STATE OF MICHIGAN

DEPARTMENT OF ATTORNEY GENERAL

P.O. BOX 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

August 22, 2016

Ingham County Circuit Court
Attn: Clerk of the Court
313 W. Kalamazoo
Lansing, MI 48933

Re: *Michigan Department of Environmental Quality v Ford Motor Co. and The Kingsford Products Company*
Ingham County Circuit Court File No: 04-1427-CE

Dear Clerk:

Enclosed is the Proof of Service for the service of the Stipulated Motion for Entry of First Modification to Consent Judgment that was sent to all counsel.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Brian J. Negele
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
(517) 373-7540

BJN:kaw
Enclosures
cc: Michael Robinson
Sharon Newlon

LF: Ford Kingsford #1997-200070-B/Letter – Clerk 2016-08-22

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

v

Case No. 04-1427-CE

Honorable Joyce Draganchuk

FORD MOTOR COMPANY and
THE KINGSFORD PRODUCTS COMPANY

Defendants.

/

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DICKINSON WRIGHT, PLLC
500 Woodward Ave., Ste. 4000
Detroit, MI 48226
(313) 223-3674

/

PROOF OF SERVICE

On August 22, 2016, I sent by first-class mail a signed copy of the First Modification to Consent Judgment to:

Michael L. Robinson (P23160
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I declare that the above statement is true to the best of my knowledge, information, and belief.

Kimberly A. Wilcox

LF/Ford Kingsford/1997-200070-B/POS-First Class Mail-2016-08-22

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
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FIRST MODIFICATION TO CONSENT JUDGMENT

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First Modification to Consent Judgment

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ).

The Defendants are Ford Motor Company and The Kingsford Products Company.

This Consent Judgment requires the preparation and performance of a remedial investigation to determine the nature, extent, and impact of hazardous substances and any threat to the public health, safety, or welfare or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate remedial action for the Facility; and the performance of interim response activities to mitigate unacceptable risks. Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Judgment or (b) any terms or conditions set forth herein.

The entry into this Consent Judgment by Defendants is for settlement purposes and neither an admission or denial of liability with respect to any issue dealt with in this Consent Judgment nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Consent Judgment finds, that the response activities set forth herein are necessary to abate the release or threatened release of hazardous substances into the environment, to control future releases, and to protect public health, safety, welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Judgment constituting an admission by Defendants of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ADJUDGED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have with respect to jurisdiction of the Court or to venue in this District with respect to the Complaint in this matter and the entry of this Consent Judgment.

1.2 The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment and to resolve disputes arising under this Consent Judgment, including those that may be necessary for its construction, execution, or implementation, subject to Section XVII (Dispute Resolution).

II. PARTIES BOUND

2.1 This Consent Judgment shall apply to and be binding upon Plaintiff and Defendants and their successors. No change or changes in the ownership or

corporate status or other legal status of any of the Defendants, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendants' responsibilities under this Consent Judgment. Defendants shall provide the MDEQ with written notice prior to the transfer, after the Effective Date, of ownership of part or all of the Facility, which is owned by Defendants, and shall also provide a copy of this Consent Judgment to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20116.

2.2 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of response activities pursuant to this Consent Judgment, Defendants are responsible for compliance with the terms of this Consent Judgment and shall ensure that their contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Consent Judgment.

2.3 All Defendants shall be jointly and severally liable for the performance of the activities specified in this Consent Judgment and for any penalties that may arise from violations of this Consent Judgment. The signatories to this Consent Judgment certify that they are authorized to execute this Consent Judgment and to legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

3.1 In entering into this Consent Judgment, it is the mutual intent of the Plaintiff and Defendants to minimize litigation and ensure that the Defendants remediate the facility for which they are responsible in accordance with Part 201 of NREPA. Specifically, the Defendants will: (a) conduct a remedial investigation to determine the nature, extent, and impact of hazardous substances and any threat to the public health, safety, or welfare, or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate remedial action for the Facility; (b) perform interim response activities to mitigate unacceptable risk through direct contact, eliminate the migration toward the Menominee River at the boundary described in Paragraph 7.6(a)(x) of this Consent Judgment of contaminated groundwater above applicable acute and chronic Groundwater-Surface Water Interface (GSI) criteria, mitigate potential explosive hazards, vent areas where methane levels exceed acceptable levels in the soil gas, and any other interim response activity determined appropriate; (c) if desired by Defendants, develop and submit to the MDEQ approvable Response Activity Plans or No Further Action Reports that comply with Part 201's requirements; (d) perform remedial actions at the Facility to meet Defendants' obligations pursuant to Part 201; and (e) reimburse the State for Response Activity Costs as described in Section XV (Reimbursement of Costs).

3.2 Except as set forth herein, the Parties agree and acknowledge that this Consent Judgment is the sole mechanism for addressing the Part 201 matters regarding the Ford-Kingsford Products Facility, and that any Submissions provided

to the State shall be handled in the manner established under Section XIV (Submissions and Approvals) of this Consent Judgment.

IV. DEFINITIONS

4.1 "Area of Concern" means the area depicted in Attachment 1.

4.2 "Consent Judgment" means this Consent Judgment and any attachment hereto, including any future modifications and any Submissions required by the Consent Judgment, which shall be incorporated into and become an enforceable part of this Consent Judgment.

4.3 "Defendants" means Ford Motor Company and its successors and The Kingsford Products Company and its successors.

4.4 "Effective Date" means the date that the Court entered the original Consent Judgment on October 26, 2004.

4.5 "Facility" means those areas within the Area of Concern, as defined in Paragraph 4.1 and depicted in Attachment 1, that meet the definition of "facility" in Section 20101(1)(s) of NREPA, MCL 324. 20101(1)(s); and any other area outside of the Area of Concern that meets the definition of "facility" in Section 20101(1)(s) of NREPA as a result of the migration of a hazardous substance from within the Area of Concern.

4.6 "First Modification Effective Date" is the date that the Court enters this First Modification to Consent Judgment.

4.7 "Ford" means Ford Motor Company.

4.8 "Future Response Activity Costs" means all costs of response activity lawfully incurred by the State as provided in Part 201 to oversee, enforce, monitor, and document compliance with this Consent Judgment and to perform response activities required by this Consent Judgment, including, but not limited to, costs incurred to: monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; collect and analyze samples; evaluate data; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare and review cost reimbursement documentation; and perform response activities pursuant to Paragraph 7.13 (The MDEQ's Performance of Response Activities) and Section X (Emergency Response).

4.9 "KPC" means The Kingsford Products Company.

4.10 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.11 "No Further Action Report" or "NFA Report" means a report as defined in Section 20101(1)(hh) of NREPA.

4.12 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended on the First Modification Effective Date, MCL 324.20101 *et seq*, and the Administrative Rules promulgated and in effect thereunder, on the First Modification Effective Date.

4.13 "Part 201 Rules" means the Administrative Rules promulgated under Part 201 of NREPA as of the First Modification Effective Date.

4.14 "Party" means the Plaintiff or one of the Defendants. "Parties" means the Plaintiff and Defendants.

4.15 "Plaintiff" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.16 "Remedial Action Plan" or "RAP" means a plan for the Facility that satisfies the requirements of Part 201, including, but not limited to, Sections 20118, 20120a, 20120b, and 20120d of NREPA and the Part 201 Rules.

4.17 "Remedial Investigation" or "RI" means an evaluation to determine the nature, extent, and impact of a release or threat of release and the collection of data necessary to conduct a feasibility study of alternate response activities or to conduct a remedial action at a facility and complies with Part 201 of NREPA and its rules.

4.18 "Response Activity Plan" means a plan as defined in Section 20101(1)(xx) of NREPA.

4.19 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

4.20 "State" or "State of Michigan" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality and any authorized representatives acting on their behalf.

4.21 "Submissions" means all plans, reports, schedules and other submittals that Defendants are required to provide to the State pursuant to this Consent Judgment and Response Activity Plans as set forth in Section XIV

(Submissions and Approvals). "Submissions" does not include the notifications set forth in Section XI (Delays in Performance, Violations, and *Force Majeure*).

4.22 Unless otherwise stated herein, all other terms used in this document, which are defined in Part 3 of NREPA, MCL 324.301; Part 201 of NREPA, MCL 324.20101, *et seq*; or the Part 201 Rules, shall have the same meaning in this document as in Parts 3 and 201 of NREPA and the Part 201 Rules. Unless otherwise specified in this Consent Judgment, "day" means a calendar day. The Parties agree that, for purposes of this document, the definition of the term "source" in Section 20101(1)(zz) of NREPA shall apply to only Section 20114(1)(c) of NREPA.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Consent Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations, including, but not limited to, Part 201 of NREPA, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the conduct of response activities under this Consent Judgment regarding matters within that agency's jurisdiction.

5.2 This Consent Judgment does not obviate the Defendants' obligations to obtain and maintain compliance with permits that are necessary for the performance of response activities under this Consent Judgment.

VI. BACKGROUND

6.1 In the early 1920s, Ford acquired property in the area that was to become the City of Kingsford. Ford established a plant in the area, which was used to manufacture wooden body parts for Ford touring cars, sedans, and gliders. Operations at the plant included a sawmill, a body plant, and a wood carbonization and by-product recovery plant. The direct products from the wood carbonization and by-product portion of the plant included: charcoal, pyroligneous acid, and noncondensable gas. As a result of processing of the pyroligneous acid, additional chemical products were produced including alcohols, acetates, acetones, creosote oils, formates, high boiling esters, ketones, methanol, pitch, and oils. This plant continued to be owned by Ford until 1951.

6.2 Kingsford Chemical Company (KCC), KPC's predecessor, purchased the plant in 1951 and operated certain portions of it until 1961.

6.3 There are four known former waste pits, referred to as NE Pit, SW Pit, Riverside Disposal Area (RDA), and West Breen Street Dump. (See Attachment 1.) The NE and SW Pits, which started as two separate surface impoundments and were later connected by a channel, received the wastewater stream from the plant. The NE and SW Pits have an estimated surface area of 145,000 sq. ft.

6.4 Between 1985 and 1987, EWA, Inc. (EWA), a consultant for Ford, performed two hydrogeological investigations which defined the general hydrogeological characteristics of portions of the Area of Concern. EWA also estimated the volume of the waste in the NE and SW Pits to range from 190,000-260,000 cubic yards.

6.5 From the winter of 1987 through 1988, Ford excavated 26,949 cubic yards of tars from the NE Pit area. Defendants continued to remove tars from the NE Pit as needed prior to the construction of the cap.

6.6 In July 1995, an explosion occurred in a house located at 2104 West Breen Avenue in Kingsford from accumulated methane in the basement.

6.7 A soil gas investigation conducted by the United States Environmental Protection Agency (EPA) and its contractors near the explosion area in December 1995 indicated that the ground near the area of the explosion contained high levels of methane. Soil gas concentrations of methane ranged from 82% to 97%.

6.8 In February 1996, a Soil Vapor Extraction (SVE) System was installed by the EPA to mitigate the explosion hazard around the house at 2104 West Breen Avenue and an adjacent home to the south. In May 1996 operation and maintenance of the SVE system was turned over to the MDEQ.

6.9 In December 1996, elevated concentrations of methane were also found in the basement of the residence at 2001 Emmet Street in Kingsford. In March 1997, an SVE system was installed by the EPA to mitigate methane in the area around the residence at 2001 Emmet Street. The SVE system was turned over to the MDEQ in July 1997 for operation and maintenance.

6.10 The Defendants have been responsible for the operation and maintenance of the SVE systems since September 1998.

6.11 From April through September 1996, EPA and its contractors investigated the source and extent of the methane. The investigation determined

that the methane in the soil gas and groundwater was being generated by the microbial degradation of various organic compounds disposed of in the waste pits.

6.12 On September 15, 1998, the Defendants agreed in writing to implement an interim response work plan, which consisted of the operation and maintenance of the SVE systems, removal of tar or restriction of access to tar in the NE and SW Pits, and implementing an Emergency Response Plan relating to methane exposures.

6.13 Contaminants found within the Facility include: phenol, 2-methylphenol, 4-methylphenol, 2,4-dimethylphenol, acetone, trichloroethene, benzene, ethylbenzene, xylene, phenanthrene, 1,1,2,2- tetrachloroethane, arsenic, mercury, copper, chromium, and lead. Each of these contaminants found at the Facility exceeds residential cleanup criteria for one or more pathways pursuant to Section 20120a(1)(a) of NREPA and are "hazardous substances" as that term is defined in Section 20101(1)(x) of NREPA.

6.14 Over 50 contaminants are found in the groundwater within the Facility in concentrations that exceed one or more of the following: the Part 201 Residential Drinking Water Criteria, Part 201 acute or chronic Groundwater-Surface Water Criteria, Part 201 Groundwater Contact Criteria. Additionally, aesthetic concerns in the groundwater include foaming, discoloration (yellow – black), and odors.

6.15 Disposal of waste into the pits has resulted in levels of hazardous substances present at the surface or near the surface above the residential cleanup

criteria levels, and has leached and may continue to leach hazardous substances into the groundwater, contaminating the groundwater, creating a situation conducive to generating methane, and resulting in unpermitted discharges to a surface water. The disposal of these hazardous substances constitutes a "release or threatened release" within the meaning of Section 20101(1)(pp) and 20101(1)(ccc) of NREPA.

6.16 The Ford–Kingsford Products Facility is a "facility" as that term is defined in Section 20101(1)(s) of NREPA.

6.17 Potentially explosive concentrations of methane may accumulate in basements and other structures due to concentrations of methane in or near surface soils of the Facility.

6.18 Ford Motor Company, a Delaware Corporation, and The Kingsford Products Company, a Delaware corporation, are each a "person" as that term is defined in Section 301(h) of Part 3 of NREPA, MCL 324.301(h).

6.19 Ford and KCC were each an owner and operator of the former plant at the time of disposal of hazardous substances at the Facility. KPC alleges that KCC, and not KPC, was responsible for releases at the Facility. Solely for the purpose of this Consent Judgment, KPC does not challenge responsibility for KCC's actions. Ford and KCC disposed of wastes, containing hazardous substances, into waste pits and other disposal areas at the Facility. Therefore, Ford and KPC are responsible for the release or threat of release. Ford and KPC are each a person who is liable within the meaning of Section 20126(1) of NREPA. Ford's and KPC's obligations

with respect to the Facility shall be limited to addressing the release or threatened release of a hazardous substance for which either Ford or KPC is liable under Part 201.

6.20 By letters dated June 19, 1997, September 23, 1997, January 20, 1998, and July 14, 2003, the MDEQ notified Ford of its status as a person that may be liable for the Facility. By letters dated January 20, 1998, and July 14, 2003, the MDEQ notified KPC of its status as a person that may be liable for the Facility. These letters demanded that the Defendants undertake interim response activities; submit plans for eliminating the methane fire and explosion hazards; investigate the extent of the Facility; implement a remedial action; and reimburse the State's past response activity costs.

6.21 Defendants reimbursed the State $135,642.00 in past response activity costs in January 2001. On November 11, 2003, Defendants reimbursed the State $1,301,728.74 in additional past response activity costs.

6.22 Ford and KPC have undertaken response activities including, but not limited to: (a) installation of monitoring wells; (b) installation of passive and active gas vents; (c) installation of a pilot groundwater pre-treatment facility; (d) removal of surficial and subsurficial contaminants; and (e) preparation of work plans for several portions of the Facility, including the Riverside Disposal area, the West Breen Avenue Dump area, the Former Plant area, and the NE and SW Pits area.

6.23 In coordination with these response activities, Ford, KPC, and the MDEQ have held public meetings in Kingsford in September of 1997, February of

1999, and October of 1999 regarding Facility conditions. A public meeting was held by MDEQ in Kingsford in June 2004 to provide updated information. Further information was disseminated by a series of Progress Updates sent to area residents by Ford and KPC from 1998 to 2004. These Updates were supplemented by information bulletins issued by the MDEQ in January of 1999, February of 2000, and June 2004.

6.24 Defendants have submitted to the MDEQ a draft Facility evaluation report. Data collected by EPA, MDEQ and the Defendants confirms concentrations of constituents in excess of Part 201 residential cleanup criteria requiring response activities.

6.25 Defendants have completed construction of and are implementing the interim response activities identified in Paragraph 7.1(b), as evidenced by the following interim response activity plans (IRAPs), reports and documents submitted to the MDEQ:

(a) In conjunction with the mitigation of all direct contact hazards:

(i) Former Northeast Pit Interim Response Action Plan, January 8, 2003.

(ii) Addenda for the Former Northeast Pit IRAP, May 14, 2003 and February 5, 2009.

(iii) Former Northeast Pit Interim Response Action Construction Documentation Report, April 19, 2006.

(iv) Former Southwest Pit Interim Response Action Plan, July 18, 2003.

(v) Former Southwest Pit Interim Response Action Construction Documentation Report, February 2, 2012.

(vi) Former Riverside Disposal Area Interim Response Action Plan, October 31, 2002.

(vii) Addendum for the Former Riverside Disposal Area Interim Response Action Plan, August 15, 2003.

(viii) Former Riverside Disposal Area Interim Response Action Construction Documentation Report, February 10, 2010.

(ix) Former Plant Site Interim Response Action Plan and Construction Documentation Report, October 12, 2007.

(x) Addendum to the Former Plant Site Interim Response Action Plan and Construction Documentation Report, June 24, 2008.

(b) In conjunction with eliminating the migration toward the Menominee River at the boundary described in Paragraph 7.6(a)(x) of contaminated groundwater above the acute and chronic criteria for the GSI:

(i) Groundwater Interim Response Action Plan, January 29, 2009.

(ii) Addendum to the Groundwater Interim Response Action Plan, June 6, 2011.

(iii) Performance Monitoring Plan – Groundwater Extraction System, January 21, 2005.

(iv) Revised Performance Monitoring Plan – Groundwater Extraction System, April 22, 2005.

(v) Addendum for the Performance Monitoring Plan – Groundwater Extraction System, September 1, 2006.

(vi) Request for Modifications to Constituent Analysis and Frequency of Monitoring for the GSI Mixing Zone (Final), February 2, 2009, approved by the MDEQ in January 2009.

(c) In conjunction with providing adequate treatment for any contaminated groundwater extracted:

(i) Groundwater Interim Response Action Plan, January 29, 2009.

(ii) Addendum to the Groundwater Interim Response Action Plan, June 6, 2011.

(iii) Performance Monitoring Plan – Groundwater Extraction System, January 21, 2005.

(iv) Revised Performance Monitoring Plan – Groundwater Extraction System, April 22, 2005.

(v) Addendum for the Performance Monitoring Plan – Groundwater Extraction System, September 1, 2006.

(vi) Request for Modifications to Constituent Analysis and Frequency of Monitoring for the Groundwater Extraction System (Final), February 2, 2009, approved by the MDEQ in January 2009.

(vii) Groundwater Treatment System NPDES Permits, effective September 1, 2009, and April 1, 2016.

(d) In conjunction with preventing or eliminating explosive hazards in buildings, above or below-ground structures, and confined spaces where methane may accumulate in soil gas within the Area of Concern:

(i) Standard Contingent Work Plan – Pressure Control System, December 16, 2004.

(ii) Methane IRAP, October 31, 2007.

(iii) Methane IRAP Addendum, October 13, 2009.

(iv) Progress Reports dated 2005 through the First Modification Effective Date.

(e) In conjunction with venting any areas identified by the MDEQ or Defendants where methane levels in the soil gas are at or above 1.25 percent by volume within the Area of Concern:

(i) Standard Contingent Work Plan – Pressure Control System, December 16, 2004.

(ii) Methane IRAP, October 31, 2007.

(iii) Methane IRAP Addendum, October 13, 2009.

(iv) Progress Reports dated 2005 through the First Modification Effective Date.

6.26 Defendants have conducted interim response activities and investigated, to the extent authorized by the current landowner, the risks from

direct contact hazards associated with contaminated soils or waste to address the requirements of Paragraphs 7.1(b)(i) and 7.6(a)(viii) with respect to the West Breen Avenue Dump to the extent currently practicable, as evidenced by the following reports and documentation submitted to the MDEQ:

(a) Investigation of the Former West Breen Avenue Disposal Area (WBADA), January 15, 2003.

(b) Workplan Former WBADA, December 2004.

(c) Former WBADA Report, October 25, 2005.

(d) Remedial Investigation Report, November 2010, Sections 3.10.5, 4.5, and 6.4.5.

(e) Figure S-1, Summary of Soil Boring, Monitoring Well, Subsurface and Surface Sampling Locations, WBADA, December 2014.

(f) Table S-1, Summary of Constituents Detected in Waste Samples, WBADA, February 12, 2015.

(g) West Breen Avenue Disposal Area Summary, March 23, 2015.

6.27 As reflected in the IRAPs and documents referenced in Paragraph 6.25, Defendants are complying with the requirements of Paragraph 7.1(b), including demonstrating either a documented decreasing trend in groundwater contamination on a continuing basis at each of the GSI compliance points and/or a hydraulic gradient towards the extraction wells from all points along a boundary parallel to the State of Michigan shoreline of the Menominee River.

6.28 Defendants have performed a remedial investigation and submitted an RI Report in November 2010, pursuant to Paragraph 7.1(c), which was approved by the MDEQ on May 4, 2011. Evaluation of Facility conditions described in the approved RI Report was sufficient for the remedy implemented to date.

6.29 Defendants received authorization from the MDEQ for a mixing zone-based GSI discharge on March 1, 2006, which was renewed on March 23, 2011.

6.30 Amendments to Part 201, which, in part, led to this First Modification, revised the requirements for a Remedial Action Plan (RAP). Defendants prepared the RAP and submitted it to the MDEQ on February 4, 2012, and have been implementing the response activities provided in the documents listed in Paragraphs 6.25 and 6.26 and in Attachment 3, which were attachments to the RAP. Review of the RAP has been held in abeyance pending entry into this First Modification to Consent Judgment. Although components of the RAP will continue to be utilized, the RAP is no longer a required Submission under the Consent Judgment and is no longer a part of this Consent Judgment.

6.31 Quality Assurance Project Plan (QAPP). Defendants have submitted an initial site QAPP dated November 2004 to the MDEQ pursuant to Paragraph 7.3. The initial QAPP has been updated, with notice to the MDEQ.

6.32 Health and Safety Plan (HASP). Defendants have submitted an initial HASP dated November 2004 to the MDEQ pursuant to Paragraph 7.4. The initial HASP has been updated, with notice to the MDEQ.

VII. PERFORMANCE OF RESPONSE ACTIVITIES

7.1 Performance Objectives

Defendants shall perform all necessary response activities at the Facility to comply with the requirements of Part 201, including the response activities required to meet the performance objectives outlined in this Section VII of the Consent Judgment.

(a) To the extent that Defendants are the owner, individually or collectively, of part or all of the Facility, Defendants shall achieve and maintain compliance with Section 20107a(1)(a) through (f) of NREPA and Part 10 of the Part 201 Administrative Rules.

(b) Defendants shall perform interim response activities (IRA). The performance objectives of these IRA are to:

(i) Mitigate unacceptable risk from all direct contact hazards associated with contaminated soils or waste at the disposal areas, including, but not limited to, the NE and SW Pits, Riverside Disposal Area, West Breen Ave Dump, and the Former Plant Site within three hundred and sixty-five (365) days of the Effective Date of this Consent Judgment.

(ii) Within two years of the Effective Date of this Consent Judgment, (a) eliminate the migration toward the Menominee River, at the boundary described in Paragraph 7.6(a)(x), of contaminated groundwater from the Facility that is above applicable acute and chronic criteria for the GSI, including 1.0 acute toxic units, as defined in the Administrative Rules of Part 31, Water Resources Protection, of NREPA, at MDEQ-approved GSI

compliance points along the Menominee River as provided in the Part 201 Rules, including, but not limited to, between monitoring wells GM-66 and GM-64, by demonstrating the conditions described in Paragraph 7.6(a)(x); and (b) provide adequate treatment for any contaminated groundwater extracted to comply with this Consent Judgment and state and federal law. Within five (5) years of the Effective Date of the Consent Judgment, the Defendants shall demonstrate a documented decreasing trend in groundwater contamination on a continuing basis at each of the GSI monitor wells to the MDEQ's satisfaction until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(iii) Within two (2) years of the Effective Date of this Consent Judgment and continuing on an ongoing basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, prevent or eliminate any explosive hazard in buildings, above or below-ground structures, excluding municipal sewer lines, or confined spaces where methane may accumulate in soil-gas within the Area of Concern.

(iv) Commencing on the Effective Date of the Consent Judgment and continuing on an ongoing basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, vent any areas identified by the MDEQ or the Defendants where

methane levels in the soil gas are at or above 1.25 percent by volume within the Area of Concern where feasible in accordance with Section 20120.

(v) Implement any other IRA determined by the Defendants or the MDEQ to be appropriate based on the factors provided in Part 201 and its rules and submit a work plan for approval upon the request of the MDEQ.

(vi) Commencing on the First Modification Effective Date and continuing on an ongoing basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, passively vent any pockets of methane identified by the MDEQ or Defendants at or above 1.25 percent by volume that have accumulated beneath the water table within the Facility to the extent feasible in accordance with Section 20120 and as described in the following sentence. It may be feasible to passively vent gas-phase methane that has accumulated in the pore spaces of the soils below the water table beneath the water table if: 1) the methane accumulation is present in sufficient volume to displace or depress the water column beneath a confining layer (i.e., enough gas-phase methane accumulates beneath a silt/clay type geologic layer to create a "pocket" of methane in a confined area below the water table); and 2) if the accumulated gas-phase methane pocket becomes sufficiently pressurized to allow for passive venting techniques that use the rise and fall of barometric pressure and the associated rise and fall of the water table) as the motive

force to passively vent the methane pocket. This Paragraph 7.1(b)(vi) shall not apply to *de minimis* accumulations of methane.

(c) Defendants shall perform a remedial investigation (RI) and submit an RI report for MDEQ approval, subject to Section XIV (Submission and Approvals). The performance objectives of the RI are to assess Facility conditions in order to select an appropriate remedial action that adequately addresses the provisions prescribed in Part 201. This includes, but is not limited to, the following:

(i) Definition of the source or sources of any contamination at the Facility, including the saturated zone beneath and/or directly downgradient of the disposal areas, and definition of the nature and extent of contamination originating from that source or sources and present in soil, soil-gas, indoor air, groundwater, surface water, and sediments, including the three dimensional extent of methane, as defined by the boundaries of methane concentrations at 0.5 parts per million (ppm) in groundwater or other MDEQ-approved site specific background concentration, if appropriate, and at 1.25 percent by volume in soil gas. Note that a 0.5 ppm groundwater screening level for dissolved methane was in effect when the RI was prepared and approved, but it is no longer in effect.

(ii) Definition of the risks to the public health, safety, and welfare and to the environment and natural resources, including, but not limited to, the identification of any water wells and wellhead protection zones in the vicinity of the Facility and an evaluation of the impact of the Facility on any

such wells or zones, and identification and evaluation of aboveground and underground structures where methane could accumulate.

(iii) Definition of the amount, concentration, hazardous properties, environmental fate, bioaccumulative properties, persistence, location, mobility, and physical state of the hazardous substances, including methane and methane-generating contamination, at the Facility.

