

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:) Chapter 11
)
COLLINS & AIKMAN CORPORATION, <u>et al.</u> ¹) Case No. 05-55968 (SWR)
) (Jointly Administered)
Debtors.)
) (Tax Identification # 95-4001211)
)
) Honorable Steven W. Rhodes

**ORDER GRANTING ADMINISTRATIVE CLAIM
PURSUANT TO 11 U.S.C. § 503 (b)(1)(A) AND REQUIRING
IMMEDIATE PAYMENT OF ADMINISTRATIVE CLAIM**

Upon the Michigan Department of Environmental Quality's (MDEQ) Motion for Entry of an Order Granting Administrative Claim [Case No. 05-55968; Docket No. 4] (the "Motion"), proper notice of the motion having been given, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the Motion is granted as set forth herein.

IT IS FURTHER ORDERED that MDEQ has an allowed administrative claim in the amount of \$3,845.11 for costs already incurred as follows: (a) \$2,672.18 for employee salaries and wages for the period May 18, 2005 through November 19, 2005; (b) \$391.75 for the costs of

¹ The Debtors in the jointly administered cases include: Collins & Aikman Corporation; Amco Convertible Fabrics, Inc., Case No. 05-55949; Becker Group, LLC (d/b/a/ Collins & Aikman Premier Mold), Case No. 05-55977; Brut Plastics, Inc., Case No. 05-55957; Collins & Aikman (Gibraltar) Limited, Case No. 05-55989; Collins & Aikman Accessory Mats, Inc. (f/k/a the Akro Corporation), Case No. 05-55952; Collins & Aikman Asset Services, Inc., Case No. 05-55959; Collins & Aikman Automotive (Argentina), Inc. (f/k/a Textron Automotive (Argentina), Inc.), Case No. 05-55965; Collins & Aikman Automotive (Asia), Inc. (f/k/a Textron Automotive (Asia), Inc.), Case No. 05-55991; Collins & Aikman Automotive Exteriors, Inc. (f/k/a Textron Automotive Exteriors, Inc.), Case No. 05-55958; Collins & Aikman Automotive Interiors, Inc. (f/k/a Textron Automotive Interiors, Inc.), Case No. 05-55956; Collins & Aikman Automotive International, Inc., Case No. 05-55980; Collins & Aikman Automotive International Services, Inc. (f/k/a Textron Automotive International Services, Inc.), Case No. 05-55985; Collins & Aikman Automotive Mats, LLC, Case No. 05-55969; Collins & Aikman Automotive Overseas Investment, Inc. (f/k/a Textron Automotive Overseas Investment, Inc.), Case No. 05-55978; Collins & Aikman Automotive Services, LLC, Case No. 05-55981; Collins & Aikman Canada Domestic Holding Company, Case No. 05-55930; Collins & Aikman Carpet & Acoustics (MI), Inc., Case No. 05-55982; Collins & Aikman Carpet & Acoustics (TN), Inc., Case No. 05-55984; Collins & Aikman Development Company, Case No. 05-55943; Collins & Aikman Europe, Inc., Case No. 05-55971; Collins & Aikman Fabrics, Inc. (d/b/a Joan Automotive Industries, Inc.), Case No. 05-55963; Collins & Aikman Intellimold, Inc. (d/b/a M&C Advanced Processes, Inc.), Case No. 05-55976; Collins & Aikman Interiors, Inc., Case No. 05-55970; Collins & Aikman International Corporation, Case No. 05-55951; Collins & Aikman Plastics, Inc., Case No. 05-55960; Collins & Aikman Products Co., Case No. 05-55932; Collins & Aikman Properties, Inc., Case No. 05-55964; Comet Acoustics, Inc., Case No. 05-55972; CW Management Corporation, Case No. 05-55979; Dura Convertible Systems, Inc., Case No. 05-55942; Gamble Development Company, Case No. 05-55974; JPS Automotive, Inc. (d/b/a PACI, Inc.), Case No. 05-55935; New Baltimore Holdings, LLC, Case No. 05-55992; Owosso Thermal Forming, LLC, Case No. 05-55946; Southwest Laminates, Inc. (d/b/a Southwest Fabric Laminators Inc.), Case No. 05-55948; Wickes Asset Management, Inc., Case No. 05-55962; and Wickes Manufacturing Company, Case No. 05-55968.

operational services provided to the Remediation and Redevelopment Division by the MDEQ and other Michigan State agencies; and (c) \$781.18 for fees for the period July 22, 2005 through September 23, 2005.

