosing the signed agreement.

Please do not hesitate to call me if you have any questions.

Very truly yours,


Joseph R. McKinney
Nogales City Attorney

JRM:cl

Enclosures



AGREEMENT

THIS AGREEMENT is made and entered into on this 17 day of August, 1988, by and between United Musical Instrument USA, Inc., hereinafter "UMI", and the City of Nogales, hereinafter "Nogales", an Arizona municipal corporation.

WHEREAS, UMI is the owner and operator of a musical instrument manufacturing facility located within the City of Nogales, Arizona; and,

WHEREAS, UMI is required by various state and federal laws to remove certain groundwater from an aquifer that had previously been impacted by UMI's manufacturing activities, and treat said groundwater to remove volatile organic compounds associated with the UMI manufacturing activities to levels at or below applicable state and federal water quality standards; and,

WHEREAS, Nogales is the owner of a golf course known as the Meadow Hills Country Club Golf Course, more particularly described on the map attached hereto and made a part hereof as Exhibit "A" hereinafter referred to as the "Golf Course"; and

WHEREAS, Nogales desires the right to use the treated groundwater produced by UMI to irrigate the Golf Course; and,

WHEREAS, UMI desires to grant Nogales the right to use the treated groundwater on the Golf Course;

NOW, THEREFORE IT IS AGREED by the parties as follows:

1. UMI shall install, at its sole cost and expense, the necessary groundwater withdrawal, treatment, and conveyance facilities to extract, treat, and convey the groundwater removed, to the Golf

Course at two holding ponds shown on Exhibit "A" and denominated as the "Delivery Point" or "outfall". The ground water extracting, treatment and conveyance facilities (hereinafter referred to as the "System") shall be as more particularly described in the "Notice of Disposal" filed by UMI with the Arizona Department of Health Services, [Arizona Department of Environmental Quality] and which is attached hereto and made a part hereof as Exhibit "B".

2. UMI agrees to deliver to the Golf Course Delivery Point a maximum of 150 gallons per minute of treated groundwater through the System.

3. UMI shall bear the sole cost and responsibility of operating, maintaining and repairing the System to the point of the outfall of the System into the two Golf Course holding ponds at the Delivery Point so long as UMI is in the process of treating the groundwater.

4. UMI warrants and guarantees to Nogales that the treated groundwater delivered to the Delivery Point on the Golf Course shall be treated to remove volatile organic compounds associated with the UMI manufacturing activities to levels at or below applicable state and federal water quality standards for use of said treated groundwater to irrigate a golf course, as set forth in Exhibit "B".

5. It shall be the sole cost and responsibility of Nogales to store, distribute and use said treated groundwater upon delivery of said groundwater by UMI to the Delivery Point on the Golf Course. Nogales shall not use the treated groundwater for any purposes other than for irrigation of the Golf Course and any other uses permitted by the Arizona Department of Health Services and/or the Arizona

Department of Environmental Quality. It shall be the sole responsibility of Nogales to obtain any such permits for use of the treated groundwater for uses other than the irrigation of the golf course. UMI does not warrant nor in any way imply or guarantee that such treated water would be suitable for human consumption.

6. It shall be the sole cost and responsibility of UMI to obtain any easements and/or rights of way for construction, installation and operation of the System through property not owned by Nogales. Nogales, by this Agreement, grants to UMI a right and license to install, maintain and operate the System on Nogales property to the Delivery Point, including an easement for the pipeline, said easement as more particularly shown on Exhibit "C".

7. UMI shall hold the City of Nogales, its officers, agents, employees, and elected officials free and harmless from any and all claims and liabilities of any nature whatsoever arising from or relating to in any way the following:

- (a) the withdrawal of the groundwater by UMI;
- (b) the treatment of the groundwater by UMI;
- (c) the installation, operation, maintenance and repair of the System by UMI;
- (d) the quality of the groundwater at the Delivery Point.

It is expressly understood and agreed that upon delivery of said treated groundwater to the Delivery Point, UMI transfers control, dominion and responsibility for the treated groundwater to Nogales. Nogales, therefore, shall hold UMI, its officers, agents, employees,

Shareholders and directors free and harmless from any and all claims or liabilities of any nature whatsoever arising from or relating to in any way the following:

- (e) the use, possession and control of the groundwater upon the Golf Course and at any point beyond the Delivery Point of the System into the two holding ponds by Nogales;
- (f) the quality of the groundwater beyond the Delivery Point of the System into the two holding ponds on the Golf Course.

8. For purposes of this Agreement, UMI shall be designated as the Operator of the System, and Nogales the landowner of the Golf Course, which for purposes of state and federal laws and regulations the Golf Course is denominated as the "disposal facility". All permits and applications necessary and required by state or federal agencies to implement the treatment of the groundwater and the use of said groundwater on the Golf Course shall reflect this status.

9. UMI shall be the applicant to the Arizona Department of Water Resources (hereinafter "ADWR") for a "Poor Quality Groundwater Withdrawal Permit" pursuant to A.R.S, 45-516. However, in the event ADWR requires Nogales to be the applicant for said permit as the "user" of said groundwater, Nogales agrees to be said applicant. All costs associated with said application shall be borne by UMI.

10. This Agreement shall be for a term of thirty-five (35) years, the term of the "Poor Quality Groundwater Withdrawal Permit" issued by ADWR, or until the groundwater being withdrawn and treated by UMI is

of such quality that treatment by UMI is no longer required by state or federal agencies, whichever shall first occur.

11. Upon the date at which UMI is no longer required to treat the groundwater to state or federal standards for reuse on the Golf Course, Nogales may, at its sole option, agree to continue receiving groundwater from the System, provided however,

(a) Nogales agrees to take title to the System (except for the groundwater treatment plant) in its own name, including the easements and/or rights-of-way and all facilities necessary to withdraw, pump and transport the groundwater to the Golf Course;

(b) Nogales agrees to operate, maintain and repair said System (excluding the groundwater treatment plant) at its sole cost and expense;

(c) That any and all hold harmless or other covenants entered into by UMI in favor of Nogales relating to the System (excluding the groundwater treatment plant) and the groundwater shall be deemed of no further force and effect, except as to any prior occurrences or acts before the date UMI is no longer required to treat the groundwater.

Within six (6) months of the date at which this Agreement would terminate as provided for in Paragraph 10 hereinabove, UMI shall notify Nogales in writing of the termination date. Nogales shall have six (6) months from said notice to elect to take over ownership, possession, control, operation and liability for the System (excluding the groundwater treatment plant).

There shall be no charge or cost to Nogales from UMI in the

vent Nogales elects to so take over ownership, possession, control, operation and liability for the System (excluding the groundwater treatment plant). The conveyance of ownership of the System (excluding the groundwater treatment plant) and its easements and rights-of-way shall be by such documents as the parties may then agree to at the time, including, but not limited to deeds, bills of sale, and other evidences of ownership and right satisfactory in the opinion of the City Attorney of Nogales. The System (excluding the groundwater treatment plant) shall be conveyed free and clear of any liens or other encumbrances.

(d) UMI will retain the groundwater treatment plant ownership and keep said treatment plant on-site for a period of five (5) years after this Agreement terminates pursuant to Paragraph 10.

The purpose for which the groundwater treatment plant will be retained on-site is in the event that further treatment to remove volatile organic compounds associated with the UMI manufacturing activities is required. The cost of such treatment will be borne by UMI.

(e) As further consideration for this Agreement, UMI agrees to provide to Nogales an easement for a wellsite of approximately 20 feet by 20 feet along the northeastern boundary of the UMI property and a 10 foot wide easement (if necessary) across UMI property between said wellsite and the existing pipeline to the Golf Course, at a specific location to be subsequently determined by mutual agreement of the parties.