(iv) Definition of the extent to which hazardous substances, including methane, have migrated or are expected to migrate from the area of release, including the potential for hazardous substances to migrate along preferential pathways, including storm drains and sewer systems.

(v) Definition of the geology, hydrogeology, groundwater flow, and gradients at the Facility. This includes, but is not limited to, groundwater flow and gradients into and under the Menominee River.

(d) Defendants shall perform remedial action(s) at the Facility that are consistent with Part 201 that are necessary and appropriate to protect the public health, safety or welfare or the environment and designed to achieve the following:

(i) Satisfy and maintain compliance with the cleanup criteria established under Section 20120a or Section 20120b of NREPA, as applicable.

(ii.) Comply with the applicable requirements of Sections 20114c, 20118, 20120a, 20120d and 20120e of NREPA and the Part 201 Rules.

(iii) Assure the ongoing effectiveness and integrity of the remedial action(s).

7.2 In accordance with this Consent Judgment, the Defendants shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 7.1(a) through (d). The Defendants shall develop each work plan and perform the response activities contained in each work plan to address this Facility in accordance with the requirements of Part 201 and this Consent Judgment. If there is a conflict between the requirements of this Consent Judgment and any work plans, the requirements of this Consent Judgment shall prevail.

7.3 Quality Assurance Project Plan (QAPP)

Within thirty (30) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a QAPP, which describes the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Consent Judgment. The QAPP shall be developed in accordance with the United States Environmental Protection Agency's (U. S. EPA or EPA) "EPA Requirements for Quality Assurance Project Plans", EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans", EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." The Defendants shall utilize recommended sampling methods and analytical methods and analytical detection levels specified in "Operational Memo No. 6, Analytical Method Detection Level Guidance for Environmental Contamination Response Activities under Part 201,

Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Revision 6, January 2001)." The Defendants shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria (S3TM) to determine the number of samples collected for the purposes of verifying the cleanup. The Defendants shall comply with the above documents, or documents that supersede or amend these documents, or other methods demonstrated by the Defendants to be appropriate as approved by the MDEQ.

7.4 Health and Safety Plan (HASP)

Within thirty (30) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* The HASP is not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment.

7.5 Section 20107a Documentation of Compliance Report

To the extent that Defendants own a part or all of the Facility, Defendants shall provide to the MDEQ a "Section 20107a Documentation of Compliance Report" that summarizes the actions Defendants have taken or propose to take to comply with Section 20107a(1) of NREPA and Part 10 of the Part 201 Administrative Rules.

7.6 Interim Response Activities (IRA)

(a) The Defendants shall implement the following IRA to initiate compliance with the provisions of Paragraph 7.1(b) of this Consent Judgment:

(i) Upon the Effective Date of the Consent Judgment, implement any necessary actions, as set forth in the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan within the Area of Concern, until an MDEQ-approved Response Activity Plan or MDEQ-approved No Further Action Report or Court order specifically modifies the obligation. Section III (Implementation of Emergency Response Plan) of the Emergency Response Plan is amended to apply to the Area of Concern as defined in this Consent Judgment.

(ii) Upon the Effective Date of the Consent Judgment and until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, mitigate any explosive hazard in non-habitable below-ground structures or confined spaces accessible to persons where methane accumulates in the below-ground structure or confined space, excluding municipal sewer lines, at or above twenty-five percent (25%) of the Lower Explosive Level (LEL), as soon as practical, and within seventy-two (72) hours eliminate the explosive hazard and notify the local unit of government and MDEQ.

(iii) Within two (2) years of the Effective Date of the Consent Judgment, implement measures to control exposures to unacceptable risks

from methane that may result from construction, maintenance of utilities, and other transient activities that may encounter methane, including preventing conditions that pose a risk of fire or explosion in areas without structures, or adequately mitigate the fire or explosion hazard with appropriate land or resource use restrictions, until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(iv) Within six (6) months of the Effective Date of this Consent Judgment, the Defendants shall document which structures in the Area of Concern have continuous methane monitors with appropriate alarms, whether they are operating properly and are strategically placed in structures where accumulation of explosive levels of methane is possible, and whether all cracks or openings found in the foundation in the structures have been appropriately sealed.

(v) To in part comply with Paragraph 7.1(b)(iii), the Defendants shall provide for methane monitoring of structures within the Area of Concern, unless demonstrated to the MDEQ's satisfaction that methane cannot accumulate in a structure, until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, as follows:

(1) (a) offer owners of any structure, unencumbered by any conditions on the owner of the structure, installation of continuous

methane monitors with appropriate alarms in structures existing prior to the Effective Date of this Consent Judgment and any structures constructed after the Effective Date of this Consent Judgment;
(b) install or fund the installation of continuous methane monitors; during installation of the methane monitors, seal any cracks or openings found in the foundation of any structure; and address any other condition that would facilitate a point of entry for methane accumulation; (c) upon installation of the methane detector, initially test the sensitivity of the methane detector to ensure operation within twenty-five percent (25%) of the LEL; (d) perform or assure performance of maintenance and service of the methane detectors in accordance with the manufacturers written specifications; (e) perform an annual safety check, calibration or other verification of monitor sensitivity and reliability, and maintenance program for the methane monitors installed in any structures in the Area of Concern to ensure proper function, and inspect the structures for conditions that would facilitate methane accumulation, such as cracks or other openings in the foundation; (f) if at any time a methane detector alarm is activated, implement the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan to mitigate the methane and maintain a database of all methane detector alarms activated and the results of all follow-up activities.

(2) In lieu of providing methane detectors to existing commercial or industrial structures where the primary activity at the property is and will continue to be retail, warehouse, office, or business space, the Defendants shall implement the following measures to control exposures to unacceptable risks from methane: (a) installation of a monitoring network that includes the use of nested gas probes along the building foundation. Each nested set shall include a minimum of three (3) gas probes. The probes shall be installed to allow for discrete monitoring of the top, middle, and bottom portions of the permeable areas of the unsaturated zone; (b) a minimum of two (2) nested probe sets shall be installed around the foundation of buildings less than or equal to 10,000 square feet in area, plus installation of one more nested probe set per each additional 10,000 square feet or portion thereof; (c) a minimum of quarterly methane measurements of all gas probes shall be conducted; (d) if at any time methane concentrations in the gas probes are at or above 1.25 percent by volume, (i) the provisions of Paragraph 7.6(a)(vii) shall be implemented, (ii) the building shall be investigated for elevated concentrations of methane and the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan shall be implemented as necessary to mitigate the methane, and (iii) response activities shall be performed to assure methane will not accumulate in

the structure; (e) paved areas over 10,000 square feet, excluding square footage associated with public roadways or streets, and within 5 feet of the exterior wall of a structure shall be vented or adequately monitored for methane accumulation.

(3) If an owner of a structure does not consent to installation of a methane detector or probes, as applicable, Defendants shall implement to the MDEQ's satisfaction alternative monitoring or other response activities to assure that methane will not accumulate in a structure.

(vi) Until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, the Defendants shall, unless Defendants demonstrate to the MDEQ's satisfaction that suitable ventilation precludes methane accumulation:

(1) offer to all owners of structures in the Area of Concern, unencumbered by any conditions on the owner of the structure, installation of a vapor control system for all existing permanent structures and new structures prior to the structure's construction;

(2) install or fund installation of vapor control systems that prevent the accumulation of methane in structures in the Area of Concern in or around existing permanent structures and new structures prior to the structure's construction;

(3) implement a contingency plan to provide protection from the accumulation of methane in a structure if an owner of a structure does not consent to installation of a vapor control system.

(vii) Until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, in any areas identified at the Facility where methane levels in the soil gas are at or above 1.25 percent by volume, at minimum, the Defendants shall:

(1) within twenty-four (24) hours of discovery of methane at or above 1.25 percent by volume in soil gas, ensure nearby above and below-ground structures contain a properly functioning and strategically placed continuous methane monitor with appropriate alarms or nested probes for commercial or industrial structures as provided in Paragraph 7.6(a)(v)(2) or alternative monitoring or other response activity satisfactory to the MDEQ as provided in Paragraph 7.6(a)(v)(3); seal any cracks or openings found in the foundation of the structures; address any other condition that would facilitate methane accumulation;

(2) within forty-eight (48) hours of discovery of methane at or above 1.25 percent by volume in soil gas, initiate implementation of the contingent work plan provided in Paragraph 7.6(b)(ii) to install a pressure control system;

(3) within fourteen (14) days of discovery of methane at or above 1.25 percent by volume in the soil gas, assure that the pressure control system is in operation; and

(4) continue to operate, maintain, and monitor all pressure control systems installed at the Facility in response to methane on an on-going basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(viii) The Defendants shall cap, cover, or otherwise control contaminated soils or waste at the disposal areas to achieve compliance with Paragraph 7.1(b)(i) of this Consent Judgment, and maintain that control until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(ix) Within two (2) years of the Effective Date of this Consent Judgment, the Defendants shall provide for adequate capacity for treatment of all contaminated groundwater extracted to comply with Paragraph 7.1(b)(ii). The Defendants shall treat contaminated groundwater extracted to comply with Paragraph 7.1(b)(ii), and discharge it in compliance with applicable state and federal laws on an ongoing basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(x) Until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation, the Defendants shall install and operate a groundwater extraction system which captures all groundwater that contains hazardous substances above applicable GSI criteria in compliance with Paragraph 7.1(b)(ii), in a manner that demonstrates the following:

(1) the composite capture zone of the extraction wells encompasses the vertical and horizontal extent of contaminated groundwater flux to the Menominee River;

(2) a hydraulic gradient towards the extraction wells from all points along a boundary parallel to the edge of the Menominee River. The boundary is defined as a surface that consists of all vertical lines that pass through a defined curve on the land surface. The defined curve shall be all points on a fixed line which is parallel to the river's edge and not more than seventy (70) feet horizontally landward from the river's edge, except where it is not possible due to physical constraints with the terrain. In such circumstances, the defined curve can be more than 70 feet from the river's edge, but the average distance for the entire defined curve shall be no more than 70 feet horizontally landward from the river's edge. The vertical boundary running parallel to the river's edge will be established as described in

Attachment 2. Extraction wells shall be located on the landward side of the boundary; and

(3) a documented decreasing trend in groundwater contamination at each of the GSI monitoring wells. Defendants shall install, operate and maintain a monitoring system comprised of piezometers and observation wells at sufficient representative locations and depths to document hydraulic capture of all groundwater that contains hazardous substances above applicable GSI criteria at the boundary. Defendants shall also install, operate, and maintain GSI monitoring wells at sufficient locations, spacings, and depths between the boundary and the river's edge to document groundwater conditions, including a continuing decreasing trend in groundwater contamination. GSI monitor wells shall not be located within the area of influence of the groundwater extraction wells, unless the cone of influence extends to the river's edge at that location. If the cone of influence extends to the river's edge, compliance wells will need to be located between the extraction wells and the river's edge to document groundwater conditions. Defendants may request a mixing zone determination with their monitoring proposal, and, in part, rely upon mixing zone based GSI criteria calculated in response to the request, to establish compliance with Paragraph 7.1(b)(ii). The mixing zone discharge authorized by the MDEQ determination for this interim

response applies only to areas of the discharge that are meeting the mixing zone based GSI criteria. The authorization shall not exceed five (5) years. The Defendants may request re-authorization of discharges that meet mixing zone based criteria. The groundwater extraction system shall not be out of operation for more than an average of four (4) days per well per year. Any one extraction well shall not be shut down for more than five (5) weeks, unless it is replaced within that five-week period. After the groundwater extraction well system is operational, at no time shall the hydraulic gradient at any point along the boundary be allowed to go toward the Menominee River, including when groundwater extractions wells are shut down for maintenance. The groundwater extraction system shall be operated on an ongoing basis until an MDEQ-approved Response Activity Plan or No Further Action Report or Court order specifically modifies the obligation.

(b) The Defendants shall submit to the MDEQ a work plan for the following IRA in accordance with the schedule provided below. Except for Paragraph 7.6(b)(iii), the work plans in this Paragraph are not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment.

(i) For areas where work plans have not previously been submitted to the MDEQ to comply with Paragraph 7.1(b)(i), including the West Breen

Ave. Dump and Former Plant Site, within sixty (60) days of the Effective Date of this Consent Judgment, a work plan to meet the requirements of Paragraphs 7.1(b)(i) and 7.6(a)(viii).

(ii) Within sixty (60) days of the Effective Date of this Consent Judgment, a standard contingent work plan for installation of a pressure control system for use in venting areas where unacceptable levels of methane are found to meet the requirements of Paragraphs 7.1(b)(iv) and 7.6(a)(vii), in case the circumstance arises.

(iii) Within ninety (90) days of the Effective Date of this Consent Judgment, a request for a mixing zone determination and authorization, including a proposed monitoring system for hydraulic control and GSI monitoring that complies with the requirements of Paragraph 7.6(a)(x), which is subject to MDEQ review and approval as provided in Section XIV (Submissions and Approval).

(iv) Within ninety (90) days of the Effective Date of this Consent Judgment, a contingency plan for providing an alternative for monitoring methane when the owner of a structure does not consent to the provisions of Paragraph 7.6(a)(v)(1) and (2).

(v) Within ninety (90) days of the Effective Date of this Consent Judgment, a plan for a standard design for the vapor control system to be installed in or around all existing structures in the Area of Concern as provided in Paragraph 7.6(a)(vi); an installation and maintenance schedule;

a statement demonstrating how any increased costs due to the vapor control system to the structure owner will be financed by the Defendants; and the contingency plan for providing protection from the accumulation of methane if an owner of a structure does not consent to installation of a vapor control system.

(vi) Within two (2) years of the Effective Date of the Consent Judgment, a plan for demonstrating how a decreasing trend in groundwater contamination at GSI monitor wells, as provided in Paragraph 7.1(b)(ii), will be documented.

(c) Defendants completed construction of and are implementing the IRAs identified in Paragraph 7.6(a), and are complying with the performance objectives identified in Paragraph 7.1(b), as reflected in the documents listed in Paragraphs 6.25, 6.28, and 6.30 above. Defendants shall continue to operate, monitor and maintain these IRAs until such time as they are amended or terminated pursuant to Response Activity Plans and/or NFA Reports submitted by Defendants and approved by the MDEQ or as ordered by the Court.

(d) The documents Defendants have submitted to the MDEQ as required pursuant to Paragraph 7.6(b) are listed in Paragraphs 6.25, 6.28, and 6.30 and Attachment 3.

7.7 Remedial Investigation (RI)

(a) Within sixty (60) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a work plan for conducting additional evaluation of the Facility. The work plan shall provide for the following:

(i) A detailed description of the specific work tasks that will be conducted pursuant to the work plan and a description of how these work tasks will meet the performance objectives described in Paragraph 7.1(c). The factors specified in the Part 201 Administrative Rules shall be considered in the development of the work plan.

(ii) A description of the history and nature of operations at the Facility and a summary of any existing information regarding the physical characteristics of the site.

(iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.

(iv) A plan for obtaining access to any properties not owned or controlled by the Defendants that is needed to perform the response activities contained in the work plan.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities that the Defendants propose to use for the off-site transfer, storage, treatment, or disposal of those waste materials.

(b) The Defendants shall perform the response activities contained in the plan and submit progress reports and an RI report in accordance with the implementation schedule. The Defendants shall correlate weather data, including barometric pressure, temperature, and precipitation, with any soil gas measurements.

(c) The documents Defendants have submitted to the MDEQ pursuant to Paragraph 7.7(a) with respect to the WBADA are listed in Paragraph 6.26.

7.7A Response Activities

(a) If Defendants determine that additional response activities are necessary to comply with Part 201, including additional evaluation of the Facility to support the selection of a remedial action and meet the requirements of Part 201 and the Part 201 Rules, or if Defendants seek to modify the response activities being conducted pursuant to Paragraph 7.1, Defendants shall submit a Response Activity Plan to the MDEQ for review and approval. The Response Activity Plan shall provide for the following:

(i) A detailed description of the specific response activities that will be conducted pursuant to the Response Activity Plan and a description of how those tasks will meet the performance objectives described in Paragraph 7.1.

(ii) Implementation schedules for conducting the response activities and for submission of progress reports and final report.

(iii) A list of any properties not owned or controlled by Defendants where access may be needed to perform the response activities or remedial actions described in the Response Activity Plan.

(iv) A description of the nature and amount of waste materials expected to be generated during the performance of the response activities described in the Response Activity Plan and the name and location of the facilities that Defendants propose to use for the off-site transfer, storage, treatment, or disposal of those waste materials.

(b) Within thirty (30) days of receiving the MDEQ's approval of the Response Activity Plan, Defendants shall perform the response activities contained in the plan in accordance with the MDEQ-approved implementation schedule in the Response Activity Plan. Defendants shall correlate, to the extent possible, weather data, including barometric pressure, temperature, and precipitation at the Facility, with any soil gas measurements.

(c) If Defendants complete remedial actions at the Facility for a category of clean up that does not satisfy cleanup criteria for unrestricted residential use, Defendants shall submit to the MDEQ a postclosure plan as provided in Section 20114c of NREPA for review and approval.

(d) In seeking MDEQ's approval of the Response Activity Plan, Defendants may demonstrate compliance with requirements for venting groundwater by meeting any of the alternatives listed in Section 20120e(1)(a)-(f) of

NREPA, singly or in combination, and as otherwise set forth in Section 20120e of NREPA.

7.7B No Further Action (NFA) Reports

(a) Defendants may submit to the MDEQ an NFA Report that addresses all or a portion of contamination at the Facility, in the manner provided in Section 20114d(1)-(7) of NREPA.

(b) The NFA Report must indicate what obligation(s), if any, in the Consent Judgment is (are) satisfied and terminated, or otherwise affected, if the NFA Report submitted by Defendants is approved by MDEQ. MDEQ's approval of an NFA Report, including any postclosure plan and postclosure agreement, as appropriate, shall terminate Defendants' obligations under Section VII (Performance of Response Activities) for the completed remedial actions that satisfy the requirements of Part 201, as documented in the NFA Report. Defendants' remaining obligations, if any, under a postclosure agreement, shall be governed by that postclosure agreement and not by the terms of the Consent Judgment. The approved NFA Report, including the postclosure plan and postclosure agreement, as appropriate, are not incorporated into the Consent Judgment.

(c) If a financial assurance mechanism is required pursuant to a postclosure agreement in conjunction with the approval of an NFA Report, Defendants may utilize any financial assurance mechanism authorized under Part 201. The MDEQ has determined that a financial test is an acceptable financial assurance mechanism under Part 201 and under this Consent Judgment, provided

Defendants meet the test's requirements, as reflected in the March 30, 2015 financial test submitted by Ford on March 31, 2015, or as otherwise agreed by the Parties or required by law.

7.8 Progress Reports

(a) The Defendants shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Consent Judgment. The MDEQ may provide comments on the progress reports to the Defendants, but the progress reports are not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment; provided, however, that the progress reports are subject to MDEQ review for making satisfactory progress in achieving the performance objectives of Paragraph 7.1. These progress reports shall include the following:

(i) A detailed description of the specific work tasks that have been conducted during the previous reporting period, which demonstrates how these work tasks are meeting the performance objectives and schedules described in Paragraphs 7.1, 7.6, 7.7, and 7.9 and identifies any problems encountered and describes their resolution. The factors specified in the Part 201 Rules shall be considered in the development of the work tasks;

(ii) All results of sampling and tests and other data received by the Defendants, their employees or authorized representatives during the

previous reporting period relating to the response activities performed pursuant to this Consent Judgment;

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, including documentation of property ownership, lease agreements, easement agreements, and, if problems arise, a description of how the Defendants propose to resolve those issues;

(iv) A description of the nature and amount of solid waste materials that were generated and the name and location of the facilities that were used for the off-site transfer, storage, treatment, or disposal of those waste materials;

(v) A detailed description of data collection and the specific work tasks that will be conducted during the next reporting period, including implementation schedules, and a description of how these work tasks will meet the performance objectives described in Paragraphs 7.1, 7.6, 7.7, and 7.9. Comprehensive plans for specific work tasks shall include, but not be limited to, the following: work plans required under Paragraph 7.6(b), design plans for the groundwater treatment plant, and design plans for the extraction well system. The factors specified in the Part 201 Rules shall be considered in the development of the work tasks;

(vi) A correlation of weather data, including barometric pressure, temperature, and precipitation, with any soil gas measurements;

(vii) Any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Consent Judgment;

(viii) Any proposed site-specific criteria;

(ix) Any new proposed restrictive covenants or notices of aesthetic impact, prior to recording with the county Register of Deeds, and supporting data. The proposed restrictive covenant(s) shall comply with applicable requirements of Part 201 of the NREPA. This requirement to submit shall not apply to restrictive covenants already recorded with the county Register of Deeds listed in Attachment 3;

(x) Any new institutional controls proposed by Defendants;

(xi) Any new plans or revisions to existing plans as of the First Modification Effective Date proposed by Defendants describing monitoring and/or operation and maintenance response activities, if performance of monitoring or operation and maintenance are necessary to assure the ongoing effectiveness and integrity of a remedial action. This requirement shall not apply to monitoring and/or operation and maintenance response activities described in documents already submitted to the MDEQ and listed in Attachment 3; and

(xii) Notice of any revisions to the QAPPs or HASPs for the Facility in effect as of the First Modification Effective Date and any QAPP revision approved by MDEQ pursuant to Paragraph 7.3.

(b) The first progress report shall be submitted to the MDEQ within ninety (90) days of the Effective Date of this Consent Judgment. Thereafter, progress reports shall be submitted quarterly by the end of the month following each calendar quarter for the previous calendar quarter until 2016. The progress reports shall provide the information in Paragraph 7.8(a) under separate headings for each discrete interim response activity as provided in Paragraph 7.6(a)(i)-(x), the RI provided in Paragraph 7,7, or other individual tasks that may arise. Failure to demonstrate satisfactory progress and that the work tasks will result in compliance with the performance objectives in Paragraph 7.1 is a violation of the Consent Judgment.

(c) Unless otherwise agreed in writing by the Parties, progress reports shall continue to be submitted quarterly through 2015, semi-annually from 2016 through 2017 and annually thereafter. Quarterly and semiannual progress reports shall be submitted by the end of the month following each reporting period. Annual progress reports shall be submitted by the end of March for the previous calendar year.

7.9 Remedial Action Plan

(a) Defendants submitted a RAP to the MDEQ on February 4, 2012. In lieu of approval of the RAP by the MDEQ, the Parties have agreed that Defendants shall continue to operate, monitor and maintain the response activities described in the IRAPs and documents referenced in Paragraphs 6.25 and 6.26 until such time as they are superseded, amended or terminated pursuant to Response Activity

Plans and/or NFA Reports submitted by Defendants and approved by the MDEQ or ordered by the Court.

(b) Defendants have recorded or caused to be recorded restrictive covenants with the Dickinson County Register of Deeds with respect to the response activities described in the above-referenced IRAPs, and provided copies of the recorded restrictive covenants and the liber and page to the MDEQ, as listed in Attachment 3.

(c) Institutional controls in the form of ordinances that prohibit the installation, use and maintenance of water extraction wells within the Facility, except in conjunction with remedial activities, have been enacted in the City of Kingsford and Breitung Township, and Defendants have provided documentation of such institutional controls to the MDEQ, as listed in Attachment 3.

(d) Defendants have obtained executed access agreements for access to the properties listed in Attachment 3 for implementation and maintenance of methane extraction and monitoring.

7.10 Public Notice and Public Meeting Requirements under Section 20120d of NREPA.

If the MDEQ determines public notice under Section 20120d of NREPA is necessary for a proposed Response Activity Plan or NFA Report proposed under the Consent Judgment, the MDEQ will make those reports or plans available for public comment pursuant to the provisions of this Paragraph 7.10.

If the MDEQ determines that there is significant public interest in the results of an RI required by this Consent Judgment, the MDEQ will make those

results available for public comment. When the MDEQ determines that the RI report, Response Activity Plan, or NFA Report is acceptable for public review, a public notice regarding the availability of the report or plan will be published and the report or plan shall be made available for review and comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDEQ. If the MDEQ determines that there is significant public interest or the MDEQ receives a request for a public meeting, the MDEQ will hold such public meeting in accordance with Section 20120d(1) and (3) of NREPA. Following the public review and comment period or a public meeting, the MDEQ may refer the RI report, proposed Response Activity Plans(s), or proposed NFA Report back to the Defendants for revision to address public comments and the MDEQ's comments. The MDEQ will prepare the final responsiveness summary document that explains the reasons for the selection or approval of a report or plan in accordance with the provisions of Section 20120d(5) and (6) of NREPA. Upon the MDEQ's request, the Defendants shall provide information to the MDEQ for the final responsiveness summary document, or the Defendants shall prepare portions of the draft responsiveness summary document.

7.11 Well Abandonment

Defendants shall submit to the MDEQ for review and approval a work plan for the proper plugging and abandonment of any monitoring wells, extraction wells and SVE systems that will not be used for long-term monitoring at the Facility (Well Abandonment Work Plan). The work plan shall identify the monitoring wells,

extraction wells and SVE systems that will be plugged and abandoned and an implementation schedule for performing the work. Upon receipt of the MDEQ's approval of the work plan, Defendants shall plug and abandon monitoring wells, extraction wells and SVE systems in accordance with the approved plan. Within thirty (30) days of completing the work under the Well Abandonment Work Plan, Defendants shall submit a Well Abandonment Report to the MDEQ.

7.12 Modification of Response Activity

(a) If the MDEQ determines that a modification to response activity is necessary to meet and maintain the applicable performance objectives specified in Paragraph 7.1 to comply with Part 201, or to meet any other requirement of this Consent Judgment, the MDEQ may require that such modification be conducted. If extensive modifications are necessary, the MDEQ may require the Defendants to develop and submit or amend a response activity work plan for review and approval in accordance with Section XIV (Submissions and Approvals). The Defendants may request that the MDEQ consider a modification to a MDEQ-approved response activity by submitting such request for modification along with the proposed change in the response activity and the justification for that change to the MDEQ for review and approval in accordance with the provisions of Section XIV (Submissions and Approvals). Any such request for modification by the Defendants must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due.

(b) Upon receipt of the MDEQ's determination, the Defendants shall perform the response activities specified in the MDEQ's determination. This may include, but is not limited to, submittal of a modified response activity work plan, a report, or a new work plan.

7.13 The MDEQ's Performance of Response Activities

(a) If the Defendants cease to perform the response activities required by this Consent Judgment, are not performing response activities in accordance with this Consent Judgment, or are performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to the Defendants, take over the performance of those response activities at the end of the thirty-day period. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section X (Emergency Response). The determination by the MDEQ to take over response activities or continue the performance of response activities is not subject to Section XVII (Dispute Resolution).

(b) If the MDEQ finds it necessary to take over the performance of response activities pursuant to Paragraph 7.13(a), the MDEQ may access the financial assurance mechanism established by the Defendants to assure the performance of the required response activities and reimburse the State's response activity costs, including interest. It is acknowledged that the level of funding of this

financial assurance mechanism will not cover all of the necessary response activities to be conducted at the Facility. In the event that the Defendants believe that the MDEQ improperly accessed the financial assurance mechanism for the reason that the response activities undertaken by the MDEQ under this paragraph were not in accordance with the performance objectives of the Consent Judgment or were arbitrary and capricious or otherwise unlawful, the Defendants may seek reimbursement from the Cleanup and Redevelopment Fund in the manner set forth in Section 20119(5) of NREPA. State response activity costs not secured or reimbursed by the financial assurance mechanism shall be Future Response Activity Costs, and the Defendants shall provide reimbursement of these costs and any accrued interest to the State in accordance with Section XV (Reimbursement of Costs), which is subject to Section XVII (Dispute Resolution).