IT IS FURTHER ORDERED that the above-captioned debtors (collectively, the "Debtors") shall remit payment to the MDEQ in the amount of \$3,845.11 for administrative expenses already incurred within 30 days of the entry of this Order.

IT IS FURTHER ORDERED that except as specifically set forth herein, the Debtors and MDEQ reserve all rights including, but not exclusively, to claims set forth in the Motion and not resolved by this Order.

IT IS FURTHER ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

IT IS FURTHER ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Entered: March 08, 2006

/s/ Steven Rhodes
Steven Rhodes
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
Wickes Manufacturing Company, *et al*,

Debtor.

Chapter 11
Case No. 05-55968
Honorable Steven W. Rhodes

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY'S MOTION FOR ENTRY OF AN
ORDER GRANTING ADMINISTRATIVE CLAIM**

The State of Michigan, Department of Environmental Quality (MDEQ), by and through the undersigned counsel, files this Motion for Entry of an Order Granting Administrative Claim (the "Motion"). In support of this Motion, MDEQ states:

BACKGROUND

1. On May 17, 2005 (the "Petition Date"), Wickes Manufacturing Company (Debtor) commenced a voluntary case under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code")¹ as part of the Collins & Aikman Corporation *et al*, jointly administered case (Case No. 05-55927 (SWR)).
2. The Joint Debtors continue to operate the business and manage their bankruptcy estate properties as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.
3. The Debtor owns a parcel in Mancelona, Antrim County, Michigan, containing an area known as the Wickes Effluent Pond Site, on which contaminants exceeding the cleanup criteria under Part 201, Environmental Remediation of the Michigan's Natural Resources and Environmental Protection Act (NREPA),² have come to be located (the "Property"). The

¹ 11 USC § 101 *et seq.*

² 1994 PA 451, as amended.

Property contains a former landfill area, treated wastewater settling lagoons, and a final wastewater infiltration pond. The soil and groundwater in this area have been impacted with metals (including antimony and manganese above Part 201 criteria).

4. Under Part 201 of NREPA, the owner³ or operator⁴ of a facility⁵ at the time of disposal of a hazardous substance is liable if the owner or operator is responsible for an activity causing a release.⁶

5. The Debtor owned, and until November 1990 operated, an automotive parts plant on the Property, during which time it discharged wastewater containing hazardous substances into unlined disposal ponds located on the Property and is liable under NREPA Part 201 for soil and groundwater contamination at and emanating from the Property.

6. Pursuant to NREPA Part 201, a liable party is jointly and severally liable for all costs of response activity⁷ lawfully incurred by the State (MDEQ) relating to the selection and implementation of response activity under this Part.⁸

³ "Owner" means a person who owns a facility. MCL 324.20101(1)(2).

⁴ "Operator" means a person who is in control of or responsible for the operation of the facility [with some exceptions]. MCL 324.20101(1)(4).

⁵ "Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in section 20120a(1)(a) and (17) or at which corrective action has been completed under Part 213 which satisfies the cleanup criteria for unrestricted residential use. MCL 324.20101(1)(o).

⁶ MCL 324.20126(1)(a).

⁷ "Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of public health and enforcement actions related to any response activity.

⁸ MCL 324.20126a.

7. Prior to the Petition Date, Debtor's parent corporation, Collins & Aikman Corporation, had been actively investigating and remediating the contamination at the Property pursuant to Part 201 of the NREPA and under MDEQ oversight.

8. Since the filing of the Petition, Debtors have discontinued their response activities at the Property although soil and groundwater remain contaminated above NREPA Part 201 cleanup criteria and work remains to be done.⁹ While Debtor has not formally abandoned the cleanup of the Property, the lack of action portends an intention to do so.