Nogales shall exercise its right to obtain such wellsite easement

within ten (10) years of the date of commencement of this Agreement. Nogales shall exercise its right to obtain such wellsite easement by written notice to UMI designating its proposed location.

Such wellsite easement shall be granted by UMI to Nogales at no additional cost to Nogales by UMI.

(f) UMI shall provide Nogales with copies of reports made by it to the Arizona Department of Environmental Quality (DEQ) related to the performance of the groundwater treatment plant, and UMI shall further provide to Nogales copies of any reports or notices received by UMI from DEQ related to the operation or performance of the groundwater treatment plant.

In the event Nogales shall not elect to take over ownership, possession, control, operation and liability for the System by the termination date of this Agreement, this Agreement shall then terminate on the termination date and be of no further force and effect, and neither party shall have any right or liability one to another arising in any way from this agreement, except as to any prior occurrences or acts before the date of termination of this Agreement.

12. For purposes of this Agreement the following consideration is recognized and agreed to by the parties:

(a) the consideration to UMI for this Agreement shall be the right granted to UMI to dispose of the treated groundwater to and upon property owned by Nogales, namely the aforementioned and described Golf Course, which right constitutes a valuable right and cost savings to UMI;

(b) the consideration to Nogales for this Agreement shall be the right granted to Nogales by UMI to receive the treated groundwater at the Delivery Point, at no cost or liability to Nogales for the extraction, treatment, and conveyance of said groundwater to its Golf Course, which right constitutes a valuable right and cost savings to Nogales.

13. The duty and obligation by UMI to deliver treated groundwater to the Golf Course shall be subject to, and limited by, the following: Acts of God and other events beyond the control of UMI, including but not limited to breakdowns of the System; the acts or decisions of any governmental agency or authority whether local, state or federal.

This paragraph shall be specifically limited to delivery of quantities of water, and not to quality of water. UMI agrees and warrants to Nogales that the System shall be constructed, installed, operated and maintained so as to prevent any untreated groundwater from reaching the Golf Course Delivery Point. Nogales shall have no obligation pursuant to this Agreement to accept delivery of any groundwater from UMI which has not been treated to remove volatile organic compounds associated with the UMI manufacturing activities to levels at or below applicable state and federal water quality standards for use of said water to irrigate the Golf Course.

It is expressly understood and agreed that if for any reason UMI is unable for any length of time to deliver treated groundwater to the Golf Course, such inability to deliver treated groundwater shall not constitute a breach of this Agreement; and, further, that UMI shall be under no duty or obligation to provide an alternative

supply of water to the Golf Course. In the event UMI's withdrawal, treatment, pumping or conveyance system shall cease to operate due to any physical defect or breakdown, UMI shall promptly attempt to repair or restore said System to operational status using its best efforts and at UMI's sole cost and expense. UMI shall attempt to make the System operational within five (5) working days of any breakdown.

14. This Agreement shall be binding on the successors, trustees, and assigns of the parties. Either party shall have the right of assignment in whole or in part to any individual, group or entity. Responsibility for operation and maintenance of the system will be assumed by the assignee.

15. This Agreement shall be subject to all applicable local, state and federal laws, rules and regulation.

16. In the event any local, state or federal consent or approval is required before his Agreement can be implemented, this Agreement shall be subject to such approval or consent.

17. This Agreement shall commence on the date all required local, state and/or federal permits, consents or approvals have been obtained and the System has been installed by UMI and becomes operational, presently anticipated to be on or about January 1, 1989. Upon completion of the System and all permits, approvals and consents having been obtained, Nogales agrees to then commence accepting delivery of the treated groundwater to the Golf Course.

18. For purposes of this Agreement, any notices required shall be given by the one party to the other by first class mail, certified or registered return receipt requested, postage prepaid, to the

following:

Page 10

UMI

United Musical Instruments
3972 Fairway Drive
Nogales, Arizona 85621

NOGALES

City Engineer
City of Nogales
1018 Grand Avenue
Nogales, Arizona 85621

or to such other parties and addresses as may be subsequently designated by this noticing process.

19. This Agreement shall not be amended or modified except by writing mutually agreed to and executed by the parties.

20. This Agreement represents the entire Agreement between the parties and there are no other Agreements orally or in writing between the parties except as hereinbefore set forth, and there are no warranties implied or expressed except as set forth herein.

21. UMI has provided to Nogales and Nogales acknowledges receipt of a copy of the 1987 financial statement of Skane Gripen, the owner of UMI, as satisfaction of the City Attorney's requirement for UMI to evidence it's ability to perform this Agreement.

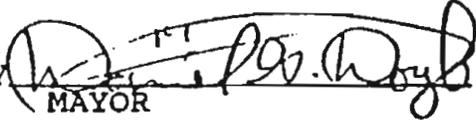
IN WITNESS WHEREOF the parties have entered into this Agreement on the day and date first above written.

UMI

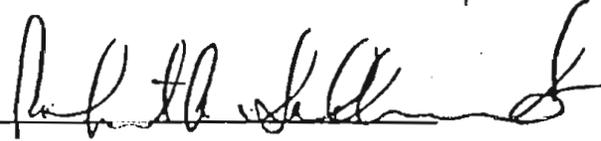
United Musical Instruments U.S.A.

By *Thomas Buzgala*
Its *President*

NOGALES
City of Nogales, an Arizona
Municipal corporation

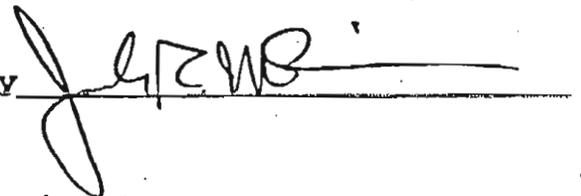
BY 
MAYOR

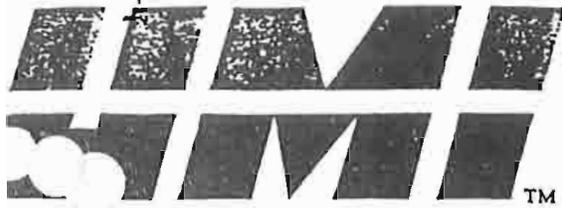
Attest:

BY 

City Clerk

Approved as to form:

BY 
City Attorney



United Musical Instruments U.S.A., Inc. • 1000 Industrial Parkway • Elkhart, IN 46516 • (219) 295-0079 • FAX (219) 295-8613

September 16, 1996

Mr. Mike Hein
City of Nogales
777 N. Grand Avenue
Nogales, AZ 85621

Dear Mike:

I would first like to personally thank you for all your efforts in making the amendment to the 1998 agreement a reality. I believe that this document addresses all the issues that were concerns of the citizens of Nogales, the City of Nogales and those of UMI. We at UMI feel that we are a part of the Nogales community and we will continue to work hard for our employees and our community.

Enclosed are two signed amendments to the agreement. Once the Mayor has signed for the City of Nogales, please have one of the originals returned to me for our records.

Once again, thank you for your efforts.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Rob', written in black ink.