(c) Within sixty (60) days of the Effective Date of this Consent Judgment, Defendants shall establish a financial assurance mechanism in the form of an MDEQ-approved Environmental Escrow in the amount of one million dollars ($1,000,000), which shall be maintained at that level by the Defendants until terminated or modified as described in Paragraph 7.13(e). In the event that the MDEQ utilizes the Environmental Escrow in accordance with this Paragraph 7.13, the Defendants shall ensure that the balance of the Environmental Escrow remains at one million dollars ($1,000,000) by making deposits, as needed, on a monthly basis; provided, however, that the Defendants' obligation to fund the Environmental Escrow does not exceed five million dollars ($5,000,000).

(d) The Environmental Escrow shall be used solely and exclusively for the performance of response activities as provided in Paragraph 7.13(a), and shall be in a form that allows the MDEQ to contract immediately for the response activities for which financial assurance is required.

(e) The Environmental Escrow shall be terminated upon MDEQ-approval of an NFA Report for the GSI pathway at the Facility, or as otherwise agreed by the Parties, or ordered by the Court.

VIII. ACCESS

8.1 Upon the Effective Date of this Consent Judgment, Defendants shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and any associated properties at all reasonable times to the extent that access to the Facility and any associated properties are owned, controlled by, or to the extent available to Defendants. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, the MDEQ and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and associated properties for the purpose of conducting any activity to which access is required for the implementation of this Consent Judgment or to otherwise fulfill any responsibility under federal or State laws with respect to the Facility, including, but not limited to, the following:

(a) Monitoring response activities or any other activities taking place pursuant to this Consent Judgment at the Facility;

(b) Verifying any data or information submitted to the MDEQ;

(c) Assessing the need for, planning, or conducting investigations relating to the Facility;

(d) Obtaining samples;

(e) Assessing the need for, planning, or conducting, response activities at or near the Facility;

(f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a remedial action;

(g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;

(h) Communicating with Defendants' Project Coordinator, or other personnel, representatives, or consultants for the purpose of assessing compliance with this Consent Judgment;

(i) Determining whether the Facility or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Consent Judgment; and

(j) Assuring the protection of public health, safety, welfare and the environment.

8.2 To the extent that the Facility, or any other property where the response activities are to be performed by the Defendants under this Consent Judgment, is owned or controlled by persons other than Defendants, Defendants

shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Defendants shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Defendants shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than ten (10) days after the judicial action for access has been filed. If Defendants have not been able to obtain access within sixty (60) days after filing judicial action, Defendants shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access has affected or may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XI (Delays in Performance, Violations, and *Force Majeure*). To the extent Defendants are subject to the requirements of Section 20114 of NREPA, Defendants' failure to secure access or petition the court within one (1) year of having reason to believe that access to another person's property is necessary to comply with Section 20114 of NREPA, subjects the Defendants to both stipulated penalties pursuant to Paragraph 16.3 of Section XVI (Stipulated Penalties) and civil penalties under Part 201.

8.3 Any lease, purchase, contract, or other agreement entered into by Defendants, which transfers from Defendants to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the MDEQ or any other person undertaking the response activities, and their authorized representatives, the access provided under this Section and Section XII (Record Retention/Access to Information).

8.4 Any person granted access to perform a response activity at the Facility pursuant to this Consent Judgment shall comply with all applicable health and safety laws and regulations.

IX. SAMPLING AND ANALYSIS

9.1 All sampling and analysis conducted pursuant to this Consent Judgment shall be in accordance with the QAPP specified in Paragraph 7.3 and the work plans submitted to the MDEQ.

9.2 Defendants, or their consultants or subcontractors, shall provide the MDEQ with a ten (10) day notice prior to any sampling activity to be conducted pursuant to this Consent Judgment to allow the MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10) day notice is not possible, Defendants, or their consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the MDEQ Project Coordinator and explain why earlier notification was not possible. If the MDEQ

Project Coordinator concurs with the explanation provided, Defendants may forego the ten (10)-day notification period for that particular sampling event.

9.3 Defendants shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Consent Judgment, Parts 201, 211 or 213 of NREPA or other relevant authorities. These results shall be included in the progress reports set forth in Paragraph 7.8.

9.4 For the purpose of quality assurance monitoring, Defendants shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by Defendants in implementing this Consent Judgment.

X. EMERGENCY RESPONSE

10.1 If during the pendency of this Consent Judgment, an act or the occurrence of an event poses or threatens to pose an imminent and substantial endangerment from conditions resulting from releases, threats of release, or exacerbation at the Facility to public health, safety, or welfare or the environment, Defendants shall immediately undertake all appropriate actions to prevent, abate, or minimize such endangerment or threat of endangerment and shall immediately notify the MDEQ Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, Defendants shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendants shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP referenced in Paragraph 7.4.

10.2 Within ten (10) days of notifying the MDEQ of such an act or event, Defendants shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate the endangerment or threat of endangerment and to prevent recurrence of such an act or event. Regardless of whether Defendants notify the MDEQ under this Section, if an act or event causes a release, threat of release, or exacerbation, or endangerment or threat of endangerment, the MDEQ may: (a) require Defendants to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat of release, exacerbation, endangerment, or threat of endangerment; (b) require Defendants to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation or endangerment or threat of endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

XI. DELAYS IN PERFORMANCE, VIOLATIONS, AND FORCE MAJEURE

11.1 If either (a) an event occurs that causes or may cause a delay in the performance of any obligation under this Consent Judgment, whether or not such delay is caused by a *Force Majeure* event, or (b) a delay in performance or other violation occurs due to Defendants' failure to comply with this Consent Judgment, Defendants shall do the following:

(i) Notify the MDEQ by telephone, email or telefax within two (2) business days of discovering the event or violation; and

(ii) Within ten (10) days of providing the two (2)-business day notice, provide a written notification and a plan of action, with supporting documentation, to the MDEQ, which include the following:

(1) A description of the event, delay in performance, or violation and the anticipated length and precise causes of the delay, potential delay, or violation;

(2) The specific obligations of this Consent Judgment that may be or have been affected by a delay in performance or violation;

(3) The measures Defendants have taken or propose to take to avoid, minimize, or mitigate the delay in performance or the effect of the delay or to cure the violation and an implementation schedule for performing those measures;

(4) If Defendants intend to assert a claim of *Force Majeure*, Defendants' rationale for attributing a delay or potential delay to a *Force Majeure* event;

(5) Whether Defendants are requesting an extension for the performance of any of its obligations under this Consent Judgment and, if so, the specific obligations for which they are seeking such an extension, the length of the requested extension, and their rationale for needing the extension; and

(6) A statement as to whether, in the opinion of Defendants, the event, delay in performance, or violation may cause or contribute to an endangerment to public health, safety, welfare, or the environment and how the measures taken or to be taken to address the event, delay in performance, or violation will avoid, minimize, or mitigate such endangerment.

11.2 For the purposes of this Consent Judgment, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of Defendants, of any person controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Judgment despite Defendants' "best efforts to fulfill the obligation." The requirement that Defendants exercise "best efforts to fulfill the obligation" includes Defendants using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Defendants minimize any delays in the performance of any obligation under this Consent Judgment to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes, or failure to obtain a permit or license as a result of Defendants' acts or omissions.

11.3 Defendants shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure.*" Defendants shall not be

deemed to be in violation of this Consent Judgment if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to Paragraph 11.4(a) or if Defendants' position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If Defendants otherwise fail to comply with or violate any requirement of this Consent Judgment and such noncompliance or violation is not attributable to a *Force Majeure* event, Defendants shall be subject to the stipulated penalties set forth in Section XVI (Stipulated Penalties).

11.4 The State will provide written approval, approval with modifications, or disapproval of Defendants' written notification under Paragraph 11.1 and will notify Defendants as follows:

(a) If the State agrees with Defendants' assertion that a delay or potential delay in performance is attributable to a *Force Majeure* event, the MDEQ's written approval or approval with modifications will include the length of the extension, if any, for the performance of specific obligations under this Consent Judgment that are affected by the *Force Majeure* event for which Defendants are seeking an extension and any modification to the plan of action submitted pursuant to Paragraph 11.1. An extension of the schedule for performance of a specific obligation affected by a *Force Majeure* event shall not, by itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with Defendants' assertion that a delay or anticipated delay in performance has been or will be caused by a *Force Majeure*

event, the State will notify Defendants of its decision. If Defendants disagree with the State's decision, Defendants may initiate the dispute resolution process specified in Section XVII (Dispute Resolution) of this Consent Judgment. In any such proceeding, Defendants shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay or anticipated delay in performance has been or will be caused by a *Force Majeure* event; (ii) the duration of the delay or of any extension sought by Defendants was or will be warranted under the circumstances; (iii) Defendants exercised its best efforts to fulfill the obligation; and (iv) Defendants have complied with all requirements of this Section.

(c) If Defendants' notification pertains to a delay in performance or other violation that has occurred because of its failure to comply with the requirements of this Consent Judgment, Defendants shall undertake those measures determined to be necessary and appropriate by the MDEQ to address the delay in performance or violation, including the modification of a response activity work plan, and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment, as set forth in Section XVI (Stipulated Penalties). Penalties shall accrue, as provided in Section XVI (Stipulated Penalties), regardless of when the MDEQ notifies Defendants of a violation or when Defendants notify the MDEQ of a violation.

11.5 This Consent Judgment shall be modified as set forth in Section XXIII (Modifications) to reflect any modifications to the implementation schedule in the applicable response activity work plan that are made pursuant to Paragraph 11.4 or

that are made pursuant to the resolution of a dispute between the Parties under Section XVII (Dispute Resolution).

11.6 Defendants' failure to comply with the applicable notice requirements of Paragraph 11.1 shall render this Section void and of no force and effect with respect to an assertion of *Force Majeure* by Defendants as to the particular event; however, the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to Defendants of any such waiver.

11.7 Defendants' failure to notify the MDEQ, as required by Paragraph 11.1, constitutes an independent violation of this Consent Judgment and shall subject Defendants to stipulated penalties as set forth in Section XVI (Stipulated Penalties).

XII. RECORD RETENTION/ACCESS TO INFORMATION

12.1 Defendants and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of five (5) years after completion of operation and maintenance and long-term monitoring at the Facility, all records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances and the storage, generation, disposal, treatment, and handling of hazardous substances at the Facility and any other records that are maintained or generated pursuant to any requirement of this Consent Judgment. However, if Defendants choose to perform a remedial action that relies on the cleanup criteria

established under Section 20120a(1)(c)-(d) or (2) of NREPA, and further defined in the Part 201 Rules, and it provides for land use or resource use restrictions, Defendants shall retain any records pertaining to these land use or resource use restrictions until the MDEQ determines that land use and resource use restrictions are no longer needed. After the five (5)-year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, Defendants may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, Defendants may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period, or Defendants may offer to relinquish custody of all documents to the MDEQ. In any event, Defendants shall obtain the MDEQ's written permission prior to the destruction of any documents. Defendants' request shall be accompanied by a copy of this Consent Judgment and be sent to the address listed in Section XIII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ. Defendants may keep records electronically rather than as hard copies to the extent the records are readable by the MDEQ. Notwithstanding any other provision of this Section XII, after the earlier of (i) the end of the five (5) year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, or (ii) the conditions in the first sentence of Section XXIV (Termination) are met which entitle Defendants to petition the State to terminate the Consent Judgment, the

Defendants' obligations under the Consent Judgment to preserve and retain Records (which are the records and other documents referred to in the first and second sentences of this Paragraph 12.1) pursuant to this Section XII shall terminate, provided the following conditions are met: (i) the Defendants shall provide written notice to the MDEQ of the Defendants' intent to destroy the Records at least ninety (90) calendar days prior to the destruction of any Records; and (ii) upon written request of the MDEQ received prior to the proposed destruction date, the Defendants shall relinquish custody of the documents to the MDEQ. Records under this Section XII shall only include the final versions of a Record produced by or on behalf of both of the Defendants and shall not include: (i) drafts or (ii) documents that were produced by third persons and not by or on behalf of the Defendants.

12.2 Upon request, Defendants shall provide to the MDEQ copies of all non-privileged documents and information within their possession, or within the possession or control of their employees, contractors, agents, or representatives, relating to the performance of response activities or other requirements of this Consent Judgment, including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to response activities undertaken pursuant to this Consent Judgment. Upon request, Defendants also shall make available to the MDEQ, upon

reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

12.3 Either Defendant may assert a confidentiality or privilege claim, if appropriate. Such assertion shall be adequately substantiated when it is made, and shall describe with specificity the nature of each document for which a confidentiality or privilege is claimed. If Defendants submit to the MDEQ documents or information that Defendants believe they are entitled to protection as provided for in Section 20117(10) of NREPA, Defendants may designate in that submittal the documents or information to which they believe they are entitled such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to Defendants. Information described in Section 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by Defendants. Information or data generated under this Consent Judgment shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of NREPA, MCL 324.14801 *et seq.*

XIII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

13.1 Each Party shall designate one or more Project Coordinators. Whenever notices are required to be given or progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Consent Judgment, or whenever other

communications between the parties are needed, such communications shall be directed to the designated Project Coordinator at the address listed below. If any Party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

(a) As to the MDEQ:

(i) For all matters pertaining to this Consent Judgment, except those specified in Paragraphs 13.1 (a)(ii), (iii) and (iv) below:

Chris Austin, Project Coordinator
Remediation and Redevelopment Division
Upper Peninsula District Office, Crystal Falls Field Office
Michigan Department of Environmental Quality
1420 U.S. 2 West
Crystal Falls, MI 49920
Phone No.: 906-875-2071
Fax No.: 906-875-3336

With a copy to:

Kathleen Shirey, Field Operations Section Chief - West
Field Operations Section
Remediation and Redevelopment Division
Constitution Hall, 5th Floor, South Tower
P.O. Box 30426
Lansing, MI 48909-7926

This Project Coordinator will have primary responsibility for overseeing for the MDEQ the performance of response activities at the Facility and other requirements specified in this Consent Judgment.

(ii) For all matters specified in this Consent Judgment that are to be directed to the RRD Division Chief:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-335-1104
Fax: 517-373-2637

Via courier:

Constitution Hall, 5th Floor, South Tower,
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1(a)(i).

(iii) For providing a true copy of a recorded NAER, a restrictive covenant, and documentation that an institutional control has been enacted pursuant to Section VII (Performance of Response Activities); for Record Retention pursuant to Section XII (Record Retention/Access to Information); and for questions concerning financial matters pursuant to Section VII (Performance of Response Activities), including financial assurance mechanisms, Section XV (Reimbursement of Costs), and Section XVI (Stipulated Penalties):

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-373-7818
Fax: 517-373-2637

Via courier:

Constitution Hall, 5th Floor, South Tower,
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1(a)(i).

(iv) For all payments pursuant to Section XV (Reimbursement of Costs) and Section XVI (Stipulated Penalties):

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

Via courier:

MDOT Accounting Services Division
Cashier's Office for MDEQ
Van Wagoner Building, 1st Floor
425 West Ottawa Street
Lansing, MI 48933

To ensure proper credit, all payments made pursuant to this Consent Judgment must reference the Ford-Kingsford Products Facility and the Court Case Number.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1(a)(i), the Chief of the Compliance and Enforcement Section designated in Paragraph 13.1(a)(iii), and the Assistant Attorney General in Charge designated in Paragraph 13.1(b).

(b) As to the Department of Attorney General:

Assistant Attorney General in Charge
Environment, Natural Resources, and Agriculture Division
Department of Attorney General
G. Mennen Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
Telephone: 517-373-7540
Fax: 517-373-1610

(c) As to Defendants:

(i) For all matters pertaining to the Consent Judgment:

Richard L. Studebaker, Jr., P.E.
Ford-Kingsford Products Facility Project Coordinator
ARCADIS U.S., Inc.
126 North Jefferson Street
Suite 400
Milwaukee, WI 53202
Telephone: (414) 276-7742
Fax: (414) 276-7603

Transmittals to Defendants' Project Coordinator shall be copied to the following representatives of Ford Motor Company and Kingsford Products Company in addition to their respective representatives identified in Paragraph 13.1(c)(i):

Chuck Pinter
Senior Environmental Engineer
Ford Motor Company
Fairlane Plaza North
290 Town Center Drive, Suite 800
Dearborn, MI 48126
Telephone: 313-390-0875
Fax: 313-845-4115
cpinter@ford.com

Kingsford Products Company
c/o Clorox Services Company
5064 S. Merrimac Ave.
Chicago, IL 60638
Telephone:
Fax: 708-728-4296

Timothy Green, Esquire
Ford Motor Company
Office of the General Counsel
Room 406-A5
One American Road
Dearborn, MI 48126-2701
Telephone: 313-390-1875
Fax: 313-390-3308
tgreen5@ford.com

and

General Counsel
The Clorox Company (for the Kingsford Products Company)
1221 Broadway, 24th Floor
Oakland, CA 94612
Telephone: 510-271-7000
Fax: 510-271-1696

A copy of all correspondence relating to the matters specified in this Consent Judgment shall also be provided to the individuals designated in Paragraph 13.1(c)(i).

13.2 Defendants' Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Consent Judgment for Defendants.

13.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment.

XIV. SUBMISSION AND APPROVALS

14.1 While only a subset of the Submissions provided to the MDEQ under this Consent Judgment require MDEQ approval, all Submissions required by this Consent Judgment shall comply with all applicable laws and regulations and the requirements of this Consent Judgment and shall be delivered to the MDEQ in accordance with the schedule set forth in this Consent Judgment. All Submissions delivered to the MDEQ pursuant to this Consent Judgment shall include a reference to the Ford-Kingsford Products Facility and the Court Case Number. All Submissions delivered to the MDEQ shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document has not received approval from the Michigan Department of Environmental Quality (MDEQ). This document was prepared pursuant to a judicial Consent Judgment. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ." Submission of all Response Activity Plans shall be subject to the provisions of this Section, even if the Submission is not specifically required by the Consent Judgment.

14.2 Except for NFA Reports, after receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Consent Judgment, the MDEQ will in writing: (a) approve the Submission; (b) approve the Submission with modifications; (c) reject the Submission as insufficient if the Submission lacks the information necessary or required by the MDEQ to make a decision regarding Submission approval; or (d) disapprove the Submission and notify Defendants of the deficiencies in the Submission. Except as

otherwise set forth in this Paragraph 14.2, upon receipt of a notice of approval or approval with modifications from the MDEQ, Defendants shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Approved." If the MDEQ approves a Response Activity Plan with modifications, Defendants shall have the option to, within ninety (90) days: (x) accept the proposed modifications; (y) consult with the MDEQ regarding negotiation of the proposed modifications; or (z) withdraw the proposed Response Activity Plan. A Response Activity Plan approved with modifications shall not be deemed approved unless and until the Defendants agree to accept the proposed or negotiated modifications. Upon approval of a Response Activity Plan by the MDEQ, the Response Activity Plan and its attachments shall be incorporated into and become an enforceable part of the Consent Judgment.

14.3 Except for Response Activity Plans and NFA Reports, upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2(c), Defendants shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, Defendants shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period for Defendants to

provide the revised Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 14.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise Defendants and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until Defendants deliver an approvable Submission.

14.4 Except for Response Activity Plans and NFA Reports, if any initial Submission contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by Defendants to deliver an acceptable Submission that complies with Part 201 and this Consent Judgment, the MDEQ will notify Defendants of such and will deem Defendants to be in violation of this Consent Judgment. Stipulated penalties, as set forth in Section XVI (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until an acceptable Submission is provided to the MDEQ. Any other delay in the delivery of a Submission; noncompliance with a MDEQ-approved Submission or attachment to this Consent Judgment; or failure to cure a deficiency of a MDEQ-approved Submission in accordance with Paragraphs 14.3 shall subject Defendants to penalties pursuant to Section XVI (Stipulated Penalties) or other remedies available to the State pursuant to this Consent Judgment.

14.5 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Consent Judgment shall be considered part of this

Consent Judgment and are enforceable pursuant to the terms of this Consent Judgment. If there is a conflict between the requirements of this Consent Judgment and any Submission or an attachment to a Submission, the requirements of this Consent Judgment shall prevail.

14.6 An approval or approval with modifications of a Submission shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in the Submission or warrants that the Submission comports with law.

14.7 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Defendants shall not be construed as relieving Defendants of their obligation to obtain any formal approval required under this Consent Judgment.

14.8 Only Paragraphs 14.1 and 14.8 through 14.13 of this Section XIV shall apply to the submission of NFA Reports by Defendants.

14.9 Upon receipt of an NFA Report, the MDEQ shall approve or deny the NFA Report or notify Defendants that the NFA Report does not contain sufficient information for the MDEQ to make a decision within 180 days of its submittal by Defendants, which time may be extended by agreement in writing by the Parties. If the NFA Report requires a postclosure agreement, the Parties may negotiate alternative terms than those included within the proposed postclosure agreement. If MDEQ fails to provide its determination regarding an NFA Report within 180 days after its submittal or within an agreed-upon extension, Defendants may

initiate the dispute resolution process specified in Section XVII (Dispute Resolution), and the determination shall be issued in accordance with the provisions of that process at the conclusion of that process.

14.10 If the MDEQ determines the NFA Report has insufficient information, the MDEQ will identify the information that is required to make a decision. If the NFA Report is denied, the MDEQ will, to the extent practical, state with specificity all of the reasons for the denial. If the NFA Report is not approved, Defendants may submit a revised NFA Report, at their discretion. Approval of an NFA Report will include a reference to the obligations terminated under the Consent Judgment, if any. An MDEQ-approved NFA Report is not enforceable under the Consent Judgment.

14.11 Defendants shall not submit more than one NFA Report in a 180-day period, unless otherwise agreed to by the MDEQ.

14.12 An approval of an NFA Report shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in the NFA Report or warrants that the NFA Report comports with law, but it shall be construed to satisfy Defendants' obligations under this Consent Judgment with respect to the subject matter of the NFA Report.

14.13 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Response Activity Plan or NFA Report provided by Defendants shall not be construed as relieving Defendants of their obligation to obtain any formal approval required under the Consent Judgment.

XV. REIMBURSEMENT OF COSTS

15.1 Defendants shall pay: (a) response activity costs the State lawfully incurred subsequent to March 17, 2003, including staff costs in negotiating and preparing settlement documents with Defendants, overseeing response activities and contractor costs at the Facility prior to the Effective Date of this Consent Judgment, but after March 17, 2003. These costs shall be considered to be Future Response Activity Costs and shall be documented and included in a demand for Future Response Activity Costs pursuant to Paragraph 15.2.

15.2 Defendants shall reimburse the State for all Future Response Activity Costs lawfully incurred by the State. As soon as possible after each anniversary of the Effective Date of this Consent Judgment, the MDEQ will provide Defendants with a written demand for payment of Future Response Activity Costs that have been lawfully incurred by the State. Any such demand will set forth, with reasonable specificity, the nature of the costs incurred. Except as provided by Section XVII (Dispute Resolution), Defendants shall reimburse the MDEQ for such costs within thirty (30) days of Defendants' receipt of a written demand from the MDEQ.

15.3 Defendants shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Defendants may result in the

MDEQ incurring additional Future Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

15.4 All payments made pursuant to this Consent Judgment shall be by certified check, made payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first class mail, priority or certified mail, or express delivery to the Cashier's Office at the address listed in Paragraph 13.1(a)(iv) of Section XIII (Project Coordinators and Communications/Notices). The Ford-Kingsford Products Facility and the Court Case Number shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 13.1(a)(i); the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 13.1(a)(iii); and the Assistant Attorney General in Charge at the address listed in Paragraph 13.1(b). Costs recovered pursuant to this Section, and payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties), shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

15.5 If Defendants fail to make full payment to the MDEQ for Future Response Activity Costs, as specified in Paragraph 15.1, interest at the rate specified in Section 20126a(3) of NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Defendants make full payment of those costs and the accrued interest to the MDEQ. In any challenge by Defendants to a MDEQ demand for reimbursement of costs,

Defendants shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of NREPA.

XVI. STIPULATED PENALTIES

16.1 Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 for failure to comply with the requirements of this Consent Judgment, unless excused under Section XI (Delays in Performance, Violations, and *Force Majeure*) or Section XVII (Dispute Resolution). "Failure to Comply" by Defendants shall include failure to deliver Submissions and notifications, failure to perform response activities in accordance with Section VII (Performance of Response Activities) and this Consent Judgment, and failure to pay response activity costs and penalties in accordance with all applicable requirements of law and this Consent Judgment within the specified implementation schedules established by or approved under this Consent Judgment.

16.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VII (Performance of Response Activities):

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,000	15th through 30th day
$ 5,000	31st day and beyond

16.3 If Defendants fail or refuse to comply with any other term or condition of this Consent Judgment, Defendants shall pay the MDEQ stipulated penalties of $ 500 per day for each and every failure or refusal to comply.

16.4 All stipulated penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

16.5 Except as provided in Section XVII (Dispute Resolution), Defendants shall pay stipulated penalties owed to the State no later than thirty (30) days after Defendants' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 15.4 of Section XV (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which Defendants make full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Consent Judgment.

16.6 The payment of stipulated penalties shall not alter in any way Defendants' obligation to perform the response activities required by this Consent Judgment.

16.7 If Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the stipulated penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's

exclusive remedy if Defendants violate this Consent Judgment. For any failure or refusal of Defendants to comply with the requirements of this Consent Judgment, the State also reserves the right to pursue any other remedies to which it is entitled under this Consent Judgment or any applicable law including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, and sanctions for contempt of court.

16.8 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Judgment.

XVII. DISPUTE RESOLUTION

17.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment, unless otherwise expressly provided for in this Consent Judgment as set forth in Paragraphs 7.13(a) and (b), and Section X (Emergency Response). However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendants' obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution under this Section shall not negate the obligation or requirement under this Consent Judgment. The Defendants may choose to delay the performance of a response activity; however, if the resolution of the dispute is found in the MDEQ or State's favor, stipulated penalties will apply.

17.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Defendants provide to the State under Paragraphs 17.3 through 17.5 and any documents upon which the MDEQ and the State rely to make the decisions set forth in Paragraphs 17.3 through 17.5. Defendants shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(5). With respect to disputes appealed in accordance with Section 20114e(7)-(10) of NREPA, pursuant to Paragraph 17.10, the administrative record shall also include Defendants' written petition, all documents relied upon by the MDEQ and the State in reaching the MDEQ's Statement of Conclusion pursuant to Paragraph 17.3, all documents presented to the review panel in conjunction with the hearing, the written recommendation of the review panel, and the director's final decision.

