

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

SC Holdings, Inc.  
Muskegon County, Michigan

MDEQ Reference No.  
RRD-13-001

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AGREEMENT TO TERMINATE FINAL ORDER NO. AOC-ERD-93-003

This Agreement to Terminate Final Order No. AOC-ERD-93-003 ("Agreement") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ") and the Michigan Department of Attorney General ("MDAG") (collectively, the "State"); and SC Holdings, Inc., (collectively, referred to as the "Parties"). This Agreement provides for the termination of the Administrative Order by Consent and Final Order No. AOC-ERD-93-003 ("1993 AOC") entered in association with the performance of response activities at the Superfund site known as the SCA Independent Landfill, Muskegon County, Michigan (the "Site").

RECITALS

1. In October 1993, the State and SC Holdings, Inc., entered into the 1993 AOC that required the preparation of, performance of, and reimbursement of oversight costs for the remedial investigation and feasibility study ("RI/FS") for the Site. The Site objectives of the 1993 AOC were to expedite effective response activity to (a) determine the nature and extent of contamination and any threat to the public health, safety or welfare, or the environment, caused by the release or threatened release of the hazardous substances, pollutants or contaminants from the Site by conducting a remedial investigation; (b) determine and evaluate alternatives for remedial action to prevent, mitigate, abate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants from the Facility, by conducting a feasibility study; and (c) to minimize litigation.

2. The 1993 AOC was entered voluntarily by the Parties pursuant to the authority vested in the MDNR (the predecessor agency to MDEQ) by sections 10f and 14b(1) of the Michigan Environmental Response Act of 1982 (MERA), as amended, 1982 PA 307, MCL 299.610f and 299.614b(1).

3. MERA was subsequently amended by Public Act 451 of 1994 and recodified as Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), M.C.L. § 324.20101 *et seq*, which became effective March 30, 1995. Pursuant to Section 20102a of the NREPA, agreements entered on or before May 1, 1995 are governed by the provisions in effect on May 1, 1995.

4. SC Holdings, Inc., has been conducting response activities and is performing Operation and Maintenance ("O&M") activities at the Site.

5. The Parties agree that response activities at this Site have moved beyond study and planning, and it is therefore appropriate to terminate the 1993 AOC, as provided herein.

6. According to a May 2005 Five-Year Review Report issued by MDEQ with U.S. Environmental Protection Agency concurrence, remedy construction was complete as of 2001, and SC Holdings, Inc., is conducting O&M at the Site.

7. The signatories to this Agreement certify that they are authorized to execute this Agreement and legally bind the parties they represent.

8. The execution of this Agreement by the Parties is neither an admission of liability by either of the Parties with respect to any issue covered under this Agreement, nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

#### TERMS OF AGREEMENT

Accordingly, in consideration of the recitals set forth above, the Parties hereby agree:

9. Parties Bound. This Agreement shall apply to and be binding upon the Parties, their successors and assigns. The term, "MDNR", as used in the 1993 AOC, predates the Executive Orders that created the MDEQ, and for the purpose of this Agreement includes and applies to the MDEQ.

10. Surviving Provisions and Continuing Obligations. Notwithstanding any other provision of this Agreement, the following provisions of the 1993 AOC shall survive the termination of the 1993 AOC and shall continue in full force and effect as set forth and as modified in this Agreement:

(a) Access. To the extent access to the Site is owned, controlled by, or available

to SC Holdings, Inc., the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access from the Effective Date of this Agreement at all reasonable times to the Site to oversee O&M at the Site, including, but not limited to:

- Monitoring the work or any other activities taking place at the Site pursuant to this Agreement;
- Verifying any data or information submitted to the MDEQ;
- Conducting investigations relating to contamination at or near the Site;
- Obtaining samples;
- Assessing the need for or planning and implementing response activity at or near the Site; and
- Inspecting and copying non-privileged records, operating logs, contracts or other documents.