Rob Palmer

RESOLUTION NO. 96-09-75

A RESOLUTION OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF NOGALES ("CITY") AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH UNITED MUSICAL INSTRUMENTS USA, INC. ("UMI") AMENDING THE AGREEMENT DATED AUGUST 17, 1988, BETWEEN UMI AND THE CITY; AND DECLARING AN EMERGENCY

WHEREAS, UMI is the owner and operator of a musical instrument manufacturing facility located within the City of Nogales, Arizona. City is the owner of a golf course known as the "Meadow Hills Country Club Golf Course" (the "Golf Course"). UMI and the City are parties to an Agreement dated August 17, 1988 (the "Agreement"), which provides for the delivery by UMI of treated groundwater to be used by the City to irrigate the Golf Course. UMI entered into a Consent Order No. D-47-93 on August 19, 1993, and amendments (the "Consent Order") with the Arizona Department of Environmental Quality concerning certain procedures with respect to remediating trichloroethylene, otherwise referred to as "TCE", in the groundwater; and

WHEREAS, UMI has installed, at its sole cost and expense, groundwater withdrawal, treatment conveyance, and storage facilities and UMI has obtained a gas chromatography test system, to extract, treat, field test, store and convey the treated water to the Pond (as defined in the Agreement) (the "System") in accordance with the Consent Order; and

WHEREAS, the Pond, as defined in Section 1.1 of this Amendment, is not part of the System; UMI will have certain responsibilities relating to the Pond, as provided in the Amendment; and

WHEREAS, the System has been designed to treat contamination in the groundwater to a concentration which has been established by Arizona state regulatory standards for drinking water quality; and

WHEREAS, UMI has obtained consent for construction, installation and operation of the System through, under, on, or above property not owned by City; and

WHEREAS, UMI is not charging the City for the treated water based on the City's representation that the City will not receive any income or payments from the lessee of the Golf Course specifically for that treated water; and

WHEREAS, UMI and the City desire to amend the Agreement to address various concerns expressed at previous public hearings,

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Aldermen of the City of Nogales as follows:

1. That Louie Valdez, Mayor, is hereby authorized to execute on behalf of the City of Nogales the Amendment to Agreement between the City of Nogales, Arizona, and United Musical Instruments USA, Inc., an Indiana corporation.

2. That the above named Amendment to Agreement will be in substantially the proposed form attached with such additions, deletions, and modifications as approved by the city attorney. Execution by the Mayor on behalf of the City of Nogales shall constitute conclusive evidence of the approval and execution on behalf of the City of Nogales and of the approval by the Board of Aldermen of any departures from the forms attached. The Mayor is further authorized to execute any additional documents necessary to implement the agreements as approved herein.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized to execute said agreement and that city staff be directed to do all acts necessary and consistent with the purposes and intents as therein stated.

WHEREAS, the preservation of the public peace, health, and safety of the City of Nogales require that this resolution shall become immediately operative,

AN EMERGENCY IS HEREBY DECLARED TO EXIST; and this resolution is hereby exempted from the referendum provisions of the Charter of the City of Nogales and shall take effect and be in full force from and after its passage and approval.

Passed and adopted this 18th day of September 1996.

Approved this 18th day of September 1996.

Louie Valdez
Mayor

ATTEST:
[Signature]
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
O'Connor, Cavanagh, Anderson
Killingsworth & Beshears

By [Signature]

AMENDMENT TO AGREEMENT

This Amendment (the "Amendment") is entered into as of September 18, 1996 between United Musical Instruments USA, Inc., an Indiana corporation ("UMI") and the City of Nogales, Arizona, an Arizona municipal corporation (the "City"), and amends the Agreement dated August 17, 1988 between UMI and the City.

RECITALS

A. UMI is the owner and operator of a musical instrument manufacturing facility located within the City of Nogales, Arizona. City is the owner of a golf course known as the "Meadow Hills Country Club Golf Course" (the "Golf Course"). UMI and the City are parties to an Agreement dated August 17, 1988 (the "Agreement"), which provides for the delivery by UMI of treated groundwater to be used by the City to irrigate the Golf Course. UMI entered into a Consent Order No. D-47-93 on August 19, 1993, and amendments (the "Consent Order") with the Arizona Department of Environmental Quality ("ADEQ") concerning certain procedures with respect to remediating trichloroethylene ("TCE") in the groundwater.

B. UMI has installed, at its sole cost and expense, groundwater withdrawal, treatment conveyance, and storage facilities and UMI has obtained a gas chromatography test system, to extract, treat, field test, store and convey the treated water to the Delivery Point (as defined in the Agreement) (the "System") in accordance with the Consent Order. The Pond, as defined in Section 1.1 of this Amendment, is not part of the System, but UMI will have certain responsibilities relating to the Pond, as provided in this Amendment. The System has been designed to treat contamination in the groundwater to a concentration which has been established by Arizona state regulatory standards for drinking water quality. UMI has obtained easements and/or rights of way for construction, installation and operation of the System through, under, on, or above property not owned by City.

C. The City encountered public concerns regarding the use of treated groundwater at the Golf Course. No treated water has been used until now to irrigate the Golf Course. UMI and the City desire to amend the Agreement to address the concerns expressed at various public hearings. UMI is not charging the City for the treated water based on the City's representation that the City will not receive any income or payments from the lessee of the Golf Course specifically for that treated water. Defined Terms used in this Amendment apply to and supplement the provisions or definitions contained in the Agreement, unless otherwise specifically provided in this Amendment.

The City and UMI agree as follows:

AGREEMENT

ARTICLE I

Obligations of UMI

1.1 UMI, at its sole cost and expense, shall provide for the design and installation of an impermeable liner for the northernmost of two existing irrigation ponds owned by the City

(the "Pond") for the temporary retention of treated water prior to delivery of the treated water solely for use by the City for irrigation of the Golf Course. UMI shall routinely inspect the Pond to assure that the impermeable liner is in good condition and shall repair and replace as needed. UMI shall bear the cost for acquisition, placement and maintenance of a chainlink fence, at least six feet (6') in height, that shall surround the Pond in its entirety. UMI shall also place "No Trespassing" signs, in English and Spanish, on each side of that chainlink fence.

1.2 UMI shall be solely responsible for all costs associated with the System, including but not limited to the operation, maintenance, and repair of the System, and with the maintenance and repair of the lining, fencing and "No Trespassing" signs as provided in Section 1.1 so long as UMI operates or is obligated to operate the System.

1.3 UMI agrees to be the only applicant and permit holder for all permits required for the System, and UMI shall be solely responsible for all costs associated with obtaining such permits, provided however that the City shall cooperate with UMI in obtaining such permits and shall not charge UMI for such cooperation.

1.4 UMI agrees to operate the System in compliance with all requirements set forth by the ADEQ in all applicable orders, amendments, laws, regulations, ordinances, governmental directives applicable to the System so long as the approved end use of the treated groundwater continues to include irrigation at the Golf Course; provided, however, that UMI may also use alternative operational uses for the groundwater approved by the ADEQ.

1.5 UMI will acquire at its expense testing equipment selected by UMI and during the first six months of this Amendment will use that equipment to test the treated water for TCE at the point where the treated water enters the pipeline to the Pond (the "Field Tests"), daily (except weekends and public holidays), and will make available to the City the results of those daily tests. After the first six months of this Amendment, if the treated water has not exceeded the Alert Level (as defined in Section 1.6) during that period, UMI will perform periodic Field Tests not less frequently than weekly, and make available to the City the results of those Field Tests.

In addition, UMI will perform sampling and outside laboratory analysis of the treated water in the Pond (the "Laboratory Tests") at least once every seven (7) days during the first eight (8) weeks of delivery. If the results of the Field Tests and the results of the Laboratory Tests are both under the Alert Level during that eight (8) week period, then Laboratory Tests shall thereafter be performed at least monthly during the next two (2) months. If the results of the Field Tests and the results of the Laboratory Tests are both under the Alert Level during that two (2) month period, then Laboratory Tests shall thereafter be performed at least once during each three month period thereafter so long as treated water being supplied by UMI to the Delivery Point and in the Pond does not exceed the Alert Level. UMI shall be responsible for the costs of such Laboratory Tests and shall be entitled to utilize reasonable procedures available to reduce expense, consistent with producing reliable and timely sampling and analysis. For Laboratory Tests during the first three (3) weeks of delivery, UMI shall cause the results of the Laboratory Tests to be provided to the City within 72 hours of such tests. For Laboratory Tests after the first three (3) weeks of delivery, UMI shall cause the results of the Laboratory Tests to be provided to the City within a reasonable time, it being understood that UMI shall not be

required to incur additional costs for expediting sampling or analysis. If at any time the results of Laboratory Tests exceed the Alert Level, the testing regime described above shall begin anew when treated water is again provided to the Pond, with Laboratory Tests every week for eight weeks, then monthly and quarterly as provided above if the results of the Field Tests and the Laboratory Tests do not exceed the Alert Level.