17.3 Except for undisputable matters identified in Paragraph 17.1, any dispute that arises under this Consent Judgment with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of Section VII (Performance of Response Activities), Section IX (Sampling and Analysis), Section XI (Delays in Performance, Violations, and *Force Majeure*), Section XII (Record Retention/Access to Information), Section XIV (Submissions and Approvals), or Section XXIV (Termination), shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and the Defendants. A dispute shall be considered to have arisen on the date that a

Party to this Consent Judgment receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The period of informal negotiations shall not exceed twenty-one (21) days from the date a Party receives a Notice of Dispute, unless the period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty-one (21) days, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Conclusion, in writing, to Defendants. In the absence of initiation of formal dispute resolution by Defendants under Paragraph 17.4, the MDEQ's position as set forth in the MDEQ's Statement of Conclusion shall be binding on the Parties.

17.4 If Defendants and the MDEQ cannot informally resolve a dispute under Paragraph 17.3, Defendants may initiate formal dispute resolution. If the informal process in Paragraph 17.3 did not resolve the dispute, Defendants may initiate formal dispute resolution by submitting a written Request for Review to the Chief of RRD, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed items within fourteen (14) days of Defendants' receipt of any Statement of Conclusion issued by the MDEQ pursuant to Paragraph 17.3. If the dispute is not subject to the informal dispute resolution process described in Paragraph 17.3, a dispute shall be considered to have arisen on the date that a Party to this Consent Judgment receives a written Notice of Dispute from the other

Party, initiating the formal dispute resolution process. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. When the MDEQ issues a Notice of Dispute, the Defendants will have twenty (20) days to submit a written rebuttal to the Chief of RRD, with a copy to the MDEQ Project Coordinator. Within twenty (20) days of the RRD Chief's receipt of Defendants' Request for Review, Defendants' Notice of Dispute, or Defendants' rebuttal, the Chief of RRD will provide the MDEQ's Statement of Decision, in writing, to Defendants, which will include a statement of his or her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting her or his position; and supporting documentation he or she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Statement of Decision shall be binding on the Parties, unless contested in accordance with Paragraph 17.6.

17.5 If Defendants seek to challenge any decision or notice issued by the MDEQ or the State under Section VIII (Access), Section XV (Reimbursement of Costs), Section XVI (Stipulated Penalties), Section XVIII (Indemnification and Insurance), Section XIX (Covenants Not to Sue by Plaintiff), or Section XX (Reservation of Rights by Plaintiff), of this Consent Judgment, Defendants shall send a written Notice of Dispute to both the RRD Chief and the Assistant Attorney

General assigned to this matter within ten (10) days of Defendants' receipt of the decision or notice from the MDEQ or the State. The Notice of Dispute shall include all relevant facts that provide the basis for the dispute; factual data, analysis, or opinion supporting its position; and supporting documentation upon which Defendants base their position. The Parties shall have fourteen (14) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If the Parties do not reach an agreement on any dispute within the fourteen (14) day period, the State will thereafter issue, in writing, the State's Statement of Decision to Defendants, which shall be binding on the Parties, unless contested in accordance with Paragraph 17.6.

17.6 The MDEQ Statement of Decision or the State's Statement of Decision pursuant to Paragraph 17.4 or 17.5, respectively, shall control unless, within twenty (20) days after Defendants' receipt of one of those Decisions, Defendants file with this Court a motion for resolution of a dispute. The motion shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Judgment. Within thirty (30) days of Defendants' filing of a motion for resolution of a dispute, Plaintiff will file with the Court the administrative record that is maintained pursuant to Paragraph 17.2.

17.7 Any judicial review of the MDEQ Statement of Decision or the State's Statement of Decision shall be limited to the administrative record. In proceeding on any dispute relating to the selection, extent, or adequacy of any aspect of the

response activities that are the subject of this Consent Judgment, the Defendants shall have the burden of demonstrating on the administrative record that the position of the MDEQ or the State is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the Defendants shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent the Plaintiff from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Consent Judgment.

17.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Defendants' failure or refusal to comply with any term or condition of this Consent Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that Defendants do not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Defendants shall pay stipulated penalties as set forth in Paragraph 16.5 of Section XVI (Stipulated Penalties). Defendants shall not be assessed stipulated penalties for disputes that are resolved in their favor.

17.9 Notwithstanding the provisions of this Section and in accordance with Section XV (Reimbursement of Costs) and Section XVI (Stipulated Penalties), Defendants shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an on-going dispute resolution proceeding.

17.10 In lieu of the procedures set forth in Paragraphs 17.4 and 17.5 for formal dispute resolution, as provided in Section 20120e(20), Defendants may appeal a decision made by the MDEQ regarding a Response Activity Plan or NFA Report for venting groundwater under Section 20120e of NREPA with respect to a technical or scientific dispute, including a dispute regarding assessment of risk, in accordance with Section 20114e(7)-(10) of NREPA. Any review of the final decision of the Director of the MDEQ shall proceed pursuant to Paragraphs 17.6 and 17.7, and not Section 631 of the Revised Judicature Act of 1961, MCL 600.631.

17.11 Disputes arising under or with respect to postclosure agreements approved as part of MDEQ-approved NFA Reports are not governed by the Consent Judgment and are not disputable under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

18.1 The State of Michigan does not assume any liability by entering into this Consent Judgment. This Consent Judgment shall not be construed to be an indemnity by the State for the benefit of Defendants or any other person.

18.2 Defendants shall indemnify and hold harmless the State of Michigan and their departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, any acts or omissions of Defendants, their officers, employees, agents, or any other person acting on their behalf, or under their control, in performing the activities required by this Consent Judgment.

18.3 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

18.4 The State shall provide Defendants notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 18.2 or 18.3.

18.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of Defendants for the performance of activities required by this Consent Judgment. Neither Defendants nor any contractor shall be considered an agent of the State.

18.6 Defendants waive all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any other person for the performance of response activities under this Consent Judgment at the Facility, including any claims on account of construction delays.

18.7 Prior to commencing any response activities pursuant to this Consent Judgment and for the duration of this Consent Judgment, Defendants shall secure

and maintain comprehensive general liability insurance with limits of two million dollars ($2,000,000), combined single limit, which names the MDEQ, the Attorney General, and the State of Michigan as additional insured parties. If Defendants demonstrate by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Defendants need to provide only that portion, if any, of the insurance described above which is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Defendants, and prior to the commencement of response activities pursuant to this Consent Judgment, Defendants shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, and for the duration of this Consent Judgment, Defendants shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Defendants in furtherance of this Consent Judgment.

XIX. COVENANTS NOT TO SUE BY PLAINTIFF

19.1 In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of this Consent Judgment, and except as specifically provided for in this Section and Section XX

(Reservation of Rights by Plaintiff), the State of Michigan hereby covenants not to sue or to take further administrative action against Defendants for:

(a) Response activities that Defendants performed prior to the First Modification Effective Date in compliance with the Consent Judgment and response activities that Defendants perform pursuant to MDEQ-approved Response Activity Plans under the Consent Judgment;

(b) All Response Activity Costs that were incurred and paid by the State prior to March 17, 2003;

(c) Future Response Activity Costs that are incurred by the State as set forth in Paragraphs 15.1, 15.2, and 15.6 of Section XV (Reimbursement of Costs) of this Consent Judgment and paid by the Defendants.

19.2 The covenants not to sue shall take effect under this Consent Judgment as follows:

(a) Upon the First Modification Effective Date with respect to response activities performed in compliance with the Consent Judgment prior to the First Modification Effective Date, and upon satisfactory performance of the response activity provided in MDEQ-approved Response Activity Plans approved after the First Modification Effective Date.

(b) With respect to Response Activity Costs incurred and paid by the State prior to March 17, 2003, the covenant not to sue shall be upon the Effective Date of the Consent Judgment.

(c) With respect to Future Response Activity Costs incurred and paid by the State and paid by Defendants, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

19.3 The covenants not to sue extend only to Defendants and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY PLAINTIFF

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiff). These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiff) until such time as these covenants become effective, as set forth in Paragraph 19.2 of Section XIX (Covenants Not to Sue by Plaintiff). The MDEQ and the Attorney General reserve the right to bring an action against Defendants under federal and state laws for any matters for which Defendants have not received a covenant not to sue as set forth in Section XIX (Covenants Not to Sue by Plaintiff). The State reserves, and this Consent Judgment is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Defendants with respect to all other matters, including, but not limited to, the following:

(a) The performance of response activities that are required to comply with Part 201 and to achieve and maintain the performance objectives specified in

Paragraph 7.1 of Section VII (Performance of Response Activities) and to assure the effectiveness and integrity of remedial actions, including, but not limited to, compliance with the terms of any postclosure agreement that is part of an approved NFA Report;

(b) Response activity costs incurred and paid by the State after March 17, 2003 that Defendants have not paid;

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility;

(d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility;

(e) Damages for injury to, destruction of, or loss of natural resources and the costs for any natural resource damage assessment;

(f) Criminal acts;

(g) Any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance) of this Consent Judgment; and

(h) The release or threatened release of hazardous substances or violations of federal or state law that occur during or after the performance of response activities required by this Consent Judgment.

20.2 The State reserves the right to take action against Defendants if it discovers at any time that any material information provided by Defendants prior to or after entry of this Consent Judgment was false or misleading.

20.3 The MDEQ and the Attorney General expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Consent Judgment or to compel Defendants to comply with NREPA.

20.4 In addition to, and not as a limitation of any other provision of this Consent Judgment, the MDEQ retains all authority and reserves all of its rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

20.5 In addition to, and not as a limitation of any provision of this Consent Judgment, the MDEQ and the Attorney General retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 and any other applicable statute or regulation.

20.6 Failure by the MDEQ or the Attorney General to enforce any term, condition or requirement of this Consent Judgment in a timely manner shall not:

(a) Provide or be construed to provide a defense for Defendants' noncompliance with any such term, condition or requirement of this Consent Judgment.

(b) Estop or limit the authority of MDEQ or the Attorney General to enforce any such term, condition or requirement of the Consent Judgment or to seek any other remedy provided by law.

20.7 This Consent Judgment does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Defendants in accordance with the MDEQ-approved work plans required by this

Consent Judgment will result in the achievement of the performance objectives stated in Paragraph 7.1 of Section VII (Performance of Response Activities) or the remedial criteria established by law or that those response activities will assure protection of public health, safety, or welfare, the environment.

20.8 Except as provided in Paragraph 19.1(a) of Section XIX (Covenants Not to Sue by Plaintiff), nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare or the environment or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

XXI. COVENANT NOT TO SUE BY DEFENDANTS AND RESERVATION OF RIGHTS

21.1 Except as provided in Section XVII (Dispute Resolution) and Paragraph 7.13(b), Defendants hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives for any claims or causes of action against the State that arise from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of NREPA or any other provision of law.

21.2 After the Effective Date of this Consent Judgment, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the

Facility, Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting or that are based upon a defense that contends that any claims raised by the MDEQ or the Attorney General in such a proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by Plaintiff).

21.3 Defendants reserve the right to use the provisions of Section 20129(1) of NREPA.

XXII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC, 1980 PL 96-510; and to the extent provided in Section XIX (Covenants Not to Sue by Plaintiff), Defendants shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiff) of this Consent Judgment, to the extent allowable by law. Entry of this Consent Judgment does not discharge the liability of any other person that may be liable under Section 20126 of NREPA or CERCLA, 42 USC 9607 and 9613. Pursuant to Section 20129(9) of NREPA, any action by Defendants for contribution from any person that is not a Party to this Consent Judgment shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to NREPA or other applicable federal or state law.

XXIII. MODIFICATIONS

23.1 The Parties may only modify this Consent Judgment according to the terms of this Section. The modification of any MDEQ-approved Submission required by this Consent Judgment may be made only upon written approval from the Chief of RRD or his or her representative.

23.2 Modification of any other provision of this Consent Judgment shall be made only by written agreement between Defendants' Project Coordinators, Chief of RRD, or his or her authorized representative, and the designated representative of the Michigan Department of Attorney General and shall be entered with the Court.

XXIV. TERMINATION

If Defendants obtain one or more MDEQ-approved NFA Reports pursuant to Section 20114d of NREPA covering the entire Facility or when response activities by Defendants are no longer required at this Facility pursuant to the Consent Judgment, Defendants may petition the State to terminate the Consent Judgment. Some approved NFA Reports may include monitoring, operation and maintenance, or oversight necessary to assure the effectiveness and integrity of remedial action; these requirements will be encompassed in a postclosure agreement between the Parties in accordance with Section 20114d of NREPA. Any response activities required in the postclosure agreement necessary to maintain compliance with Part 201 are separate and distinct from this Consent Judgment and are enforceable under the postclosure agreement, not under the Consent Judgment. Upon MDEQ concurrence, which shall not be unreasonably withheld or delayed, that one or more

MDEQ-approved NFA Reports cover the entire Facility or response activities by Defendants are no longer required at the Facility, and that MDEQ received all payments required to be made under the Consent Judgment, all obligations under Section VII (Performance of Response Activities), Section VIII (Access), Section IX (Sampling and Analysis), Section X (Emergency Response), Section XIII (Project Coordinators and Communications/Notices), Section XIV (Submissions and Approvals), Section XV (Reimbursement of Costs and Payment of Civil Penalties), Section XVI (Stipulated Penalties), and Paragraph 18.7 are terminated.

XXV. SEPARATE DOCUMENTS

The parties may execute this Consent Judgment in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IT IS SO AGREED BY:

BILL SCHUETTE
Attorney General
Attorney for Plaintiff

By: _____

Brian J. Negele (P41846)
Polly A. Synk (P63473)
Assistant Attorneys General
Environment, Natural Resources, and
Agriculture Division
Michigan Department of Attorney General
525 West Ottawa Street
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Telephone: 517-373-7540
Fax: 517-373-1610

By: _____

Assistant Secretary
Ford Motor Company
One American Road
Dearborn, MI 48126-2701
Telephone: 313-594-0096
Fax: 313-390-4201

Vice-President - Secretary
The Kingsford Products Company
P.O. Box 24305
Oakland, CA 94623
Telephone: 510-271-7000
Fax: 510-271-1652

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 22ND day of August, 2016.

JOYCE DRAGANCHUK

Honorable

LF: Ford Kingsford/AG# 1997-200070-B/First Modification of Consent Decree 2016-07-11

By:

Assistant Secretary	Vice-President – Corporate Secretary
Ford Motor Company	The Kingsford Products Company
One American Road	1221 Broadway Angela Hilt
Dearborn, MI 48126-2701	Oakland, CA 94612
Telephone: 313-594-0096	Telephone: 510-271-7000
Fax: 313-390-4201	Fax: 510-271-1652

IT IS SO ORDERED, ADJUDGED AND DECREED THIS _____ day of _____, 2016.

_____

Honorable

ATTACHMENT 1

ATTACHMENT 1

Area of Concern

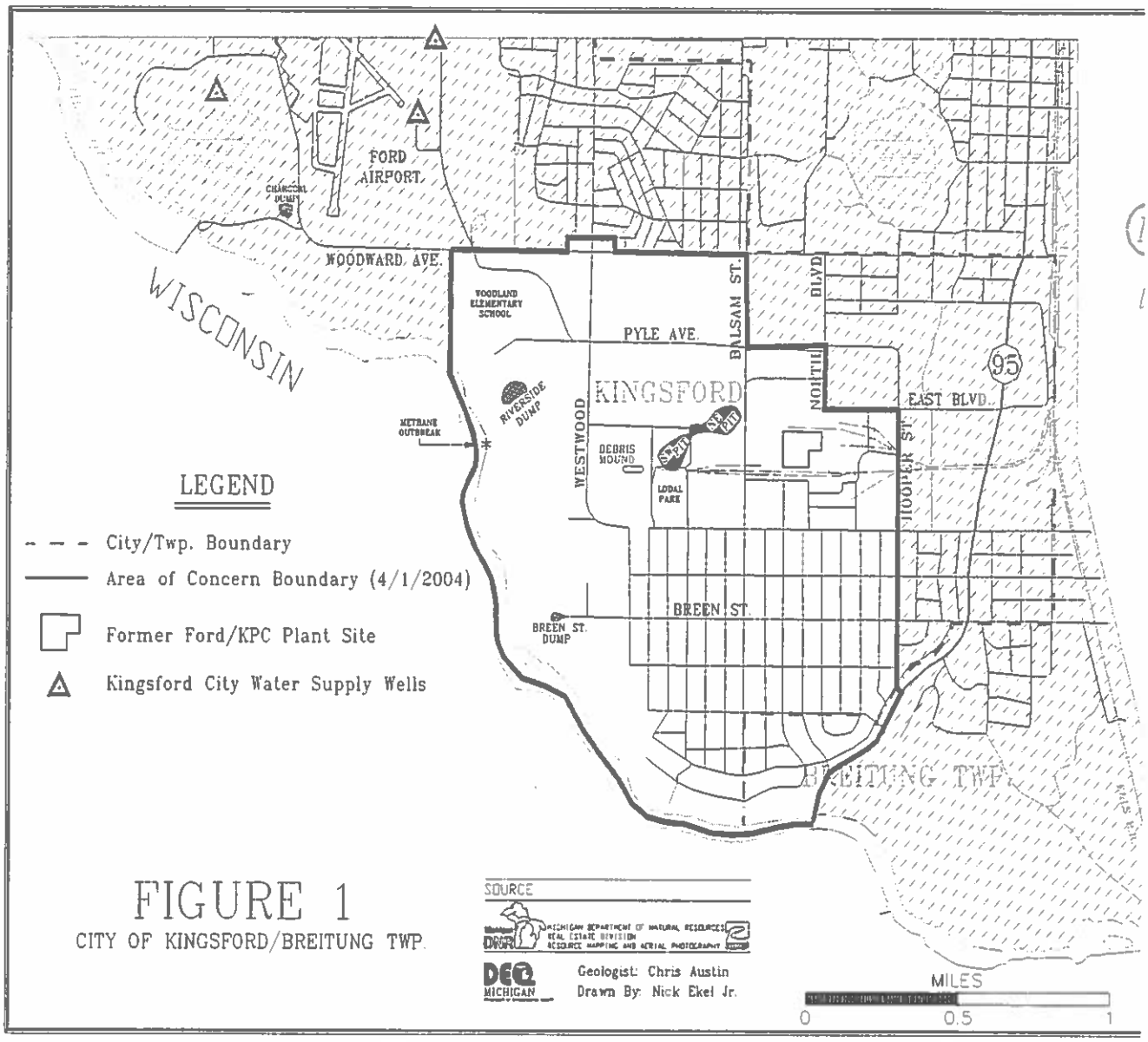

FIGURE 1
CITY OF KINGSFORD/BREITUNG TWP.

ATTACHMENT 2

ATTACHMENT 2

Process for Establishing the Boundary Curve Parallel to the River's Edge

The surficial curve parallel to the edge of the Menominee River for defining the boundary in Paragraph 7.6(a)(x) will be established using the following process:

Step One-Establishing the edge of the Menominee River

The Plaintiff's and Defendants' representatives will locate the edge of the Menominee River using the following definition: the point between the upland that persists through successive changes in water levels, and river bottomland at which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. Based on this definition, the coordinates for the river's edge will be staked, surveyed and recorded by a licensed surveyor at 50 foot intervals. The location coordinates will establish a line representing the river's edge.

Step Two-Establishing the defined curve on the land surface

The defined curve on the land surface shall be a curve parallel to the curve established in step one and shall be on average not more than seventy (70) feet horizontally landward from the location identified in step one. The location of the surficial curve shall be established by surveying and staking the surficial curve.

Step Three – The vertical boundary definition

A vertical boundary running parallel to the river's edge will then be defined as all possible vertical lines passing through the curve defined in Step Two.

ATTACHMENT 3

ATTACHMENT 3

Disposal Areas:

- O&M Plan - Smith Castings (recorded 1/26/2012)
- O&M Plan – Former Northeast Pit (recorded 1/26/2012)
- O&M Plan – Carter Drive (recorded 1/31/2012)
- O&M Plan – Former Riverside Disposal Area (recorded 1/31/2012)
- O&M Plan – Former Southwest Pit (recorded 1/31/2012)
- Former Southwest Pit Interim Response Action Construction Documentation Report (submitted in RAP 2/2/2012)

Restrictive Covenants:

- Smith Castings Amended and Restated Declaration of Restrictive Covenant (recorded 1/26/2012)
- Delta Do-It Center Declaration of Restrictive Covenant (recorded 9/21/2005)
- Former Northeast Pit Amended and Restated Declaration of Restrictive Covenant (recorded 1/26/2012)
- Carter Drive Declaration of Restrictive Covenant & Affidavit (recorded 1/31/2012)
- Former Southwest Pit Declaration of Restrictive Covenant & Affidavit (recorded 1/31/2012)
- Former Riverside Disposal Area Declaration of Restrictive Covenant & Affidavit (recorded 1/31/2012)

Ordinances:

- City of Kingsford Groundwater Ordinance (9/5/2011)
- Breitung Township Groundwater Ordinance (1/2/2012)

Access Agreements:

- 120 Lawrence (GMSG-123 System) (signed 11/11/2010 - recorded 11/22/10)
- Quick Property, now GMSG-139 System (signed 10/28/2010 - recorded 11/22/10)
- 2001 Emmet (Emmet System) (signed 7/20/2011 – recorded 8/3/2011)
- 290 River Pointe Parkway (GM-29) (signed 6/30/2011 - recorded 8/3/2011)
- 282 River Pointe Parkway (GM-9) (signed 7/20/2011 - recorded 8/3/2011)
- 2108 West Breen (EW-9, GP-2A/B) (signed 7/20/2011 - recorded 8/3/2011)

- 381 Evergreen Court (GM-6) (signed 6/24/2011 – recorded 6/28/2011)
- 401 Grant (GM-24A/B/C) (signed 6/24/2011 - recorded 6/28/2011))
- 677 South Westwood (GM-82A/B) (signed 10/21/2011 - recorded 12/01/2011)
- 421 Knudson-Douglass Caudell (signed 7/24/2006 – recorded 8/26/2006)
- 1565 Pyle-Spencer/Universal Plumbing (signed 7/24/2006 – recorded 8/26/2006)
- City of Kingsford (signed 4/22/1997)
- Dickinson County Road Commission (signed 10/7/1998)
- MDOT (signed 8/31/2004)
- Purchase Easement and Access Agreement (signed 9/29/2014)

Groundwater (all submitted in RAP 2/2/2012):

- Groundwater Mixing Zone Application
- Interim Well Abandonment Work Plan
- Contingency for Groundwater System Extraction Well Shutdown
- Site Reduction Plan

Methane (all submitted in RAP 2/2/2012):

- Emergency Response & Evacuation Procedures for Occupied Structures
- Building Inspection Procedure
- Standard Contingent Venting Procedures
- Emergency Contact List
- Guidelines for Vapor Control System Installation

MDEQ Letters Regarding Review of Proposed IRAPs

- MDEQ Approval Letter, Former Plant Site Interim Response Action Plan and Construction Documentation Report (5/28/08)
- MDEQ Approval Letter, Former Northeast Pit Interim Response Action Plan (8/25/03)
- MDEQ Approval Letter, Former Southwest Pit Interim Response Action Plan (10/16/03)
- MDEQ Approval Letter, Former Riverside Disposal Area Interim Response Action Plan (2/26/04)
- MDEQ Approval Letter, Methane Interim (3/5/10)
- MDEQ Approval Letter, Methane Interim Response Action Plan (4/30/08)

- MDEQ Approval for Addendum Performance Monitoring Plan – Groundwater Extraction System (11/9/06)
- MDEQ Approval Letter, Addendum to the Groundwater Interim Response Action Plan (12/21/11)

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

FILE COPY

P.O. BOX 30755
LANSING, MICHIGAN 48909

FORD COURT CASE NO.
04-001427-CE-C30

MIKE COX
ATTORNEY GENERAL

RECEIVED
BY 10/27/04 DATE

October 26, 2004

Maragaret A. Coughlin
DICKINSON WRIGHT, PLLC
38525 Woodward Ave., Suite 200
Bloomfield Hills, MI 48304

Michael L. Robinson
WARNER NORCROSS & JUDD LLP
111 Lyon Street NW
900 Fifth Third Center
Grand Rapids, MI 49503-2413

VIA U.P.S. NEXT DAY AIR

Dear Ms. Coughlin and Mr. Robinson:

Re: *Michigan Department of Environmental Quality v Ford Motor Company and the Kingsford Products Company*
Ingham County Circuit Court No. 04-1427-CE
Honorable Thomas L. Brown

Enclosed are your copies of the Consent Judgment entered today by Judge Brown. Please note that despite our request, the Circuit Court Clerk would not provide "True Copies" specifically identified as such. Also enclosed are your copies of the Summons and Complaint.

Thank you for your cooperation in this matter. We very much appreciate your efforts and those of your clients in negotiating this agreement.

Very truly yours,

Robert P. Reichel

Robert P. Reichel
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
525 W. Ottawa, 6th Floor, Williams Bldg.
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

RPR/pjb
c: Carrie Olmsted
Christopher Dobyns
S: Natural Resources/cases/1997200070AA/Old Ford Kingsford/cl-coughlin robinson cj

2.5.3.7-CJ 10/26/04

Original - Court 1st copy - Defendant 2nd copy - Plaintiff 3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO.
30th		04- 1427 -CE

THOMAS L. BROWN

Court Address: Ingham County Circuit Court, 313 W. Kalamazoo, Lansing, MI 48933

Court telephone no.: (517) 483-6500

Plaintiff name(s), address(es) and telephone no(s).		Defendant name(s), address(es), and telephone no(s).
Michigan Dep't of Environmental Quality 525 W. Allegan, 5th Floor, South Tower, Constitution Hall Lansing, MI 48913	V	Ford Motor Company Parklane Towers West Three Parklane Boulevard, Suite 950 Dearborn, MI 48126-2477 313-322-3761 Kingsford Products Company 5064 S. Merrimac Ave. Chicago, IL 60638 Telephone: 708-728-5257
Plaintiff attorney, bar no., address, and telephone no. Christopher D. Dobyns (P27125) Special Asst Attorney Gnl Robert P. Reichel (P31878) Assistant Attorney General 525 W. Ottawa, 6th Floor, Williams Bldg. - P.O. Box 30755 Lansing, MI 48909 (517) 373-7540		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
OCT 25 2004	JAN 24 2005	MIKE BRYANTON

*This summons is invalid unless served on or before its expiration date.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Lansing, Michigan	Ford - Dearborn, MI KPD - Oakland, CA

Place where action arose or business conducted: City of Kingsford, Iron County, Michigan

I declare that the **complaint information above and attached** is true to the best of my information, knowledge, and belief.

10/25/04
Date

Robert P. Reichel
Signature of attorney/plaintiff

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

SUMMONS AND COMPLAINT
Case No. 04- 1427 CE

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE

☐ OFFICER CERTIFICATE	OR	☐ AFFIDAVIT OF PROCESS SERVER
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notary not required)		Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____

_____ on the defendant(s):

Defendant's Name	Complete address(es) of service	Day, date, time

☐ After diligent search and inquiry, I have been unable to find and serve the following defendant(s):

_____

I have made the following efforts in attempting to serve the defendant(s): _____

_____

☐ I have personally attempted to serve the summons and complaint, together with _____
Attachment

_____ on _____
Name

at _____ and have been unable to complete service because
Address

the address was incorrect at the time of filing.

