

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MILFORD DOWNTOWN
DEVELOPMENT AUTHORITY, a public
corporate body,

File No. 07-083146-CH

Hon. Steven N. Andrews

Plaintiff/Counter-Defendant,

v

J & S COMPANY, a Michigan corporation,

Defendant/Counter-Plaintiff,

and

J & S COMPANY, a Michigan corporation,

Third Party Plaintiff,

v

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, an executive
department of the State of Michigan,

Third Party Defendant,

and

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, an executive
department of the State of Michigan,

Fourth Party Plaintiff/Counter Plaintiff,

v

G/CSC, LTD., a Michigan Corporation, and
BP PRODUCTS NORTH AMERICA, INC., a
Maryland Corporation and J & S COMPANY, a
Michigan Corporation,

Fourth Party Defendants and Counter Defendant.

CONSENT JUDGMENT
BETWEEN MICHIGAN
DEPARTMENT OF
ENVIRONMENTAL
QUALITY AND
G/CSC, LTD.

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

The Fourth Party Defendant is G/CSC, Ltd. ("G/CSC")

The Consent Judgment concerns the settlement of the Fourth-Party Complaint filed by MDEQ against G/CSC for the State's claims for Past Response Activity Costs which were incurred in responding to releases or threats of releases of hazardous substances from the Property, that occurred prior to the effective date of this Consent Judgment, and to resolve G/CSC's liability for any Future Response Activity Costs related to known releases or threats of releases of hazardous substances from the Property that occurred prior to the effective date of this Consent Judgment.

The Parties agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Judgment or, (b) any terms or conditions of this Consent Judgment.

This Consent Judgment is neither an admission or denial of any factual allegations or legal conclusions stated or implied in this Consent Judgment, nor is it an admission or denial of liability with respect to the issues dealt with in the Consent Judgment.

The Parties agree, and the Court by entering this Consent Judgment finds, that the terms and conditions of the Consent Judgment are fair, reasonable, and consistent with the public interest and the doctrines of applicable law.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Judgment constituting an admission of any of the allegations in the Fourth-Party Complaint, and upon the consent of the Parties and their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137 and 324.21323. This Court also has personal jurisdiction over the Parties. The Parties waive all objections and defenses that they may have to the jurisdiction of this Court or to venue in this Circuit Court.

1.2 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment.

II. PARTIES BOUND

2.1 This Consent Judgment shall apply to and be binding upon the Parties and their successors and assigns. No change or changes in the ownership or corporate status of the Defendant shall in any way alter the Parties' responsibilities under this Consent Judgment.

2.2 The Defendant is liable for the payment specified in 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, the mutual objective of the Parties is to resolve, without further litigation, the State's claims against G/CSC for the recovery of Past and Future Response Activity Costs that the State has incurred or will incur at the Facility.

IV. DEFINITIONS

4.1 "Consent Judgment" means this Consent Judgment and any attachment.

4.2 "Fourth Party Defendant" means G/CSC, Ltd.

4.3 "Facility" means the property located at 505 North Main Street, Milford, Michigan (Property), and any area, place, or property where a hazardous substance, which originated at and emanates from the Property and is present at concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the natural resources and environmental protection act (NREPA), MCL 324.20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, has been released, deposited, or disposed of, or otherwise has come to be located.

4.4 "Future Response Activity Costs" means the gap costs that the State incurred and paid between the date of the Final Summary Report, Attachment B, and the effective date of this Consent Judgment, and all costs the State incurs and pays after the effective date of this Consent Judgment, performing response activities at the Facility to address known releases or threats of releases of hazardous substances as defined in Part 201 of NREPA, MCL 324.21201, pollutants and contaminants that occurred prior to the effective date of this Consent Judgment.

4.5 "Past Response Activity Costs" means all costs that the State has incurred at the Facility for the releases or threats of release of hazardous substances as defined in Part 201 of NREPA, MCL 324.21201, pollutants and contaminants as of the effective date of this Consent Judgment and paid prior to and during the time periods set forth in the attached Final Summary Report, and all interest and penalties that may be applicable to those costs.

4.6 "Fourth Party Plaintiff" means the Michigan Department of Environmental Quality.

4.7 "Parties" means the MDEQ and G/CSC.

4.8 "State" means Michigan Department of Environmental Quality and the Attorney General of the State of Michigan.

4.9 All other terms used in this Consent Judgment, which are defined in Part 201 of NREPA, MCL 324.20101 *et seq.*, or the Part 201 Administrative Rules, 1990 AACS, R 299.5101 *et seq.*, or Part 213 of the NREPA, MCL 324.21301 *et seq.*, shall have the same meaning in the Consent Judgment as in Part 201 and its rules.

V. PAYMENT OF COSTS

5.1 Within (30) days of the effective date of this Consent Judgment, G/CSC shall pay to the MDEQ the sum of \$40,000.00 to resolve all claims for Past Response Activity Costs and Future Response Activity Costs incurred by the MDEQ.

Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Revenue Control Unit
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
P.O. Box 30657
Lansing, Michigan 48909-8157

Via courier:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

To ensure proper credit, payments made pursuant to this Consent Judgment must be made by check referencing Coe's Cleaners Facility, G/CSC, Oakland County Circuit Court No. 07- 083146-CH, and the Remediation and Redevelopment Division Account Number RRD2254.

5.2 If G/CSC fails to pay the amount indicated in Paragraph 5.1 within the time frame set forth therein, G/CSC shall pay MDEQ interest on those unreimbursed costs at the rate provided in Section 20126a(3) of the NREPA. If G/CSC's payment is more than thirty (30) days past due, G/CSC shall also pay the MDEQ stipulated penalties of \$500.00 per day for every day of noncompliance with Paragraph 5.1.

5.3 Costs recovered pursuant to this Consent Judgment shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA, MCL 324.20108(3).

**VI. COVENANT NOT TO SUE AND
RESERVATION OF RIGHTS BY MDEQ**

6.1 In consideration of the payments to be made by G/CSC as provided in this Consent Judgment, except as specifically provided in this Section, the MDEQ covenants not to sue or to take administrative action against G/CSC for Past Response Activity Costs, Future Response Activity Costs, or injunctive relief related to known releases or threats of release from the Property or from liability under Part 201 or Part 213 of NREPA arising before the effective date of this Consent Judgment. This covenant not to sue shall take effect upon the MDEQ's receipt of the payments required by Paragraph 5.1 and any associated interest and penalties that may have accrued pursuant to Paragraph 5.2. This covenant not to sue shall not be construed as a covenant not to sue for any other liability that G/CSC may have to the State for the Facility. This covenant not to sue extends only to G/CSC and does not extend to any other person.

6.2 The covenant not to sue applies only to those matters specified in Paragraph 6.1. The MDEQ reserves the right to bring an action against G/CSC under state laws for any matters that are not set forth in Paragraph 6.1. The MDEQ 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 G/CSC with respect to all other matters.

6.3 The State has concluded that entry into this Consent Judgment is appropriate based in part on representations, information and documentation provided by G/CSC, related to its financial status. If the MDEQ subsequently determines that financial information or documents provided by G/CSC are substantially inaccurate concerning its financial status, the covenant not to sue in Paragraph 6.1 shall be void unless this Court rules that the MDEQ determination is arbitrary and capricious or otherwise not in accordance with the law.

6.4 MDEQ expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Consent Judgment.

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

6.6 Nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan to take, 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.

VII. COVENANT NOT TO SUE AND RESERVATION OF RIGHT BY G/CSC

7.1 G/CSC hereby covenants not to sue and agrees not to assert any claim or cause of action against the State of Michigan with respect to the Facility for matters arising from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement

from the Environmental Response Fund pursuant to Section 20119(5) of the NREPA, MCL 324.20119(5), or any other provision of law.

7.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to matters reserved by MDEQ in Paragraph 6.2, G/CSC agrees not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by MDEQ in the subsequent 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 VI (Covenant Not to Sue and Reservation of Rights by MDEQ) and Section VII (Covenant Not to Sue and Reservation of Rights by G/CSC).

VIII. CONTRIBUTION PROTECTION

Pursuant to Section 113(f)(2) of CERCLA, 42 USC § 9613(f)(2), and Section 20129(5) of NREPA, MCL 324.20129(5) and to the extent provided in Section VI (Covenant Not to Sue and Reservation of Rights), G/CSC shall not be liable for claims for contribution regarding matters addressed in this Consent Judgment. Entry of this Consent Judgment does not discharge the liability of any other person or persons liable under Section 107 of CERCLA, 42 USC § 9607, or Section 20126 of NREPA, MCL 324.20126. Pursuant to Section 20129(9) of the NREPA, MCL 324.20129(9), any action by G/CSC for contribution from any person not a party to this Consent Judgment shall be subordinate to the rights of the State if the State files an action pursuant to the NREPA or other applicable federal or state law.

IX. SEPARATE DOCUMENTS

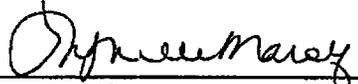
This Consent Judgment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

X. EFFECTIVE DATE

This Consent Judgment shall be effective upon the date that this Consent Judgment is entered with the Court. All dates for performance of activities under this Consent Judgment shall be calculated from the effective date of this Consent Judgment. For the purposes of this Consent Judgment, the term "day" shall mean a calendar day unless otherwise noted.

IT IS SO AGREED AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Lynelle Marolf, Acting Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
517-335-1104

Dated 10/21/09

Attorney for Fourth Party Plaintiff

Attorney for Fourth Party Defendant-G/CSC, Ltd.

Michael A. Cox
Attorney General

By: Todd B. Adams
Todd B. Adams (P36819)
Assistant Attorney General
Counter-Plaintiff MDEQ
Environment, Natural Resources,
and Agriculture Division
Lansing, MI 48909
(517) 373-7540

By: Sarah C. Lindsey
Sarah C. Lindsey (P68544)
Warner Norcross & Judd LLP
2000 Town Center, Ste. 2700
Southfield, MI 48075
(248) 784-5147

Dated: Oct. 20, 2009

Dated: Oct. 21, 2009

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 25 day of November
2009.

[Signature]
Honorable

ATTEST: A TRUE COPY

Deputy Court Clerk

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk, Register of Deeds
By: [Signature]
Deputy

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ATTACHMENTS

- A. Legal Description of J&S Company Property
- B. Cost Summary
- C. Well Location Map
- D. Existing Environmental Lien

CONSENT DECREE

The Third Party Plaintiff is J & S Company. The Third Party Defendant is the Michigan Department of Environmental Quality (MDEQ).

This Consent Decree (Decree) requires the performance of response activities and reimbursement of costs in accordance to this Decree at the J&S Company Property which is part of the Coe's Cleaner Facility in the Village of Milford, Michigan (hereafter "Facility"). J&S Company agrees not to contest the authority or jurisdiction of the Court to enter this Decree or any terms or conditions set forth herein.

The entry of this Decree by J&S Company is for settlement purposes only and is neither an admission or denial of liability with respect to any issue dealt with in this Decree 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 Decree 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, and welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission 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 ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137 and MCL 324.21323. This Court also has personal jurisdiction over J&S Company. J&S Company waives all objections and defenses that it may have with respect to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Decree 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 Decree and to resolve disputes arising under this Decree, including those that may be necessary for its construction, execution, or implementation, subject to Section XVI (Dispute Resolution).