1.6 UMI shall shut down the System or the pipeline used for delivery of treated water in the event and as soon as UMI is in receipt of any results of sampling events indicating that the treated water exceeds the Alert Level. The Alert Level is defined as concentration of TCE or subsequent degradation products in concentrations exceeding 3.2 parts per billion, or such lower concentration of TCE as may be applicable by law, regulation, order, or judgment.

1.7 In the event that tests conducted, upon the treated water delivered to the Pond exceeds the Alert Level or the tests required by ADEQ shows other contaminants, wastes, substances, toxins, pollutants or elements thereof, above those allowable for drinking water by any applicable regulatory authority, as well as any applicable law, regulation, order or judgment, and it is determined by ADEQ that UMI is responsible, then UMI shall take reasonable and prompt steps to treat the water so as to reduce the TCE or other contaminants for which UMI has been determined to be responsible in the water to concentrations below the Alert Level. In such event, UMI shall have in place the necessary equipment to either re-treat the contaminated water through the system, or have aeration or other treatment devices which are approved by ADEQ installed at the retention ponds. Such further treatment and installation of equipment shall be at the sole cost and expense of UMI. In this event, UMI shall obtain all necessary permits to conduct the required activity. UMI shall not be determined to be responsible for TCE or other contaminants the presence of which results from the act or omission, including criminal act, of any person or entity other than UMI.

1.8 In the event the System shall cease to operate due to any physical defect or breakdown, or if there is damage to the lining of the Pond or the fence around the Pond, or to the "No Trespassing" signs, UMI shall promptly and reasonably attempt to repair or restore the System or damaged item to operational status using its best efforts at UMI's sole cost and expense and in compliance with any and all applicable laws, regulations, orders and judgments.

1.9 UMI shall discharge treated water to the Pond. After proper analysis and testing by the City is accomplished of treated water in the Pond, and it is established that the treated water has been treated to acceptable levels as required by ADEQ, then the City may transfer the water to and utilize such water for irrigation purposes of the Golf Course.

1.10 UMI shall conduct pressure tests on the water lines used by the System to supply treated water to the Pond every six (6) months subsequent to the first pressure test which shall be conducted by UMI within fifteen (15) days prior to startup of the System.

1.11 UMI agrees that the City may during regular business hours review and copy UMI's maintenance plan for the System and UMI's maintenance logs, activity reports, and other associated documentation, all agreements, orders, and amendments to them, executed between UMI, the state or any other governmental authority that in any manner concerns or is related to System, the Pond, lining of, fencing or signage around the Pond, and/or the contaminated

groundwater and any orders, letters, notices, demands, or inquiries from any governmental authority, citizens' group, individual, or entity concerning the System, the Pond, lining of, fencing or signage around the Pond, and/or the contaminated groundwater.

1.12 UMI agrees to allow City reasonable access to the System to obtain random samples of treated water from the System.

1.13 UMI agrees that the existing System in place when treated water is first delivered to the Pond will remain operable so long as UMI is required to continue to operate the System by the ADEQ or the Environmental Protection Agency.

1.14 UMI agrees and warrants to City that the System shall be constructed, installed, operated and maintained so as to provide treated water with concentration levels of TCE below the Alert Level.

1.15 Upon the termination of the Agreement, as modified by this Amendment, UMI shall, upon written request of the City made within thirty (30) days after termination of the Agreement, remove the liner, fencing and signs referred to in Section 1.1 and return the Pond to substantially the condition it was in immediately after the City prepared the Pond for lining under Section 2.1.

ARTICLE II City's Obligation and Rights

2.1 The City shall prepare the Pond for lining to the specifications of the liner installation contractor as set forth on attached Addendum A, using the City's workforce without charge to UMI. The City will use reasonable efforts to complete the preparation of the Pond for lining within 45 days after the effective date of this Agreement.

2.2 City shall use its best efforts to provide UMI with licenses, and permits, within its authority, to construct, operate and manage the System and to allow UMI to line and fence the Pond in a manner consistent with all applicable laws, regulations, orders, or other applicable directive. UMI shall not be in breach of this Agreement based on any matter resulting from the City not providing UMI with any necessary licenses or permits within the City's authority. The City shall cooperate with UMI in obtaining all licenses and permits from all state and local agencies necessary to carry out this Agreement, without charge to UMI for such cooperation. City irrevocably (but subject to the conditions of the Agreement and this Amendment) grants to UMI all necessary rights to install, maintain, and operate the System where it is currently located on City's property as shown on the attached drawing.

2.3 City agrees only to accept for irrigation purposes treated water that does not contain concentrations of any contaminants, wastes, substances, toxins, pollutants or elements above those allowable by any applicable regulatory authority as well as any applicable law, regulation, order or judgment. Further, City shall accept treated water from the Pond for irrigation purposes only so long as the concentrations in the treated water do not exceed the Alert Level. City agrees to accept only the amount of treated water which can be reasonably

held by the Pond until such stored water is determined to meet the standards set forth in the Amendment.

2.4 City shall have the right, but not the obligation, to undertake sampling and analysis of the treated water in the Pond at any reasonable time. In the event the sampling event results in a finding of concentrations exceeding the Alert Level, City shall immediately report such finding to UMI. City shall not utilize that treated water for irrigation purposes until the concentrations are below the Alert Level, as established by the testing and analysis procedures set forth in Section 1.5.

2.5 City agrees that it shall be solely responsible for the costs associated with the irrigation process of the Golf Course. These costs shall include but not be limited to transferring water from the Pond to the Golf Course irrigation system and operation and maintenance of the golf course irrigation system and all costs and expense associated with employees or maintenance personnel necessarily utilized to operate the golf course irrigation system.

2.6 City shall not, and shall not authorize any person or entity other than UMI to, place or deliver water or any other material to the Pond during the term of the Agreement.

2.7 City has provided UMI with a copy of the lease of the Golf Course between the City, as lessor and Medici Properties, Inc., as lessee, as currently in effect, and will promptly provide UMI with all future amendments, agreements and understandings relating to that lease or to the use of the treated water.

2.8 City agrees to accept delivery of treated water, upon the terms and conditions as provided in this Amendment.

ARTICLE III General Provisions

3.1 City shall have no obligation pursuant to this Amendment or the Agreement to accept delivery of any treated water from UMI which has not been treated to levels identified in this Amendment or that otherwise is not in full compliance with applicable law, regulations, or other applicable directives.

3.2 The parties agree that the Agreement as modified by this Amendment, shall be binding on, and inure to the benefit of, their successors, trustees, and assigns. The benefits and responsibilities of this Agreement will be fully assumed by the assignee, however, such assignment does not release the assignor from its obligations under the Agreement.

3.3 The parties agree that they will use their best efforts to obtain any required local, state or federal consent or approval that may be required for implementation of the Agreement or this Amendment, and if necessary, the Agreement and this Amendment will be subject to obtaining such approval or consent.

3.4 By entering into the Agreement or this Amendment with UMI, City in no way represents that it has the ability to control, manage, operate, maintain, direct operation of, or

in any way associate with the day-to-day, week-to-week or other routine operation and management of the System. UMI is solely responsible for the construction, location, operation, maintenance, and management of all aspects of the System, and for routine maintenance of the Pond and fencing around the Pond.