Service Fee	Miles Traveled	Mileage Fee	Total Fee
$		$	$

_____
Signature

_____
Title

Subscribed and sworn to before me on _____ , _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary Public

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with: _____
Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,

Plaintiff,

File No. 04-1427-CE

Honorable THOMAS L. BROWN

v

THE FORD MOTOR COMPANY, a Delaware Corporation, and THE KINGSFORD PRODUCTS COMPANY, a subsidiary of THE CLOROX COMPANY, a Delaware Corporation,

Defendants.

Christopher D. Dobyns (P27125)
Special Assistant Attorney General
Robert P. Reichel (P31878)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
525 W. Allegan, 6th Floor, Williams Bldg.
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
Attorneys for Plaintiff

There is no other pending or resolved civil action between these parties arising out of the same transaction or occurrence alleged in the complaint.

COMPLAINT

Plaintiff Michigan Department of Environmental Quality (MDEQ), by its attorneys, Michael A. Cox, Attorney General of the State of Michigan, and Christopher D. Dobyns, Special Assistant Attorney General and Robert P. Reichel, Assistant Attorney General, says:

STATEMENT OF THE CASE

1. This is a civil action to obtain injunctive relief to compel Defendants to implement response activities to address environmental contamination at the Ford – Kingsford Products facility (Facility) in and near the City of Kingsford, Iron County, Michigan, pursuant to § 201037(1)(a) of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20137(1)(a). Plaintiff also seeks the recovery of response activity costs lawfully incurred by the State of Michigan in undertaking response activities at the Facility pursuant to §20137(1)(b) of NREPA and a declaratory judgment pursuant to §20137(1)(d) of NREPA, MCL 324.20137(1)(b) and (d), that Defendants are liable for all future response activities costs incurred by the State of Michigan at the Facility.

JURISDICTION AND VENUE

2. This Court has jurisdiction in this matter pursuant to § 20137(1) of NREPA, MCL 324.20137(1).

3. Venue is proper in this Court pursuant to § 20137(3) of NREPA, MCL 324.20137(3).

PARTIES

4. Plaintiff Michigan Department of Environmental Quality (MDEQ) is the state agency mandated to protect and conserve the natural resources of the state in the interest of the health, safety, and welfare of the people as the successor to the Michigan Department of Natural Resources (MDNR), under Executive Order 1995-16, effective October 1, 1995. MCL 324.503; MCL 324.99903. The MDEQ has primary responsibility for implementation of Part 201, MCL

324.20101 *et seq*, and is mandated to coordinate all activities required under Part 201, MCL 324.20104 *et seq*, and Executive Order 1995-16. Accordingly, references to the MDEQ relating to events or actions prior to October 1, 1995, should be understood as having been taken by or involved the MDNR.

5. Defendant Ford Motor Company (Ford) is a Delaware corporation.

6. Defendant The Kingsford Products Company (KPC) is a Delaware corporation

COMMON ALLEGATIONS

7. In the early 1920s, Ford acquired property in the area that was to become the City of Kingsford. Ford established a plant in the area, which was used to manufacture wooden body parts for Ford touring cars, sedans, and gliders.

8. Operations at the plant included a sawmill, a body plant, and a wood carbonization and by-product recovery plant. The direct products from the wood carbonization and by-product portion of the plant included: charcoal, pyroligneous acid, and noncondensable gas.

9. As a result of processing of the pyroligneous acid, additional chemical products were produced including alcohols, acetates, acetones, creosote oils, formates, high boiling esters, ketones, methanol, pitch, and oils.

10. This plant continued to be owned by Ford until 1951.

11. Kingsford Chemical Company (KCC), KPC's predecessor, purchased the plant in 1951 and operated certain portions of it until 1961.

12. There are four known former waste pits, referred to as NE Pit (marked as No. 1 on Attachment 1), SW Pit (No. 2 on Attachment 1), Riverside Disposal Area (No. 3 on Attachment 1), and West Breen Street Dump (No. 4 on Attachment 1). The NE and SW Pits, which started as two separate surface impoundments and were later connected by a channel, received the wastewater stream from the plant. The NE and SW Pits have an estimated surface area of 145,000 sq. ft.

13. From the winter of 1987 through 1988, Ford excavated 26,949 cubic yards of tars from the NE Pit area. Defendants have continued to remove tars from the NE Pit as needed.

14. In July 1995, an explosion occurred in a house located at 2104 West Breen Avenue in Kingsford from accumulated methane in the basement.

15. A soil gas investigation conducted by the United States Environmental Protection Agency (U.S. EPA) and its contractors near the explosion area in December 1995 indicated that the ground near the area of the explosion contained high levels of methane. Soil gas concentrations of methane ranged from 82% to 97%.

16. In February 1996, a Soil Vapor Extraction (SVE) System was installed by the U.S. EPA to mitigate the explosion hazard around the house at 2104 West Breen Avenue and an adjacent home to the south. In May 1996 operation and maintenance of the SVE system was turned over to the MDEQ.

17. In December 1996, elevated concentrations of methane were also found in the basement of the residence at 2001 Emmet Street in Kingsford. In March 1997, an SVE system was installed by the U.S. EPA to mitigate methane in the area around the residence at 2001 Emmet Street. The SVE system was turned over to the MDEQ in July 1997 for operation and maintenance.

18. The Defendants have been responsible for the operation and maintenance of the SVE systems since September 1998.

19. From April through September 1996, U.S. EPA and its contractors investigated the source and extent of the methane. The investigation determined that the methane in the soil gas and groundwater was being generated by the microbial degradation of various organic compounds disposed of in the waste pits.

20. On September 15, 1998, the Defendants agreed in writing to implement an interim response work plan, which consisted of the operation and maintenance of the SVE systems, removal of tar or restriction of access to tar in the NE and SW Pits, and the implementation of an Emergency Response Plan relating to methane exposures.

21. Contaminants found within the Facility include: phenol, 2-methylphenol, 4-methylphenol, 2,4 dimethylphenol, acetone, trichloroethene, benzene, ethylbenzene, xylene, phenanthrene, 1,1,2-2 tetrachloroethane, arsenic, mercury, copper, chromium, and lead. Each of these contaminants found at the Facility exceeds residential cleanup criteria for one or more pathways pursuant to § 20120a(1)(a) of NREPA, MCL 324.20120a(1)(a), and are "hazardous substances" as that term is defined in § 20101(1)(t) of NREPA, MCL 324.20101(1)(t).

22. Over 50 contaminants are found in the groundwater within the Facility in concentrations that exceed one or more of the following: the Part 201 Residential Drinking Water Criteria, Part 201 acute or chronic Groundwater Surface Water Criteria, Part 201 Groundwater Contact Criteria. Additionally, aesthetic concerns in the groundwater include foaming, discoloration (yellow – black), and odors.

23. Defendants' disposal of waste into the pits has resulted in the presence of hazardous substances at the surface or near the surface above the residential cleanup criteria levels. These hazardous substances have leached and may continue to leach into the groundwater, contaminating the groundwater, creating a situation conducive to generating methane, and resulting in unpermitted discharges to a surface water.

24. Potentially explosive concentrations of methane may accumulate in basements and other structures due to concentrations of methane in or near surface soils of the Facility.

25. Defendants have failed to submit and implement a plan for response activities that complies with Part 201 of NREPA to remediate the contamination associated with their former operations.

COUNT I

DEFENDANTS' LIABILITY UNDER PART 201

26. Plaintiff incorporates by reference paragraphs 1 through 25 of this Complaint.

27. Section 20126(1) of NREPA, MCL 324.20126(1), provides, in part:

> (1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:
>
> (a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.
>
> (b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

28. "Hazardous substances", as defined in § 20101(1)(q) of NREPA, MCL 24.20101(1)(q), have been released or threaten to be released from the former plant property into the environment.

29. The Ford-Kingsford Products site, consisting of the property and associated areas and areas to which contamination has migrated from the property, is a "facility", as defined in § 20101(1)(l) of NREPA, MCL 324.20101(1)(l).

30. Defendants Ford and KPC are each responsible for the disposal of hazardous substances and causing a release or threat of release as these terms are defined in § 20101(t) and §20101(bb) of NREPA, MCL 324.20101(t) and MCL 324.20101(bb).

31. Each Defendant is a person liable under § 20126 of NREPA, MCL 324.20126.

COUNT II
COST RECOVERY

32. Plaintiff incorporates by reference paragraphs 1 through 31 of this Complaint.

33. Section 20126a of NREPA, MCL 324.20126a, provides, in pertinent part:

> (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:
>
> (a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

34. Plaintiff has lawfully incurred, and is continuing to lawfully incur, response activity costs arising from the Ford – Kingsford Products Facility.

35. Defendants Ford and KPC are liable for all response activity costs lawfully incurred by the State relating to the releases or threatened releases of hazardous substances from the Ford – Kingsford Products Facility.

COUNT III

DECLARATORY JUDGMENT UNDER NREPA

36. Plaintiff incorporates by reference paragraphs 1 through 36 of this Complaint.

37. An actual, substantial, legal controversy exists between Plaintiff and Defendants, and Plaintiff is entitled to a judicial declaration of its rights and legal relations with Defendants. Pursuant to §§ 20126a and 20137(1)(d) of NREPA, MCL 324.20126a and MCL 324.20137(1)(d), Plaintiff is entitled to a declaratory judgment that Defendants are jointly and severally liable to Plaintiff for the future response activity costs to oversee and undertake the design, construction, implementation, operation, maintenance, and monitoring of the response activities at the site.

38. A declaratory judgment for recovery of such response activity costs is appropriate and in the public interest because it will: (a) prevent the need for multiple lawsuits as Plaintiff incurs future response costs and damages; (b) provide a final resolution of the issues of liability for these costs; and (c) insure a prompt and effective response.

RELIEF REQUESTED

Plaintiff requests this Honorable Court to provide the following relief:

A. Enter an injunction requiring Defendants Ford and KPC to submit and implement a plan for response activities to remediate contamination in and near the City of Kingsford associated with Defendants' manufacturing operations that complies with Part 201 of NREPA, MCL 324.20101 *et seq*, and its rules.

B. Enter judgment against Defendants Ford and KPC requiring Defendants to pay Plaintiff all response activity costs incurred by the State at the Ford-Kingsford Products Facility, including enforcement costs and attorney fees.

C. Enter a declaratory judgment that Defendants Ford and KPC must reimburse Plaintiff for all future response activity costs to be incurred by the State at the Ford-Kingsford Products Facility.

D. Grant Plaintiff any further relief deemed appropriate and just.

Respectfully submitted,

Michael A. Cox
Attorney General

Christopher D. Dobyns (P27125)
Special Assistant Attorney General
Robert P. Reichel (P31878)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
525 W. Ottawa, 6th Floor, Williams
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
Attorney for Plaintiff

Dated: 10/25/04

S: NR/cases/199700070/Old Ford/Complaint

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

v

FORD MOTOR COMPANY and
THE KINGSFORD PRODUCTS COMPANY

Defendants,

/

CASE NO. 04-1427-CE
Honorable

THOMAS L. BROWN

Christopher D. Dobyns (P27125)
Special Assistant Attorney General
Robert P. Reichel (P31878)
Assistant Attorney General
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Bloomfield Hills, MI 48304
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/

CONSENT JUDGMENT

CONSENT JUDGMENT

INDEX

CONSENT JUDGMENT

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ).

The Defendants are Ford Motor Company and The Kingsford Products Company.

This Consent Judgment requires the preparation and performance of a remedial investigation to determine the nature, extent, and impact of hazardous substances and any threat to the public health, safety, or welfare or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate remedial action for the Facility; performance of interim response activities to mitigate unacceptable risks; preparation of a MDEQ-approvable Remedial Action Plan that complies with Part 201; and the implementation of the MDEQ-approved Remedial Action Plan. Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Judgment or (b) any terms or conditions set forth herein.

The entry into this Consent Judgment by Defendants is for settlement purposes and neither an admission or denial of liability with respect to any issue dealt with in this Consent Judgment nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Consent Judgment finds, that the response activities set forth herein are necessary to abate the release or threatened release of hazardous substances into the environment, to control future releases, and to protect public health, safety, welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Judgment constituting an admission by Defendants of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ADJUDGED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have with respect to jurisdiction of the Court or to venue in this District with respect to the Complaint in this matter and the entry of this Consent Judgment.

1.2 The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment and to resolve disputes arising under this Consent Judgment, including those that may be necessary for its construction, execution, or implementation, subject to Section XVII (Dispute Resolution).

II. PARTIES BOUND

2.1 This Consent Judgment shall apply to and be binding upon Plaintiffs and Defendants and their successors. No change or changes in the ownership or corporate status or other legal status of any of the Defendants, including, but not limited to, any transfer of assets or

of real or personal property, shall in any way alter Defendants' responsibilities under this Consent Judgment. Defendants shall provide the MDEQ with written notice prior to the transfer, after the Effective Date, of ownership of part or all of the Facility, which is owned by Defendants, and shall also provide a copy of this Consent Judgment to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20116, and the Part 201 Rules.

2.2 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of response activities pursuant to this Consent Judgment, Defendants are responsible for compliance with the terms of this Consent Judgment and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Consent Judgment.

2.3 All Defendants shall be jointly and severally liable for the performance of the activities specified in this Consent Judgment and for any penalties that may arise from violations of this Consent Judgment. The signatories to this Consent Judgment certify that they are authorized to execute this Consent Judgment and to legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

3.1 In entering into this Consent Judgment, it is the mutual intent of the Plaintiffs and Defendants to minimize litigation and ensure that the Defendants remediate the facility for which they are responsible in accordance with Part 201 of NREPA. Specifically, the Defendants will: (a) conduct a remedial investigation to determine the nature, extent, and impact of hazardous

substances and any threat to the public health, safety, or welfare, or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate remedial action for the Facility; (b) perform interim response activities to mitigate unacceptable risk through direct contact, eliminate the migration toward the Menominee River at the boundary described in Paragraph 7.6(a)(x) of this Consent Judgment of contaminated groundwater above applicable acute and chronic Groundwater-Surface water Interface (GSI) criteria, mitigate potential explosive hazards, vent areas where methane levels exceed acceptable levels in the soil gas, and any other interim response activity determined appropriate; (c) develop and submit to the MDEQ an approvable Remedial Action Plan that complies with Part 201; (d) perform an MDEQ-approved Remedial Action Plan in accordance with its approved implementation schedule; and (e) reimburse the State for Response Activity Costs as described in Section XV (Reimbursement of Costs).

3.2 The Parties agree and acknowledge that this Consent Judgment is the sole mechanism for addressing the Part 201 matters regarding the Ford-Kingsford Products Facility, and any Submissions provided to the State shall be handled in the manner established under Section XIV (Submissions and Approvals) of this Consent Judgment.

IV. DEFINITIONS

4.1 "Area of Concern" means the area depicted in Attachment 1.

4.2 "Consent Judgment" means this Consent Judgment and any attachment hereto, including any future modifications and any Submissions required by the Consent Judgment, which shall be incorporated into and become an enforceable part of this Consent Judgment.

4.3 "Defendants" means Ford Motor Company and its successors and The Kingsford Products Company and its successors.

4.4 "Effective Date" means the date that the Court enters this Consent Judgment.

4.5 "Facility" means the Area of Concern, as defined in Paragraph 4.1 and depicted in Attachment 1, where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17), of NREPA, MCL 324.20120a(1)(a) or (17), and further defined in the Part 201 Rules; or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of NREPA, has been released, deposited, or disposed of, or otherwise comes to be located; and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Area of Concern.

4.6 "Ford" means Ford Motor Company.

4.7 "Future Response Activity Costs" means all costs of response activity lawfully incurred by the State as provided in Part 201 to oversee, enforce, monitor, and document compliance with this Consent Judgment and to perform response activities required by this Consent Judgment, including, but not limited to, costs incurred to: monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; collect and analyze samples; evaluate data; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare and review cost reimbursement documentation; and perform response activities pursuant to Paragraph 7.16 (The MDEQ's Performance of Response Activities) and Section X (Emergency Response).

4.8 "KPC" means The Kingsford Products Company.

4.9 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.10 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq*, and the Administrative Rules promulgated thereunder.

4.11 "Part 201 Rules" means the Administrative Rules promulgated under Part 201 of NREPA,

4.12 "Party" means the Plaintiff or one of the Defendants. "Parties" means the Plaintiff and Defendants.

4.13 "Plaintiff" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.14 "Remedial Action Plan" or "RAP" means a plan for the Facility that satisfies the requirements of Part 201, including, but not limited to, Sections 20118, 20120a, 20120b, and 20120d of NREPA and the Part 201 Rules.

4.15 "Remedial Investigation" or "RI" means an evaluation to determine the nature, extent, and impact of a release or threat of release and the collection of data necessary to conduct a feasibility study of alternate response activities or to conduct a remedial action at a facility and complies with Part 201 of NREPA and its rules.

4.16 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

4.17 "State" or "State of Michigan" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality and any authorized representatives acting on their behalf.

4.18 "Submissions" means all plans, reports, schedules and other submittals that Defendants are required to provide to the State pursuant to this Consent Judgment. "Submissions" does not include the notifications set forth in Section XI (Delays in Performance, Violations, and *Force Majeure*).

4.19 Unless otherwise stated herein, all other terms used in this document, which are defined in Part 3 of NREPA, MCL 324.301; Part 201 of NREPA, MCL 324.20101, *et seq*; or the Part 201 Rules, shall have the same meaning in this document as in Parts 3 and 201 of NREPA and the Part 201 Rules. Unless otherwise specified in this Consent Judgment, "day" means a calendar day.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Consent Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations, including, but not limited to, Part 201 of NREPA, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the conduct of response activities under this Consent Judgment regarding matters within that agency's jurisdiction.

5.2 This Consent Judgment does not obviate the Defendants' obligations to obtain and maintain compliance with permits that are necessary for the performance of response activities under this Consent Judgment.

VI. BACKGROUND

6.1 In the early 1920s, Ford acquired property in the area that was to become the City of Kingsford. Ford established a plant in the area, which was used to manufacture wooden body parts for Ford touring cars, sedans, and gliders. Operations at the plant included a sawmill, a body plant, and a wood carbonization and by-product recovery plant. The direct products from the wood carbonization and by-product portion of the plant included: charcoal, pyroligneous acid, and noncondensable gas. As a result of processing of the pyroligneous acid, additional chemical products were produced including alcohols, acetates, acetones, creosote oils, formates, high boiling esters, ketones, methanol, pitch, and oils. This plant continued to be owned by Ford until 1951.

6.2 Kingsford Chemical Company (KCC), KPC's predecessor, purchased the plant in 1951 and operated certain portions of it until 1961.

6.3 There are four known former waste pits, referred to as NE Pit, SW Pit, Riverside Disposal Area ("RDA"), and West Breen Street Dump. (See Attachment 1). The NE and SW Pits, which started as two separate surface impoundments and were later connected by a channel, received the wastewater stream from the plant. The NE and SW Pits have an estimated surface area of 145,000 sq. ft.

6.4 Between 1985 and 1987, EWA, Inc. ("EWA"), a consultant for Ford, performed two hydrogeological investigations which defined the general hydrogeological characteristics of portions of the Area of Concern. EWA also estimated the volume of the waste in the NE and SW Pits to range from 190,000-260,000 cubic yards.

6.5 From the winter of 1987 through 1988, Ford excavated 26,949 cubic yards of tars from the NE Pit area. Defendants have continued to remove tars from the NE Pit as needed.

6.6 In July 1995, an explosion occurred in a house located at 2104 West Breen Avenue in Kingsford from accumulated methane in the basement.

6.7 A soil gas investigation conducted by the United States Environmental Protection Agency (EPA) and its contractors near the explosion area in December 1995 indicated that the ground near the area of the explosion contained high levels of methane. Soil gas concentrations of methane ranged from 82% to 97%.

6.8 In February 1996, a Soil Vapor Extraction (SVE) System was installed by the EPA to mitigate the explosion hazard around the house at 2104 West Breen Avenue and an adjacent home to the south. In May 1996 operation and maintenance of the SVE system was turned over to the MDEQ.

6.9 In December 1996, elevated concentrations of methane were also found in the basement of the residence at 2001 Emmet Street in Kingsford. In March 1997, an SVE system was installed by the EPA to mitigate methane in the area around the residence at 2001 Emmet Street. The SVE system was turned over to the MDEQ in July 1997 for operation and maintenance.

6.10 The Defendants have been responsible for the operation and maintenance of the SVE systems since September 1998.

6.11 From April through September 1996, EPA and its contractors investigated the source and extent of the methane. The investigation determined that the methane in the soil gas and groundwater was being generated by the microbial degradation of various organic compounds disposed of in the waste pits.

6.12 On September 15, 1998, the Defendants agreed in writing to implement an interim response work plan, which consisted of the operation and maintenance of the SVE systems, removal of tar or restriction of access to tar in the NE and SW Pits, and implementing an Emergency Response Plan relating to methane exposures.

6.13 Contaminants found within the Facility include: phenol, 2-methylphenol, 4-methylphenol, 2,4 dimethylphenol, acetone, trichloroethene, benzene, ethylbenzene, xylene, phenanthrene, 1,1,2-2 tetrachloroethane, arsenic, mercury, copper, chromium, and lead. Each of these contaminants found at the Facility exceeds residential cleanup criteria for one or more pathways pursuant to Section 20120a(1)(a) of NREPA and are "hazardous substances" as that term is defined in Section 20101(1)(t) of NREPA.

6.14 Over 50 contaminants are found in the groundwater within the Facility in concentrations that exceed one or more of the following: the Part 201 Residential Drinking Water Criteria, Part 201 acute or chronic Groundwater Surface Water Criteria, Part 201 Groundwater Contact Criteria. Additionally, aesthetic concerns in the groundwater include foaming, discoloration (yellow – black), and odors.

6.15 Disposal of waste into the pits has resulted in levels of hazardous substances present at the surface or near the surface above the residential cleanup criteria levels, and has leached and may continue to leach hazardous substances into the groundwater, contaminating the groundwater, creating a situation conducive to generating methane, and resulting in unpermitted discharges to a surface water. The disposal of these hazardous substances constitutes a "release or threatened release" within the meaning of Section 20101(1)(bb) and 20101(1)(ii) of NREPA.

6.16 The Ford–Kingsford Products Facility is a "facility" as that term is defined in Section 20101(1)(o) of NREPA.

6.17 Potentially explosive concentrations of methane may accumulate in basements and other structures due to concentrations of methane in or near surface soils of the Facility.

6.18 Ford Motor Company, a Delaware Corporation, and The Kingsford Products Company, a Delaware corporation, are each a "person" as that term is defined in Section 301(g) of Part 3 of NREPA.

6.19 Ford and KCC were each an owner and operator of the former plant at the time of disposal of hazardous substances at the Facility. KPC alleges that KCC, and not KPC, was responsible for releases at the Facility. Solely for the purpose of this Consent Judgment, KPC does not challenge responsibility for KCC's actions. Ford and KCC disposed of wastes, containing hazardous substances, into waste pits and other disposal areas at the Facility. Therefore, Ford and KPC are responsible for the release or threat of release. Ford and KPC are each a person who is liable within the meaning of Section 20126(1) of NREPA.

6.20 By letters dated June 19, 1997, September 23, 1997, January 20, 1998, and July 14, 2003, the MDEQ notified Ford of its status as a person that may be liable for the Facility. By letters dated January 20, 1998, and July 14, 2003, the MDEQ notified KPC of its status as a person that may be liable for the Facility. These letters demanded that the Defendants undertake interim response activities; submit plans for eliminating the methane fire and explosion hazards; investigate the extent of the Facility; implement a remedial action; and reimburse the State's past response activity costs.

6.21 Defendants reimbursed the State $135,642 in past response activity costs in January 2001. On November 11, 2003, Defendants reimbursed the State $1,301,728.74 in additional past response activity costs.

6.22 Ford and KPC have undertaken response activities including, but not limited to: (a) installation of monitoring wells; (b) installation of passive and active gas vents; (c) installation of a pilot groundwater pre-treatment facility; (d) removal of surficial and subsurficial contaminants; and (e) preparation of work plans for several portions of the Facility, including the Riverside Disposal area, the West Breen Avenue Dump area, the Former Plant area, and the NE and SW Pits area.

6.23 In coordination with these response activities, Ford, KPC, and the MDEQ have held public meetings in Kingsford in September of 1997, February of 1999, and October of 1999 regarding Facility conditions. A public meeting was held by MDEQ in Kingsford in June 2004 to provide updated information. Further information was disseminated by a series of Progress Updates sent to area residents by Ford and KPC from 1998 to 2004. These Updates were

supplemented by information bulletins issued by the MDEQ in January of 1999, February of 2000, and June 2004.

6.24 Defendants have submitted to the MDEQ a draft Facility evaluation report. Data collected by EPA, MDEQ and the Defendants confirms concentrations of constituents in excess of Part 201 residential cleanup criteria requiring response activities.

VII. PERFORMANCE OF RESPONSE ACTIVITIES

7.1 Performance Objectives

Defendants shall perform all necessary response activities at the Facility to comply with the requirements of Part 201, including the response activities required to meet the performance objectives outlined in this Section VII of the Consent Judgment.

(a) To the extent that Defendants are the owner, individually or collectively, of part or all of the Facility, Defendants shall achieve and maintain compliance with Section 20107a(1)(a) through (c) of NREPA and Part 10 of the Part 201 Administrative Rules.

(b) Defendants shall perform interim response activities (IRA). The performance objectives of these IRA are to:

(i) Mitigate unacceptable risk from all direct contact hazards associated with contaminated soils or waste at the disposal areas, including, but not limited to, the NE and SW Pits, Riverside Disposal Area, West Breen Ave Dump, and the Former Plant Site within three hundred and sixty-five (365) days of the Effective Date of this Consent Judgment.

(ii) Within two years of the Effective Date of this Consent Judgment, (a) eliminate the migration toward the Menominee River, at the boundary described in

Paragraph 7.6(a)(x), of contaminated groundwater from the Facility that is above applicable acute and chronic criteria for the GSI, including 1.0 acute toxic units, as defined in the Administrative Rules of Part 31, Water Resources Protection, of NREPA, at MDEQ-approved GSI compliance points along the Menominee River as provided in the Part 201 Rules, including, but not limited to, between monitoring wells GM-66 and GM-64, by demonstrating the conditions described in Paragraph 7.6(a)(x) of the Consent Judgment; and (b) provide adequate treatment for any contaminated groundwater extracted to comply with this Consent Judgment and state and federal law. Within five (5) years of the Effective Date of the Consent Judgment, the Defendants shall demonstrate a documented decreasing trend in groundwater contamination on a continuing basis at each of the GSI monitor wells to the MDEQ's satisfaction until this obligation is modified by the RAP.

(iii) Within two (2) years of the Effective Date of this Consent Judgment and continuing on an ongoing basis until this obligation is modified by the RAP, prevent or eliminate any explosive hazard in buildings, above or below-ground structures, excluding municipal sewer lines, or confined spaces where methane may accumulate in soil-gas within the Area of Concern.

(iv) Commencing on the Effective Date of the Consent Judgment and continuing on an ongoing basis until this obligation is modified by the RAP, vent any areas identified by the MDEQ or the Defendants where methane levels in the soil gas are at or above 1.25 percent by volume within the Area of Concern.

(v) Implement any other IRA determined by the Defendants or the MDEQ to be appropriate based on the factors provided in Part 201 and its rules and submit a work plan for approval upon the request of the MDEQ.