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon the J&S Company and the State and their successors and assigns. Any change in the ownership, corporate, or legal status of the J&S Company, including, but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter the J&S Company's responsibilities under this Decree. To the extent that the J&S Company is the owner of a part or all of the Facility, J&S Company shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any

ownership rights. The J&S Company 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 the J&S Company may enter with respect to the performance of response activities pursuant to this Decree, the J&S Company is responsible for compliance with the terms of this Decree and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Decree.

2.3 The signatories to this Decree certify that they are authorized to execute this Decree and to legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

In entering into this Decree, it is the mutual intent of the Parties to: (a) perform Free Product abatement; (b) reimburse the State for Past and Future Response Activity Costs as described in Section XI (Reimbursement of Costs); (c) upon entry of this Decree, reduce the amount of the environmental lien recorded by the MDEQ on the Property, and upon the payment(s) required in Section XI (Reimbursement of Costs) discharge the lien; and (d) minimize litigation.

IV. DEFINITIONS

4.1 "Decree" means this Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications and schedules required by the Consent Decree which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Decree.

4.2 “Effective Date” means the date that the Court enters this Decree.

4.3 “Facility” means any area of the Property identified in Attachment A where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the 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 Property.

4.4 “Free Product” means a regulated substance in a liquid phase greater than 1/8 inch of measurable thickness, that is not dissolved in water, and that has been released into the environment.

4.5 “Future Response Activity Costs” means all costs incurred by the State that are not included in the attached Summary Report (Attachment B), to develop, oversee, enforce, monitor, and document compliance with this Decree, and to perform response activities required by this Decree, including, but not limited to, costs incurred to: monitor response activities at the Facility, observe and comment on field activities, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, to prepare and review cost reimbursement documentation; and MDEQ costs related to the MDEQ operation of the Village of Milford groundwater treatment system.

4.6 "Monitoring Staff" means a Qualified Consultant or persons employed or contracted by J&S Company and who are responsible for and trained by a Qualified Consultant to implement the work described in Paragraph 6.1 (Performance of Response Activities). The Parties agree that Fariborz Noori, president of J&S Company, may implement the work described in Paragraph 6.1 and will be included in the definition of the term "Monitoring Staff" upon being trained by a Qualified Consultant.

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

4.8 "Oversight Costs" means all costs incurred by the State to enforce compliance with this Decree and to perform the response activities required by this Decree that are not performed in compliance with this Decree by J&S Company; including, but not limited to, costs incurred to perform response activities pursuant to Section VIII (Emergency Response) and Paragraph 6.6 (Performance of Response Activities). Oversight Costs begin to accrue when the MDEQ provides written notice to J&S Company that J&S Company has not complied with the Decree and that Oversight Costs are beginning to accrue. Oversight costs will not be billed unless one or more violations exceed a 30-day period of cure. Oversight Costs may be billed once a 30-day cure period has been exceeded if any violation has not been cured. Oversight costs will continue until any and all violations of the Decree have been resolved and verified to the satisfaction of the MDEQ, in accordance with this Decree.

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

4.10 "Part 201 Rules" means the administrative rules promulgated under Part 201.

4.11 "Part 213" means Part 213, Leaking Underground Storage Tanks, of the NREPA.

4.12 "Party" means either the J&S Company or the State. "Parties" means the J&S Company and the State.

4.13 "Past Response Activity Costs" means response activity costs that the State incurred and paid during the dates set forth in the attached Summary Report (Attachment B).

4.14 "J&S Company" means J&S Company(s) and its successors.

4.15 "Property" means the property located at 505 North Main Street, Milford, Michigan, and described in the legal description provided in Attachment A.

4.16 "Qualified Consultant" means a qualified consultant as the term is defined in Part 215 Refined Petroleum Fund, of the NREPA.

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

4.18 "State" or "State of Michigan" means the Michigan Department of Attorney General (MDAG) and the MDEQ, and any authorized representatives acting on their behalf.

4.19 "Submissions" means all plans, reports, schedules, and other submissions that the J&S Company is required to provide to the State or the MDEQ pursuant to this Decree.

4.20 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Rules, shall have the same meaning in this Decree as in Parts 3 and 201 and the Part 201 Rules. Unless otherwise specified in this Decree, "day" means a calendar day.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Decree 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, the Part 201 Rules, Part 213, Part 111 (Hazardous Waste Management), of the NREPA, Part 211 (Underground Storage Tanks) of the NREPA, and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Decree.

5.2 This Decree does not relieve the J&S Company's obligations to obtain and maintain compliance with permits if such permits are necessary under applicable law.

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 J&S Company shall perform the following response activities:

(a) As soon as possible but no later than six (6) months after the Effective Date, J&S Company shall initiate Free Product abatement as described below.

(i) On a monthly basis Monitoring Staff shall monitor wells AMW-17 and CES-6 (Attachment C) for the presence of Free Product.

(A) If J&S Company is unable to use either of these wells, then J&S Company shall install a comparable replacement well in the approximate location of the well which J&S Company was unable to use. The

replacement well shall then be monitored as soon as possible after installation but no later than six months after the Effective Date in lieu of the well identified in Paragraph 6.1(a)(i).

(ii) If Free Product is present Monitoring Staff shall bail the Free Product from the well until such Free Product is removed. The Free Product shall be handled, stored and disposed of in accordance with state and federal law.

(iii) Monitoring Staff shall continue to monitor these wells monthly until no Free Product is detected in both wells over a period of 12 consecutive months or until J&S Company no longer holds an ownership interest in the Property.

(b) J&S Company shall notify the MDEQ Project Coordinator no less than seven (7) days prior to each monitoring/bailing event.

6.2 Status Reports

(a) The J&S Company shall provide to the MDEQ Project Coordinator monthly written status reports regarding response activities related to the implementation of this Decree. These status reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Decree during the specified reporting period, including obtaining access to monitor wells AMW-17 and CES-6.

(ii) 1) Whether Free Product was observed in either well; and 2) the amount of Free Product that was observed; 3) the amount of Free Product that was bailed; and 4) the name and location of the facility(ies) that was used for the off-site transfer, storage, and treatment or disposal of the Free Product.

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

(b)

(i) The first status report shall be submitted to the MDEQ as follows: J&S Company shall submit its first status report within four (4) months of the Effective Date or within fourteen (14) days of the first monitoring event, whichever is first. Thereafter, status reports shall be submitted every thirty (30) days, or within fourteen (14) days of each monthly monitoring event if free product abatement has been initiated.

(ii) J&S Company may discontinue submitting status reports after twelve consecutive months of observing no Free Product in both wells or after J&S Company no longer holds an ownership interest in the Property.

(iii) Pursuant to Paragraph 19.1 (Modifications), the MDEQ Project Coordinator may approve modification of the schedule for the submission of status reports.

6.3 Within fourteen (14) days of the date J&S Company no longer holds an ownership interest in the Property, J&S Company shall notify the MDEQ Project Coordinator and the MDEQ Chief of the Compliance and Enforcement Section identified in Paragraph 10.1A(3) of Section X (Project Coordinators and Communications/Notices). The notification shall include documentation of the property transaction.

6.4 Within thirty (30) days of the Effective Date, the MDEQ shall reduce the amount of the lien recorded on the Property under the provisions of Section 20138(1) of the NREPA (Attachment D) from \$834,657.16 to \$130,000.

6.5 Within fourteen (14) days of MDEQ's determination that J&S Company has fully complied with the terms of this Decree, the MDEQ shall send for recording a lien release of the environmental lien recorded on the Property pursuant to Paragraph 6.4.

6.6 The MDEQ's Performance of Response Activities

If the J&S Company ceases to perform the response activities required by this Decree, is not performing response activities in accordance with this Decree, or is 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 J&S Company, take over the performance of those response activities. 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 VIII (Emergency Response). If the MDEQ finds it necessary to take over the performance of response activities that the J&S Company is obligated to perform under this Decree, the J&S Company shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this paragraph shall be considered to be "Oversight Costs" and the J&S Company shall provide

reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 11.2 and 11.4 of Section XI (Reimbursement of Costs).

VII. ACCESS

7.1 Upon the Effective Date of this Decree, the J&S Company shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties are owned, controlled by, or available to the J&S Company. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, MDEQ staff 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 Decree or to otherwise fulfill any responsibility under state or federal 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 Decree at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or 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 the remedial action;

(g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents relating to the activities performed pursuant to this Decree;

(h) 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 Decree; and

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

7.2 To the extent that the Facility or any other property where the Free Product abatement is to be performed by the J&S Company under this Decree, is owned or controlled by persons other than the J&S Company, the J&S Company shall use its best efforts to secure from such persons written access agreements or judicial orders providing access to the monitor wells, or the property at which a replacement monitor well is to be installed, for the Parties and their authorized employees, agents, representatives, contractors, and consultants. 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 IX (*Force Majeure*).

7.3 Any lease, purchase, contract, or other agreement entered into by the J&S Company that transfers 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.

7.4 Any person granted access to the Facility pursuant to this Decree shall comply with all applicable health and safety laws and regulations.

VIII. EMERGENCY RESPONSE

8.1 If during the course of the J&S Company performing response activities pursuant to this Decree, J&S Company or Monitoring Staff causes a release or threat of release of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, the J&S Company shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation; and shall immediately notify the MDEQ Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, the J&S Company shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by the J&S Company shall be in accordance with all applicable health and safety laws and regulations.

8.2 Within twenty (20) days of notifying the MDEQ of such an act or event, the J&S Company 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 any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether the J&S Company notifies the MDEQ under this section, if such an act or event causes a release, threat of release, or

exacerbation, the MDEQ may: (a) require the J&S Company 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, or exacerbation; (b) require the J&S Company to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation.

IX. FORCE MAJEURE

9.1 The J&S Company shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this section.

9.2 For the purposes of this Decree, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of the J&S Company, of any person controlled by the J&S Company, or of the J&S Company's contractors, that delays or prevents the performance of any obligation under this Decree despite the J&S Company's "best efforts to fulfill the obligation." The requirement that the J&S Company exercises "best efforts to fulfill the obligation" includes the J&S Company 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 the J&S Company minimizes any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the

fault of the J&S Company, such as an act of God, untimely review of permit applications or submission by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by diligence of the J&S Company and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of the J&S Company.

9.3 The J&S Company shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by the J&S Company to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The J&S Company shall use its best efforts to avoid or minimize any such delay.

9.4 Failure of the J&S Company to comply with the notice requirements of Paragraph 9.3, above, shall render this Section IX void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 9.3.

9.5 If the parties agree that the delay or anticipated delay was beyond the control of the J&S Company, this may be so stipulated and the parties to this Decree may agree upon an appropriate modification of this Decree. If the parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance

with Section XIII (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of the J&S Company, and that all the requirements of this section have been met by the J&S Company, is on the J&S Company.

9.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the J&S Company qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

X. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

10.1 Each Party shall designate one or more Project Coordinators. Whenever notices, 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 Decree, or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Coordinator at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. 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 Decree, except those specified in Paragraphs 10.1A(2), and (3) below:

Terri Golla , Project Coordinator
Southeast Michigan District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
27700 Donald Court
Warren, Michigan 48092
Phone: 586-753-3813
Fax: 586-753-3859
E-mail address: gollat@michigan.gov

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

(2) For all matters specified in this Decree that are to be directed to the RRD Chief:

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

Via courier:
Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

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 10.1A(1).

