

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:
Agri-Fuels, Inc.
Williams Road, Alma, Michigan

MDEQ Docket No. AOC-ERD-94-013

ASSIGNMENT OF ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY

This Assignment (Assignment) of Administrative Order by Consent for Response Activity (AOC), AOC-ERD-94-013, dated June 9, 1994, and attached as Attachment 1, is made and entered into by and between Terry Asphalt Materials, Inc. (Terry Asphalt or Assignor) and Michigan Paving & Materials Company (Michigan Paving or Assignee), a Michigan company, and the Michigan Department of Attorney General and the Michigan Department of Environmental Quality (MDEQ); collectively, the State. This Assignment concerns the AOC with respect to the 15.71 acre property located in Gratiot County at, 1950 Williams Street, Alma, Michigan, as legally described in Exhibit A of Attachment 1 (hereinafter Property). The Property is a portion of the former Mueller Bean and Grain a.k.a. Agri-Fuels, Inc. Facility (hereinafter, Facility, as that term is defined in the AOC), Site ID No. 29000083. This AOC and all its benefits, duties, and obligations were previously transferred from Terry Materials of Michigan, Inc. to Terry Asphalt on March 7, 2006.

1. For a valuable consideration, including purchase of the Property, Terry Asphalt hereby assigns the AOC to Michigan Paving. By signature, Michigan Paving hereby acknowledges that it has read the AOC and accepts all the benefits, duties, and obligations as set forth in the AOC and agrees to be bound by the terms of the said AOC.
2. This Assignment is made pursuant to Section XXVII (Covenant Not to Sue to Terry Asphalt by the State) of the AOC. Upon Execution of this Assignment and transfer of the Property, Michigan Paving shall have the full benefits, duties, and obligations of the AOC that previously only applied to the Assignor; Terry Asphalt (excluding any officer, director, or employees formerly employed by any previous owner or operator of the Property pursuant to Section XXVII of the AOC) shall be released from the responsibilities imposed by the AOC but shall continue to be afforded the protections of the AOC with respect to the Facility and the Property.
3. Michigan Paving covenants and warrants that all of the representations in the Affidavit of Gregg Campbell, executed on December 1, 2014, a copy of which is found in Attachment 2 of this Assignment, are true and accurate. These representations are incorporated by reference into this Assignment, and this Assignment shall be void if it is determined that Michigan Paving has provided any false information to the State, in which case the Assignor shall again become the entity responsible under the AOC.

4. Michigan Paving acknowledges that it may not further assign the benefits, duties, and obligations set forth under the AOC without first complying with the requirements contained in Section XXVII of the AOC, including obtaining the written approval from the State of Michigan, which shall not be unreasonably withheld.
5. Michigan Paving, by acknowledging and agreeing to accept the terms of the AOC, additionally acknowledges that it shall be responsible for complying with the due care obligations it may now or in the future have under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the Part 201 Administrative Rules for any existing contamination known or discovered to exist on the Property.
6. Michigan Paving agrees to reimburse the State its costs to review and approve this Assignment of the AOC.
7. This Assignment shall become effective upon the completion of the following:
 - a. Execution of this Assignment by the parties;
 - b. Closure on the purchase of the Property by Michigan Paving from Terry Asphalt;
 - c. The MDEQ's receipt from Michigan Paving of a Notice of Transfer of Property from Terry Asphalt to Michigan Paving. Failure to provide the MDEQ with a Notice of Transfer of Property from the Assignor to the Assignee within ten (10) days of the consummation of transfer shall be cause for avoidance of this Assignment. Included in the notice of transfer or in a separate notice, Michigan Paving shall verify that, as the Assignee, it has assumed responsibility for the duties and obligations set forth in the AOC as required pursuant to Paragraph 27.3 of the AOC;
 - d. The MDEQ's receipt from Michigan Paving of a Spill Prevention, Control and Countermeasures Contingency Plan for the Property, pursuant to Title 40, Protection of Environment, Code of Federal Regulations (CFR), Part 112, Oil Pollution Prevention, as amended (40 CFR 112), and applicable rules, within 30 days for the consummation of transfer of the Property from Terry Asphalt to Michigan Paving;
 - e. The MDEQ's receipt from Michigan Paving of the Assignee's Pollution Incident Prevention Plan (PIPP) for the Property pursuant to the Natural Resources and Environmental Protection Act, Part 31, Water Resources Protection, as amended, and the Part 31 Administrative Rules, R 324.2001 *et seq.* The content that should be provided within the PIPP is specifically identified in R 324.2006 (Rule 6 of the Part 5 Spillage of Oil and Polluting Materials Rules); and
 - f. The MDEQ's receipt of payment of the State's cost to review and approve this Assignment.

IT IS SO STIPULATED AND AGREED:

Terry Asphalt Materials Inc.

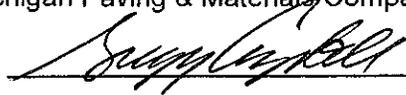
By: _____

Print Name: _____

Title: _____

Date: _____

Michigan Paving & Materials Company

By: 

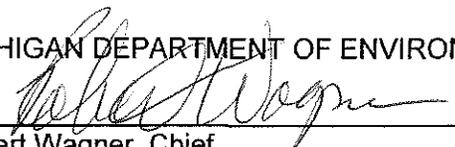
Print Name: LORELL CAMBELL

Title: PRESIDENT

Date: 3/24/15

STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Robert Wagner, Chief
Remediation and Redevelopment Division

Date: 4/13/2015

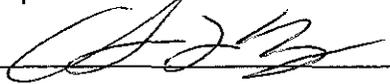
MICHIGAN DEPARTMENT OF ATTORNEY GENERAL


Richard S. Kuhl (P42042)
Environment, Natural Resources and Agriculture Division

Date: 4/3/2015

IT IS SO STIPULATED AND AGREED:

Terry Asphalt Materials Inc.