(c) Defendants shall perform a remedial investigation (RI) and submit an RI report for MDEQ approval, subject to Section XIV (Submission and Approvals). The performance objectives of the RI are to assess Facility conditions in order to select an appropriate remedial action that adequately addresses the provisions prescribed in Part 201. This includes, but is not limited to, the following:

(i) Definition of the source or sources of any contamination at the Facility, including the saturated zone beneath and/or directly downgradient of the disposal areas, and definition of the nature and extent of contamination originating from that source or sources and present in soil, soil-gas, indoor air, groundwater, surface water, and sediments, including the three dimensional extent of methane, as defined by the boundaries of methane concentrations at 0.5 ppm in groundwater or other MDEQ-approved site specific background concentration, if appropriate, and at 1.25 percent by volume in soil gas.

(ii) Definition of the risks to the public health, safety, and welfare and to the environment and natural resources, including, but not limited to, the identification of any water wells and wellhead protection zones in the vicinity of the Facility and an evaluation of the impact of the Facility on any such wells or zones, and identification and evaluation of aboveground and underground structures where methane could accumulate.

(iii) Definition of the amount, concentration, hazardous properties, environmental fate, bioaccumulative properties, persistence, location, mobility, and

physical state of the hazardous substances, including methane and methane-generating contamination, at the Facility.

(iv) Definition of the extent to which hazardous substances, including methane, have migrated or are expected to migrate from the area of release, including the potential for hazardous substances to migrate along preferential pathways, including storm drains and sewer systems.

(v) Definition of the geology, hydrogeology, groundwater flow, and gradients at the Facility. This includes, but is not limited to, groundwater flow and gradients into and under the Menominee River.

(d) Defendants shall develop and perform a MDEQ-approved Remedial Action Plan (RAP). The performance objectives of the RAP are to address all releases of hazardous substances in all environmental media at the Facility consistent with Section 20118, 20120a, 20120b, and 20120d of NREPA and the Part 201 Rules. This includes, but is not limited to, the following:

(i) Identifying which of the pathways, risks, and conditions provided in the Part 201 Administrative Rules are relevant for the Facility, including an analysis of source control measures as required by Section 20118(8) of NREPA.

(ii) Documenting that the cleanup criteria in the RAP are appropriate to the Facility, including, but not limited to, land use, activity patterns anticipated at the Facility, and identification of any wellhead protection zone that may be affected.

(iii) Identifying the category or categories of cleanup criteria that are being proposed or relied upon at the Facility.

(iv) Assuring that, when implemented, the MDEQ-approved RAP shall:

1. be protective of human health, safety, welfare, and the environment;

2. achieve the cleanup criteria specified in Part 201 and its rules; and

3. ensure the effectiveness and integrity of the RAP.

(v) Meet and maintain compliance with the cleanup criteria established under Section 20120a(1)(a) through (j) or 20120a(2) and Section 20120a(15) and (17) of NREPA and comply with all applicable requirements of Sections 20118, 20120a, 20120b, and 20120d of NREPA and the Part 201 Administrative Rules at the Facility.

(vi) Allowing for the continued use of the Facility consistent with local zoning.

7.2 In accordance with this Consent Judgment, the Defendants shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 7.1(a) through (d). The Defendants shall develop each work plan and perform the response activities contained in each work plan to address this Facility in accordance with the requirements of Part 201 and this Consent Judgment. If there is a conflict between the requirements of this Consent Judgment and any work plans, the requirements of this Consent Judgment shall prevail.

7.3 Quality Assurance Project Plan (QAPP)

Within thirty (30) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a QAPP, which describes the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Consent Judgment. The QAPP shall be developed in accordance with the United States Environmental Protection Agency's (U. S. EPA or EPA) "EPA Requirements for Quality Assurance Project Plans", EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project

Plans", EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." The Defendants shall utilize recommended sampling methods and analytical methods and analytical detection levels specified in "Operational Memo No. 6, Analytical Method Detection Level Guidance for Environmental Contamination Response Activities under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Revision 6, January 2001)." The Defendants shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria (S3TM) to determine the number of samples collected for the purposes of verifying the cleanup. The Defendants shall comply with the above documents, or documents that supercede or amend these documents, or other methods demonstrated by the Defendants to be appropriate as approved by the MDEQ.

7.4 Health and Safety Plan (HASP)

Within thirty (30) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* The HASP is not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment.

7.5 Section 20107a Documentation of Compliance Report

To the extent that Defendants own a part or all of the Facility, Defendants shall provide to the MDEQ a "Section 20107a Documentation of Compliance Report" that summarizes the

actions Defendants have taken or propose to take to comply with Section 20107a(1)(a)-(c) of NREPA and Part 10 of the Part 201 Administrative Rules.

7.6 Interim Response Activities (IRA)

(a) The Defendants shall implement the following IRA to initiate compliance with the provisions of Paragraph 7.1(b) of this Consent Judgment:

(i) Upon the Effective Date of the Consent Judgment, implement any necessary actions, as set forth in the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan within the Area of Concern, until this obligation is terminated pursuant to the implementation schedule in the approved RAP. Section III (Implementation of Emergency Response Plan) of the Emergency Response Plan is amended to apply to the Area of Concern as defined in this Consent Judgment.

(ii) Upon the Effective Date of the Consent Judgment and until terminated pursuant to the implementation schedule in the approved RAP, mitigate any explosive hazard in non-habitable below-ground structures or confined spaces accessible to persons where methane accumulates in the below-ground structure or confined space, excluding municipal sewer lines, at or above twenty-five percent (25%) of the Lower Explosive Level (LEL), as soon as practical, and within seventy-two (72) hours eliminate the explosive hazard and notify the local unit of government and MDEQ.

(iii) Within two (2) years of the Effective Date of the Consent Judgment, implement measures to control exposures to unacceptable risks from methane that may result from construction, maintenance of utilities, and other transient activities that may encounter methane, including preventing conditions that pose a risk of fire or explosion

in areas without structures, or adequately mitigate the fire or explosion hazard with appropriate land or resource use restrictions, until terminated pursuant to the implementation schedule in the approved RAP.

(iv) Within six (6) months of the Effective Date of this Consent Judgment, the Defendants shall document which structures in the Area of Concern have continuous methane monitors with appropriate alarms, whether they are operating properly and are strategically placed in structures where accumulation of explosive levels of methane is possible, and whether all cracks or openings found in the foundation in the structures have been appropriately sealed.

(v) To in part comply with Paragraph 7.1(b)(iii), the Defendants shall provide for methane monitoring of structures within the Area of Concern, unless demonstrated to the MDEQ's satisfaction that methane cannot accumulate in a structure, until this obligation is terminated pursuant to the implementation schedule in the approved RAP, as follows:

(1)(a) offer owners of any structure, unencumbered by any conditions on the owner of the structure, installation of continuous methane monitors with appropriate alarms in structures existing prior to the Effective Date of this Consent Judgment and any structures constructed after the Effective Date of this Consent Judgment; (b) install or fund the installation of continuous methane monitors; during installation of the methane monitors, seal any cracks or openings found in the foundation of any structure; and address any other condition that would facilitate a point of entry for methane accumulation; (c) upon installation of the methane detector, initially test the sensitivity of the methane

detector to ensure operation within twenty-five percent (25%) of the LEL; (d) perform or assure performance of maintenance and service of the methane detectors in accordance with the manufacturers written specifications; (e) perform an annual safety check, calibration or other verification of monitor sensitivity and reliability, and maintenance program for the methane monitors installed in any structures in the Area of Concern to ensure proper function, and inspect the structures for conditions that would facilitate methane accumulation, such as cracks or other openings in the foundation; (f) if at any time a methane detector alarm is activated, implement the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan to mitigate the methane and maintain a database of all methane detector alarms activated and the results of all follow-up activities.

(2) In lieu of providing methane detectors to existing commercial or industrial structures where the primary activity at the property is and will continue to be retail, warehouse, office, or business space, the Defendants shall implement the following measures to control exposures to unacceptable risks from methane: (a) installation of a monitoring network that includes the use of nested gas probes along the building foundation. Each nested set shall include a minimum of three (3) gas probes. The probes shall be installed to allow for discrete monitoring of the top, middle, and bottom portions of the permeable areas of the unsaturated zone; (b) a minimum of two (2) nested probe sets shall be installed around the foundation of buildings less than or equal to 10,000 square feet in area, plus installation of one more nested probe set per each additional 10,000 square feet or

portion thereof; (c) a minimum of quarterly methane measurements of all gas probes shall be conducted; (d) if at any time methane concentrations in the gas probes are at or above 1.25 percent by volume, (i) the provisions of Paragraph 7.6(a)(vii) shall be implemented, (ii) the building shall be investigated for elevated concentrations of methane and the Emergency Response Plan provided in Section III of the September 15, 1998 Interim Response Activity Work Plan shall be implemented as necessary to mitigate the methane, and (iii) response activities shall be performed to assure methane will not accumulate in the structure; (e) paved areas over 10,000 square feet, excluding square footage associated with public roadways or streets, and within 5 feet of the exterior wall of a structure shall be vented or adequately monitored for methane accumulation.

(3) If an owner of a structure does not consent to installation of a methane detector or probes, as applicable, Defendants shall implement to the MDEQ's satisfaction alternative monitoring or other response activities to assure that methane will not accumulate in a structure.

(vi) Until terminated pursuant to the provisions of the approved RAP, the Defendants shall, unless Defendants demonstrate to the MDEQ's satisfaction that suitable ventilation precludes methane accumulation:

(1) offer to all owners of structures in the Area of Concern, unencumbered by any conditions on the owner of the structure, installation of a vapor control system for all existing permanent structures and new structures prior to the structure's construction;

(2) install or fund installation of vapor control systems that prevent the accumulation of methane in structures in the Area of Concern in or around existing permanent structures and new structures prior to the structure's construction;

(3) implement a contingency plan to provide protection from the accumulation of methane in a structure if an owner of a structure does not consent to installation of a vapor control system.

(vii) In any areas identified at the Facility where methane levels in the soil gas are at or above 1.25 percent by volume, at minimum, the Defendants shall:

(1) within twenty-four (24) hours of discovery of methane at or above 1.25 percent by volume in soil gas, ensure nearby above and below-ground structures contain a properly functioning and strategically placed continuous methane monitor with appropriate alarms or nested probes for commercial or industrial structures as provided in Paragraph 7.6(a)(v)(2) or alternative monitoring or other response activity satisfactory to the MDEQ as provided in Paragraph 7.6(a)(v)(3); seal any cracks or openings found in the foundation of the structures; address any other condition that would facilitate methane accumulation;

(2) within forty-eight (48) hours of discovery of methane at or above 1.25 percent by volume in soil gas, initiate implementation of the contingent work plan provided in Paragraph 7.6(b)(ii) to install a pressure control system;

(3) within fourteen (14) days of discovery of methane at or above 1.25 percent by volume in the soil gas, assure that the pressure control system is in operation; and

(4) continue to operate, maintain, and monitor all pressure control systems installed at the Facility in response to methane on an on-going basis until terminated pursuant to the implementation schedule in the approved RAP.

(viii) The Defendants shall cap, cover, or otherwise control contaminated soils or waste at the disposal areas to achieve compliance with Paragraph 7.1(b)(i) of this Consent Judgment, and maintain that control until this obligation is terminated pursuant to the implementation schedule in the approved RAP.

(ix) Within two (2) years of the Effective Date of this Consent Judgment, the Defendants shall provide for adequate capacity for treatment of all contaminated groundwater extracted to comply with Paragraph 7.1(b)(ii). The Defendants shall treat contaminated groundwater extracted to comply with Paragraph 7.1(b)(ii), and discharge it in compliance with applicable state and federal laws on an ongoing basis until this obligation is terminated pursuant to the implementation schedule in the approved RAP.

(x) The Defendants shall install and operate a groundwater extraction system which captures all groundwater that contains hazardous substances above applicable GSI criteria in compliance with Paragraph 7.1(b)(ii), in a manner that demonstrates the following:

(1) the composite capture zone of the extraction wells encompasses the vertical and horizontal extent of contaminated groundwater flux to the Menominee River;

(2) a hydraulic gradient towards the extraction wells from all points along a boundary parallel to the edge of the Menominee River. The boundary is defined as a surface that consists of all vertical lines that pass through a defined curve on the land surface. The defined curve shall be all points on a fixed line which is parallel to the river's edge and not more than seventy (70) feet horizontally landward from the river's edge, except where it is not possible due to physical constraints with the terrain. In such circumstances, the defined curve can be more than 70 feet from the river's edge, but the average distance for the entire defined curve shall be no more than 70 feet horizontally landward from the river's edge. The vertical boundary running parallel to the river's edge will be established as described in Attachment 2. Extraction wells shall be located on the landward side of the boundary; and

(3) a documented decreasing trend in groundwater contamination at each of the GSI monitoring wells. Defendants shall install, operate and maintain a monitoring system comprised of piezometers and observation wells at sufficient representative locations and depths to document hydraulic capture of all groundwater that contains hazardous substances above applicable GSI criteria at the boundary. Defendants shall also install, operate, and maintain GSI monitoring wells at sufficient locations, spacings, and depths between the boundary and the river's edge to document groundwater conditions, including a continuing decreasing trend in groundwater contamination. GSI monitor wells shall not be located within the area of influence of the groundwater extraction wells, unless the cone of influence extends to the river's edge at that location. If the cone of

influence extends to the river's edge, compliance wells will need to be located between the extraction wells and the river's edge to document groundwater conditions. Defendants may request a mixing zone determination with their monitoring proposal, and, in part, rely upon mixing zone based GSI criteria calculated in response to the request, to establish compliance with Paragraph 7.1(b)(ii). The mixing zone discharge authorized by the MDEQ determination for this interim response applies only to areas of the discharge that are meeting the mixing zone based GSI criteria. The authorization shall not exceed five (5) years. If a MDEQ-approved RAP has not been implemented prior to expiration of the authorization, the Defendants may request re-authorization of discharges that meet mixing zone based criteria. The groundwater extraction system shall not be out of operation for more than an average of four (4) days per well per year. Any one extraction well shall not be shut down for more than five (5) weeks, unless it is replaced within that five-week period. After the groundwater extraction well system is operational, at no time shall the hydraulic gradient at any point along the boundary be allowed to go toward the Menominee River, including when groundwater extractions wells are shut down for maintenance. The groundwater extraction system shall be operated on an ongoing basis until this obligation is terminated pursuant to the implementation schedule in the approved RAP.

(b) The Defendants shall submit to the MDEQ a work plan for the following IRA in accordance with the schedule provided below. Except for Paragraph 7.6(b)(iii), the work plans in this Paragraph are not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment.

(i) For areas where work plans have not previously been submitted to the MDEQ to comply with Paragraph 7.1(b)(i), including the West Breen Ave. Dump and Former Plant Site, within sixty (60) days of the Effective Date of this Consent Judgment, a work plan to meet the requirements of Paragraphs 7.1(b)(i) and 7.6(a)(viii).

(ii) Within sixty (60) days of the Effective Date of this Consent Judgment, a standard contingent work plan for installation of a pressure control system for use in venting areas where unacceptable levels of methane are found to meet the requirements of Paragraphs 7.1(b)(iv) and 7.6(a)(vii), in case the circumstance arises.

(iii) Within ninety (90) days of the Effective Date of this Consent Judgment, a request for a mixing zone determination and authorization, including a proposed monitoring system for hydraulic control and GSI monitoring that complies with the requirements of Paragraph 7.6(a)(x), which is subject to MDEQ review and approval as provided in Section XIV (Submissions and Approval).

(iv) Within ninety (90) days of the Effective Date of this Consent Judgment, a contingency plan for providing an alternative for monitoring methane when the owner of a structure does not consent to the provisions of Paragraph 7.6(a)(v)(1) and (2).

(v) Within ninety (90) days of the Effective Date of this Consent Judgment, a plan for a standard design for the vapor control system to be installed in or around all existing structures in the Area of Concern as provided in Paragraph 7.6(a)(vi); an installation and maintenance schedule; a statement demonstrating how any increased costs due to the vapor control system to the structure owner will be financed by the Defendants; and the contingency plan for providing protection from the accumulation of

methane if an owner of a structure does not consent to installation of a vapor control system.

(vi) Within two (2) years of the Effective Date of the Consent Judgment, a plan for demonstrating how a decreasing trend in groundwater contamination at GSI monitor wells, as provided in Paragraph 7.1(b)(ii), will be documented.

7.7 Remedial Investigation (RI)

(a) Within sixty (60) days of the Effective Date of this Consent Judgment, the Defendants shall submit to the MDEQ a work plan for conducting additional evaluation of the Facility, which shall be of sufficient scope to support the selection of a RAP and meet the requirements of a RI pursuant to Part 201 and its rules. The work plan shall provide for the following:

(i) A detailed description of the specific work tasks that will be conducted pursuant to the work plan and a description of how these work tasks will meet the performance objectives described in Paragraph 7.1(c). The factors specified in the Part 201 Administrative Rules shall be considered in the development of the work plan.

(ii) A description of the history and nature of operations at the Facility and a summary of any existing information regarding the physical characteristics of the site.

(iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.

(iv) A plan for obtaining access to any properties not owned or controlled by the Defendants that is needed to perform the response activities contained in the work plan.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities that the Defendants propose to use for the off-site transfer, storage, treatment, or disposal of those waste materials.

(b) The Defendants shall perform the response activities contained in the plan and submit progress reports and an RI report in accordance with the implementation schedule. The Defendants shall correlate weather data, including barometric pressure, temperature, and precipitation, with any soil gas measurements.

7.8 Progress Reports

(a) The Defendants shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Consent Judgment. The MDEQ may provide comments on the progress reports to the Defendants, but the progress reports are not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Consent Judgment; provided, however, that the progress reports are subject to MDEQ review for making satisfactory progress in achieving the performance objectives of Paragraph 7.1. These progress reports shall include the following:

(i) A detailed description of the specific work tasks that have been conducted during the previous reporting period, which demonstrates how these work tasks are meeting the performance objectives and schedules described in Paragraphs 7.1, 7.6, 7.7, and 7.9 and identifies any problems encountered and describes their resolution. The factors specified in the Part 201 Rules shall be considered in the development of the work tasks;

(ii) All results of sampling and tests and other data received by the Defendants, their employees or authorized representatives during the previous reporting period relating to the response activities performed pursuant to this Consent Judgment;

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, including documentation of property ownership, lease agreements, easement agreements, and, if problems arise, a description of how the Defendants propose to resolve those issues;

(iv) A description of the nature and amount of solid waste materials that were generated and the name and location of the facilities that were used for the off-site transfer, storage, treatment, or disposal of those waste materials;

(v) A detailed description of data collection and the specific work tasks that will be conducted during the next reporting period, including implementation schedules, and a description of how these work tasks will meet the performance objectives described in Paragraphs 7.1, 7.6, 7.7, and 7.9. Comprehensive plans for specific work tasks shall include, but not be limited to, the following: work plans required under Paragraph 7.6(b) of the Consent Judgment, design plans for the groundwater treatment plant, and design plans for the extraction well system. The factors specified in the Part 201 Rules shall be considered in the development of the work tasks;

(vi) A correlation of weather data, including barometric pressure, temperature, and precipitation, with any soil gas measurements; and

(vii) Any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Consent Judgment.

(b) The first progress report shall be submitted to the MDEQ within ninety (90) days of the Effective Date of this Consent Judgment. Thereafter, progress reports shall be submitted quarterly by the end of the month following each calendar quarter for the previous calendar quarter until otherwise specified in the MDEQ-approved RAP. The progress reports shall provide the information in Paragraph 7.8(a) under separate headings for each discrete interim response activity as provided in Paragraph 7.6(a)(i)-(x), the RI provided in Paragraph 7.7, or other individual work tasks that may arise. Failure to demonstrate satisfactory progress and that the work tasks will result in compliance with the performance objectives in Paragraph 7.1 is a violation of the Consent Judgment. Upon mutual agreement, the MDEQ and the Defendants may modify a schedule for the submittal of progress reports.

7.9 Remedial Action Plan (RAP)

(a) Within nine (9) months of receiving MDEQ approval of the RI report, as specified by the procedure set forth in Paragraph 14.2, the Defendants shall submit a RAP to the MDEQ for review and approval. The Defendants have the option of proposing the clean up category of the remedial action, subject to MDEQ approval, in accordance with Part 201. The RAP shall provide for the following:

(i) All components required by Sections 20118, 20120a, 20120b, and 20120d of NREPA; and the Part 201 Administrative Rules.

(ii) A detailed description of the specific work tasks to be conducted pursuant to the work plan, a description of how these work tasks will meet the performance objectives described in Paragraph 7.1(d), and a description and supporting documentation of how the results of the remedial investigation or other response activities that have been

performed at the Facility support the selection of the remedial action contained in the RAP.

(iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.

(iv) A plan for obtaining access to any properties not owned or controlled by the Defendants that is needed to perform the response activities contained in the RAP. If the Defendants propose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(b) through (j) or (2) and that RAP provides for land and resource use restrictions, monitoring, operation and maintenance, or permanent markers, as prescribed by Section 20120b(3)(a) through (d) of NREPA, the RAP shall include documentation from property owners, easement holders, or local units of government that the necessary access to these properties has been or will be obtained and that any proposed land or resource use restrictions can or will be placed or enacted.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities that the Defendants propose to use for the off-site transfer, storage, treatment, or disposal of those waste materials.

(vi) Identification of the conditions, including the performance standards, that may be used to void or nullify the MDEQ's approval of the RAP.

(b) Within thirty (30) days of receiving the MDEQ's approval of the RAP, the Defendants shall commence performance of the RAP and submit progress reports in accordance with the MDEQ-approved RAP. The MDEQ-approved RAP shall become incorporated into this

Consent Judgment and become an enforceable part of this Consent Judgment. The components of an MDEQ-approved RAP may include, but are not limited to, the following:

(i) Notices of Approved Environmental Remediation (NAERs)

If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(b) through (e) of NREPA, the Defendants shall record, or cause to be recorded, any NAERs required by Section 20120b(2) of NREPA and the RAP with the Dickinson County Register of Deeds within twenty-one (21) days after the MDEQ's approval of the RAP or within twenty-one (21) days after completion of construction of the remedial action provided for in the RAP, as appropriate to the circumstances. The form, content, and schedule for filing the NAER must be approved by the MDEQ. The Defendants shall provide documentation acceptable to the MDEQ that demonstrates that the twenty-one (21) day statutory time frame for recording the NAER was met (e.g., a date-stamped receipt from the Register of Deeds Office). Such documentation shall be submitted to the MDEQ within seven days of the date that the NAER was delivered to the Dickinson County Register of Deeds for recording. The Defendants shall also provide a true copy of the recorded NAER and the liber and page to the MDEQ within ten (10) days of the Defendants' receipt of a copy from the Register of Deeds.

(ii) Restrictive Covenants

If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(f) through (j) or (2) of NREPA and that RAP provides for the placement of restrictive covenants, the Defendants shall record, or cause to be recorded, the appropriate restrictive covenants required by the RAP with the

Dickinson County Register of Deeds within twenty-one (21) days after the MDEQ's approval of the RAP or within twenty-one (21) days after completion of construction of the remedial action provided for in the RAP, as appropriate to the circumstances. The date that construction is complete should be defined in the RAP. The form, content, and schedule for filing the restrictive covenant must be approved by the MDEQ. The Defendants shall provide documentation acceptable to the MDEQ that demonstrates that the twenty-one (21) day statutory time frame for recording the restrictive covenant was met (e.g., a date stamped receipt from the Register of Deeds Office). Such documentation shall be submitted to the MDEQ within seven days of the date that the restrictive covenant was delivered to the Dickinson County Register of Deeds for recording. The Defendants shall also provide a true copy of the recorded restrictive covenant and the liber and page to the MDEQ within ten (10) days of the Defendants' receipt of a copy from the Register of Deeds.

(iii) Institutional Controls

If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(f) through (j) or (2) of NREPA and that RAP provides for the enactment of institutional controls, the institutional controls shall be enacted within forty-five (45) days of the MDEQ's approval of the RAP. The Defendants shall provide documentation that such institutional controls have been enacted to the MDEQ within ten (10) days of enactment.

(iv) Land Use Restrictions

If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(b) through (j) or (2) of NREPA and that RAP

provides for land use restrictions, within thirty (30) days of the MDEQ's approval of the RAP, the Defendants shall provide notice of the land use restrictions to the zoning authority of the local unit of government within which the Facility is located.

(v) Financial Assurance Mechanisms (FAMs)

If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(f) through (j) or (2) of NREPA and a FAM is a necessary component of that RAP, the Defendants shall establish and maintain financial assurance that will assure the Defendants' ability to pay for monitoring, operation and maintenance, oversight, and other costs (collectively referred to as "O&M Costs") that are determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action, as set forth in an MDEQ-approved RAP. The cost of activities covered by the FAM shall be documented on the basis of an annual estimate of maximum costs for the activity as if they were to be conducted by a person under contract to the state; not based on an estimate that presumes that activities were being conducted by employees of the Defendants. The proposed FAM shall be submitted to the MDEQ as part of the RAP pursuant to Paragraph 7.9(a) and shall be in an amount sufficient to cover O&M Costs at the Facility for a thirty (30)-year period. If a FAM is a component of an MDEQ-approved RAP, every five (5) years after the MDEQ's initial approval of the FAM, the Defendants shall provide to the MDEQ an update of the thirty (30)-year O&M Costs estimate. The updated cost estimate shall include documentation of O&M Costs for the previous five-year period and be signed by an authorized representative of the Defendants who shall confirm the validity of the data. The Defendants shall revise the amount of funds secured by the FAM in accordance with that up-dated five-year cost

estimate unless otherwise directed by the MDEQ. If, at any time, the MDEQ determines that the FAM does not adequately secure sufficient funds, the Defendants shall capitalize or revise the existing FAM or establish a new FAM acceptable to the MDEQ. After a FAM has been established, if the Defendants can demonstrate that the FAM provides funds in excess of those needed to cover O&M Costs for the Facility, the Defendants may submit a request to the MDEQ to reduce the amount of funds secured by the FAM. The Defendants shall maintain the FAM in perpetuity or until the Defendants can demonstrate to the MDEQ that such FAM is no longer necessary to protect the public health, safety, or welfare or the environment and is no longer necessary to assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP. The MDEQ considers any modification of a FAM to be a modification of a RAP that must be made in accordance with Section XXIII (Modifications). The financial test will be considered an acceptable mechanism for the purposes of this Paragraph so long as the test is acceptable to MDEQ. If the MDEQ approved test is no longer met or the response activities assured by the financial test are not being performed, an alternate FAM shall be provided. Failure to comply with this requirement will result in RAP voidance pursuant to Paragraph 7.15 (Voidance and Nullification of the MDEQ's Approval of a RAP). This voidance shall be cured in accordance with the provisions of this Consent Judgment.

(c) The Defendants shall notify the MDEQ within ten (10) days of its completion of construction of a remedial action pursuant to an MDEQ-approved RAP that relies on the cleanup criteria established under Section 20120a(1)(b) through (j) of NREPA.