9. To date, MDEQ has incurred \$3,845.11 in oversight and other costs post-petition and it is estimated that MDEQ will incur approximately \$1.8 million or more post-petition to complete the cleanup. The affidavit of Kathe L. Corson, a Senior Environmental Quality Analyst in the Part 201 Enforcement Unit of the Remediation and Redevelopment Division of MDEQ, attached hereto as Exhibit B, summarizes post-petition costs incurred to date and the Affidavit of Janice A. Adams, attached hereto as Exhibit C, describes future response activity needed at the Property.

RELIEF REQUESTED

10. MDEQ requests entry of an order allowing MDEQ's post-petition costs incurred or to be incurred be treated as administrative expense claims.

ARGUMENT

11. Section 503(b)(1)(A) of the Bankruptcy Code provides, in pertinent part:

After notice and a hearing, there shall be allowed administrative expenses . . . including (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case.¹⁰

⁹ Contaminated groundwater continues to migrate from the site and contaminated soil remains in place.

¹⁰ 11 USC § 503(b)(1)(A).

MDEQ maintains that the language of § 503(b)(1)(A) and applicable case law entitle it to an administrative claim for post-petition actual and projected response activity costs that it has and will further for investigation and cleanup of environmental contamination at the Property.

12. Generally, the administrative expense priority "applies to those claims for costs that are actually and necessarily incurred in preserving the bankruptcy estate for the benefit of its creditors."¹¹ And for the expense to be considered "actual" and "necessary," the claim must benefit the estate as a whole. To sustain its burden of proof, a claimant must demonstrate that the claim: (1) arises out of a post-petition transaction with the debtor; and (2) benefits the bankruptcy estate. However, an exception has been developed by the courts for situations in which environmental injury occurs pre-petition, but remediation costs are expended post-petition.¹² In fact, courts have determined that while it would appear that response activity costs are a drain on the estate and would not qualify for treatment as an administrative expense under the test established above, such costs were "actual and necessary to preserve the estate in compliance with state law."¹³

13. In Michigan, compliance with the environmental laws is not optional. Under Part 201 of the NREPA, a liable party has affirmative obligations to investigate and remediate contamination that it is responsible for. Part 201 provides, in pertinent part: "[a]n owner or operator of property who has knowledge that the property is a facility and who is liable under section 20126 should do all of the following: (a) Determine the nature and extent of a release at the facility. . . . (g) Diligently pursue response activities necessary to achieve the cleanup criteria

¹¹ *In re G-I Holding, Inc.*, 308 BR 196, 202 (Bankr D NJ 2004).

¹² *In re G-I Holding, Inc.*, 308 BR at 203. The Court in this case notes that the exception applies when pre-petition environmental contamination "also imposes an identifiable and imminent harm in the post-petition period which requires the expenditure of funds to contain or remediate the problem – not all courts have pronounced such a limitation.

¹³ *In re Wall Tube & Metal Products Co.*, 832 F2d 118 (6th Cir 1987).

specified in this part and the rules promulgated under this part."¹⁴ If Debtor does not complete the cleanup of the site, MDEQ, which has responsibility for environmental compliance, will have to step in to complete the work and is entitled to recover its costs.

14. The bankruptcy estate cannot be abandoned nor "maintained and possessed in continuous violation of law."¹⁵ Any costs incurred to obtain and maintain compliance necessarily benefits the bankruptcy estate. In *Midlantic National Bank v New Jersey Department of Environmental Protection*,¹⁶ the United States Supreme Court established that a bankruptcy trustee cannot abandon property of a bankruptcy estate in violation of state laws that protect public health and safety. This requirement also applies to debtors-in-possession such as Wickes and Collins & Aikman. The Bankruptcy Code provides that: "[A] trustee, receiver or arranger appointed in any cause pending in any court of the United States, including a debtor in possession, shall arrange and operate the property in his possession as such trustee, receiver or arranger according to the requirements of the valid laws of the state in which such property is situated. . . ." 28 USC § 959.