ARTICLE IV
Governing Law

4.1 The Agreement shall be subject to all applicable local, state and federal laws, rules, regulations, orders, ordinances and statutes, provided however, that City may not by rule, regulation, order, ordinance, or other governmental action change any term or provision of the Agreement without the written consent of UMI. The terms of the Agreement shall be construed under Arizona law. In the event any provision in the Agreement is deemed unenforceable, only by mutual agreement of the parties will the remaining terms of the Agreement have any force and effect.

ARTICLE V
Term of the Agreement

5.1 The Amendment shall become effective on the latest to occur of (i) the due execution and delivery of this Amendment by the City and UMI; (ii) the due execution and delivery of an amendment to the Consent Order satisfactory to UMI; and (iii) the issuance of an Aquifer Protection Permit satisfactory to UMI. The term of the Agreement as modified by this Amendment shall run parallel with UMI's obligation to treat the groundwater, provided however, that UMI may use other operational uses for the groundwater if permitted by the ADEQ.

ARTICLE VI
Notice

6.1 Any notices required or permitted under this Agreement by one party to the other shall be effective when hand delivered or sent by facsimile transmission, or the day after delivery by overnight courier service, or three days after mailing, by first-class mail, certified or registered, return receipt requested, postage prepaid, to the following:

UMI:

United Musical Instruments, USA, Inc.
1000 Industrial Parkway
Elkhart, Indiana 46516
Attn: Mr. Robert W. Palmer, President
Facsimile Number: (219) 295-8613

CITY:

City Attorney's Office
City of Nogales
777 N. Grand Avenue
Nogales, Arizona 85621
Facsimile Number: (520) 287-9159

or to such other persons or addresses as may be subsequently designated by these notice provisions.

ARTICLE VII
Effect of Amendment

7.1 In the event that there is a conflict between the provisions of the Agreement and the provisions of this Amendment, the provisions of this Amendment shall control. The following portions of the Agreement are superseded and replaced in their entirety by the provisions of this Amendment, and shall be null and void and have no force and effect, paragraphs 3, 4, the first three sentences of paragraph 5, and paragraphs 6, 7, 8, 9 and 10 of the Agreement.

7.2 All other provisions of the Agreement remain in full force and effect except as specifically modified by this Amendment.

ARTICLE VIII
INDEMNIFICATION

8.1 UMI will defend, indemnify and hold the City, its officers, agents, employees, officials, appointed or elected, and aldermen, harmless for, from, and against any suits, demands, claims, notices, liabilities, orders, and causes of action arising out of or based upon any action taken or directed by UMI under or relating to the Agreement or this Amendment. The City will give prompt written notice to UMI of any claim or event which might give rise to a claim by the City for indemnification against UMI, stating the nature and basis of such claim or event and the amount of such claim, to the extent known. If within thirty (30) days after receiving such notice, UMI advises the City that UMI will conduct the defense of such claim or event at UMI's expense, the City will not settle or admit liability with respect to the claim or event and shall afford to UMI and defending counsel all reasonable assistance in defending against such claim or event.

ARTICLE IX
Entire Agreement

9.1 This Agreement shall not be amended or modified except by the mutual consent of both parties in writing executed by the parties.

9.2 The Agreement as amended by this Amendment represents the entire agreement between the parties concerning its subject matter and there are no other agreements orally or in writing concerning its subject matter between the parties except as set forth in the Agreement as amended by this Agreement.

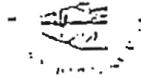
United Musical Instruments USA, Inc.

By: _____

Robert W. Palmer, President

ATTACHMENT B

**Post-Closure Cost and Financial Assurance Documentation
and Related Correspondences**



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor

Russell F. Rhoades, Director

CERTIFIED MAIL

Return Receipt Requested

June 04, 1997

REF: HW97-0257

Mr. Robert W. Palmer, President
United Musical Instruments U.S.A., Inc.
1000 Industrial Parkway
Nogales, AZ 85621

RE: Review of Financial Assurance Documentation

Dear Mr. Palmer:

ADEQ has reviewed the financial assurance documentation as provided in your March 25, 1997 and April 30, 1997 submittals (please note that the remainder of these submittals will be reviewed separately).

Liability Requirements (40 CFR 265.147¹)

Upon closer review of 40 CFR 265 Subpart H for financial requirements, ADEQ has determined that UMI only needs to demonstrate financial assurance for post-closure care under 40 CFR 265.145. UMI does not need to meet the liability requirements under 40 CFR 265.147, because the hazardous waste management units for which liability requirements would apply have been closed. ADEQ acknowledged closure of these units in 1988. Therefore, pursuant to 40 CFR 265.147(e), liability insurance is no longer required. As such, ADEQ will no longer consider your request for variance to the liability requirements because ADEQ has determined that liability

¹All references to the Code of Federal Regulations (CFR) are as adopted and modified by the Arizona Administrative Code (AAC).

Page 2

Mr. Palmer

REF: HW97-0257

requirements are not applicable to UMI. I apologize for not catching this error in my earlier letter dated February 24, 1997 (REF: HW97-0147).

Post-Closure Care Cost Estimates (40 CFR 265.144)

ADEQ has reviewed the post-closure care cost estimates as provided in your submittals. ADEQ has also reviewed its UMI files to look for the original detailed post-closure care cost estimates which the current costs are based on. However, there is no documentation in the files that provides the details necessary to adequately review the post-closure care cost estimates. Therefore, UMI must provide current detailed post-closure care cost estimates.

Besides sampling and maintenance costs, there are many additional costs associated with post-closure care of this facility. Appropriate closure of monitoring and extraction wells and decontamination and removal of treatment systems, pond liner and residue disposal, are just a few examples of other required costs.

The post-closure care cost estimate must be extensively detailed. For example, the collection of groundwater samples must include the number of sampling locations, labor and equipment costs, work rate to collect one sample, number of hours required to collect all samples, and costs to collect groundwater samples per event. As another example, the costs of site security during the post-closure care period would include fencing (length, labor-materials-equipment costs per foot, and cost to fence site), corner posts (number of posts, cost per post, and cost to erect corner posts), gates (number, labor-materials-equipment costs, and cost to install gates), signs, etc.

The post-closure care cost estimate must be based on the costs to UMI of hiring a third party to close the facility (40 CFR Subpart H 265.142(a)(2)). Again, all these costs must be itemized in detail and provided to ADEQ in document form.

Page 3

Mr. Palmer

REF: HW97-0257

UMI may refer to the following references for developing the detailed post-closure care cost estimate required:

1. U.S. Environmental Protection Agency, "Final Guidance Manual: Costs Estimates for Closure and Post-Closure Care Plans (Subpart G and H)", January 1987, EPA/530-SW-009. This essential document is available through the RCRA Hotline (1-800-424-9346) or you may contact Jeff Bryan of the Hazardous Waste Permits Unit (602-207-4169) to obtain a copy.
2. R.S. Means Company, Inc., "Means Building Construction Cost Data", 1996. This or similar reference documents should be available at a technical library.
3. R.S. Means Company, Inc., "Means Site Work and Landscape Costs Data", 1996. This or similar reference documents should be available at a technical library.

Financial Assurance for Post-Closure Care (40 CFR 265.145)

ADEQ has determined that based on the post-closure care cost estimate of \$2,379,437 and the financial data submitted for the year ending December 31, 1996, UMI does meet the financial test requirements. However, as detailed above, the post-closure care cost estimates are likely to be grossly understated. Therefore, UMI must resubmit financial assurance documentation when revised detailed post-closure care cost estimates are submitted. Additionally, the following discrepancies were noted in the financial assurance documentation:

- 1) As required by 40 CFR 265.145(e)(3)(i), the letter signed by the owner's or operator's chief financial officer must be worded as specified in 40 CFR 265.151(f). Please resubmit this letter.
- 2) As required by 40 CFR 265.145(e)(3)(ii), a copy of the independent certified public accountant's report on the

Page 4

Mr. Palmer

REF: HW97-0257

examination of the owner's or operator's financial statements for the latest completed fiscal year (Ending December 31, 1996) was not provided. Please submit this documentation.