7.10 Venting Groundwater Discharge Authorization

(a) To the extent that a mixing zone is required as part of the RAP pursuant to Section 20120a(15) of NREPA, and upon MDEQ approval of the RAP, this Consent Judgment authorizes the discharge of those hazardous substances identified in the RAP for which mixing-zone based GSI criteria have been developed by the MDEQ. At no time does this Consent Judgment authorize the discharge of:

(i) hazardous substances in excess of the mixing zone-based GSI criteria established in the MDEQ-approved RAP;

(ii) hazardous substances that were not specified in the MDEQ-approved RAP and this Consent Judgment; or

(iii) hazardous substances in excess of the applicable criteria developed pursuant to Part 201.

In the event that the MDEQ-approved RAP is nullified pursuant to Paragraph 7.15(b)(ii) of this Consent Judgment and the nullification is based upon a GSI discharge authorization which is no longer protective of public health, safety, and welfare and the environment, the Defendants shall, within thirty (30) days of acquiring knowledge of such nullification, submit to the MDEQ a request for a revised mixing zone determination and reauthorization of the GSI discharge.

(b) At least 180 days prior to the five year anniversary of the MDEQ's approval of the RAP, the Defendants shall submit to the MDEQ for review and approval a GSI Report. The Defendants shall submit subsequent GSI Reports every five years thereafter until authorization of a discharge to the waters of the state is no longer required. The GSI Report shall provide all information and data concerning the discharge of contaminated groundwater venting from the

Facility to the surface water that is necessary to assess the Defendants' on-going compliance with Part 201.

(c) The GSI Report shall, at a minimum, include the following information:

(i) Identity of the Facility and the MDEQ reference number of this Consent Judgment.

(ii) The name of the receiving surface water body and the location of the venting groundwater contaminant plume. This information should be provided in narrative form, which includes a quarter-quarter section description, and in map form.

(iii) The location, nature, and chemical characteristics of the past and ongoing source(s) of hazardous substances in the groundwater contaminant plume, including a description of whether the source has been removed or is still present. If the source is still present, identify the type, concentration, and mobility of these hazardous substances.

(iv) A summary of all GSI monitoring data and information on contaminant sources collected over the previous five years. The summary shall include (1) the Chemical Abstract Service (CAS) Number for each hazardous substance; (2) the worst case maximum concentrations of the hazardous substances in the groundwater contaminant plume at the GSI; (3) the identification of all hazardous substances that are non-aqueous phase liquids (light and dense), if present at any location in the groundwater contamination plume; and (4) documentation of any changes in the groundwater contaminant plume's volume or concentration of hazardous substances; and if hazardous substances from the source have not yet reached the groundwater, but are expected to do so, the concentrations of the hazardous substances shall also be included. This information shall be provided in narrative and tabular form and in map form that includes

both a plan view showing groundwater concentration contours of the hazardous substances and a cross-sectional view at the GSI.

(v) An analysis of the contaminant plume's general chemistry parameters, including, but not limited to, the major cations and anions, ammonia, chemical and bichemical oxygen demand, chlorides, and phosphorus.

(vi) The discharge rate in cubic feet per second (cfs) of the groundwater contaminant plume. The discharge rate of the groundwater plume shall be calculated using that portion of the contaminant plume which is or may become contaminated above the generic GSI criteria.

(vii) The location of any other groundwater contaminant plumes entering the same surface water body in the vicinity of the Facility and their constituents and concentrations, if available.

(viii) Any other information required by the MDEQ at the time of the report.

(ix) A certification statement and signature of an appropriate person. The certification statement shall state "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

(d) The MDEQ shall review the GSI Report and determine if the discharge complies with the mixing zone-based GSI criteria applicable at the time that the GSI Report is submitted. In the event that the MDEQ determines that the discharge complies with the then current

applicable GSI criteria, the authorization to discharge pursuant to Section 20120a(15) shall be reauthorized for a period of five years and the MDEQ shall so notify the Defendants. In the event that the MDEQ determines that the discharge does not comply with the current applicable GSI criteria, the MDEQ approval of the RAP shall be immediately and automatically nullified in accordance with Paragraph 7.15(e) of this Consent Judgment and the MDEQ shall so notify the Defendants.

7.11 Public Notice and Public Meeting Requirements under Section 20120d of NREPA

If the MDEQ determines that there is significant public interest in the results of an RI, proposed IRA work plan(s), or proposed RAP required by this Consent Judgment; if the Defendants propose a RAP pursuant to Section 20120a(1)(f) through (j) or (2) of NREPA; or if Section 20118(5) or (6) of NREPA applies to the proposed RAP, the MDEQ will make those reports or plans available for public comment. When the MDEQ determines that the RI report, proposed IRA work plan(s), or proposed RAP is acceptable for public review, a public notice regarding the availability of those reports or plans will be published and those reports or plans shall be made available for review and comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDEQ. If the MDEQ determines that there is significant public interest or the MDEQ receives a request for a public meeting, the MDEQ will hold such public meeting in accordance with Section 20120d(1) and (3) of NREPA. Following the public review and comment period or a public meeting, the MDEQ may refer the RI report, proposed IRA work plans(s), or proposed RAP back to the Defendants for revision to address public comments and the MDEQ's comments. The MDEQ will prepare the final responsiveness summary document that explains the reasons for the selection or approval of a remedial action plan in accordance with the provisions of

Section 20120d(5) and (6) of NREPA. Upon the MDEQ's request, the Defendants shall provide information to the MDEQ for the final responsiveness summary document, or the Defendants shall prepare portions of the draft responsiveness summary document.

7.12 Interim Well Abandonment

Within thirty (30) days after the MDEQ's approval of the RAP, and in compliance with the RAP implementation schedule, the Defendants shall submit to the MDEQ for review and approval a work plan for the proper plugging and abandonment of any monitor wells that will not be used for long-term monitoring at the Facility (Interim Well Abandonment Work Plan). The work plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receipt of the MDEQ's approval of the work plan, the Defendants shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications set forth in the ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the Interim Well Abandonment Work Plan, the Defendants shall submit an Interim Well Abandonment Report to the MDEQ.

7.13 Final Well Abandonment

Upon completion of the monitoring activities as set forth in an MDEQ-approved RAP, including operation and maintenance and long-term monitoring, the Defendants shall submit to the MDEQ for review and approval a work plan for the final identification, plugging, and abandonment of all remaining monitor wells at or related to the Facility (Final Well

Abandonment Work Plan). The work plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receiving the MDEQ's approval of the Final Well Abandonment Work Plan, the Defendants shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the Final Well Abandonment Work Plan, the Defendants shall submit a Final Well Abandonment Report to the MDEQ.

7.14 Modification of Response Activity

(a) If the MDEQ determines that a modification to response activity or an MDEQ-approved RAP is necessary to meet and maintain the applicable performance objectives specified in Paragraph 7.1 to comply with Part 201, or to meet any other requirement of this Consent Judgment, the MDEQ may require that such modification be conducted. If extensive modifications are necessary, the MDEQ may require the Defendants to develop and submit or amend a response activity work plan or RAP for review and approval in accordance with Section XIV (Submissions and Approvals). The Defendants may request that the MDEQ consider a modification to a MDEQ-approved response activity or MDEQ-approved RAP by submitting such request for modification along with the proposed change in the response activity and the justification for that change to the MDEQ for review and approval in accordance with the provisions of Section XIV (Submissions and Approvals). Any such request for modification by the Defendants must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due.

(b) Upon receipt of the MDEQ's determination, the Defendants shall perform the response activities specified in the MDEQ's determination. This may include, but is not limited to, submittal of a modified response activity work plan, a report, a RAP, or a new work plan.

7.15 Voidance and Nullification of the MDEQ's Approval of a RAP

(a) If the Defendants choose to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(f) through (j) or (2) of NREPA and the Defendants allow a lapse of, or do not comply with, the provisions of Section 20120b(3)(a) through (e) of NREPA as provided for in this Consent Judgment or an MDEQ-approved RAP, the MDEQ's approval of the RAP is void from the time of the lapse or violation unless the lapse or violation is corrected in accordance with Paragraph 7.15(c) and to the satisfaction of the MDEQ. Provisions and requirements addressed by this Paragraph include:

(i) Required land use or resource use restrictions, including but not limited to, the following:

(1) A court of competent jurisdiction determines that a land use or resource use restriction is unlawful;

(2) a land use or resource use restriction is not filed or enacted in accordance with this Consent Judgment or the MDEQ-approved RAP;

(3) a land use or resource use restriction is violated or is not enforced by the controlling entity; or

(4) a land use or resource use restriction expires or is modified or revoked without the MDEQ's approval;

(ii) Monitoring;

(iii) Operation and Maintenance;

(iv) Permanent markers; and

(v) Financial assurance.

(b) The MDEQ's approval of the RAP shall be nullified if any of the following occur unless the lapse or violation is corrected to the satisfaction of the MDEQ:

(i) if unknown conditions that existed at the Facility when the response activity was conducted , but was unknown or undetected, and requires additional response activity;

(ii) failure of the remedial action to comply with the applicable cleanup criteria and conditions, including the MDEQ-approved RAP performance standards or this Consent Judgment;

(iii) the MDEQ determines that the RAP is not effective or reliable because the remedial action or response activity repeatedly fails, notwithstanding repeated cures within ninety (90) days of discovery of the failure by either the Defendants or the MDEQ.

(c) Within thirty (30) days of the Defendants becoming aware of a lapse or violation under Paragraph 7.15(a) or (b), the Defendants shall provide to the MDEQ a written notification of such lapse or violation. This notification shall include a description of the nature of the lapse or violation, an evaluation of the impact or potential impact of the lapse or violation on the effectiveness and integrity of the RAP, and one of the following:

(i) If the Defendants have corrected the lapse or violation, a written demonstration of how and when the Defendants corrected the lapse or violation;

(ii) If the Defendants have not yet corrected the lapse or violation, a work plan and implementation schedule for addressing the lapse or violation; or

(iii) If the Defendants believe that they will not be able to correct the lapse or violation without modifying the MDEQ-approved RAP, an action plan and implementation schedule outlining the response activities that the Defendants will take to comply with Part 201 and to assure that the Facility does not pose a threat to public health, safety, or welfare or the environment.

(iv) The action plan and implementation schedule identified in Paragraph 7.15(c)(iii) shall provide for the development of any response activity work plans and associated implementation schedules that are necessary to assure the protection of public health, safety, and welfare and the environment, including work plans for interim response activities, a remedial investigation to provide additional information to support the selection and approval of an alternative remedial action plan, and an approvable alternative remedial action plan that meets the performance objectives specified in Paragraph 7.1 and that complies with Part 201. The Defendants shall develop those response activity work plans pursuant to the requirements specified in this Consent Judgment and shall submit those plans in accordance with the schedule established in an MDEQ-approved action plan. The MDEQ will review and approve any plans submitted pursuant to Paragraph 7.15 in accordance with the procedures set forth in Section XIV (Submissions and Approvals). Upon receipt of the MDEQ's approval, the Defendants shall perform the response activities in accordance with the MDEQ-approved work plans.

(d) If the Defendants do not comply with all of the requirements of Paragraph 7.15(c) or do not comply with the provisions of Section XIV (Submissions and Approvals), and independent of the statutory consequences of nullification of the MDEQ's approval of a RAP

pursuant to Part 201, stipulated penalties, as specified in Paragraph 16.2, shall begin to accrue on the day the lapse or violation under Paragraph 7.15(a) or (b) occurred and shall continue to accrue unless the lapse or violation is corrected to the satisfaction of the MDEQ.

(e) The provisions in Paragraphs 7.15(a)-(b) are not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution). However, the facts associated with the voidance or nullification of a RAP may be disputed pursuant to Paragraphs 7.15(c) or (d).

7.16 The MDEQ's Performance of Response Activities

(a) If the Defendants cease to perform the response activities required by this Consent Judgment, are not performing response activities in accordance with this Consent Judgment, or are performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to the Defendants, take over the performance of those response activities at the end of the thirty-day period. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section X (Emergency Response). The determination by the MDEQ to take over response activities or continue the performance of response activities is not subject to Section XVII (Dispute Resolution).

(b) If the MDEQ finds it necessary to take over the performance of response activities pursuant to Paragraph 7.16(a), the MDEQ may access the Environmental Escrow established by the Defendants to assure the performance of the required response activities and reimburse the State's response activity costs, including interest. It is acknowledged that the Environmental Escrow will not cover all of the necessary response activities to be conducted at the Facility. In the event that the Defendants believe that the MDEQ improperly accessed the Environmental

Escrow for the reason that the response activities undertaken by the MDEQ under this paragraph were not in accordance with the Performance Objectives of this Consent Judgment or were arbitrary and capricious or otherwise unlawful, the Defendants may seek reimbursement to the Environmental Escrow from the Cleanup and Redevelopment Fund in the manner set forth in Section 20119(5) of NREPA, MCL 324.20119(5). State response activity costs not secured or reimbursed by the Environmental Escrow shall be reimbursed, including all interest. Costs incurred by the State to perform response activities pursuant to Paragraph 7.16 shall be considered to be "Future Response Activity Costs" and the Defendants shall provide reimbursement of these costs and any accrued interest to the State in accordance with Section XV (Reimbursement of Costs), which is subject to Section XVII (Dispute Resolution).

(c) Within sixty (60) days of the Effective Date of this Consent Judgment, Defendants shall establish a FAM in the form of an MDEQ-approved Environmental Escrow in the amount of one million dollars ($1,000,000), which shall be maintained at that level by the Defendants until terminated or modified by a financial assurance mechanism in an MDEQ-approved RAP. In the event that the MDEQ utilizes the Environmental Escrow in accordance with this Paragraph 7.16, the Defendants shall ensure that the balance of the Environmental Escrow remains at one million dollars ($1,000,000) by making deposits, as-needed, on a monthly basis; provided, however, that the Defendants' obligation to fund the Environmental Escrow does not exceed five million dollars ($5,000,000).

(d) The Environmental Escrow shall be used solely and exclusively for the performance of response activities as provided in Paragraph 7.16(a), and shall be in a form that allows the MDEQ to contract immediately for the response activities for which financial assurance is required.

VIII. ACCESS

8.1 Upon the Effective Date of this Consent Judgment, Defendants shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and any associated properties at all reasonable times to the extent that access to the Facility and any associated properties are owned, controlled by, or to the extent available to Defendants. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, the MDEQ and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and associated properties for the purpose of conducting any activity to which access is required for the implementation of this Consent Judgment or to otherwise fulfill any responsibility under federal or State laws with respect to the Facility, including, but not limited to, the following:

(a) Monitoring response activities or any other activities taking place pursuant to this Consent Judgment at the Facility;

(b) Verifying any data or information submitted to the MDEQ;

(c) Assessing the need for, planning, or conducting investigations relating to the Facility;

(d) Obtaining samples;

(e) Assessing the need for, planning, or conducting, response activities at or near the Facility;

(f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a remedial action;

(g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;

(h) Communicating with Defendants' Project Coordinator, or other personnel, representatives, or consultants for the purpose of assessing compliance with this Consent Judgment;

(i) Determining whether the Facility or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Consent Judgment; and

(j) Assuring the protection of public health, safety, welfare and the environment.

8.2 To the extent that the Facility, or any other property where the response activities are to be performed by the Defendants under this Consent Judgment, is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Defendants shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Defendants shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than ten (10) days after the judicial action for access has been filed. If Defendants have not been able to obtain access within sixty (60) days after filing judicial action, Defendants shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access has affected or may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State

determines that the delay was caused by a *Force Majeure* event pursuant to Section XI (Delays in Performance, Violations, and *Force Majeure*). To the extent Defendants are subject to the requirements of Section 20114 of NREPA, Defendants' failure to secure access or petition the court within one (1) year of having reason to believe that access to another person's property is necessary to comply with Section 20114 of NREPA, subjects the Defendants to both stipulated penalties pursuant to Paragraph 16.3 of Section XVI (Stipulated Penalties) and civil penalties under Part 201.

8.3 Any lease, purchase, contract, or other agreement entered into by Defendants, which transfers from Defendants to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the MDEQ or any other person undertaking the response activities, and their authorized representatives, the access provided under this Section and Section XII (Record Retention/Access to Information).

8.4 Any person granted access to perform a response activity at the Facility pursuant to this Consent Judgment shall comply with all applicable health and safety laws and regulations.

IX. SAMPLING AND ANALYSIS

9.1 All sampling and analysis conducted pursuant to this Consent Judgment shall be in accordance with the QAPP specified in Paragraph 7.3 and the work plans submitted to the MDEQ.

9.2 Defendants, or their consultants or subcontractors, shall provide the MDEQ with a ten (10) day notice prior to any sampling activity to be conducted pursuant to this Consent Judgment to allow the MDEQ Project Coordinator, or his or her authorized representative, the

opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10) day notice is not possible, Defendants, or their consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the MDEQ Project Coordinator and explain why earlier notification was not possible. If the MDEQ Project Coordinator concurs with the explanation provided, Defendants may forego the ten (10)-day notification period for that particular sampling event.

9.3 Defendants shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Consent Judgment, Parts 201, 211 or 213 of NREPA or other relevant authorities. These results shall be included in the progress reports set forth in Paragraph 7.8.

9.4 For the purpose of quality assurance monitoring, Defendants shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by Defendants in implementing this Consent Judgment.

X. EMERGENCY RESPONSE

10.1 If during the pendency of this Consent Judgment, an act or the occurrence of an event poses or threatens to pose an imminent and substantial endangerment from conditions resulting from releases, threats of release, or exacerbation at the Facility to public health, safety, or welfare or the environment, Defendants shall immediately undertake all appropriate actions to prevent, abate, or minimize such endangerment or threat of endangerment and shall immediately notify the MDEQ Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, Defendants shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendants shall be in accordance with all

applicable health and safety laws and regulations and with the provisions of the HASP referenced in Paragraph 7.4.

10.2 Within ten (10) days of notifying the MDEQ of such an act or event, Defendants shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate the endangerment or threat of endangerment and to prevent recurrence of such an act or event. Regardless of whether Defendants notify the MDEQ under this Section, if an act or event causes a release, threat of release, or exacerbation, or endangerment or threat of endangerment, the MDEQ may: (a) require Defendants to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat of release, exacerbation, endangerment, or threat of endangerment; (b) require Defendants to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation or endangerment or threat of endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

XI. DELAYS IN PERFORMANCE, VIOLATIONS, AND *FORCE MAJEURE*

11.1 If either (a) an event occurs that causes or may cause a delay in the performance of any obligation under this Consent Judgment, whether or not such delay is caused by a *Force Majeure* event, or (b) a delay in performance or other violation occurs due to Defendants' failure to comply with this Consent Judgment, Defendants shall do the following:

(i) Notify the MDEQ by telephone or telefax within two (2) business days of discovering the event or violation; and

(ii) Within ten (10) days of providing the two (2)-business day notice, provide a written notification and a plan of action, with supporting documentation, to the MDEQ, which include the following:

(1) A description of the event, delay in performance, or violation and the anticipated length and precise causes of the delay, potential delay, or violation;

(2) The specific obligations of this Consent Judgment that may be or have been affected by a delay in performance or violation;

(3) The measures Defendants have taken or propose to take to avoid, minimize, or mitigate the delay in performance or the effect of the delay or to cure the violation and an implementation schedule for performing those measures;

(4) If Defendants intend to assert a claim of *Force Majeure*, Defendants' rationale for attributing a delay or potential delay to a *Force Majeure* event;

(5) Whether Defendants are requesting an extension for the performance of any of its obligations under this Consent Judgment and, if so, the specific obligations for which they are seeking such an extension, the length of the requested extension, and their rationale for needing the extension; and

(6) A statement as to whether, in the opinion of Defendants, the event, delay in performance, or violation may cause or contribute to an endangerment to public health, safety, welfare, or the environment and how the measures taken or

to be taken to address the event, delay in performance, or violation will avoid, minimize, or mitigate such endangerment.

11.2 For the purposes of this Consent Judgment, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of Defendants, of any person controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Judgment despite Defendants' "best efforts to fulfill the obligation." The requirement that Defendants exercise "best efforts to fulfill the obligation" includes Defendants using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Defendants minimize any delays in the performance of any obligation under this Consent Judgment to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes, or failure to obtain a permit or license as a result of Defendants' acts or omissions.

11.3 Defendants shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." Defendants shall not be deemed to be in violation of this Consent Judgment if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to Paragraph 11.4(a) or if Defendants' position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If Defendants otherwise fail to comply with or violate any requirement of this Consent Judgment

and such noncompliance or violation is not attributable to a *Force Majeure* event, Defendants shall be subject to the stipulated penalties set forth in Section XVI (Stipulated Penalties).

11.4 The State will provide written approval, approval with modifications, or disapproval of Defendants' written notification under Paragraph 11.1 and will notify Defendants as follows:

(a) If the State agrees with Defendants' assertion that a delay or potential delay in performance is attributable to a *Force Majeure* event, the MDEQ's written approval or approval with modifications will include the length of the extension, if any, for the performance of specific obligations under this Consent Judgment that are affected by the *Force Majeure* event for which Defendants are seeking an extension and any modification to the plan of action submitted pursuant to Paragraph 11.1. An extension of the schedule for performance of a specific obligation affected by a *Force Majeure* event shall not, by itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with Defendants' assertion that a delay or anticipated delay in performance has been or will be caused by a *Force Majeure* event, the State will notify Defendants of its decision. If Defendants disagree with the State's decision, Defendants may initiate the dispute resolution process specified in Section XVII (Dispute Resolution) of this Consent Judgment. In any such proceeding, Defendants shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay or anticipated delay in performance has been or will be caused by a *Force Majeure* event; (ii) the duration of the delay or of any extension sought by Defendants was or will be warranted under the circumstances; (iii) Defendants exercised its best efforts to fulfill the obligation; and (iv) Defendants have complied with all requirements of this Section.

(c) If Defendants' notification pertains to a delay in performance or other violation that has occurred because of its failure to comply with the requirements of this Consent Judgment, Defendants shall undertake those measures determined to be necessary and appropriate by the MDEQ to address the delay in performance or violation, including the modification of a response activity work plan, and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment, as set forth in Section XVI (Stipulated Penalties). Penalties shall accrue, as provided in Section XVI (Stipulated Penalties), regardless of when the MDEQ notifies Defendants of a violation or when Defendants notify the MDEQ of a violation.

11.5 This Consent Judgment shall be modified as set forth in Section XXIII (Modifications) to reflect any modifications to the implementation schedule in the applicable response activity work plan that are made pursuant to Paragraph 11.4 or that are made pursuant to the resolution of a dispute between the Parties under Section XVII (Dispute Resolution).

11.6 Defendants' failure to comply with the applicable notice requirements of Paragraph 11.1 shall render this Section void and of no force and effect with respect to an assertion of *Force Majeure* by Defendants as to the particular event; however, the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to Defendants of any such waiver.

11.7 Defendants' failure to notify the MDEQ, as required by Paragraph 11.1, constitutes an independent violation of this Consent Judgment and shall subject Defendants to stipulated penalties as set forth in Section XVI (Stipulated Penalties).

XII. RECORD RETENTION/ACCESS TO INFORMATION

12.1 Defendants and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of five (5) years after completion of operation and maintenance and long-term monitoring at the Facility, all records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances and the storage, generation, disposal, treatment, and handling of hazardous substances at the Facility and any other records that are maintained or generated pursuant to any requirement of this Consent Judgment. However, if Defendants choose to perform a remedial action from an MDEQ-approved RAP that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of NREPA, and further defined in the Part 201 Rules, and the RAP provides for land use or resource use restrictions, Defendants shall retain any records pertaining to these land use or resource use restrictions until the MDEQ determines that land use and resource use restrictions are no longer needed. After the five (5)-year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, Defendants may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, Defendants may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period, or Defendants may offer to relinquish custody of all documents to the MDEQ. In any event, Defendants shall obtain the MDEQ's written permission prior to the destruction of any documents. Defendants' request shall be accompanied by a copy of this Consent Judgment and be sent to the address listed in Section XIII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing

by the MDEQ. Defendants may keep records electronically rather than as hard copies to the extent the records are readable by the MDEQ.

12.2 Upon request, Defendants shall provide to the MDEQ copies of all non-privileged documents and information within their possession, or within the possession or control of their employees, contractors, agents, or representatives, relating to the performance of response activities or other requirements of this Consent Judgment, including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to response activities undertaken pursuant to this Consent Judgment. Upon request, Defendants also shall make available to the MDEQ, upon reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

12.3 Either Defendant may assert a confidentiality or privilege claim, if appropriate. Such assertion shall be adequately substantiated when it is made, and shall describe with specificity the nature of each document for which a confidentiality or privilege is claimed. If Defendants submit to the MDEQ documents or information that Defendants believe they are entitled to protection as provided for in Section 20117(10) of NREPA, Defendants may designate in that submittal the documents or information to which they believe they are entitled such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to Defendants. Information described in Section 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by Defendants. Information or data generated under this

Consent Judgment shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of NREPA, MCL 324.14801 *et seq.*

XIII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

13.1 Each Party shall designate one or more Project Coordinators. Whenever notices are required to be given or progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Consent Judgment, or whenever other communications between the parties are needed, such communications shall be directed to the designated Project Coordinator at the address listed below. If any Party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

A. As to the MDEQ:

(1) For all matters pertaining to this Consent Judgment, except those specified in Paragraphs 13.1 A.(2), (3) and (4) below:

Chris Austin, Project Coordinator
Remediation and Redevelopment Division
Upper Peninsula District Office, Crystal Falls Field Office
Michigan Department of Environmental Quality
1420 U.S. 2 West
Crystal Falls, MI 49920
Phone No.: 906-875-2071
Fax No.: 906-875-3336

With a copy to:

Patricia Brandt
Field Operations Section
Remediation and Redevelopment Division
Constitution Hall
4th Floor South Tower
P.O. Box 30426
Lansing, MI 48909-7926

This Project Coordinator will have primary responsibility for overseeing for the MDEQ the performance of response activities at the Facility and other requirements specified in this Consent Judgment.

(2) For all matters specified in this Consent Judgment that are to be directed to the RRD Division Chief:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-335-1104
Fax: 517-373-2637

Via courier
Constitution Hall, 4th Floor, South Tower,
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1(A)(1).

(3) For providing a true copy of a recorded NAER, a restrictive covenant, and documentation that an institutional control has been enacted pursuant to Section VII (Performance of Response Activities); for Record Retention pursuant to Section XII (Record Retention/Access to Information); and for questions concerning financial matters pursuant to Section VII (Performance of Response Activities), including financial assurance mechanisms associated with a RAP, Section XV (Reimbursement of Costs), and Section XVI (Stipulated Penalties):

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-373-7818
Fax: 517-373-2637

Via courier
Constitution Hall, 4th Floor, South Tower,
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1A(1).

(4) For all payments pursuant to Section XV (Reimbursement of Costs) and Section XVI (Stipulated Penalties):

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, MI 48909-8157

Via courier:
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933

To ensure proper credit, all payments made pursuant to this Consent Judgment must reference the Ford-Kingsford Products Facility, the Court Case Number.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 13.1A(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 13.1A(3), and the Assistant Attorney General in Charge designated in Paragraph 13.1B.