(b) Record Retention/Access to Information.

(i) SC Holdings, Inc., and its representatives, consultants and contractors shall preserve and retain for a period of ten (10) years after the Effective Date of this Agreement, all records, sampling and test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Site or that were generated as a requirement of the 1993 AOC. After the ten (10) year period of document retention, SC Holdings, Inc., and its successors shall request in writing the MDEQ's permission to destroy such documents. The MDEQ will respond to a request to destroy documents under this provision within thirty (30) business days of receipt. The MDEQ shall either grant such request, or require that SC Holdings, Inc., and/or its successors relinquish custody of all such documents to the MDEQ. In the absence of MDEQ's response within thirty (30) days, SC Holdings, Inc.'s record retention obligations pursuant to this Agreement shall terminate. Any request to destroy documents covered by this Paragraph shall be accompanied by a copy of this Agreement and sent to the following address:

Chief, Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909-7926

(ii) SC Holdings, Inc., shall, upon request, provide to the MDEQ copies of

all documents and information within its possession, or within the possession or control of its employees, contractors, agents or representatives relating to the work at the Site pursuant to this Agreement, including, but not limited to, sampling, analysis, chain of custody of records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the work. SC Holdings, Inc., shall also, upon request, make available to the MDEQ, upon reasonable notice, its employees or authorized representatives with knowledge of relevant facts concerning the performance of the work at the Site pursuant to this Agreement.

(iii) SC Holdings, Inc., may assert a confidentiality or privilege claim, if appropriate, covering all or part of information requested. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDEQ, it may be made available to the public by the MDEQ without further notice to SC Holdings, Inc. Analytical data shall not be claimed as confidential or privileged by SC Holdings, Inc.

(c) O&M and Progress Report. SC Holdings, Inc., shall continue to undertake the work at the Site and to provide to the MDEQ written annual progress reports that shall describe all work at the Site, including O&M activities, taken during the previous twelve (12) months. The progress report should also include all monitoring reports and all results of sampling and tests and other data received by SC Holdings, Inc., its employees, or authorized representatives during the previous twelve (12) months relating to the work performed at the Site. The first progress report will be due on April 15, 2014 and annually thereafter on or before April 15 of the following year. The requirement to submit progress reports will terminate upon completion of O&M. Progress reports shall be sent to the following address:

Project Coordinator, Superfund Section  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909-7926

(d) Covenant Not To Sue By The State. In consideration of the response activities that have been performed by SC Holdings, Inc., and payments that have been made by SC Holdings, Inc., under the terms of the 1993 AOC, the State of Michigan covenants not to sue or take further administrative actions against SC Holdings, Inc., for costs paid by SC Holdings, Inc., to the State under the terms of the 1993 AOC, for any costs incurred by the State

under the terms of the 1993 AOC but not paid by SC Holdings, Inc., and for the performance of MDEQ-approved response activities at the Site. The State reserves, and nothing in this Agreement shall limit, the power and authority of the State to take administrative action or to file a new action against SC Holdings, Inc., pursuant to any applicable authority with respect to the following:

(i) claims based on a failure by SC Holdings, Inc., to meet a requirement of this Agreement;

(ii) the performance of response activities that are required to comply with Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection act (NREPA), MCL 324. 20101 *et seq*;

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

(iv) the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Site;

(v) the release or threatened release of hazardous substances that occur after the date of this Agreement or any other violations of state or federal law for which S.C. Holdings, Inc. has not received a covenant not to sue; and

(vi) criminal acts.

(e) Covenant Not To Sue By SC Holdings, Inc. SC Holdings, Inc., hereby covenants not to sue or 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 Agreement or from the 1993 AOC, 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. If the MDAG initiates any administrative or judicial proceeding after the effective date of this Agreement for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Site, SC Holdings, Inc., 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. Nothing in this Paragraph affects the enforceability of the covenants not to sue by the State set forth in Paragraph 10(d) of this Agreement.