- 3) Based on the resubmittal of the letter as specified in item 1 above, a revised special report from the owner's or operator's independent certified public accountant pursuant to 40 CFR 265.145(e)(3)(iii) will be required.

Please be advised that in addition to the above submittals, UMI must submit updated financial assurance documentation every year within 90 days after the close of the preceding fiscal year [40 CFR 265.145(e)(5)]. If UMI no longer meets the requirements of the financial test mechanism for financial assurance, an alternate mechanism must be established to meet the financial assurance requirements for post-closure costs [40 CFR 265.145(e)(6)].

Please submit the detailed post closure care cost estimates and updated financial assurance documentation as specified above within sixty (60) calendar days of the date of this letter. If you have any questions, please contact Yvette David of my staff at 207-4112.

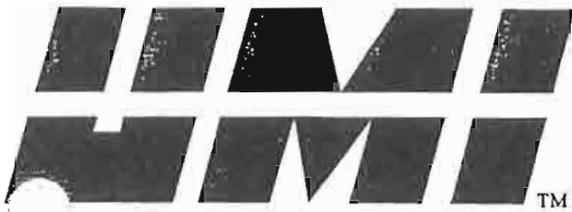
Sincerely,



Lupe Buys, Manager
Hazardous Waste Compliance Unit

M:\wpdocs\umi\umi_fin.let

cc: ✓ Pat Kuefler, HWS
✓ Yvette David, HWCU
Jeff Bryan, HWP
Melissa Taylor, DDO



United Musical Instruments U.S.A., Inc. • 1000 Industrial Parkway • Elkhart, IN 46516 • (219) 295-0079 • FAX (219) 295-8613

July 26, 1997

Ms. Lupe Buys
Arizona Department of Environmental Quality
3033 N. Central Ave.
Phoenix, AZ 85012

RE: Your letter of June 4, 1997

Dear Ms. Buys,

Rob Palmer has shared with me, your letter to him dated June 4, 1997. This response is intended to address each of the points you raised regarding our financial assurance documentation.

Liability Requirements (40 CFR 265.147)

We acknowledge the fact that we are no longer required to provide, in our financial assurance documentation, for liability coverage. The documentation included with this letter as well as all future documentation will be limited to demonstrating financial assurance for post-closure care only.

Post-Closure Care Cost Estimates (40 CFR 265.144)

We have read the most recent publication of 40 CFR 265.144 as revised on July 1, 1996 and compared its' provisions to the list of alleged deficiencies which you site in your letter of June 4, 1997.

To begin, paragraph (a) of 265.144 details other code sections containing the actual post-closure regulations to which its' provisions apply. Those other code sections are:

- 265.117 through 265.120 of Subpart G (Closure and Post-Closure)
265.228 of Subpart K (Surface Impoundments)
265.258 of Subpart L (Waste Piles)
265.280 of Subpart M (Land Treatment)
265.310 of Subpart N (Landfills)

To the best of our knowledge, and since ADEQ officially acknowledged closure of our Nogales facility in 1988, ours has been characterized as a "Treatment Facility". As such, seemingly none of the code sections to which 265.144 refers applies to UMI which, in turn, would indicate that 265.144 itself is inapplicable.

Additionally, in your June 4, 1997 letter you make reference to an EPA guidance manual for post-closure cost estimating. You go so far as to refer to this manual as an "essential document". Based upon your suggestion we placed an order with the National Technical Information Service division of the U.S. Department of Commerce and received a copy of GUIDANCE MANUAL: COST ESTIMATES FOR CLOSURE AND POST CLOSURE PLANS (SUBPARTS G AND H). Interestingly,

Superior Craftsmanship, Tradition and Technology

the very first paragraph of the first page of the first chapter of the document states in part; "...Treatment and storage facilities typically are not subject to post-closure care, consequently, post-closure cost estimates are not required. ..." This statement too certainly seems to indicate that as the owner/operator of what has been defined as a treatment facility, we are not liable for preparation of post-closure cost estimates.

That having been said, we are extremely interested in being as cooperative as possible and, indeed are more than anxious to begin that which should be of paramount importance to everyone. Specifically... cleaning the ground water! In this spirit we intend to continue to supply annual financial assurance documentation including updates to the post-closure cost estimates.

Financial Assurance for Post-Closure Care (40 CFR 265.145)

It naturally follows that if we are not required by regulation to file post-closure cost estimates we would likewise be exempt from the financial assurance requirements of 265.145. However, since we will continue to supply annual cost estimates, we will also continue to provide annual financial assurance documentation in accordance with this code section.

This being the case, and since ADEQ has indicated that we are no longer required to comply with the liability requirements of 265.147, we acknowledge the need to resubmit our original financial assurance letter of April 29, 1997. We believe though, that the required letter is detailed in code section 264.151 (f) rather than 265.151 (f) as you have indicated. That letter is included with this submission.

Your letter also states that we failed to supply a copy of our independent auditor's annual report as required by 265.145 (e) (3) (ii). Although this report was indeed sent with our original April 29, 1997 financial assurance letter, another copy has been enclosed herewith.

You further state in your letter that we must resubmit the special report from the owner's independent auditors as required by 265.145 (e) (3) (iii) since the financial assurance letter is being resubmitted. While it is certainly true that the form of the letter is somewhat different, the financial information it contains is nearly identical to that which ADEQ has already received and to which our auditors have already attested. Another copy of their original letter has been included.

Next, we take exception to your statement that "... the post-closure care cost estimates are likely to be grossly understated". The reasons which you site for making such a broad and sweeping statement are numerous. You intimate that in past submissions we have overlooked required expense items but we strongly disagree with this assessment. Among the items which you purport to be missing are the following:

Disposal of the pond liner and pond residue. You'll recall we're sure, that the pond liner in question is one which was not required by ADEQ but rather was voluntarily installed by UMI after a meeting with the City of Nogales. Further, the water with which the pond is to be filled will have already been treated and cleaned and will contain no residue of any kind. There is absolutely no good reason that the pond liner should ever need to be removed and disposed of.

Site security including fencing, corner posts, gates, signs, etc. You should be aware from prior communications with both UMI and Woodward-Clyde, as well as site visits by ADEQ staff, that all necessary fencing, gates and signage is already in place and paid for. We see no valid reason to anticipate any further expenses in this area with regard to post-closure care.

Decontamination and removal of treatment systems. In 1991 UMI filed a Notice To Deed for its' Nogales property which was approved by ADEQ and which, as required by 265.119, included a list of site contaminants. Those contaminants are... 1,1-Dichloroethene; 1,1-Dichloroethane; Trans 1,2-

Dichloroethene; Chloroform; 1,1,1-Trichloroethane; Trichloroethylene; 1,1,2-Trichloroethane and Carbon Tetrachloride. As you know, all of these substances are categorized as Volatile Organic Compounds (VOCs) and as such will leave no residual contamination as they pass through the treatment facility. System decontamination and removal, therefore, is wholly unnecessary.

With these points in mind, we have also enclosed an updated schedule of post-closure care costs estimates prepared by Woodward-Clyde Consultants. These new estimates have been used in the preparation of our new financial assurance letter.

We trust you will find everything in order.

Sincerely,

UNITED MUSICAL INSTRUMENTS USA, INC.

A handwritten signature in cursive script, appearing to read "Tom Lawdenski".