15. In *In re Peerless Plating Co.*,¹⁷ the Court held that the bankruptcy estate was in violation of the federal cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),¹⁸ and could not avoid the consequent liability by abandoning its contaminated property. The Court ruled that the trustee had a duty to expend all

¹⁴ MCL 324.20114(1)(a) and (g).

¹⁵ *In re Wall Tube & Metal Products Co.*, 832 F2d at 122. See also, *Dep't of Environmental Resources v Conroy*, 24 F3d 568 (3rd Cir 1994); *In re Torwico Electronics, Inc.*, 8 F3d 146 (3rd Cir 1993), *cert denied*, 511 US 1046 (1994); and *In re Coal Stripping, Inc.*, 222 BR 78 (Bankr WD Pa 1998).

¹⁶ *Midlantic National Bank v New Jersey Department of Environmental Protection* 474 US 494 (1986).

¹⁷ *In re Peerless Plating Co.*, 70 BR 943 (Bankr WD MI 1987).

¹⁸ 42 USC § 9601 *et seq.*

the unencumbered assets of the estate in remedying the situation and since the United States Environmental Protection Agency (U.S. EPA) had expended its funds to do what the trustee was obligated to do, it was entitled to have its claim for reimbursement treated as an administrative expense. Since Wickes and Collins & Aikman as debtors-in-possession could be required to expend estate funds to remedy the environmental condition at the Property, MDEQ stepping into its shoes should be entitled to have any claims as its post-petition work treated as an administrative expense.

16. Although only a small part of MDEQ's claim is for post-petition costs that have already been incurred, \$3,845.11, there is support for the granting of administrative expense status for MDEQ's projected cost for completing response activity at the Site. In *In re Chateaugay Corp.*,¹⁹ the Court held that unincurred CERCLA response costs for pre-petition releases were properly defined as claims, because U.S. EPA would have a right to payment. The Court went on to note that while such a claim is contingent – the amount of claim can be estimated "if their liquidation would unduly delay administration of the case."²⁰ The Court also held that expenses necessary to remove threat posed by toxic substances are necessary to preserve the estate and therefore qualify as an administrative expense.²¹

17. It appears that Wickes and Collins & Aikman, as debtors-in-possession have abandoned the Property and left its soil and groundwater contaminated in contravention of state law. Although it has not officially stated an intention to do so, its cessation of response activities and lack of notice or any indication that it intends to meet its obligations leads to that conclusion. Since the Property cannot be abandoned nor possessed or maintained by Debtor in violation of

¹⁹ *In re Chateaugay Corp.*, 944 F2d 997 (2nd Cir 1991).

²⁰ *In re Chateaugay*, 944 F2d at 1006, *citing* 11 USC 502(c).

²¹ *In re Chateaugay*, 944 F2d at 1010 (emphasis added).

state law, MDEQ will have to expend funds to do what Debtor does not do and should be entitled to recover the funds it uses from the liable party as an administrative expense.

WHEREFORE, for all of the reasons stated above, MDEQ respectfully requests that this Court enter an order similar to the order attached here as Exhibit A:

- (a) Granting MDEQ administrative expense claim, pursuant to § 503(b)(1)(A) in the amount of \$3,845.11 for post-petition costs already incurred and administrative expense status for future response activity costs;
- (b) Requiring Debtors to remit \$3,845.11 for administrative expenses already incurred to the State of Michigan within 30 days of the entry of an appropriate order; and
- (c) Granting MDEQ other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

Michael A. Cox
Attorney General

/s/Robert P. Reichel

Celeste R. Gill (P52484)
Robert P. Reichel (P31878)
Assistant Attorneys General
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Dated: January 13, 2006
Wickes/2005029065/Motion for Entry

EXHIBIT A

**ORDER GRANTING ADMINISTRATIVE CLAIM
PURSUANT TO 11 USC 503 (b)(1)(A) AND REQUIRING
IMMEDIATE PAYMENT OF ADMINISTRATIVE CLAIM**

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:
Wickes Manufacturing Company, *et al*,

Debtor.