(f) Contribution Protection. Pursuant to Section 20129(5) of the NREPA, and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability

Act, Title 42 of the United States Code (CERCLA), and to the extent provided in Paragraph 10.d (Covenant Not to Sue by the State), SC Holdings Inc., shall not be liable for claims for contribution for the matters set forth in Paragraph 10.d of this Agreement to the extent allowable by law. The Parties agree that this Agreement constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which SC Holdings, Inc., has, as of the Effective Date, resolved its liability to the MDEQ for the matters set forth in Paragraph 10.d of this Agreement. Entry of this Order 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. Any rights that SC Holdings, Inc., may have to obtain contribution or otherwise recover costs or damages from persons not party to this Agreement are preserved, including, without limitation, the right to seek contribution from any person who is not party to this administrative settlement under Section 113(f)(3)(B) of CERCLA, § 9613(f)(3)(B), or under Part 201, based on this Agreement. Pursuant to Section 20129(9) of the NREPA, MCL 324.20129(9), any action by SC Holdings, Inc., for contribution from any person that is not a Party to this Agreement 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.

(g) Financial Assurance. SC Holdings Inc., shall provide financial assurance of its ability to fund the O&M at the Site by maintaining the attached performance bond, which is adjusted annually. The terms of the performance bond may be modified by written agreement of the Parties to this Agreement. The requirement for Financial Assurance will terminate when O&M is terminated.

11. Separate Documents. This Agreement 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.

12. Effective Date. This Agreement shall become effective on the date it is fully executed by all Parties to it.

13. Termination of the 1993 AOC. Upon execution of this Agreement, the 1993 AOC is terminated and of no effect except as specified in Paragraph 10 of this Agreement.

In the Matter of:

DEQ Reference No. RRD-13-001

IT IS SO AGREED BY:

SC Holdings, Inc.

*James C. Forney*  
\_\_\_\_\_  
James C. Forney, Area Director  
Midwest, Closed Sites  
SC Holdings, Inc.

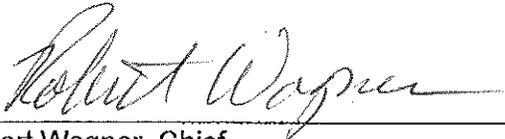
*22 August 2013*  
\_\_\_\_\_  
Date

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DEQ Reference No. RRD-13-001

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MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

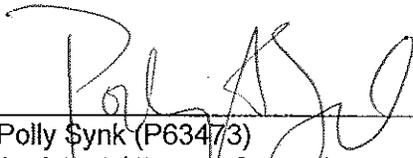


Robert Wagner, Chief  
Remediation and Redevelopment Division

8/30/13

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Polly Synk (P63473)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division

8-29-13

Date

EVERGREEN NATIONAL INDEMNITY COMPANY

MAYFIELD HEIGHTS, OH  
POWER OF ATTORNEY

POWER NO. 80126

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint: \*\*\* CHERYL C. MAY \*\*\*

its true and lawful Attorney(s)-In-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed SIX HUNDRED FIFTEEN THOUSAND ONE HUNDRED SIXTY ONE AND 00/100 (\$615,161.00)

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of July, 2004:

"RESOLVED, That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 1st day of June, 2009.

EVERGREEN NATIONAL INDEMNITY COMPANY



By: Charles D. Hamm Jr.  
Charles D. Hamm Jr, President  
By: David A. Canzone  
David A. Canzone, CFO

Notary Public)  
State of Ohio) SS:

On this 1st day of June, 2009, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Charles D. Hamm, Jr. and David A. Canzone of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Columbus, Ohio, the day and year above written.



PENNY M. BURNS  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
April 04, 2012

Penny M. Burns  
Penny M. Burns, Notary Public  
My Commission Expires April 4, 2012

State of Ohio ) SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Mayfield Hts, Ohio this 29th day of August 2011



Wan C. Collier  
Wan C. Collier, Secretary