Tom Lawdenski
Corporate Controller

cc: M. Hammer
R. Palmer
D. Anderson (Woodward-Clyde)
L. LaPat-Polasko (Woodward-Clyde)



United Musical Instruments U.S.A., Inc. • 1000 Industrial Parkway • Elkhart, IN 46516 • (219) 295-0079 • FAX (219) 295-8613

July 26, 1997

Mr. Russell F. Rhoades, Director
Arizona Department of Environmental Quality
3033 N. Central Ave.
Phoenix, AZ 85012

RE: United Musical Instruments USA, Inc.
Nogales, AZ facility
Financial Assurance Requirements (40 CFR 264.151(f))
EPA #AZT000612135

Dear Mr. Rhoades,

I am the chief financial officer of United Musical Instruments USA, Inc., 1000 Industrial Parkway, Elkhart, Indiana 46514. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in Subpart H of 40 CFR Parts 264 and 265.

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:

United Musical Instruments USA, Inc.
1310 Fairway Dr.
Nogales, AZ 85621
EPA #AZT000612135
post-closure cost estimate ... \$2,385,158

2. This firm guarantees, through the guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

NONE.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

NONE.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

NONE.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

NONE.

Superior Craftsmanship, Tradition and Technology

Arms & Serravallo • Averbach • Benge • Conn • Hermann Beyer • King • Musica • Scherke & Roth

www.unitedmusical.com

e-mail@unitedmusical.com

This firm is not required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on December 31. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended December 31, 1996.

1996 ALTERNATIVE I

1.	Sum of current closure and post-closure cost estimates (total of all cost estimates shown in the five paragraphs above).....		2,385,158
* 2.	Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4)...		59,520,525
* 3.	Tangible net worth.....		21,555,332
* 4.	Net worth.....		22,135,432
* 5.	Current assets.....		66,567,740
* 6.	Current liabilities.....		31,847,560
7.	Net working capital (line 5 minus line 6).....		34,720,180
* 8.	The sum of net income plus depreciation, depletion and amortization.....		6,092,755
* 9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).....		81,292,697
		Yes No	
10.	is line 3 at least \$10 million?.....	X	21,555,332
11.	Is line 3 at least 6 times line 1?.....	X	14,310,948
12.	Is line 7 at least 6 times line 1?.....	X	14,310,948
* 13.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.....	X	
14.	Is line 9 at least 6 times line 1?.....	X	14,310,948
15.	Is line 2 divided by line 4 less than 2.0?.....	X	2.689
16.	Is line 8 divided by line 2 greater than 0.1?.....	X	0.102
17.	Is line 5 divided by line 6 greater than 1.5?.....	X	2.090

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151 (f) as such regulations were constituted on the date shown immediately below.

UNITED MUSICAL INSTRUMENTS USA, INC.



Tom Lawdenski
Corporate Controller
July 26, 1997

United Musical Instruments USA, Inc.
Estimated, Annual Monitoring and Maintenance Costs
 Adjusted for Inflation

7/26/97

	12/31/96 restated **	12/31/96	Inflation Factor *	12/31/95	Inflation Factor *	12/31/94
Sampling and Analysis: Based on sampling the treatment facility influent and effluent monthly, 11 monitoring wells and 2 extraction wells quarterly, and 3 monitoring wells annually. Includes collection of 1 field duplicate for every 10 field originals and 24 trip blanks. Groundwater sampling and quarterly reporting are included. Assumes UMI personnel will collect treatment facility samples.	66,000	65,834	1.020	64,575	1.025	63,000
Maintenance Charges: Assumed to be equal to 1% of total equipment and construction cost.	3,135	3,135	1.020	3,075	1.025	3,000
	<u>69,135</u>	<u>68,969</u>		<u>67,650</u>		<u>66,000</u>
Contingency @ additional 15%.	<u>10,370</u>	<u>10,345</u>		<u>10,148</u>		<u>9,900</u>
Total projected annual post-closure costs	<u>79,505</u>	<u>79,315</u>		<u>77,798</u>		<u>75,900</u>
Post-Closure Period	<u>30</u>	<u>30</u>		<u>30</u>		<u>30</u>
Total Period Cost Estimate	<u>2,385,158</u>	<u>2,379,437</u>		<u>2,333,925</u>		<u>2,277,000</u>

(Based upon figures prepared and submitted by Woodward-Clyde June 7, 1995)

* Inflation rates calculated using the Implicit Price Deflators from the U.S. Department of Commerce publication *Survey of Current Business*

** Figures recalculated by Woodward-Clyde consultants and stated in 1997 dollars.



CROWE CHIZEK

Board of Directors
United Musical Instruments U.S.A., Inc.
Elkhart, Indiana

We have received the letter dated April 29, 1997 from Mr. Thomas Lawdenski, Corporate Controller of United Musical Instruments U.S.A., Inc. to Mr. Russell F. Rhoades, Director of the Arizona Department of Environmental Quality. We have been requested by Mr. Lawdenski to compare the selected financial data included in the letter with the audited financial statements of United Musical Instruments U.S.A., Inc. for the year ended December 31, 1996.

We have audited the consolidated balance sheet of United Musical Instruments U.S.A., Inc. as of December 31, 1996 and the related statements of income, retained earnings and cash flows for the year then ended, and have issued our report thereon dated February 21, 1997. Our audit was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In connection with comparing the selected financial data with the audited financial statements, no matters came to our attention which would cause the selected financial data to be adjusted.

Crowe Chizek & Company LLP

Crowe, Chizek and Company LLP

Elkhart, Indiana
April 30, 1997

90059B-1 CON-1

NOTICE TO DEED

BOOK 455 PAGE 232

ARTLEY FLUTE FACILITY
UNITED MUSICAL INSTRUMENTS, U.S.A., INC.
NOGALES, ARIZONA

This completed form constitutes a written assurance that a notation on the deed to the property described below has been made, which will, in perpetuity, notify any potential purchaser of the property that it has been used to manage hazardous waste. The future use of this property is restricted by conditions contained in State hazardous waste regulations according to the Arizona Revised Statutes 36-2822 and A.A.C., R9-9-1865.A (40 CFR 265.120), and implemented by the authority of the Arizona Department of Environmental Quality (DAQ). Under this authority it shall be recorded by the signatory parties within 60 days after closure certification in the County of Santa Cruz, Arizona, where the Nogales Artley Flute Facility (United Musical Instruments, U.S.A., Inc., formerly C.G. Conn Ltd.) is situated.

The following is the accurate legal description of the land subject to this notice.

All that part of the Northeast Quarter of the Northeast Quarter of Section 36, Township 23 south, Range 13 east, Gila and Salt River Base and Meridian, Santa Cruz County, Arizona, more particularly described as follows:

Beginning at a 1-inch iron pipe, identified as the northeast corner of said Section 36 as shown on the proposed right-of-way map for the Nogales-Tucson Highway, Nogales-Alamo Canyon, Santa Cruz County, A.M.D. Drawing No. D-121-323;

Thence north 89 degrees 46 minutes 45 seconds west, along the north line of said Section 36 as shown on said map, 105.07 feet:

900598-1 CON-2

BOOK 455 PAGE 233

Thence south 21 degrees 12 minutes 16 seconds east, 53.71 feet to a point 50.00 feet distant southerly from said north line, said point being the true point of beginning;

Continue thence south 21 degrees 12 minutes 16 seconds east, along the proposed west right-of-way line of the Nogales-Tucson Highway as shown on the aforementioned map, 105.82 feet to an angle point in said right-of-way line;

Thence south 0 degrees 55 minutes 10 seconds west, along said west right-of-way line, 339.07 feet;

Thence north 89 degrees 46 minutes 45 seconds west along a line parallel with and 487.56 feet distant southerly from said north line of Section 36, 1000.00 feet;

Thence north 0 degrees 55 minutes 10 seconds east, 437.59 feet to a point, 50.00 feet distant southerly from the said north line of Section 36;

Thence south 89 degrees 46 minutes 45 seconds west along a line parallel with and 50.00 feet distant southerly from said north line of Section 36, 960.14 feet to the true point of beginning.