(3) For all payments pursuant to Section XI (Reimbursement of Costs and Section XII (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:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

To ensure proper credit, all payments made pursuant to this Decree must reference the Coe's Cleaners Facility - J&S Company, Court Case No. 07-083146-CH, and the RRD Account Number RRD2256.

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 12.1A.(1), the Chief of the Compliance and Enforcement Section designated below, and the Assistant in Charge designated in Paragraph 10.1B.

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

Via courier:

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

B. As to the MDAG:

Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
Lansing, MI 48933
Phone: 517-373-7540
Fax: 517-373-1610

C. As to the J&S Company:

Fariborz Noori, President
J&S Company
1345 Hollywood Drive
Monroe, Michigan 48162
Phone: 734-242-1287
Fax: 734-242-2251
E-mail address: noorifrank@yahoo.com

With a copy to:

Jay A. Harter, Esquire
Knaggs, Harter, Brake & Schneider, P.C.
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
Phone: 517-622-0590
Fax: 517-622-8463
E-mail address: jharter@khbslaw.com

10.2 The J&S Company's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Decree for the J&S Company.

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

XI. REIMBURSEMENT OF COSTS

11.1 Within thirty (30) days of the sale of the Property, the J&S Company shall pay the MDEQ Twenty Two percent (22%) of the net sale proceeds or One Hundred and Thirty Thousand Dollars (\$130,000), whichever is greater, to resolve all State claims for Past Response Activity Costs and Future Response Activity Costs relating to matters covered in this Decree. Such payment shall also resolve all State claims for fines, penalties and natural resource damages that arose before the Effective Date of this Decree. At the time the payment is made to the MDEQ, documentation supporting that the payment is the greater of Twenty Two percent (22%) of the net sale proceeds or One Hundred and Thirty Thousand Dollars (\$130,000), shall be submitted to Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 10.1A.(3), and the Assistant in Charge at the address listed in Paragraph 10.1B. Payment shall be made pursuant to the provisions of Paragraph 11.3.

11.2 If J&S Company fails to perform its obligations under this Decree and the MDEQ provides a written notification to J&S Company that J&S Company has not complied with the Decree and the notification states that the Oversight Costs will begin to accrue, the J&S Company shall pay Oversight Costs. Payments shall be made within thirty (30) days of a demand for payment from the MDEQ according to the terms of Paragraph 11.3. The J&S Company 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 the J&S Company may result in the MDEQ incurring Oversight Costs.

11.3 All payments made pursuant to this Decree shall be by certified check, made payable to the "State of Michigan -Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 10.1A.(3) of Section X (Project Coordinators and Communications/Notices). The Coe's Cleaners Facility - J&S Company, the Court Case No. 07-083146-CH, and the RRD Account Number RRD2256 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 10.1A.(1), the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 10.1A.(3), and the Assistant in Charge at the address listed in Paragraph 10.1B. Costs recovered pursuant to this section and payment of stipulated penalties pursuant to Section XII (Stipulated Penalties), shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

11.4 If the J&S Company fails to make full payment to the MDEQ for Past Response Activity Costs and Future Response Activity Costs or Oversight Costs as specified in Paragraphs 11.1 and 11.2, interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which the J&S Company makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by the J&S Company to an MDEQ demand for reimbursement of costs, the J&S Company shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA.

XII. STIPULATED PENALTIES

12.1 The J&S Company shall be liable for stipulated penalties in the amounts set forth in Paragraphs 15.2 and 15.3 for failure to comply with the requirements of this Decree, unless excused under Section X (*Force Majeure*). "Failure to Comply" by the J&S Company shall include failure to submit status reports required by this Decree and failure to perform response activities in accordance with Paragraphs 6.1 and 6.2 of Section VI (Performance of Response Activities) of this Decree within the specified implementation schedules established by or approved under this Decree.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

12.3 Except as provided in Paragraph 12.2 and Section IX (*Force Majeure*) and Section XIII (Dispute Resolution), if the J&S Company fails or refuses to comply with any other term or condition of this Decree, the J&S Company shall pay the MDEQ stipulated penalties of One Hundred Dollars (\$100) a day for each and every failure or refusal to comply.

12.4 All 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.

12.5 Except as provided in Section XIII (Dispute Resolution), the J&S Company shall pay stipulated penalties owed to the State no later than thirty (30) days

after the J&S Company's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 11.3 of Section XI (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of the 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 the J&S Company makes 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 Decree.

12.6 The payment of stipulated penalties shall not alter in any way the J&S Company's obligation to perform the response activities required by this Decree.

12.7 If the J&S Company fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if the J&S Company violates this Decree. For any failure or refusal of the J&S Company to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not limited to, seeking civil fines, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to Section 20119(4) of the NREPA in the amount of three (3) times the costs incurred by the State as a result of the J&S Company's violation of or failure to comply with this Decree, and sanctions for contempt of court.

12.8 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 Decree.

XIII. DISPUTE RESOLUTION

13.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. However, the procedures set forth in this section shall not apply to actions by the State to enforce any of the J&S Company's obligations that have not been disputed in accordance with this section. Engagement of dispute resolution pursuant to this section shall not be cause for the J&S Company to delay the performance of any response activity required under this Decree.

13.2 The State shall maintain an administrative record of any disputes initiated pursuant to this section. The administrative record shall include the information the J&S Company provides to the State under Paragraphs 13.3 through 13.5, any Submissions or notices made pursuant to this Decree and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 13.3 through 13.5.

13.3 Any dispute that arises under this Decree with respect to the MDEQ's decision concerning requirements of this Decree shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and the J&S Company. A dispute shall be considered to have arisen on the date that a Party to this Decree receives a written Notice of Dispute from the other Party. 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. In the event, J&S Company objects to any MDEQ decision concerning the requirements of this Decree, J&S Company shall submit the Notice of Dispute within fourteen (14) days of receipt of the MDEQ's decision. The period of informal negotiations shall not exceed fourteen (14) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within fourteen (14) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to the J&S Company. In the absence of initiation of formal dispute resolution by the J&S Company under Paragraph 13.4, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

13.4 If the J&S Company and the MDEQ cannot informally resolve a dispute under Paragraph 13.3, the J&S Company may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed issues. This Request for Review must be submitted within fourteen (14) days of the J&S Company's receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 13.3. The Request for Review 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 Request for Review, the J&S Company will have thirty (30) days to submit a written rebuttal to the RRD Chief, with copy to the MDEQ Project Coordinator. Within twenty (20) days of the RRD Chief's receipt of the J&S Company's Request for Review

or the J&S Company's rebuttal, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to the J&S Company, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/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. In the absence of initiation of procedures set forth in Paragraph 13.5 by the J&S Company, the MDEQ's Statement of Decision shall be binding on the Parties.

13.5 The MDEQ's Statement of Decision pursuant to Paragraph 13.4, shall control unless, within thirty (30) days after J&S Company's receipt of the MDEQ's Statement of Decision, J&S Company files with this Court a motion for resolution of the dispute, which sets 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 Decree. Within thirty (30) day of J&S Company's filing of a motion asking the Court to resolve a dispute, MDEQ will file with the Court the administrative record that is maintained pursuant to Paragraph 13.2.

13.6 Any judicial review of the MDEQ's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are subject of this Decree, the J&S Company shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law or this Decree. In proceedings on any dispute, the J&S Company shall bear the burden of persuasion on factual issues under the applicable standards of review. If the

court finds that the administrative record is incomplete or inadequate, the court may consider supplemental materials. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

13.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of the J&S Company's failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that the J&S Company does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and the J&S Company shall pay stipulated penalties as set forth in Paragraph 12.5 of Section XII (Stipulated Penalties). The J&S Company shall not be assessed stipulated penalties or interest for disputes that are resolved in their favor. The MDAG, on behalf of the MDEQ, may take civil enforcement action against the J&S Company to seek the assessment of civil penalties or damages pursuant to Sections 20119(4) and 20137(1) of the NREPA or other statutory and equitable authorities, but shall not seek both stipulated penalties and civil penalties and damages pursuant to Sections 20119(4) and 20137(1) of the NREPA or other statutory or equitable authorities for the same violation.

13.8 Notwithstanding the provisions of this section and in accordance with Section XI (Reimbursement of Costs) and Section XII (Stipulated Penalties), the J&S Company 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 ongoing dispute resolution proceeding.

XIV. INDEMNIFICATION AND INSURANCE

14.1 The State of Michigan does not assume any liability by entering into this Decree. This Decree shall not be construed to be an indemnity by the State for the benefit of the J&S Company or any other person.

14.2 The J&S Company 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 that arise from, or on account of, acts or omissions of the J&S Company, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Decree.

14.3 The J&S Company shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all 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 the J&S Company and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

14.4 The State shall provide the J&S Company notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 14.2 or 14.3.

14.5 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 the J&S Company for the performance of activities required by this Decree. Neither the J&S Company nor any contractor shall be considered an agent of the State.

14.6 The J&S Company waives 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 the J&S Company and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

14.7 Prior to commencing any response activities pursuant to this Decree and for the duration of this Decree, the J&S Company shall secure and maintain comprehensive general liability insurance with limits of Five Hundred Thousand Dollars (\$500,000.00), combined single limit, which names the MDEQ, the MDAG and the State of Michigan as additional insured parties. If the J&S Company demonstrates 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, the J&S Company needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by the J&S Company, and prior to commencement of response activities pursuant to this Decree, the J&S Company shall provide the MDEQ Project Coordinator and the MDAG with certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the Coe's Cleaners Facility – J&S Company Property, the Court Case No. 07-083146-CH and the Remediation and Redevelopment Division. In addition, and for the duration of this Decree, the J&S Company 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 the J&S Company in furtherance of this Decree.

XV. COVENANTS NOT TO SUE BY THE STATE

15.1 In consideration of the actions that will be performed and the payments that will be made by the J&S Company under the terms of this Decree, and except as specifically provided for in this section and Section XVI (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action against the J&S Company for known releases from the Property for:

- (a) Free product removal as performed under this Decree.
- (b) Payment of Past Response Activity Costs and Future Response Activity Costs, excluding Oversight Costs, incurred and paid by the State as set forth in Paragraphs 11.1 and 11.4 of Section XI (Reimbursement of Costs) of this Decree.
- (c) Payment of Oversight Costs, if demanded by the MDEQ, incurred and paid by the State as set forth in Paragraph 11.2.
- (d) Payment of civil fines and penalties and any applicable interest for violations of Part 213 and/or Part 201 of the NREPA that arise from violations beginning before the Effective Date of the Decree.

15.2 The covenants not to sue under this Decree as described below shall take effect upon full compliance with this Decree:

- (a) The covenants not to sue for Free Product that is removed pursuant to this Decree.

(b) The covenants not to sue with respect to J&S Company's liability for the payment of Past Response Activity Costs, Future Response Activity Costs, and Oversight Costs, and any applicable interest.

(c) The covenants not to sue with respect to J&S Company's liability for the payment of civil fines and penalties and any applicable interest for violations of Part 213 and/or Part 201 of the NREPA.

15.3 If a new release is claimed by the MDEQ, the burden of proof will be as provided under Sections 20136(6) and 20129(1) of the NREPA.