B. As to the Department of Attorney General:

Assistant Attorney General in Charge
Environment, Natural Resources, and Agriculture Division
Department of Attorney General
G. Mennen Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
Telephone: 517-373-7540
Fax: 517-373-1610

C. As to Defendants:

(1) For all matters pertaining to the Consent Judgment:

Richard L. Studebaker, Jr., P.E.
Ford-Kingsford Products Facility Project Coordinator
ARCADIS G & M, Inc.
126 North Jefferson Street
Suite 400
Milwaukee, WI 53202
Telephone: (414) 276-7742
Fax: (414) 276-7603

With a copy to:

David Miller
Principal Environmental Engineer
Ford Motor Company
Parklane Towers West
Three Parklane Boulevard, Suite 950
Dearborn, MI 48126-2477
Telephone: 313-322-3761
Fax: 313-248-5030

Daniel Musgrove
Clorox Services Company
5064 S. Merrimac Ave.
Chicago, IL 60638
Telephone: 708-728-5257
Fax: 708-728-4296

Elaine Black Mills, Esquire
Ford Motor Company
1500 Parkland Towers West
Three Parklane Boulevard
Dearborn, MI 48126
Telephone: 313-594-0096
Fax: 313-390-4201

and

General Counsel
The Clorox Company
1221 Broadway, 24th Floor
Oakland, CA 94612
Telephone: 510-271-7000
Fax: 510-271-1696

A copy of all correspondence relating to the matters specified in this Consent Judgment shall also be provided to the individuals designated in Paragraph 13.1C(1).

13.2 Defendants' Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Consent Judgment for Defendants.

13.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment.

XIV. SUBMISSIONS AND APPROVALS

14.1 While only a subset of the Submissions provided to the MDEQ under this Consent Judgment require MDEQ approval, all Submissions required by this Consent Judgment

shall comply with all applicable laws and regulations and the requirements of this Consent Judgment and shall be delivered to the MDEQ in accordance with the schedule set forth in this Consent Judgment. All Submissions delivered to the MDEQ pursuant to this Consent Judgment shall include a reference to the Ford-Kingsford Products Facility and the Court Case Number. All Submissions delivered to the MDEQ shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document has not received approval from the Michigan Department of Environmental Quality (MDEQ). This document was prepared pursuant to a judicial Consent Judgment. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

14.2 With the exception of the submittal of a RAP, after receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Consent Judgment, the Chief of the RRD will in writing: (a) approve the Submission; (b) approve the Submission with modifications; (c) reject the Submission as insufficient if the Submission lacks the information necessary or required by the MDEQ to make a decision regarding Submission approval; or (d) disapprove the Submission and notify Defendants of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, Defendants shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Approved."

14.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2(c), Defendants shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies

a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, Defendants shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period for Defendants to provide the revised Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 14.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise Defendants and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until Defendants deliver an approvable Submission.

14.4 RAPs are the only Submissions subject to Section 20114(8) of NREPA. Therefore, within six (6) months of receipt of a RAP, the Chief of the RRD will make a decision regarding the RAP and will in writing: (a) approve the RAP; (b) reject the RAP as insufficient if the RAP lacks the information necessary or required by the MDEQ to make a decision regarding RAP approval; or (c) deny approval of the RAP. If the MDEQ denies approval of the RAP, it will provide Defendants with a complete and specific statement of the conditions or requirements necessary to obtain approval to which the MDEQ may not add additional items after it has been issued. The time period for a decision regarding the submitted RAP may be extended by the mutual consent of the Parties. Upon receipt of a notice of approval from the MDEQ, Defendants shall proceed to take the actions and perform the response activities required by the MDEQ-approved RAP and shall submit a new cover page marked "Approved."

14.5 Within ninety (90) days of receipt of a rejection or denial of approval of a RAP from the MDEQ pursuant to Paragraph 14.4(b) or (c), Defendants shall submit the revised RAP to the MDEQ for review and approval. The time period for resubmission may be extended by the MDEQ. If the MDEQ does not approve the RAP upon resubmission, the MDEQ will so advise Defendants. Any stipulated penalties applicable to the delivery of the RAP shall accrue during the 90-day period or other time period for Defendants to submit another RAP, but shall not be payable unless the revised RAP is also rejected or approval is denied. The MDEQ will review the revised RAP in accordance with the procedure stated in Paragraph 14.4. If the MDEQ rejects or denies a revised RAP, the MDEQ will so advise Defendants and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original RAP Submission and continue to accrue until Defendants deliver an approvable RAP.

14.6 If any initial Submission, including a RAP, contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by Defendants to deliver an acceptable Submission that complies with Part 201 and this Consent Judgment, the MDEQ will notify Defendants of such and will deem Defendants to be in violation of this Consent Judgment. Stipulated penalties, as set forth in Section XVI (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until an acceptable Submission is provided to the MDEQ. Any other delay in the delivery of a Submission; noncompliance with a MDEQ-approved Submission or attachment to this Consent Judgment; or failure to cure a deficiency of a MDEQ-approved Submission in accordance with Paragraphs 14.3 or 14.5 shall subject Defendants to penalties pursuant to Section XVI (Stipulated Penalties) or other remedies available to the State pursuant to this Consent Judgment.

14.7 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Consent Judgment shall be considered part of this Consent Judgment and are enforceable pursuant to the terms of this Consent Judgment. If there is a conflict between the requirements of this Consent Judgment and any Submission or an attachment to a Submission, the requirements of this Consent Judgment shall prevail.

14.8 An approval or approval with modifications of a Submission shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in the Submission or warrants that the Submission comports with law.

14.9 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Defendants shall not be construed as relieving Defendants of their obligation to obtain any formal approval required under this Consent Judgment.

XV. REIMBURSEMENT OF COSTS

15.1 Defendants shall pay: (a) response activity costs the State lawfully incurred subsequent to March 17, 2003, including staff costs in negotiating and preparing settlement documents with Defendants, overseeing response activities and contractor costs at the Facility prior to the Effective Date of this Consent Judgment, but after March 17, 2003. These costs shall be considered to be Future Response Activity Costs and shall be documented and included in a demand for Future Response Activity Costs pursuant to Paragraph 15.2.

15.2 Defendants shall reimburse the State for all Future Response Activity Costs lawfully incurred by the State. As soon as possible after each anniversary of the Effective Date of this Consent Judgment, the MDEQ will provide Defendants with a written demand for

payment of Future Response Activity Costs that have been lawfully incurred by the State. Any such demand will set forth, with reasonable specificity, the nature of the costs incurred. Except as provided by Section XVII (Dispute Resolution), Defendants shall reimburse the MDEQ for such costs within thirty (30) days of Defendants' receipt of a written demand from the MDEQ.

15.3 Defendants shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Defendants may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

15.4 All payments made pursuant to this Consent Judgment shall be by certified check, made payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first class mail, priority or certified mail, or express delivery to the Revenue Control Unit at the address listed in Paragraph 13.1A(4) of Section XIII (Project Coordinators and Communications/Notices). The Ford-Kingsford Products Facility, the Court Case Number shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 13.1A(1); the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 13.1A(3); and the Assistant Attorney General in Charge at the address listed in Paragraph 13.1B. Costs recovered pursuant to this Section, and payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties), shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

15.5 If Defendants fail to make full payment to the MDEQ for Future Response Activity Costs, as specified in Paragraph 15.1, interest at the rate specified in Section 20126a(3) of NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Defendants make full payment of those costs and the accrued interest to the MDEQ. In any challenge by Defendants to a MDEQ demand for reimbursement of costs, Defendants shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of NREPA.

XVI. STIPULATED PENALTIES

16.1 Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 for failure to comply with the requirements of this Consent Judgment, unless excused under Section XI (Delays in Performance, Violations, and *Force Majeure*) or Section XVII (Dispute Resolution). "Failure to Comply" by Defendants shall include failure to deliver Submissions and notifications, failure to perform response activities in accordance with Section VII (Performance of Response Activities) and this Consent Judgment, and failure to pay response activity costs and penalties in accordance with all applicable requirements of law and this Consent Judgment within the specified implementation schedules established by or approved under this Consent Judgment.

16.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VII (Performance of Response Activities):

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,000	1st through 14th day
$ 2,000	15th through 30th day
$ 5,000	31st day and beyond

16.3 If Defendants fail or refuse to comply with any other term or condition of this Consent Judgment, Defendants shall pay the MDEQ stipulated penalties of $ 500 per day for each and every failure or refusal to comply.

16.4 All stipulated penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

16.5 Except as provided in Section XVII (Dispute Resolution), Defendants shall pay stipulated penalties owed to the State no later than thirty (30) days after Defendants' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 15.4 of Section XV (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which Defendants make full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Consent Judgment.

16.6 The payment of stipulated penalties shall not alter in any way Defendants' obligation to perform the response activities required by this Consent Judgment.

16.7 If Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the stipulated penalties, as well as any accrued interest. However, the

assessment of stipulated penalties is not the State's exclusive remedy if Defendants violate this Consent Judgment. For any failure or refusal of Defendants to comply with the requirements of this Consent Judgment, the State also reserves the right to pursue any other remedies to which it is entitled under this Consent Judgment or any applicable law including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, and sanctions for contempt of court.

16.8 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Judgment.

XVII. DISPUTE RESOLUTION

17.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment, unless otherwise expressly provided for in this Consent Judgment as set forth in Paragraph 7.15(e), Paragraphs 7.16(a) and (b), and Section X (Emergency Response). However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendants' obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution under this Section shall not negate the obligation or requirement under this Consent Judgment. The Defendants may choose to delay the performance of a response activity; however, if the resolution of the dispute is found in the MDEQ or State's favor, stipulated penalties will apply.

17.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Defendants

provide to the State under Paragraphs 17.3 through 17.5 and any documents upon which the MDEQ and the State rely to make the decisions set forth in Paragraphs 17.3 through 17.5. Defendants shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(5).

17.3 Except for undisputable matters identified in Paragraph 17.1 and disputes related to the RAP, any dispute that arises under this Consent Judgment with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of Section VII (Performance of Response Activities), Section IX (Sampling and Analysis), Section XI (Delays in Performance, Violations, and *Force* Majeure), Section XII (Record Retention/Access to Information), or Section XIV (Submissions and Approvals), shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and the Defendants. A dispute shall be considered to have arisen on the date that a Party to this Consent Judgment receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The period of informal negotiations shall not exceed twenty-one (21) days from the date a Party receives a Notice of Dispute, unless the period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty-one (21) days, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Conclusion, in writing, to Defendants. In the absence of initiation of formal dispute resolution by Defendants under Paragraph 17.4, the MDEQ's position as set forth in the MDEQ's Statement of Conclusion shall be binding on the Parties.

17.4 If Defendants and the MDEQ cannot informally resolve a dispute under Paragraph 17.3 or if the dispute involves a RAP, Defendants may initiate formal dispute resolution. If the informal process in Paragraph 17.3 did not resolve the dispute, Defendants may initiate formal dispute resolution by submitting a written Request for Review to the Chief of RRD, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed items within fourteen (14) days of Defendants' receipt of any Statement of Conclusion issued by the MDEQ pursuant to Paragraph 17.3. If the dispute is not subject to the informal dispute resolution process described in Paragraph 17.3, a dispute shall be considered to have arisen on the date that a Party to this Consent Judgment receives a written Notice of Dispute from the other Party, initiating the formal dispute resolution process. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. When the MDEQ issues a Notice of Dispute, the Defendants will have twenty (20) days to submit a written rebuttal to the Chief of RRD, with a copy to the MDEQ Project Coordinator. Within twenty (20) days of the RRD Chief's receipt of Defendants' Request for Review, Defendants' Notice of Dispute, or Defendants' rebuttal, the Chief of RRD will provide the MDEQ's Statement of Decision, in writing, to Defendants, which will include a statement of his or her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting her or his position; and supporting documentation he or she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Statement of Decision shall be binding on the Parties, unless contested in accordance with Paragraph 17.6.

17.5 If Defendants seek to challenge any decision or notice issued by the MDEQ or the State under Section VIII (Access), Section XV (Reimbursement of Costs), Section XVI (Stipulated Penalties), Section XVIII (Indemnification and Insurance), Section XIX (Covenants Not to Sue by Plaintiffs), or Section XX (Reservation of Rights by Plaintiffs), of this Consent Judgment, Defendants shall send a written Notice of Dispute to both the RRD Chief and the Assistant Attorney General assigned to this matter within ten (10) days of Defendants' receipt of the decision or notice from the MDEQ or the State. The Notice of Dispute shall include all relevant facts that provide the basis for the dispute; factual data, analysis, or opinion supporting its position; and supporting documentation upon which Defendants base their position. The Parties shall have fourteen (14) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If the Parties do not reach an agreement on any dispute within the fourteen (14) day period, the State will thereafter issue, in writing, the State's Statement of Decision to Defendants, which shall be binding on the Parties, unless contested in accordance with Paragraph 17.6.

17.6 The MDEQ Statement of Decision or the State's Statement of Decision pursuant to Paragraph 17.4 or 17.5, respectively, shall control unless, within twenty (20) days after Defendants' receipt of one of those Decisions, Defendants file with this Court a motion for resolution of a dispute. The motion shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Judgment. Within thirty (30) days of Defendants' filing of a motion for resolution of a dispute, Plaintiffs will file with the Court the administrative record that is maintained pursuant to Paragraph 17.2.

17.7 Any judicial review of the MDEQ Statement of Decision or the State's Statement of Decision shall be limited to the administrative record. In proceeding on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are the subject of this Consent Judgment, the Defendants shall have the burden of demonstrating on the administrative record that the position of the MDEQ or the State is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the Defendants shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent the Plaintiffs from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Consent Judgment.

17.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Defendants' failure or refusal to comply with any term or condition of this Consent Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that Defendants do not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Defendants shall pay stipulated penalties as set forth in Paragraph 16.5 of Section XVI (Stipulated Penalties). Defendants shall not be assessed stipulated penalties for disputes that are resolved in their favor.

17.9 Notwithstanding the provisions of this Section and in accordance with Section XV (Reimbursement of Costs) and Section XVI (Stipulated Penalties), Defendants shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an on-going dispute resolution proceeding.

XVIII. INDEMNIFICATION AND INSURANCE

18.1 The State of Michigan does not assume any liability by entering into this Consent Judgment. This Consent Judgment shall not be construed to be an indemnity by the State for the benefit of Defendants or any other person.

18.2 Defendants shall indemnify and hold harmless the State of Michigan and their departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, any acts or omissions of Defendants, their officers, employees, agents, or any other person acting on their behalf, or under their control, in performing the activities required by this Consent Judgment.

18.3 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

18.4 The State shall provide Defendants notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 18.2 or 18.3.

18.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of Defendants for the performance of activities required by this

Consent Judgment. Neither Defendants nor any contractor shall be considered an agent of the State.

18.6 Defendants waive all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any other person for the performance of response activities under this Consent Judgment at the Facility, including any claims on account of construction delays.

18.7 Prior to commencing any response activities pursuant to this Consent Judgment and for the duration of this Consent Judgment, Defendants shall secure and maintain comprehensive general liability insurance with limits of two million dollars ($2,000,000), combined single limit, which names the MDEQ, the Attorney General, and the State of Michigan as additional insured parties. If Defendants demonstrate by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Defendants need to provide only that portion, if any, of the insurance described above which is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Defendants, and prior to the commencement of response activities pursuant to this Consent Judgment, Defendants shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, and for the duration of this Consent Judgment, Defendants shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding

the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Defendants in furtherance of this Consent Judgment.

XIX. COVENANTS NOT TO SUE BY PLAINTIFFS

19.1 In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of this Consent Judgment, and except as specifically provided for in this Section and Section XX (Reservation of Rights by Plaintiffs), the State of Michigan hereby covenants not to sue or to take further administrative action against Defendants for:

(a) Response activities that Defendants perform pursuant to the MDEQ-approved remedial action plan under this Consent Judgment;

(b) All Response Activity Costs that were incurred and paid by the State prior to March 17, 2003;

(c) Future Response Activity Costs that are incurred by the State as set forth in Paragraphs 15.1, 15.2, and 15.6 of Section XV (Reimbursement of Costs) of this Consent Judgment and paid by the Defendants.

19.2 The covenants not to sue shall take effect under this Consent Judgment as follows:

(a) With respect to Defendants' liability for response activities performed in compliance with MDEQ–approved remedial action plan under this Consent Judgment, the covenant not to sue shall take effect upon MDEQ's approval of the RAP submitted pursuant to Section VII (Performance of Response Activities).

(b) With respect to Response Activity Costs incurred and paid by the State prior to March 17, 2003, the covenant not to sue shall be upon the Effective Date of the Consent Judgment.

(c) With respect to Future Response Activity Costs incurred and paid by the State and paid by Defendants, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

19.3 The covenants not to sue extend only to Defendants and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY PLAINTIFFS

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiffs). These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiffs) until such time as these covenants become effective, as set forth in Paragraph 19.2 of Section XIX (Covenants Not to Sue by Plaintiffs). The MDEQ and the Attorney General reserve the right to bring an action against Defendants under federal and state laws for any matters for which Defendants have not received a covenant not to sue as set forth in Section XIX (Covenants Not to Sue by Plaintiffs). The State reserves, and this Consent Judgment is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Defendants with respect to all other matters, including, but not limited to, the following:

(a) The performance of response activities that are required to comply with Part 201 and to achieve and maintain the performance objectives specified in Paragraph 7.1 of Section VII (Performance of Response Activities);

(b) Response activity costs incurred and paid by the State after March 17, 2003 that Defendants have not paid;

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility;

(d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility;

(e) Damages for injury to, destruction of, or loss of natural resources and the costs for any natural resource damage assessment;

(f) Criminal acts;

(g) Any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance) of this Consent Judgment; and

(h) The release or threatened release of hazardous substances or violations of federal or state law that occur during or after the performance of response activities required by this Consent Judgment.

20.2 The State reserves the right to take action against Defendants if it discovers at any time that any material information provided by Defendants prior to or after entry of this Consent Judgment was false or misleading.

20.3 The MDEQ and the Attorney General expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Consent Judgment or to compel Defendants to comply with NREPA.

20.4 In addition to, and not as a limitation of any other provision of this Consent Judgment, the MDEQ retains all authority and reserves all of its rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

20.5 In addition to, and not as a limitation of any provision of this Consent Judgment, the MDEQ and the Attorney General retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 and any other applicable statute or regulation.

20.6 Failure by the MDEQ or the Attorney General to enforce any term, condition or requirement of this Consent Judgment in a timely manner shall not:

(a) Provide or be construed to provide a defense for Defendants' noncompliance with any such term, condition or requirement of this Consent Judgment.

(b) Estop or limit the authority of MDEQ or the Attorney General to enforce any such term, condition or requirement of the Consent Judgment or to seek any other remedy provided by law.

20.7 This Consent Judgment does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Defendants in accordance with the MDEQ-approved work plans required by this Consent Judgment will result in the achievement of the performance objectives stated in Paragraph 7.1 of Section VII (Performance of Response

Activities) or the remedial criteria established by law or that those response activities will assure protection of public health, safety, or welfare, the environment.

20.8 Except as provided in Paragraph 19.1(a) of Section XIX (Covenants Not to Sue by Plaintiffs), nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare or the environment or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

XXI. COVENANT NOT TO SUE BY DEFENDANTS AND RESERVATION OF RIGHTS

21.1 Except as provided in Section XVII (Dispute Resolution) and Paragraph 7.16(b), Defendants hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives for any claims or causes of action against the State that arise from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of NREPA or any other provision of law.

21.2 After the Effective Date of this Consent Judgment, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting or that are based upon a defense that contends that any claims raised by the MDEQ or the Attorney General in such a proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by Plaintiffs).

21.3 Defendants reserve the right to use the provisions of Section 20129(1) of NREPA.

XXII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC, 1980 PL 96-510; and to the extent provided in Section XIX (Covenants Not to Sue by Plaintiffs), Defendants shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiffs) of this Consent Judgment, to the extent allowable by law. Entry of this Consent Judgment does not discharge the liability of any other person that may be liable under Section 20126 of NREPA or CERCLA, 42 USC 9607 and 9613. Pursuant to Section 20129(9) of NREPA, any action by Defendants for contribution from any person that is not a Party to this Consent Judgment shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to NREPA or other applicable federal or state law.

XXIII. MODIFICATIONS

23.1 The Parties may only modify this Consent Judgment according to the terms of this Section. The modification of any MDEQ-approved Submission required by this Consent Judgment may be made only upon written approval from the Chief of RRD or his or her representative.

23.2 Modification of any other provision of this Consent Judgment shall be made only by written agreement between Defendants' Project Coordinators, Chief of RRD, or his or her authorized representative, and the designated representative of the Michigan Department of Attorney General and shall be entered with the Court.

XXIV. TERMINATION

The Defendants may petition the State to terminate this Consent Judgment when response activities are no longer required at this Facility pursuant to this Consent Judgment or when the MDEQ and the Defendants mutually agree and have executed a legal agreement under Section 20120(b) of NREPA.

XXV. SEPARATE DOCUMENTS

The parties may execute this Consent Judgment in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

By: _____

~~Assistant~~ Secretary
Ford Motor Company
1500 Parkland Towers West
Three Parklane Boulevard
Dearborn, MI 48126
Telephone: 313-594-0096
Fax: 313-390-4201

Vice President - Secretary
The Kingsford Products Company
P.O. Box 24305
Oakland, CA 94623
Telephone: 510-271-7000
Fax: 510-271-1652

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 26th day of Oct, 2004.

THOMAS L. BRONSON

Honorable

S: NR/cases/199700070/Old Ford-Kingsford/ cj final clean

By: _____

Assistant Secretary
Ford Motor Company
1500 Parkland Towers West
Three Parklane Boulevard
Dearborn, MI 48126
Telephone: 313-594-0096
Fax: 313-390-4201

By: Pamela Fletcher

Vice President - Secretary
The Kingsford Products Company
P.O. Box 24305
Oakland, CA 94623
Telephone: 510-271-7000
Fax: 510-271-1652

IT IS SO ORDERED, ADJUDGED AND DECREED THIS _____ day of _____, 2004.

_____
Honorable

S: NR/cases/199700070/Old Ford-Kingsford/ cj final clean

IT IS SO AGREED BY:

MICHAEL A. COX
Attorney General
Attorney for Plaintiffs

By: Robert P. Reichel

Christopher D. Dobyns (P27125)
Special Assistant Attorney General
Robert P. Reichel (P31878)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Michigan Department of Attorney General
525 West Ottawa Street
6th Floor, G. Mennen Williams Building
P.O. Box 30755
Lansing, MI 48909
Telephone: 517-373-7540
Fax: 517-373-1610

ATTACHMENT 1

Area of Concern

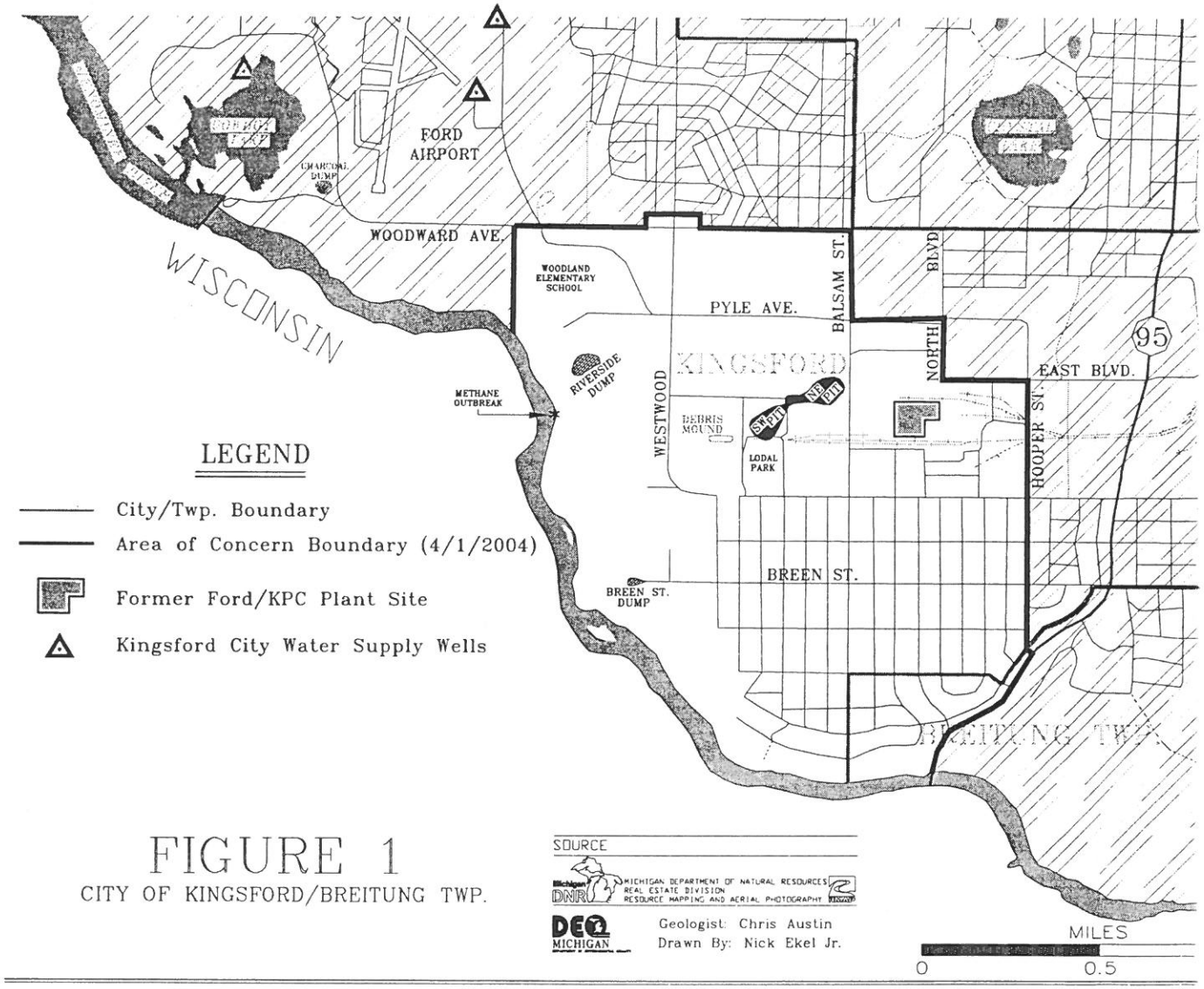

FIGURE 1
CITY OF KINGSFORD/BREITUNG TWP.

ATTACHMENT 2

Process for Establishing the Boundary Curve Parallel to the River's Edge

The surficial curve parallel to the edge of the Menominee River for defining the boundary in paragraph 7.6(a)(x) will be established using the following process:

Step One-Establishing the edge of the Menominee River

The Plaintiff's and Defendants' representatives will locate the edge of the Menominee River using the following definition: the point between the upland that persists through successive changes in water levels, and river bottomland at which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. Based on this definition, the coordinates for the river's edge will be staked, surveyed and recorded by a licensed surveyor at 50 foot intervals. The location coordinates will establish a line representing the river's edge.

Step Two-Establishing the defined curve on the land surface

The defined curve on the land surface shall be a curve parallel to the curve established in step one and shall be on average not more than seventy (70) feet horizontally landward from the location identified in step one. The location of the surficial curve shall be established by surveying and staking the surficial curve.

Step Three – The vertical boundary definition

A vertical boundary running parallel to the river's edge will then be defined as all possible vertical lines passing through the curve defined in Step Two.