Together with an easement for ingress and egress, 50 feet in width having as its easterly boundary the proposed west right-of-way line as shown on said Nogales-Tucson Highway map and extending from the south line of the above described parcel, southerly to the presently existing Meadow Hills Country Club paved entrance road one-half mile, more or less, to the presently existing U.S. 89 Highway right-of-way, said west right-of-way line more particularly described as follows:

Beginning at the most southeasterly corner of the above described parcel;

90059B-1 CON-3

REV. 455 PAGE 234

Thence south 0 degrees 55 minutes 10 seconds west, 48.15 feet;

Thence south 16 degrees 38 minutes 55 seconds west, 363.19 feet;

Thence south 33 degrees 29 minutes 09 seconds east, 300 feet, more or less, to a point in the center of said entrance road. Together with any future easement for ingress and egress that may be designated to replace the easement above.

The specific areas covered by this notice are that of the area of the former surface impoundment, and the former pH adjustment tank. The locations and final ground elevations of these areas are shown on the accompanying survey plat (Figure 1). There are low levels of contamination by organic solvents in the soil in these areas. Groundwater underlying the former surface impoundment is also thought to be contaminated.

The contamination is described as follows:

- 1,1,2-Trichloroethane at depths of 35 feet to 45 feet below grade in the former pH adjustment tank area
- Carbon tetrachloride at depths of 17 feet to 57 feet below grade in the area of the former surface impoundment
- Contaminants in on-site groundwater are deduced from the January 1987 levels at an adjacent, off-site well (DMW-2) and are estimated to be: 1,1-Dichloroethene; 1,1-Dichloroethane; trans-1,2-Dichloroethene; Chloroform; 1,1,1-Trichloroethane; Trichloroethylene; 1,1,2-Trichloroethane.

Contamination levels are described in more detail in "Closure and Post-Closure Plans, Arley Flute Facility, C.G. Conn. Ltd." dated August 25, 1986. These plans are on file at the facility and at the Arizona Department of Environmental Quality, Phoenix, Arizona.

900598-1 CON-4

BOOK 455 PAGE 295

This notice may be removed by the permittee from the county record when all traces of contaminated soil and groundwater are removed or shown to be free of hazardous waste constituents. Such removal or detoxification of this soil and water must be approved by the Arizona Department of Environmental Quality or responsible state agency at that time.

The following is the signature of the current landowner, his title, business affiliation, and date of signature, and signed with the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

OWNER: United Musical Instruments, U.S.A., Incorporated
1000 Industrial Parkway
Elkhart, Indiana 46514

<u>Name</u>	<u>Title</u>	<u>Date</u>
<i>Thomas T. Burzycki</i> Thomas T. Burzycki	President	8-3-87

NOTICE TO DEED

ARTLEY FLUTE FACILITY
UNITED MUSICAL INSTRUMENTS, U.S.A., INC.
NOGALES, ARIZONA

This completed form constitutes a written assurance that a notation on the deed to the property described below has been made, which will, in perpetuity, notify any potential purchaser of the property that it has been used to manage hazardous waste. The future use of this property is restricted by conditions contained in State hazardous waste regulations according to the Arizona Revised Statutes 36-2822 and A.A.C., R9-8-1865.A (40 CFR 265.120), and implemented by the authority of the Arizona Department of Environmental Quality (DEQ). Under this authority it shall be recorded by the signatory parties within 60 days after closure of the facility. The property is located in the County of Santa Cruz, Arizona, where the Nogales Artley Flute Facility (United Musical Instruments, U.S.A., Inc., formerly C.G. Conn Ltd.) is situated.

The following is the accurate legal description of the land subject to this notice.

All that part of the Northeast Quarter of the Northeast Quarter of Section 36, Township 23 south, Range 13 east, Gila and Salt River Base and Meridian, Santa Cruz County, Arizona, more particularly described as follows:

Beginning at a 1-inch iron pipe, identified as the northeast corner of said Section 36 as shown on the proposed right-of-way map for the Nogales-Tucson Highway, Nogales-Alamo Canyon, Santa Cruz County, A.H.D. Drawing No. D-12T-323;

Thence north 89 degrees 46 minutes 45 seconds west, along the north line of said Section 36 as shown on said map, 105.07 feet;

Thence south 21 degrees 12 minutes 16 seconds east, 53.71 feet to a point 50.00 feet distant southerly from said north line, said point being the true point of beginning;

Continue thence south 21 degrees 12 minutes 16 seconds east, along the proposed west right-of-way line of the Nogales-Tucson Highway as shown on the aforementioned map, 105.82 feet to an angle point in said right-of-way line;

Thence south 0 degrees 55 minutes 10 seconds west, along said west right-of-way line, 339.07 feet;

Thence north 89 degrees 46 minutes 45 seconds west along a line parallel with and 487.56 feet distant southerly from said north line of Section 36, 1000.00 feet;

Thence north 0 degrees 55 minutes 10 seconds east, 437.59 feet to a point, 50.00 feet distant southerly from the said north line of Section 36;

Thence south 89 degrees 46 minutes 45 seconds east along a line parallel with and 50.00 feet distant southerly from said north line of Section 36, 960.14 feet to the true point of beginning.

Together with an easement for ingress and egress, 50 feet in width having as its easterly boundary the proposed west right-of-way line as shown on said Nogales-Tucson Highway map and extending from the south line of the above described parcel, southerly to the presently existing Meadow Hills Country Club paved entrance road one-half mile, more or less, to the presently existing U.S. 89 Highway right-of-way, said west right-of-way line more particularly described as follows:

Beginning at the most southeasterly corner of the above described parcel;

Thence south 0 degrees 55 minutes 10 seconds west, 48.15 feet;

Thence south 16 degrees 38 minutes 55 seconds west, 363.19 feet;

Thence south 33 degrees 29 minutes 09 seconds east, 300 feet, more or less, to a point in the center of said entrance road. Together with any future easement for ingress and egress that may be designated to replace the easement above.

The specific areas covered by this notice are that of the area of the former surface impoundment, and the former pH adjustment tank. The locations and final graded elevations of these areas are shown on the accompanying survey plat (Figure 1). There are low levels of contamination by organic solvents in the soil in these areas. Groundwater underlying the former surface impoundment is also thought to be contaminated.

The contamination is described as follows:

- 1,1,2-trichloroethane at depths of 35 feet to 45 feet below grade in the former pH adjustment tank area
- Carbon tetrachloride at depths of 17 feet to 57 feet below grade in the area of the former surface impoundment
- Contaminants in on-site groundwater are deduced from the January 1987 levels at an adjacent, off-site well (DMW-2) and are estimated to be: 1,1-Dichloroethene; 1,1-Dichloroethane; trans-1,2-Dichloroethene; Chloroform; 1,1,1-Trichloroethane; Trichloroethylene; 1,1,2-Trichloroethane.

Contamination levels are described in more detail in "Closure and Post-Closure Plans, Artley Flute Facility, C.G. Conn, Ltd." dated August 25, 1986. These plans are on file at the facility and at the Arizona Department of Environmental Quality, Phoenix, Arizona.

This notice may be removed by the permittee from the county record when all traces of contaminated soil and groundwater are removed or shown to be free of hazardous waste constituents. Such removal or detoxification of this soil and water must be approved by the Arizona Department of Environmental Quality or responsible state agency at that time.

The following is the signature of the current landowner, his title, business affiliation, and date of signature, and signed with the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

OWNER: United Musical Instruments, U.S.A., Incorporated
1000 Industrial Parkway
Elkhart, Indiana 46514

<u>Name</u>	<u>Title</u>	<u>Date</u>
_____ Thomas T. Burzycki	<u>President</u>	_____