15.4 The covenants not to sue extend only to the J&S Company and do not extend to any other person.

XVI. RESERVATION OF RIGHTS BY THE STATE

16.1 The covenants not to sue apply only to those matters specified in Paragraph 15.1 of Section XV (Covenants Not to Sue by the State). The State expressly reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against the J&S Company with respect to the following:

(a) The performance of response activities that are required to comply with this Decree.

(b) Past Response Activity Costs and Oversight Costs that the J&S Company is obligated to pay but has not paid in accordance with this Decree.

(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 Property or any monitor well included in the Free Product abatement described in Section VI (Performance of Response Activities).

(e) Criminal acts.

(f) Any matters for which the State is owed indemnification under Section XIV (Indemnification and Insurance) of this Decree.

(g) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Decree or any other violations of state or federal law for which J&S Company has not received a covenant not to sue.

16.2 The State reserves the right to take action against the J&S Company if it discovers at any time that any material information provided by the J&S Company prior to or after entry of this Decree was false or misleading.

16.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

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

16.5 In addition to, and not as a limitation of any provision of this Decree, the MDEQ and the MDAG retain all of their information-gathering, inspection, access and enforcement authorities and rights under Part 201 and any other applicable statute or regulation.

16.6 Failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Decree in a timely manner shall not:

(a) Provide or be construed to provide a defense for the J&S Company's noncompliance with any such term, condition, or requirement of this Decree.

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

16.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by the J&S Company in accordance with this Decree will assure protection of public health, safety, or welfare, or the environment.

16.8 Except as provided in Paragraph 15.1 of Section XV (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the 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.

XVII. COVENANT NOT TO SUE BY J&S COMPANY

17.1 The J&S Company hereby covenants 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 Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or

any other provision of law. This paragraph shall not apply to petitioning the court under Section XIII (Dispute Resolution).

17.2 The third-party complaint brought by J&S Company against the MDEQ in this case is dismissed with prejudice and without costs.

17.3 After the Effective Date of this Decree, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, the J&S Company agrees 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 any claims raised by the MDEQ or the MDAG 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 XV (Covenants Not to Sue by the State).

XVIII. CONTRIBUTION

Pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XV (Covenants Not to Sue by the State), the J&S Company shall not be liable for claims for contribution for the matters set forth in Paragraph 15.1 of Section XV (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The parties agree that entry of this Decree constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which J&S Company has, as of the Effective Date, resolved its liability to the MDEQ for the

matters set forth in Paragraph 15.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by J&S Company for contribution from any person that is not a Party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable state or federal law.

XIX. MODIFICATIONS

19.1 The Parties may only modify this Decree according to the terms of this section. The modification of any submission or schedule required by this Decree may be made only upon written approval from the MDEQ Project Coordinator.

19.2 Modification of any other provision of this Decree shall be made only by written agreement between the J&S Company's Project Coordinator, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG, and shall be entered with the Court.

XX. SEPARATE DOCUMENTS

The Parties may execute this Decree 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 AND DECREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Lynelle Marolf
Lynelle Marolf, Acting Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
517-335-1104

Dated 11/19/09

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

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Dated 19 Nov 2009

J&S COMPANY

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734-242-1287

Dated 11-19-2009

Jay A. Harter
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Knaggs, Harter, Brake & Schneider, P.C.
Attorneys for J&S Company
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590

Dated 11-19-09

IT IS SO ADJUDGED AND DECREED THIS 25th day of November, 2009.

STEVEN N. ANDREWS

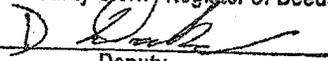
Honorable Steven N. Andrews

A TRUE COPY

RUTH JOHNSON

Oakland County Clerk Register of Deeds

By



Deputy

11/25/09

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MILFORD DOWNTOWN DEVELOPMENT
AUTHORITY, a public corporate body,
Plaintiff/Counter-Defendant,

Case No. 07-083146-CH

vs.

J & S COMPANY, a Michigan corporation,
Defendant/Counter-
Plaintiff/Third-Party Plaintiff,

Hon. Steven N. Andrews

vs.

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
an executive Department of the State of
Michigan,
Third-Party Defendant/
Cross-Plaintiff/Fourth-Party
Plaintiff,

vs.

G/CSC, LTD., a Michigan corporation, and
BP PRODUCTS NORTH AMERICA INC.,
A Maryland corporation,
Fourth-Party Defendants.

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ATTACHMENTS

1. Legal Description Of Former Amoco Property
2. Figure 1
3. MDEQ-Approved Restrictive Covenant For The Former Amoco Property
4. Figure 2
5. January 23, 2006 Revision Of Table 2 To December 10, 2004 Op Memo No. 1
6. January 23, 2006 Revision Of Table 3 To December 10, 2004 Op Memo No. 1
7. Figure 3
8. June 2008 Peer Review Draft RRD Op Memo No. 4
9. January 23, 2006 Revision Of Table 1 To December 10, 2004 Op Memo No. 1

CONSENT DECREE

This Consent Decree ("Decree") is entered into by and between the State of Michigan (the "State") and Fourth-Party Defendant and Cross-Defendant BP Products North America Inc. ("BP") in Oakland County Circuit Court Case No. 07-083146-CH (the "Action"). It resolves all claims against BP by the Michigan Department of Environmental Quality ("MDEQ") in the Action.

In the Action, the MDEQ contends, among other things, that releases of hazardous substances from the Former Amoco Property have commingled with releases of hazardous substances from the Former Speed-E-Mart Property and the Former Coe's Cleaners Property, and that it has incurred Response Activity Costs associated with the commingled plume, including, but not limited to, costs associated with the construction, maintenance, and operation of the Village of Milford Groundwater Treatment System ("GTS Costs").

This Decree requires the preparation and performance of the response activities described in Section VI (Performance of Response Activities) ("response activities"). The State and BP (the "Parties") agree not to contest the authority or jurisdiction of the Court to enter this Decree or any terms or conditions set forth herein.

The entry into this Decree by the Parties is for settlement purposes only and is neither an admission of liability with respect to any issue dealt with in this Decree or alleged in the Action nor an admission of any factual allegations or legal conclusions stated or implied in the Decree or Action. BP expressly denies any liability to any of the parties to the Action, including MDEQ.

The Court by entering this Decree 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, and welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission 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 ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this Action pursuant to MCL 324.20137, MCL 324.21323(1) and MCL 600.605. This Court also has personal jurisdiction over BP. The Parties waive all objections and defenses that they may have with respect to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Decree 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 Decree and to resolve disputes arising under this Decree, including those that may be necessary for its construction, execution, or implementation, subject to Section XVI (Dispute Resolution).

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon BP and the State and their successors and assigns. Any change in the ownership, corporate, or legal status of BP, including, but not limited to, any transfer of assets, or of real property or personal property, shall not in any way alter BP's responsibilities under this Decree. To the extent that BP is the owner of a part or all of the Facility, BP shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights.

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

2.3 The signatories to this Decree certify that they are authorized to execute this Decree and to legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

3.1 In entering into this Decree, the mutual objectives of the Parties are to:

- (a) Set forth the response activities to be performed by BP relating to the Facility, as described in Section VI (Performance of Response Activities) of this Decree;
- (b) Reimburse the State of Michigan for Response Activity Costs;
- (c) Reimburse the State of Michigan for Oversight Costs;
- (d) Dismiss with prejudice all MDEQ claims against BP in the Action and provide contribution protection pursuant to this Decree;
- (e) Resolve fully and finally any obligations or liability of BP under Part 201 or Part 213 regarding the Facility, except those obligations or liabilities arising under this Decree, and consistent with Section XVIII (Covenants Not to Sue by the State) and Section XIX (Reservations by the State); and
- (f) Minimize each Party's cost of litigation.

IV. DEFINITIONS

4.1 "BP" means BP Products North America Inc., and its legal successors and assigns.

4.2 "Decree" means this Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications and schedules required by the Consent Decree which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Decree.

4.3 "Effective Date" means the date that the Court enters this Decree.

4.4 "Facility" means any area of the Former Amoco Property, the Former Speed-E-Mart Property or the Former Coe's Cleaner's Property where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under

Part 213, Leaking Underground Storage Tanks, of the 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 a hazardous substance from the Former Amoco Property, Former Speed-E-Mart Property, or the Former Coe's Cleaners Property. "Facility" excludes any soil which contains a hazardous substance that did not result from activities at the Former Amoco Property, Former Speed-E-Mart Property, or the Former Coe's Cleaners Property, and it excludes any hazardous substances in soil, the existence of which, as of the Effective Date, has not been reported to the MDEQ, cannot be inferred based on data that are reasonably available to the MDEQ or is not otherwise known by the MDEQ. For purposes of this Consent Decree, "Facility" includes all groundwater which is or will be addressed by the existing Village of Milford Groundwater Treatment System (regardless of the source of any hazardous substances in such groundwater and regardless of whether such hazardous substances are known or unknown by the MDEQ as of the Effective Date) and it includes all groundwater containing hazardous substances released from the Former Amoco Property, Former Speed-E-Mart Property, or the Former Coe's Cleaners Property, even if that groundwater also contains hazardous substances from other sources (whether or not such hazardous substances are known or unknown by the MDEQ as of the Effective Date). For purposes of clarity, if a plume of groundwater containing hazardous substances released from such other existing sources commingles with groundwater containing hazardous substances released from the Former Amoco Property, Former Speed-E-Mart Property, or the Former Coe's Cleaners Property, then the commingled portion of such groundwater shall be included within the meaning of "Facility". A release of hazardous substances that results solely from acts or omissions first occurring after the effective date of this Consent Decree is not included in the definition of "Facility".

4.5 "Former Amoco Property" means the property located at 101 East Commerce Street, Milford, Michigan, and described in the legal description provided in Attachment 1.

4.6 "Former Coe's Cleaners Property" means the property located at 427 North Main Street, Milford, Michigan and formerly operated as Coe's Cleaners.

4.7 "Former Speed-E-Mart Property" means the property located at 505 North Main Street, Milford, Michigan, and formerly operated as Speed-E-Mart (currently operated as Village Food Mart).

4.8 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf. Environmental functions formerly assigned to the Michigan Department of Natural Resources (MDNR) were transferred to the MDEQ by Executive Order 1995-18, effective October 1, 1995.

4.9 "Milford House Restaurant" means the property identified by the Oakland County Register of Deeds as of July 15, 2009 as tax parcel identification number 16-11-104-021 located in the northeast quadrant of the intersection of North Main Street and East Commerce Street in the Village of Milford.

4.10 "Oversight Costs" means all costs incurred and paid by the State after the Effective Date and in accordance with law and this Decree, to develop, oversee, enforce, monitor, and document compliance with this Decree, and to perform response activities required by this Decree, including, but not limited to, costs incurred to: monitor response activities at the Former Amoco Property, 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 6.4 (The MDEQ's Performance of Response Activities) and Section IX (Emergency Response). Contractor costs are also considered Oversight Costs.

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

4.12 "Part 201 Rules" means the administrative rules promulgated under Part 201.

4.13 "Part 213" means Part 213, Leaking Underground Storage Tank, of the NREPA, MCL 324.21301 *et seq.*

4.14 "Party" means either BP or the State. "Parties" means BP and the State.

4.15 "Response Activity Costs" means all costs related to the Facility or this Decree that the State incurred or will incur (including but not limited to GTS Costs), except as otherwise provided in this Decree.