Case No. 05-55968
Chapter 11
Honorable Steven W. Rhodes

**ORDER GRANTING ADMINISTRATIVE CLAIM
PURSUANT TO 11 USC 503 (b)(1)(A) AND REQUIRING
IMMEDIATE PAYMENT OF ADMINISTRATIVE CLAIM**

At a session of said Court held in the City of Detroit, Wayne
County, Michigan, on the _____ day of _____,
2006.

PRESENT: HONORABLE STEVEN W. RHODES
District Court Judge

Upon the Michigan Department of Environmental Quality's (MDEQ) Motion for Entry of
an Order Granting Administrative Claim, proper notice of the motion having been given, and the
Court being fully advised in the premises,

IT IS HEREBY ORDERED that MDEQ has an allowed administrative claim in the
amount of \$3,845.11 for costs already incurred and administrative expense status for its future
response activity costs.

IT IS FURTHER ORDERED that Debtor shall remit payment to the MDEQ in the
amount of \$3,845.11 for administrative expenses already incurred within 30 days of the entry of
this Order.

HONORABLE STEVEN W. RHODES
District Court Judge

EXHIBIT B

AFFIDAVIT OF KATHE L. CORSON

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

WICKES MANUFACTURING COMPANY
Debtor

Case No. 05-55968-sw
Chapter 11
Hon. Steven W. Rhodes

AFFIDAVIT OF KATHE L. CORSON

Kathe L. Corson, being duly sworn, deposes and says:

1. I, Kathe L. Corson, am employed as a senior Environmental Quality Analyst in the Part 201 Enforcement Unit of the Remediation and Redevelopment Division (RRD) of the Michigan Department of Environmental Quality (MDEQ) in Lansing, Michigan. I have been employed by the MDEQ for approximately thirteen years.
2. My responsibilities include coordinating the MDEQ's involvement in bankruptcy cases where environmental liabilities exist.
3. One of the cases to which I am assigned involves the Wickes Manufacturing Company's (Wickes's) Chapter 11 filing for protection under the U. S. Bankruptcy Code. Wickes operated at a site of environmental contamination known as the Wickes Effluent Pond site (Site) located in Antrim County, Michigan. Wickes is responsible for activities that caused releases or threats of releases of hazardous substances at this Site.
4. The matters set forth herein are based upon my review of records pertaining to the activities occurring at the Site, including, costs incurred by the State of

Michigan, which are assembled, verified, and summarized by the Redevelopment and Enforcement Support Unit of the RRD, pursuant to state law.

5. The MDEQ has expended \$24,630.79 from April 14, 2001 through May 16, 2005 at the Site. These costs include salaries and wages; contractual expenses; indirect costs; and, travel and expenses. Summaries of the costs are provided in Attachment A.

6. The MDEQ has expended \$3,845.11 from May 18, 2005 through the present at the Site. These costs include salaries and wages; indirect costs; and, contractual expenses. Summaries of the costs are provided in Attachment B.

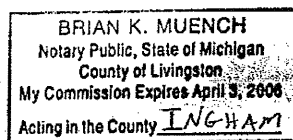
7. The estimated future response activity costs necessary to protect public health, safety, or welfare, or the environment at the Site are approximately \$1,835,580 or more. The details supporting the future response activity costs are set forth in an affidavit provided by the project manager for the Site (see Attachment C).

Kathe L. Corson
Kathe L. Corson

12/21/2005
Date

Subscribed and sworn to before me this 21st day of December, 2005.

B. K. Muench
Notary Public



County, Michigan

My Commission expires: _____

EXHIBIT C

AFFIDAVIT OF JANICE A. ADAMS

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

WICKES MANUFACTURING COMPANY
Debtor

Case No. 05-55968
Chapter 11
Hon. Steven W. Rhodes

AFFIDAVIT OF JANICE A. ADAMS

STATE OF MICHIGAN)

ss.