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 ("MDAG") and the MDEQ, and any authorized representatives acting on their behalf.

4.18 "Submissions" means all plans, reports, schedules, and other submissions that BP is required to provide to the State or the MDEQ pursuant to this Decree. "Submissions" does not include the notifications set forth in Section X (*Force Majeure*).

4.19 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; Part 213; or the Part 201 Rules, shall have the same meaning in this Decree as in Parts 3, 201 and 213 and the Part 201 Rules. Unless otherwise specified in this Decree, "day" means a calendar day.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations. To the extent that BP is an owner or operator of the Former Amoco Property or any portion thereof, BP shall comply with the requirements of Section 20116 and 20107a of Part 201. Other agencies may also be called upon to review the performance of response activities under this Decree.

5.2 This Decree does not relieve BP's obligations to obtain and maintain compliance with permits including, but not limited to, a National Pollutant Discharge Elimination System (NPDES) permit (if applicable).

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Response Activities

BP shall conduct the following response activities as described in detail below at the area depicted in Attachment 2 ("Figure 1"). All intrusive work described in Paragraph 6.1 shall be completed following applicable ASTM protocols. BP shall submit the submissions required in this Section to the MDEQ as provided for in Section XIII (Submissions and Approvals) and notifications required in this Section as provided for in Section XII (Project Coordinators and Communications/Notices).

(a) Within thirty (30) days of the Effective Date of this Decree, send for recording with the Oakland County Register of Deeds an MDEQ-approved Restrictive Covenant for the Former Amoco Property. Attached hereto as Attachment 3 is the MDEQ-approved Restrictive Covenant for the Former Amoco Property. Within forty five (45) days of the Effective Date, BP shall provide documentation acceptable to the MDEQ that demonstrates BP met the thirty (30) day time frame. BP shall also provide a true copy of the recorded Restrictive Covenant, including the liber and page number, to the MDEQ within one hundred and twenty (120) days after the Effective Date of the Decree.

(b) Determine the extent of the soil contamination off the Former Amoco Property attributable to the release(s) at the Former Amoco Property.

(i) Within 135 days of the Effective Date of the Decree, BP shall provide a report documenting that the following response activities were completed:

(1) BP will collect and obtain a laboratory analysis¹ of soil samples from one location off the Former Amoco Property, between AMW-33 and OW-1R, which is as close as practicable to the Milford House Restaurant building at that location. The location of this soil boring is depicted as soil boring #1 on Attachment 4 ("Figure 2"). The soil boring will be continuously sampled during drilling so that the lithology can be logged. A sample for laboratory analysis will be obtained from any horizons that exhibit a reading on a calibrated photoionization detector (PID) equal to or greater than 100 parts per million (ppm). PID readings will be collected by collecting two soil samples at each two foot

¹ Soil samples will be analyzed for the Soil/Groundwater Target Constituents according to EPA Method 8260B, following EPA 5035A protocols.

interval beginning at 8 feet below ground surface, where one sample is immediately preserved according to EPA Method 5035A protocols and the second sample is placed within a ziplock baggie, sealed and set aside for fifteen minutes prior to minimally unsealing the baggie and collecting a PID reading by inserting the end of the collection nozzle directly within the baggie and closing all possible baggie openings. At a minimum, four soil samples from 23-30 feet below ground surface (bgs) should be obtained for laboratory analysis. These soil samples will NOT be collected from the capillary fringe or saturated zone, but their lithology will be recorded. If the concentration of benzene, toluene, ethylbenzene, total xylenes, MTBE, naphthalene, 2-methylnaphthalene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, EDB, and 1,2-dichloroethane (collectively "Soil/Groundwater Target Constituents") detected in these soil samples is less than Residential Leaching to Drinking Water Protection Criteria ("RDWP Criteria")², then (i) the soil inhalation pathway will be deemed to be adequately addressed to the east of the Milford House Restaurant, (ii) BP will not be required to conduct any further soil sampling, response activities or soil corrective actions to the east of the Milford House Restaurant, and (iii) BP will not be required to conduct soil gas sample delineation to the east of the Milford House Restaurant. If the concentration of any of the Soil/Groundwater Target Constituents detected in these soil sample(s) from soil boring #1 exceeds RDWP Criteria, BP will undertake additional contingent soil sampling at the location(s) depicted as soil borings #2, #3, #4, #5 and #6 on Figure 2, analyzing four soil samples collected from 23-30 feet bgs from each of these locations for the presence of Soil/Groundwater Target Constituents according to EPA Method 8620B, following EPA Method 5035A protocols. If the analysis of a sample collected at these additional contingent locations does not detect any of the Soil/Groundwater Target Constituents at concentrations that exceed Residential Soil Inhalation Criteria ("RSI Criteria"), then the delineation of the soil off the Former Amoco Property shall be completed to RSI Criteria and MDEQ will not require any further delineation. Notwithstanding anything else in this paragraph to the contrary, if BP has a reasonable, good faith basis for

² The RDWP Criteria and the RSI Criteria applicable to this Decree are set forth in the January 23, 2006 revision of Table 2 to the December 10, 2004 Remediation and Redevelopment Division Operational Memorandum No. 1, which is included in Attachment 5 to this Decree.

concluding that an exceedence of RDWP Criteria from soil boring #1 is not related to Soil/Groundwater Target Constituents detected at AMW-33, then BP may petition the MDEQ to eliminate the obligation for BP to install soil borings in contingent locations under Paragraph 6.1(i)(2) and Paragraph 6.1(ii).

(ii) If the concentration of any of the Soil/Groundwater Target Constituents detected in the contingent locations exceeds RSI Criteria, then within 175 days of the Effective Date of the Consent Decree, BP shall submit a work plan for MDEQ approval to collect and analyze soil samples for the presence of Soil/Groundwater Target Constituents at additional locations.

(1) Within sixty (60) days of MDEQ approval of such work plan submitted in Paragraph 6.1(b)(ii), the work described in the approved work plan shall be completed. If the additional soil sampling has not fully delineated the area where the RSI Criteria are exceeded, then within forty-five (45) days of the completion of the work specified in the work plan, BP shall submit a revised work plan for MDEQ approval to collect and analyze soil samples for the presence of Soil/Groundwater Target Constituents at additional locations. BP shall continue to submit revised work plans for MDEQ approval and implement the approved work plans according to these time frames until the RSI Criteria are no longer exceeded. When RSI Criteria are no longer exceeded, delineation of soil contamination shall be complete east of the Milford House Restaurant.

(c) Address exposure pathways associated with soil contamination off the Former Amoco Property relating to Paragraph 6.1(b) described above.

(i) Within thirty (30) days of the completion of the response activities in Paragraph 6.1(b) that fully delineate the area where the RSI Criteria are exceeded, BP shall submit a report that documents the completion of those response activities. This report shall also document whether or not the existing soil concentrations exceed the Commercial II, III and IV Soil Inhalation Criteria ("Commercial Criteria").³ If the soil concentrations do not exceed the Commercial Criteria, the soil pathway shall be deemed to be adequately addressed east of

³ The Commercial II, III, and IV Soil Inhalation Criteria applicable to this Decree are set forth in the January 23, 2006 revision of Table 3 to the December 10, 2004 Remediation and Redevelopment Division Operational Memorandum No. 1, included in Attachment 6 to this Decree.

the Milford House Restaurant and the current soil vapor extraction remediation system ("SVE System") shall not need to be expanded. If the soil concentrations exceed the Commercial Criteria, then within one hundred and eighty (180) days after submitting the report, BP shall either expand the SVE System to include those areas where concentrations exceed the Commercial Criteria or submit to the MDEQ a survey of those areas and a proposed restrictive covenant in approvable form that is acceptable to all owners of property containing such areas and that adequately eliminates the Commercial Criteria exposure pathways in such areas. Within thirty (30) days of completing the response activities set forth in the preceding sentence, BP shall submit a report that documents those activities.

(d) Determine the extent of soil vapors of benzene, toluene, ethylbenzene, total xylenes, MTBE, naphthalene, 2-methylnaphthalene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, EDB and 1,2-dichloroethane (collectively "Soil Vapor Target Constituents"). Soil Vapor Target Constituents will be analyzed according the EPA Method TO-15.

(i) Within ninety (90) days of the Effective Date of the Decree, BP shall submit a report that documents that BP has installed the soil vapor monitoring points ("SVMPs") described in Paragraph 6.1(d)(ii) and (iii) at the locations shown on Attachment 7 ("Figure 3") and has obtained the first set of soil gas samples. Soil gas samples shall be obtained quarterly thereafter. The results of the first set of soil gas samples shall be submitted within 90 days of the Effective Date of the Decree or with the first progress report required pursuant to Paragraph 6.3(b), whichever is later, and shall be submitted with each subsequent Progress Report. The SVMPs will be used to investigate soil vapor conditions for the Soil Vapor Target Constituents and determine the influence of the SVE System at the Former Amoco Property and under the buildings off the Former Amoco Property to the east, northeast and north. Analytical results for the soil gas samples will be compared to the MDEQ Deep 5' Residential Acceptable Soil Gas Screening Concentrations as described in the June 2008 Peer Review Draft RRD Operational Memorandum No. 4, Attachment No. 4 ("Residential ASGSCs") (Attachment 8). If Commercial ASGSCs are developed by the MDEQ ("Com ASGSCs"), then the analytical data for these soil vapor gas samples will be compared to such Commercial ASGSCs instead of to the Residential ASGSCs. For the

remainder of this document, the term "ASGSCs" shall mean either Residential ASGSCs or Com ASGSCs, if MDEQ has developed them.

(ii) Within sixty (60) days after the Effective Date of this Decree, BP will initiate the investigation of Soil Vapor Target Constituents and the influence of the SVE System at the Former Amoco Property on the soils at the Former Amoco Property and in the soils under the buildings adjacent to the east (Milford House Restaurant), northeast (Perriez Catering) and north (Ice Cream Shop) by installing the following dedicated SVMPs which are depicted on Figure 3: SVMPs # 7, #8, #9 and #10 are to be installed inside the building at the Former Amoco Property to an approximate depth of five feet below the surface of the slab of the building; SVMPs #13, #14, and #15 are to be installed inside the basement of the Milford House Restaurant to an approximate depth of five feet below the surface of the basement floor; SVMPs #3, #4, and #5 are to be installed inside the building to the north that houses the Ice Cream Shop and the kitchen for the Milford House Restaurant to an approximate depth of five feet below the surface of the slab of the building; and SVMPs #1 and #2 are to be installed approximately five feet below ground surface ("bgs") outside between the Ice Cream Shop building and the Vacuum Cleaner business and northerly Dance Studio building.

(iii) BP will install an additional three dedicated SVMPs outside on the Former Amoco Property within the outdoor landscaped area. The SVMPs are to be installed at a depth of approximately five feet bgs at the locations depicted on Figure 3 as SVMPs #6, #11 and #12.

(iv) Soil vapor gas samples for the Soil Vapor Target Constituents will be collected utilizing gas tight canisters, then laboratory analyzed according to EPA Method TO-15.

(v) If soil gas samples during two consecutive sampling events indicate that concentrations of Soil Vapor Target Constituents exceed the ASGSCs at a SVMP location, BP shall determine whether such SVMP location is effectively delineated by another SVMP location with analytical results below ASGSCs. If so, BP shall document this determination submitted in a report to the MDEQ within sixty (60) days of the collection of the second sample event. If not, then within sixty (60) days of the required reporting of the second sample results, BP shall submit a supplemental Work Plan for MDEQ approval to

install SVMPs at additional locations. Provided, however, that if the SVMP location is requiring delineation east of the basement of the Milford House Restaurant and soil sample concentrations collected according to Paragraphs 6.1(b)(i) and 6.1(b)(ii) do not exceed the Commercial Soil/Groundwater Target Constituents or the area is subject to an MDEQ-approved restrictive covenant, then BP will not be required to conduct soil gas sample delineation in such locations.

(vi) If soil vapor gas sampling indicates that concentrations of the Soil Vapor Target Constituents are below ASGSCs for four consecutive quarters at a specific SVMP location but it is determined by soil vapor gas analytical results from other SVMP locations that the SVE System should be restarted as provided in Paragraph 6(h), BP will not be required to sample any SVMP showing concentrations of the Soil Vapor Target Constituents below the ASGSCs until such time as the SVE System is shut down and closure verification vapor monitoring begins.

(vii) Except as provided in Paragraph 6.1(d)(vi), soil vapor gas sampling will continue to be performed on a quarterly basis at each SVMP until the SVE System is shut down.

(viii) If soil gas samples obtained from quarterly sampling demonstrate that the extent of Soil Vapor Target Constituents that exceed ASGSCs have been delineated, then within sixty (60) days of the required reporting of those sample results, BP shall submit a report to the MDEQ demonstrating that the extent of Soil Vapor Target Constituents that exceed ASGSCs has been delineated.

(e) Verify that the SVE System is effectively addressing soil gas concerns.

(i) Within three hundred and twenty (320) days of making the demonstration in Paragraph 6.1(d)(viii), BP shall submit a report to the MDEQ that describes how the SVE System is effectively addressing Soil Vapor Target Constituents that exceed ASGSCs. BP may expand the existing SVE System or upgrade the existing SVE System to increase the radius of influence.

(ii) The effectiveness of the SVE System will be verified by the following:

(1) Magnehelic gauges will be utilized at each new SVMP point to monitor and evaluate the radius of influence of the SVE System during its operation.

(2) If a SVMP soil vapor gas sample exceeds ASGSCs for one or more of the Soil Vapor Target Constituents and the SVMP from which that sample was taken is measured for vacuum while the SVE System is being operated and the magnehelic gauge indicates no vacuum at that specific SVMP, then the SVE System will either be expanded to include the area surrounding the specific SVMP or the SVE System will be upgraded to increase the radius of influence.

(f) Verify that free product is not present on the groundwater and that indoor air risks from volatilization from the groundwater do not pose an unacceptable risk.

(i) Within forty-five (45) days of the Effective Date of the Decree, BP shall conduct annual groundwater monitoring of the Soil/Groundwater Target Constituents and check for the presence of free product at OW-1R, OW-3, OW-4R, OW-5R, AMW-15, AMW-16, AMW-22 (collectively referred to as the "Wells"), until such time that the SVE System is shut down, with one additional sampling event to be conducted six months after the SVE System is shut down. BP shall provide the MDEQ with the results from each sampling event within sixty (60) days of the date the samples were collected.

(g) Maintain and operate the SVE System. BP is currently operating an SVE System. BP shall continue to operate and maintain the SVE System until both of the following have been met:

(i) Free product is not present and the Soil/Groundwater Target Constituents in the groundwater do not exceed Commercial II, III and IV Groundwater Volatilization to Indoor Air Criteria ("CGVIIC")⁴ in the Wells. If the groundwater in the Wells during the monitoring event occurring six months after the SVE System shut down contains free product or exceeds CGVIIC, the SVE System must be restarted and verification sampling requirements set forth above will be repeated. If no groundwater samples from the Wells exceed the CGVIIC, the Wells shall be decommissioned in accordance with Paragraph 6.1(h) and (j) below and applicable state laws.

⁴The Commercial II, III, and IV Groundwater Volatilization to Indoor Air Criteria applicable to this Decree are set forth in the January 23, 2006 revision of Table 1 to the December 10, 2004 Remediation and Redevelopment Division Operational Memorandum No. 1, included in Attachment 9 to this Decree.

(ii) Soil Vapor Target Constituents in all of the SVMPs are less than the ASGSCs.

(h) BP will collect quarterly soil gas samples from all SVMPs after the SVE System has shut down in accordance with Paragraph 6.1(g). When the soil vapor gas sample analytical data are below ASGSCs for the SVMP Target Constituents for four consecutive quarters after the SVE System is shut down, all closure requirements for the soil pathway will be deemed to be fully met and BP will not be required to conduct any additional verification soil or soil gas sampling. Once these closure requirements have been deemed met, BP may properly abandon the SVE System and SVMPs, and any monitoring wells not transferred to the MDEQ in accordance with Paragraph 6.1(j). If sampling prior to four consecutive quarters after SVE System shutdown indicates soil gas vapors for one or more of the Soil Vapor Target Constituents have increased above the ASGSCs specified above, BP will restart the SVE System and repeat the shutdown and verification sampling requirements.

(i) When the soil and groundwater criteria have been met as described in Paragraph 6.1(g)(i) and (ii) and Paragraph (h) above, and the remaining obligations in this Paragraph 6 and Section XIV (Reimbursement of Costs) have been met, BP shall submit the documentation necessary to demonstrate that BP has completed the response activities described in this Paragraph 6 and achieved compliance with the requirements of Paragraph 6.1 of this Decree.

(j) BP shall maintain and provide the MDEQ with access to the existing monitoring wells installed by BP at the Facility until the MDEQ approves the submission in Paragraph 6.1(i) of this Decree, unless the MDEQ otherwise approves the removal or transfer in ownership of a monitor well(s).

6.2 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a response activity Work Plan Submission is necessary to comply with this Decree, the MDEQ may request that such modification be incorporated into a response activity Work Plan previously approved by the MDEQ under this Decree. BP may request that the MDEQ consider a modification to an approved Work Plan Submission by submitting such request for modification along with the proposed change in the Work Plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by BP 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. Any Work Plan modifications or any new Work Plans shall be developed in accordance with the applicable requirements of this section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XIII (Submissions and Approvals).

(b) Upon receipt of the MDEQ's approval, BP shall perform the response activities specified in a modified Work Plan or a new Work Plan in accordance with the MDEQ-approved implementation schedules.

6.3 Progress Reports

(a) BP 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 Decree that were not previously provided in Paragraph 6.1. These progress reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Decree during the specified reporting period. This shall include documentation that the compliance dates in this Decree have been met.

(ii) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Decree received by BP, its employees, or authorized representatives during the specified reporting period.

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how BP proposes to resolve those issues and the schedule for resolving the issues.

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

(v) A description of data collection and other activities scheduled for the next reporting period.

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

(b) The first progress report shall be submitted to the MDEQ within forty-five (45) days after the end of the first calendar quarter following the Effective Date of this

Decree, and such report shall cover activities, if any, during the first calendar quarter following the Effective Date of this Decree. Thereafter, progress reports shall be submitted quarterly, within forty-five (45) days after the end of each quarter, covering activities during that quarter. Pursuant to Paragraph 22.1 of Section XXII (Modifications), the MDEQ may approve modification of the schedule for the submission of progress reports.

6.4 The MDEQ's Performance of Response Activities

If BP ceases to perform the response activities required by this Decree, is not performing response activities in accordance with this Decree, or is 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 sixty (60) days prior written notice to BP, take over the performance of those response activities. The MDEQ, however, is not required to provide sixty (60) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section IX (Emergency Response). If the MDEQ finds it necessary to take over the performance of response activities that BP is obligated to perform under this Decree, BP shall reimburse the State for its costs lawfully incurred to perform these response activities, in accordance with this Decree, including any accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. BP shall provide reimbursement of these costs and any accrued interest to the State in accordance with Section XIV (Reimbursement of Costs).

VII. ACCESS

7.1 Upon the Effective Date of this Decree, BP shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties are owned or controlled by BP. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, MDEQ staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter such areas of the Facility and associated properties for the purpose of conducting any activity to which access is required for the implementation of

this Decree or to otherwise fulfill any responsibility under state or federal 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 Decree at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting, response activities at the Facility or associated properties;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the remedial activities;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents of BP;
- (h) 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 Decree; and
- (i) Assuring the protection of public health, safety, and welfare, and the environment.

7.2 To the extent that the Facility, or any other property where the response activities are to be performed by BP under this Decree, is owned or controlled by persons other than BP, BP shall use its best reasonable efforts to secure from such persons written access agreements or judicial orders providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. BP shall provide the MDEQ with a copy of each written access agreement or judicial order secured pursuant to this section. If BP is not able to secure access to a property within forty-five (45) days of a request for access, BP shall take judicial action to secure such access pursuant to MCL 324.20135a. If judicial action is required to obtain access, BP shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after BP's receipt of the MDEQ's approval of the work plan for which such access is needed. If BP has not been able to obtain access within sixty (60) days

after filing judicial action, BP shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access 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 X (*Force Majeure*).

7.3 Any lease, purchase, contract, or other agreement entered into by BP that transfers to another person a right of control over the Facility or a portion of the Facility shall contain a provision preserving for the MDEQ and their authorized representatives the access provided under this section and Section XI (Record Retention/Access to Information).

7.4 Any person granted access to the Facility pursuant to this Decree shall comply with all applicable health and safety laws and regulations.

7.5 If BP has access to any portion of the Facility through contract or deed restriction as of the Effective Date of this Decree, nothing in this Decree shall require BP to undertake any efforts to extend such access rights to the MDEQ or to otherwise secure access to such portions of the Facility for the MDEQ. However, for such situations, BP shall use its best reasonable efforts to obtain property owner permission for authorized representatives of the MDEQ to accompany BP during BP's response activities and to obtain split samples, if requested by the MDEQ.

VIII. SAMPLING AND ANALYSIS

8.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the quality assurance requirements specified in the MDEQ-approved work plans.

8.2 BP, or its consultants or subcontractors, shall provide the MDEQ a ten (10)-day notice prior to any sampling activity to be conducted pursuant to this Decree 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 or reasonable, BP, or its 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, BP may forego the ten (10)-day notification period for that particular sampling event.

8.3 BP 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 Decree, including environmental sampling and analytical data obtained pursuant to a permit or other relevant authorities. These results shall be included in the progress reports set forth in Paragraph 6.3.

8.4 For the purpose of quality assurance monitoring, BP shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by BP in implementing this Decree, to the extent access is controlled by BP.

IX. EMERGENCY RESPONSE

9.1 If during the course of BP performing response activities pursuant to this Decree, BP, or any of its authorized agents, contractors, or subcontractors, causes a release or threat of release of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, BP shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation, and shall immediately notify the MDEQ Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, BP shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by BP shall be in accordance with all applicable health and safety laws and regulations.

9.2 Within ten (10) days of notifying the MDEQ of such an act or event described in Paragraph 9.1, BP 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 any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether BP notifies the MDEQ under this section, if BP or any of its authorized agents, contractors, or subcontractors while implementing the

response activities causes a release, threat of release, or exacerbation, the MDEQ may:

- (a) require BP 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, or exacerbation;
- (b) require BP to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation;
- or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation.