COUNTY OF OTSEGO)

Janice A. Adams, being duly sworn, deposes and says:

1. I, Janice A. Adams, am employed as a senior geologist for the Remediation and Redevelopment Division (RRD) of the Michigan Department of Environmental Quality (MDEQ) in Gaylord, Michigan. I have been employed by the MDEQ for approximately fourteen years.

2. My responsibilities include coordinating and overseeing the identification, investigation, and evaluation of sites where hazardous substances have been released into the environment. I oversee the preparation, review, and approval of hydrogeologic investigations, remedial action plans, and interim responses designed to meet criteria. In addition, I coordinate my review of sites of environmental contamination with toxicologists and RRD Compliance and Enforcement Section staff.

3. I am the project manager for the Wickes Effluent Pond site of environmental contamination located in Mancelona, Antrim County, Michigan. Wickes Manufacturing Company, a subsidiary of Collins & Aikman Corporation, discharged wastewater containing hazardous substances into an unlined disposal pond and has liability for conducting response activities in accordance with the provisions of Part 201, Environmental Remediation, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and other applicable state and federal environmental protection statutes.

4. State-funded interim response actions implemented at the Wickes Effluent Pond site were designed to address groundwater and soil conditions of the property. Activities included providing oversight of work that Collins & Aikman had been conducting. To date, the State of Michigan has spent approximately \$28,475.90 to oversee interim response actions at the facility, and response activity costs continue to be incurred by the State.

5. Information regarding the Wickes Effluent Pond site is contained in reports generated by contractors hired by Collins & Aikman and by contractors hired by the MDEQ, including but not limited to:

- a. Malcolm Pirnie, Inc. (September 2004) Work Plan for Supplemental Investigation for the Wickes Effluent Pond;

- b. Malcolm Pirnie, Inc. (March 2004) Investigative Report for the Wickes Effluent Pond;
- c. Malcolm Pirnie, Inc. (September 2003) Work Plan for the Wickes Effluent Pond Site;
- d. MACTEC Engineering and Consulting, Inc. (August 2003) Bid Documents Supplemental Investigation/Monitoring Well Installation Project;
- e. Malcolm Pirnie, Inc. (July 2003) Work Plan for Additional Soils and Groundwater Investigation;
- f. MACTEC Engineering and Consulting, Inc. (June 2003) Technical Memorandum No. 1;
- g. MACTEC Engineering and Consulting, Inc. (December 2002) Work Plan;
- h. MACTEC Engineering and Consulting, Inc. (September 2002) Understanding of Project & Objectives;
- i. O'Brien & Gere Engineers, Inc. (April 2002) 2001 Annual Ground Water Monitoring Final Effluent Pond – South Well Field;
- j. O'Brien & Gere Engineers, Inc. (October 2000) 1999 Annual Groundwater Monitoring Final Effluent Pond - South Well Field;
- k. O'Brien & Gere Engineers, Inc. (September 1999) Soil Samples from Former Effluent Pond;
- l. O'Brien & Gere Engineers, Inc. (December 1998) Summary Report Effluent Pond Sludge Removal and Disposal;
- m. Collins & Aikman Products Co. (September 1998) groundwater data package;
- n. O'Brien & Gere Engineers, Inc. (February 1998) Effluent Pond Sludge Feasibility Study;
- o. ASI Environmental Technologies (November 1997) Groundwater Investigation and Monitoring Report, South Well Field;
- p. ASI Environmental Technologies (September 1997) Final Effluent Pond Sludge Sampling Report;
- q. ASI Environmental Technologies (April 1996) Sampling Report for Soils, Sediments and Impounded Surface Water;
- r. ASI Environmental Technologies (December 1995) Groundwater Monitoring Report, South Well Field.

6. Results from these reports indicate that disposal of wastewater has contaminated soil and groundwater at the Wickes Effluent Pond site. Additional response actions that are needed are as follows:

The extent of the contamination needs to be defined and interim responses are needed to address the drinking water criteria exceedances in the soil and groundwater.