X. FORCE MAJEURE

10.1 BP shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this section.

10.2 For the purposes of this Decree, a "Force Majeure" event is defined as any event arising from causes beyond the control of and without the fault of BP, of any person controlled by BP, or of BP's contractors that delays or prevents the performance of any obligation under this Decree despite BP's "best efforts to fulfill the obligation." The requirement that BP exercise "best efforts to fulfill the obligation" includes BP 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 BP minimizes any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of BP, such as an act of God, untimely review of permit applications or Submission by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by diligence of BP and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of BP.

10.3 BP shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this

Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by BP to prevent or minimize the delay, and the timetable by which those measures shall be implemented. BP shall use its best efforts to avoid or minimize any such delay.

10.4 Failure of BP to comply with the notice requirements of Paragraph 10.3, above, shall render this Section X void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3.

10.5 If the Parties agree that the delay or anticipated delay was beyond the control of BP, this may be so stipulated and the Parties to this Decree may agree upon an appropriate modification of this Decree. If the Parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVI (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of BP, and that all the requirements of this section have been met by BP, is on BP.

10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that BP qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. RECORD RETENTION/ACCESS TO INFORMATION

11.1 BP shall preserve and retain, for a period of five (5) years after MDEQ approval of the documentation submitted by BP pursuant to Paragraph 6.1(i) of Section VI (Performance of Response Activities), all non-privileged 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 Decree, including records that are maintained or generated by representatives, consultants, or contractors of BP. However, if BP chooses to perform a remedial activity that relies on the cleanup criteria established under Section 20120a(1)(f)-(g)

or (2) of the NREPA and that provides for land use or resource use restrictions, BP shall retain any records pertaining to those land use or resource use restrictions in perpetuity or until the MDEQ determines that land use and resource use restrictions are no longer needed. After the five (5)-year period of document retention as described above, BP shall notify the MDEQ at least ninety (90) days prior to BP's destruction of any documents that are not required to be held in perpetuity. If the MDEQ requests in writing within the ninety (90)-day period that the documents be delivered to the MDEQ, BP shall do so. If the MDEQ does not timely request in writing such delivery, BP may destroy the documents following expiration of the ninety (90)-day period. BP's notification shall be accompanied by a copy of this Decree and sent to the address listed in Section XII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

11.2 Upon request, and at the MDEQ's cost, BP shall provide to the MDEQ copies of all non-privileged documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of response activities or other requirements of this Decree, 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. Upon request, BP shall also make available to the MDEQ, upon reasonable notice, BP's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

11.3 If BP submits documents or information to the MDEQ that BP believes are entitled to protection as provided for in Section 20117(10) of the NREPA, BP may designate in that submission the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the MDEQ may provide the information to the public without further notice to BP. Information described in Section 20117(11)(a)-(h) of the NREPA shall not be claimed as confidential or privileged by BP. Information or data generated under this Decree shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

XII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

12.1 Each Party shall designate one or more Project Coordinators. Whenever notices, 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 Decree, or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Coordinator at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. 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 Decree, except those specified in Paragraphs 12.1A(2), (3), and (4) below:

Terri Golla, Project Coordinator
MDEQ Remediation and Redevelopment Division
Southeast Michigan District Office
27700 Donald Court
Warren, Michigan 48092
Telephone No. 586-753-3813
Fax: 586-753-3859

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

(2) For all matters specified in this Decree that are to be directed to the RRD Chief:

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

Via courier:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

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 12.1A(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 VI (Performance of Response Activities); for questions concerning Record Retention pursuant to Section XI (Record Retention/Access to Information); and for questions concerning financial matters pursuant to Section VI (Performance of Response Activities):

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

Via courier:

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

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 12.1A(1).

(4) For all payments pursuant to Section XIV (Reimbursement of Costs) and Section XV (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:
Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

To ensure proper credit, all payments made pursuant to this Decree must reference the Coe's Cleaner's Facility, Court Case No.07-083146-CH, and the RRD Account Number RRD2255.

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 12.1A.(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 12.1A.(3), and the Assistant in Charge designated in Paragraph 12.1B.

B. As to the MDAG:

Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
Lansing, MI 48933
Phone: 517-373-7540
Fax: 517-373-1610

C. As to BP:

John Frankenthal
Atlantic Richfield Company
Remediation Management
28100 Torch Parkway, MC-2S
Warrenville, IL 60555-3938
Phone: 630-836-7123
Fax: 630-836-6336
E-mail address: john.frankenthal@bp.com

With a copy to:

Jessica L. Gonzalez
BP America Inc.
4101 Winfield Road, MC 4 West
Warrenville, IL 60555
Phone: 630-821-2396
Fax: 630-821-3406
E-mail: Jessica.gonzalez@bp.com

12.2 BP's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Decree for BP.

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

XIII. SUBMISSIONS AND APPROVALS

13.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and shall be delivered to the MDEQ in accordance with the schedule set forth in this Decree. All Submissions delivered to the MDEQ pursuant to this Decree shall include a reference to the Coe's Cleaners Facility and Court Case No. 07-083146-CH. All Submissions delivered to the MDEQ for approval shall also be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: *"Disclaimer: This document is a DRAFT document that has not*

received approval from the Michigan Department of Environmental Quality (MDEQ). This document was prepared pursuant to a court Consent Decree. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

13.2 After receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Decree, the MDEQ District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify BP of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, BP 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", deleting the disclaimer referenced in Paragraph 13.1.

13.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 13.2(c), BP 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, BP 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 specified for BP to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and the MDEQ demands payment of stipulated penalties pursuant to Section XV (Stipulated Penalties). The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 13.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise BP 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 BP delivers an approvable Submission.

13.4 If any initial Submission contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by BP to deliver an acceptable Submission that complies with this Decree, the MDEQ will notify BP of such and will deem BP to be in violation of this Decree. Stipulated penalties, as set forth in Section XV (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to the MDEQ.

13.5 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Decree shall be considered part of this Decree and are enforceable pursuant to the terms of this Decree. If there is a conflict between the requirements of this Decree and any Submission or an attachment to a Submission, the requirements of this Decree shall prevail.

13.6 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 any Submission or warrants that the Submission comports with law.

13.7 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by BP shall not be construed as relieving BP of its obligation to obtain any formal approval required under this Decree.

XIV. REIMBURSEMENT OF COSTS

14.1 Within sixty (60) days of the Effective Date of this Decree, BP shall pay the MDEQ One Hundred and Twenty Thousand Dollars (\$120,000) to resolve all State claims for Response Activity Costs incurred for work undertaken by or on behalf of the State prior to the Effective Date. Payment shall be made pursuant to the provisions of Paragraph 14.4.

14.2 BP shall reimburse the State for all Oversight Costs claimed by the State in accordance with this Decree. Following the Effective Date of this Decree, the MDEQ will provide to BP within sixty (60) days after the end of each calendar year a summary report ("Summary Report") that identifies all Oversight Costs claimed during the prior calendar year. Each 12 month period shall be considered an "Annual Oversight Cost Period". Any such Summary Report will set forth, with reasonable specificity, the nature of the costs incurred. Except as provided by Section XVI (Dispute Resolution), BP shall reimburse the MDEQ for such costs within forty-five (45) days of BP's receipt of a written Summary Report from the MDEQ. BP shall not be obligated to reimburse the State for any Oversight Costs during an Annual Oversight Cost Period that exceed \$10,000 per year ("Annual Oversight Cost Cap"), but the MDEQ may include in the Summary Report a request for reimbursement of Oversight Costs for more than one Annual Oversight Cost Period, such that BP's reimbursement obligation may relate to more than one Annual Oversight Cost

Period on a cumulative basis. However, Oversight Costs incurred by the State to perform response activities pursuant to Paragraph 6.4 and Section IX of this Decree shall not be included in the amount subject to the Annual Oversight Cost Cap. Further, Oversight Costs incurred by the State to enforce BP's obligations under this Decree shall not be included in the amount subject to the Annual Oversight Cost Cap if the State prevails on any such enforcement matter. For the purpose of this paragraph, enforcement costs are all Oversight Costs associated with a letter identifying items of noncompliance with this Decree, including non-payment of Oversight Costs.

14.3 BP shall have the right to request a full and complete accounting of all State demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers.

14.4 All payments made pursuant to this Decree shall be by corporate check, made payable to the "State of Michigan -Environmental Response Fund," and shall be sent by first class mail or via courier to the Revenue Control Unit at the address listed in Paragraph 12.1A.(4) of Section XII (Project Coordinators and Communications/Notices). The Coe's Cleaners Facility, the Court Case No. 07-083146-CH, and the RRD Account Number RRD2255 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 12.1A.(1), the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 12.1A.(3), and the Assistant in Charge at the address listed in Paragraph 12.1B. Payment pursuant to this section and payment of stipulated penalties pursuant to Section XV (Stipulated Penalties) shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

14.5 If BP fails to make full payment to the MDEQ for Response Activity Costs or Oversight Costs as specified in Paragraphs 14.1 and 14.2, interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which BP makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by BP to an MDEQ demand for reimbursement of costs, BP shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA.

14.6 A demand by the MDEQ for BP's payment of Response Activity Costs associated with the State's performance of actions under Paragraph 9.2(c) is subject to the dispute resolution procedures set forth in Section XVI (Dispute Resolution).

XV. STIPULATED PENALTIES

15.1 BP shall be liable for stipulated penalties in the amounts set forth in Paragraphs 15.2 and 15.3 for failure to comply with the requirements of this Decree, unless excused under Section X (*Force Majeure*). "Failure to Comply" by BP shall include failure to complete Submissions and notifications as required by this Decree and failure to perform response activities in accordance with each element of Paragraph 6.1 of Section VI (Performance of Response Activities), MDEQ-approved Work Plans, and this Decree within the specified implementation schedules established by or approved under this Decree.

15.2 The following stipulated penalties shall accrue per violation per day for any violation of any requirement set forth in Section VI (Performance of Response Activities):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1 st through 14 th day
\$500.00	15 th through 30 th day
\$1,000	31 st day and beyond

15.3 Except as provided in Paragraph 15.2 and Section X (*Force Majeure*) and Section XVI (Dispute Resolution), if BP fails or refuses to comply with any other term or condition of this Decree, BP shall pay the MDEQ stipulated penalties of Two Hundred and Fifty Dollars (\$250.00) a day for each and every failure or refusal to comply.

15.4 All 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 Decree.

15.5 Except as provided in Section XVI (Dispute Resolution), BP shall pay stipulated penalties owed to the State no later than sixty (60) days after BP's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 14.5 of Section XIV (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the sixty (60)-day period on the day after payment was due until the date upon which BP makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within sixty (60) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Decree.

15.6 The payment of stipulated penalties shall not alter in any way BP's obligation to perform the response activities required by this Decree.

15.7 If BP fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if BP violates this Decree. For any failure or refusal of BP to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not limited to, seeking civil fines, injunctive relief, the specific performance of response activities, reimbursement of costs, and sanctions for contempt of court.

15.8 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 Decree.

XVI. DISPUTE RESOLUTION

16.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. However, the procedures set forth in this section shall not apply to actions by the State to enforce any of BP's obligations that have not been disputed in accordance with this section. Engagement of dispute resolution pursuant to this section shall

not be cause for BP to delay the performance of any response activity required under this Decree.

16.2 The State shall maintain an administrative record of any disputes initiated pursuant to this section. The administrative record shall include all documents and information provided to the State under Paragraphs 16.3 through 16.5, all documents and information the MDEQ and the State rely on to make the decisions set forth in Paragraphs 16.3 through 16.5, and all non-privileged documents and information provided by the MDEQ to each decision-maker.

16.3 Except for undisputable matters identified in Paragraph 16.1, any dispute that arises under this Decree shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and BP. A dispute shall be considered to have arisen on the date that a Party to this Decree receives a written Notice of Dispute from the other Party. 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. In the event BP objects to any MDEQ decision concerning the requirements of this Decree that is subject to dispute under this Section, BP shall submit the Notice of Dispute within twenty-one (21) days of receipt of the MDEQ's notice of disapproval, modification or decision. The period of informal negotiations shall not exceed twenty-one (21) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty-one (21) days or within the agreed-upon time period, the RRD Southeast Michigan District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to BP. In the absence of initiation of formal dispute resolution by BP under Paragraph 16.4, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

16.4 If BP and the MDEQ cannot informally resolve a dispute under Paragraph 16.3, BP may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed issues. This Request for Review must be submitted within twenty-one (21) days of BP's receipt of the Statement of Position issued by the MDEQ pursuant to

Paragraph 16.3. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting BP's position; and supporting documentation upon which BP bases its position. When the RRD Chief receives a Request for Review, the District Supervisor will have twenty-one (21) days to submit a written rebuttal to the RRD Chief, with copy to BP. Within twenty-one (21) days of the RRD Chief's receipt of the District Supervisor's rebuttal, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to BP, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/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. In the absence of initiation of procedures set forth in Paragraph 16.5 by BP, the MDEQ's Statement of Decision shall be binding on the Parties.

16.5 The MDEQ's Statement of Decision pursuant to Paragraph 16.4 shall control unless, within twenty-one (21) days after BP's receipt of the MDEQ's Statement of Decision, BP files with this Court a motion for resolution of the dispute, which sets 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 Decree. Within thirty (30) days of BP's filing of a motion asking the Court to resolve a dispute, MDEQ will file with the Court the administrative record that is maintained pursuant to Paragraph 16.2.

16.6 Any judicial review of the MDEQ's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are subject of this Decree, BP shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law or this Decree. In proceedings on any dispute, BP shall bear the burden of persuasion on factual issues under the applicable standards of review. If the court finds that the administrative record is incomplete or inadequate, the court may consider supplemental material. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

16.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of BP's failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event and to the extent that BP does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and BP shall pay stipulated penalties as set forth in Paragraph 15.5 of Section XV (Stipulated Penalties). BP shall not be assessed stipulated penalties for disputes that are resolved in its favor. The MDEQ will not seek both stipulated penalties and statutory fines for the same violations.

16.8 Notwithstanding the provisions of this section and in accordance with Section XIV (Reimbursement of Costs) and Section XV (Stipulated Penalties), BP 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 ongoing dispute resolution proceeding.

XVII. INDEMNIFICATION AND INSURANCE

17.1 The State of Michigan does not assume any liability by entering into this Decree. This Decree shall not be construed to be an indemnity by the State for the benefit of BP or any other person.

17.2 BP 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 that arise from, or on account of, acts or omissions of BP, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Decree, except to the extent that any claims or causes of action arise from the grossly negligent acts or omissions, or willful misconduct, of the State of Michigan or any of its departments, agencies, officials, agents, employees, contractors or representatives.

17.3 BP shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all 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 BP and any person for the

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 BP in furtherance of this Decree.

XVIII. COVENANTS NOT TO SUE BY THE STATE

18.1 In consideration of the actions that will be performed and the payments that will be made by BP under the terms of this Decree, and except as specifically provided for in this section and Section XIX (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action against BP for:

- (a) Performance of response activities relating to the Facility, except as required under this Decree.
- (b) Payment of Response Activity Costs, except as required under this Decree.
- (c) Payment of Oversight Costs, except as required under this Decree.
- (d) Payment of civil fines or penalties and any applicable interest for violations of Parts 201 and 213 of the NREPA related to the Facility based on acts or omissions allegedly occurring prior to the Effective Date.
- (e) Any obligations or liability under Part 201 or Part 213 regarding the Facility, except as required under this Decree.

18.2 The covenants not to sue shall take effect under this Decree as follows:

- (a) With respect to BP's liability for performance of response activities relating to the Facility, except for the response activities required under this Decree, the covenant not to sue shall take effect upon MDEQ approval of BP's submission under Paragraph 6.1(i) of Section VI (Performance of Response Activities) that the response activities required under this Decree have been achieved.
- (b) With respect to BP's liability for payment of Response Activity Costs, the covenants not to sue shall take effect upon the MDEQ's receipt of payments pursuant to Section XIV (Reimbursement of Costs), including any applicable interest that has accrued pursuant to Paragraph 14.1 and 14.5 of this Decree.

(c) With respect to BP's liability for Oversight Costs, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs, including any applicable interest that has accrued pursuant to Paragraph 14.2 and 14.5 of this Decree.

(d) With respect to BP's liability for the payment of civil fines or penalties for violations of Parts 201 and 213 of the NREPA related to the Facility based on acts or omissions allegedly occurring prior to the Effective Date, the covenant not to sue shall take effect upon the MDEQ approval of BP's submission under Paragraph 6.1(i) of Section VI (Performance of Response Activities) that the response activities required under this Decree have been achieved.

(e) With respect to BP's liability or obligations under Part 201 or Part 213 regarding the Facility (except obligations or liabilities arising under this Decree), the covenant not to sue shall take effect on the Effective Date of this Decree.

18.3 The covenants not to sue extend only to BP and do not extend to any other person.

XIX. RESERVATION OF RIGHTS BY THE STATE

19.1 The covenants not to sue apply only to those matters specified in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State). The State expressly reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against BP with respect to the following:

(a) The performance of response activities that are required to comply with this Decree.

(b) Response Activity Costs and Oversight Costs that BP is obligated to pay under this Decree, but has not paid in accordance with this Decree.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances 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 Former Amoco Property.

(e) A lapse or violation of the Restrictive Covenant recorded pursuant to this Decree. This includes modifying or revoking the Restrictive Covenant without MDEQ

performance of response activities at the Facility, including any claims on account of construction delays.

17.4 The State shall provide BP with written notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 17.2 or 17.3. The State shall provide to BP written notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 17.2 or 17.3. Any such notice shall include all documentation available to the MDEQ supporting such claim, and it shall be provided to BP as promptly as reasonably practicable after the State becomes aware of such claim. If the State fails to provide notice and that failure materially impairs BP's ability to defend against such claim, BP shall be relieved to the extent of the material impairment of any obligation to indemnify or hold harmless pursuant to Paragraphs 17.2 or 17.3.

17.5 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 BP for the performance of activities required by this Decree. Neither BP nor any contractor shall be considered an agent of the State.

17.6 BP waives 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 BP and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

17.7 Prior to commencing any response activities pursuant to this Decree and for the duration of such response activities, BP shall require its contractors to secure and maintain comprehensive general liability insurance with limits of ONE MILLION DOLLARS (\$1,000,000.00) combined single limit, which names the MDEQ, the MDAG and the State of Michigan as additional insured parties. Prior to commencement of response activities pursuant to this Decree, BP shall provide the MDEQ Project Coordinator and the MDAG with certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the Coe's Cleaners Facility, the Court Case No. 07-083146-CH and the Remediation and Redevelopment Division. In addition, and for the duration of this Decree, BP shall satisfy, or

approval, a determination by a court that the Restrictive Covenant is unlawful, in whole or in part, a violation of the terms of the Restrictive Covenant, and failure of the controlling entity to enforce the Restrictive Covenant.

(f) Criminal acts.

(g) Any matters for which the State is owed indemnification under Section XVII (Indemnification and Insurance) of this Decree.

(h) The release or threatened release of hazardous substances by BP that occurs during or after the performance of response activities required by this Decree or any other violations of state or federal law for which BP has not received a covenant not to sue.

19.2 The State reserves the right to take action against BP if it discovers at any time that any material information provided by BP before or after entry of this Decree was false or misleading.

19.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

19.4 In addition to, and not as a limitation of any other provision of this Decree, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any actions that the MDEQ determines are necessary under applicable law.

19.5 In addition to, and not as a limitation of any provision of this Decree, the MDEQ and the MDAG retain all of their information-gathering, inspection, access and enforcement authorities and rights under Part 201 and any other applicable statute or regulation except as provided in Section XVIII (Covenants Not to Sue by the State).

19.6 Except as otherwise provided in this Decree, the failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Decree in a timely manner shall not:

(a) Provide or be construed to provide a defense for BP's noncompliance with any such term, condition, or requirement of this Decree.

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

19.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by BP in accordance with this Decree will

result in compliance with the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

19.8 Except as provided in Paragraph 18.1(a) of Section XVIII (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the 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.

XX. COVENANT NOT TO SUE BY BP

20.1 Except with respect to (i) grossly negligent or willful acts or omissions of the State, and (ii) the filing of a motion with this Court for resolution of a dispute as provided in Paragraph 16.5 of this Consent Decree, BP hereby covenants 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 Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

20.2 After the Effective Date of this Decree, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of Response Activity Costs, or other appropriate relief relating to the Facility, BP agrees 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 any claims raised by the MDEQ or the MDAG 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 XVIII (Covenants Not to Sue by the State).

XXI. CONTRIBUTION

Pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2), and to the extent provided in Section XVIII (Covenants Not to Sue by the State), BP shall not be liable for claims for contribution for the matters set forth in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The parties agree that entry of this Decree constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which BP has, as of the Effective Date, resolved its liability to the MDEQ for the matters set forth in Paragraph 18.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by BP for contribution from any person that is not a Party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable state or federal law. The contribution protection set forth in this Section shall extend to any claims against BP in the Action by parties that are not a party to this Decree.

XXII. MODIFICATIONS

22.1 The Parties may only modify this Decree according to the terms of this section. The modification of any Submission or schedule required by this Decree may be made only upon written approval from the MDEQ Project Coordinator.

22.2 Modification of any other provision of this Decree shall be made only by written agreement between BP's Project Coordinator, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG, and shall be entered with the Court.

XXIII. SEPARATE DOCUMENTS

The Parties may execute this Decree 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.

XXIV. TERMINATION OF CERTAIN PROVISIONS

Upon MDEQ receipt of all payments required to be made under this Decree, MDEQ approval of the documentation submitted by BP pursuant to Paragraph 6.1(i) of Section VI (Performance of Response Activities) and BP's completion of all other obligations under this Decree, BP shall have no further obligation under Sections VI, VII, VIII, IX, X, XIII, XIV, and XV of the Decree, with all obligations under such Sections being deemed satisfied.

IT IS SO AGREED AND DECREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Lynelle Marolf
Lynelle Marolf, Acting Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
517-335-1104

Dated 11/12/09

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

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Dated 12 Nov 2009

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Dated 30 OCT 2009

Grant P. Gilezan

Grant P. Gilezan (P42951)
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Dykema Gossett
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(313) 568-6789

Dated NOVEMBER 10, 2009

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 25 day of November

2009

Steven N. Andrews
Honorable Steven N. Andrews

A TRUE COPY

RUTH JOHNSON
Oakland County Clerk / Register of Deeds

By [Signature]
Deputy