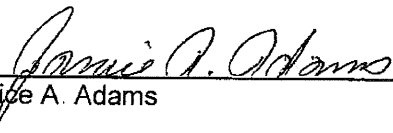
Future response activities needed at the facility include (see attached tables):

- a. delineate and evaluate groundwater contamination (estimated at \$400,625);
- b. define soil hot spots identified in the 2004 Investigative Report, prepare bid package for soil source area removal, remove and properly dispose of contaminated soil (assuming 22,000 tons unsaturated soil), provide engineering oversight, and prepare a report on the soil removal activities (estimated at \$1,434,955).

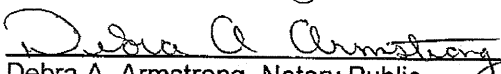
Additionally, results of the above work may indicate that additional response actions are necessary, including groundwater treatment or additional soil removal, thus increasing future costs.

7. Using best professional judgment, the total estimated future cost for the groundwater investigation, soil removal, and other potential response actions to meet the requirements of Part 201 of the NREPA, is likely to exceed \$1.8 million.

8. The above-estimated future costs were developed assuming that the State of Michigan conducts all remedial activities at the Wickes Effluent Pond site and is based on information currently available in MDEQ files.


Janice A. Adams

Subscribed and sworn to before me this 4th day of January, 2006.


Debra A. Armstrong, Notary Public
Crawford County acting in Otsego County, Michigan
My Commission Expires: September 13, 2011

Estimated Cost for Potential Environmental Response Activities
Wickes Effluent Pond Site
Facility ID No. 050099
Mancelona, Michigan

Activity	Assumptions	Frequency	Estimate Totals
Groundwater Sampling and Reporting	Sampling 3 times a year, 20 wells per event, and an annual report	ten years	\$ 256,000
Additional Investigation Groundwater	Assume 3 additional well nests of 80 and 120 foot monitoring wells	one time	\$ 49,500
Receptor evaluation for Groundwater	Groundwater plume is local to site.	one time	\$ 15,000

Subtotal Groundwater: \$ 320,500
25% Contingency: \$ 80,125
Total Groundwater: \$ 400,625

Additional Investigation Soil	Define soil hot spots identified in 2004 report	one time	\$ 49,964
Soil Source Removal	Bid Package, Non-hazardous Soil Removal and Disposal (Assume 22,000 tons unsaturated soil), Engineering Oversight, and Construction Report	one time	\$ 1,098,000

Subtotal Soil: \$ 1,147,964
25% Contingency: \$ 286,991
Total Soil: \$ 1,434,955
TOTAL: \$ 1,835,580

Cost Detail

Groundwater sampling	75 samples per year antimony, arsenic, cadmium, manganese, and lead @ \$60 (Per event cost, 2-person crew (80 hours*55) + 800 ODC)*3 events Annual Report	\$	4,500
		\$	15,600
		\$	5,500
	Per Year Total	\$	25,600
Additional Investigation	Assume 3 additional well nests of 80 and 120 foot monitoring wells Drilling Charge	\$	35,000
	Oversight time 10 days @ \$1100	\$	11,000
	Surveying	\$	3,500
	Total	\$	49,500
Receptor evaluation for Groundwater		\$	15,000
Additional Investigation Soils	40 probes to 15 feet	\$	20,000
	Oversight time 10 days @ \$1100	\$	11,000
	Surveying	\$	6,000
	Analytical 3 per boring, 40 borings @ \$32 + 12 duplicates/blanks @32 + 20 splp @ \$62	\$	5,464
	Reporting	\$	7,500
	Total	\$	49,964
Soil Source Removal	Design/Bid Specs	\$	20,000
	Submittals	\$	10,000
	Mobilization/demobilization	\$	15,000
	Soil Removal 150x200x10 and 150x150x4 Assume 1.5 Ton/yard 17,000 tons+5,000 tons=22,000 tons*\$5/ton excavate* \$30/ton Transport&Dispose No	\$	770,000
	Backfill 22,000 tons*\$9.50	\$	209,000
	Restoration	\$	20,000
	Oversight time 40 days @ \$1100	\$	44,000
	Construction Report	\$	10,000
	Total	\$	1,098,000