By: 

Print Name: _____

Title: Anthony L. Martino, II
SECRETARY

Date: _____

Michigan Paving & Materials Company

By: _____

Print Name: _____

Title: _____

Date: _____

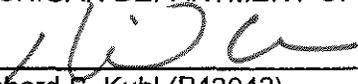
STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Robert Wagner, Chief
Remediation and Redevelopment Division

Date: 4/13/2015

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL


Richard S. Kuhl (P42042)
Environment, Natural Resources and Agriculture Division

Date: 4/13/2015

Attachment 1

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Agri-Fuels, Inc.

Williams Road
Alma, Michigan

MDNR Docket No.:
AOC-ERD-94-013

Proceeding Under Section 10f and 14b(1) of the Michigan Environmental Response Act, Act 307 of 1982, as amended, MCL 299.610f and 299.614b(1).

**ADMINISTRATIVE ORDER BY CONSENT
FOR RESPONSE ACTIVITY**

ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY
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JURISDICTION

This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Natural Resources ("MDNR"), Frank J. Kelley, Attorney General for the State of Michigan ("State"), the City of Alma, Michigan (the "City") and Terry Materials of Michigan, Inc. ("Terry"), pursuant to the authority vested in the MDNR by Sections 10f and 14b(1) of the Michigan Environmental Response Act of 1982 ("MERA" or "Act 307"), as amended, 1982 PA 307, MCL 299.610f and 299.614b(1). The Order concerns the performance by the City of certain response activities at Agri-Fuels, Inc., Alma, Gratiot County, Michigan (hereafter, the "Facility" as defined in Section 3(m) of MERA, MCL 299.601(m) to be any area, place or property where a hazardous substance has been released, deposited, stored, disposed of, or otherwise comes to be located.

II. DENIAL OF LIABILITY

The execution of this Order by the City and Terry is neither an admission of liability with respect to any issue dealt with in this Order nor is it an admission of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon the City and Terry and their successors and assigns as is further delineated in this Order. No change in ownership or corporate status shall in any way alter the City's or Terry's responsibilities under this Order. The City and Terry shall provide the MDNR with written notice prior to the transfer of ownership of part or all of the Facility, and shall provide a copy of this Order to any subsequent lessees, owners, grantees of any interest whatsoever, or successors before ownership rights are transferred. The City and Terry shall comply with the requirements of Section 10c of MERA, MCL 299.610c. The City and Terry, as provided in Paragraph 7.6 hereof, shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order within three (3) calendar days of the effective date of such retention. Notwithstanding the terms of any such contract, the City is responsible for compliance with the terms of this Order, and shall ensure that such contractors, subcontractors, laboratories and consultants perform all work in conformance with the terms and conditions of this Order.

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

IV. STATEMENT OF PURPOSE

In entering into this Order, it is the mutual intent of the Parties to: 1) remediate "Existing Contamination", as defined in Section VI, at and emanating from the Facility, 2) minimize litigation, 3) provide a mechanism for Terry to lease, with option to purchase, the property without incurring liability for existing contamination and 4) engender the social and economic benefits accompanying the reuse of this property by Terry.

V. FINDINGS OF FACT

5.1 The Agri-Fuels property, as legally described in Attachment A and made a part hereof, comprises approximately 15.71 acres and is located within the City of Alma corporation limits in Gratiot County. The property is bordered on the north by Williams Street, the east by Jerome Road and the south by the Chesapeake and Ohio railroad line. The property adjacent on the west is owned by Total Petroleum. Surrounding businesses to the property include Alma Products and United Technology to the north and Total Petroleum and Amerigas to the south.

5.2 The property is located in an industrial area of the City and was originally acquired by Agri-Fuels, Inc. in 1980 for the development of an ethanol production plant.

5.3 In accordance with the provisions of Section 67a of the General Property Tax Law, Act 206 of the Public Acts of 1893, as amended, the State of Michigan acquired deed to the property on October 10, 1985.

5.4 The city of Alma subsequently acquired deed to the property on August 14, 1986, in accordance with Act 223, Public Act 1909, as amended.

5.5 On February 2, 1989, the consulting firm of Dames and Moore conducted a Phase I Environmental Assessment of the property on behalf of the City and Procter and Gamble Paper Products Company. The findings of the Phase I investigation were indicative of the possible presence of petroleum hydrocarbons in the groundwater.

5.6 A site investigation was conducted by G.R. Kunkle and Associates on February 21, 1992 on behalf of the City of Alma and Mueller Bean Company, which at that time was using the property for the bulk storage for liquid nitrogen and Amthio. The findings of the February 2, 1992 site investigation, as documented in the Site Investigation Report dated March 27, 1992 indicated the possible release of ammonium nitrate within the clay containment area as indicated by high nitrate concentrations in soil samples collected from the facility.

5.7 The city of Alma entered into a lease with Mueller Bean Company on August 1990, which was later amended on March 24, 1992 for the lease of property, facilities and equipment.

5.8 In January of 1993, a remedial investigation of the groundwater contamination conducted by EarthFax Engineering on behalf of Total Petroleum revealed the presence of free-phase hydrocarbons on the northern portion of the property and dissolved hydrocarbons in the area between the Total Petroleum refinery and the former Agri-Fuels structure.

5.9 A Phase II Site Investigation was conducted by G.R. Kunkle and Associates on behalf of the City of Alma for the purpose of determining if the soils in the vicinity of the nitrogen storage tanks had been impacted by past activities on the property and determining the source of the petroleum hydrocarbons present on the property. The findings of the Phase II site investigation as documented on February 28, 1994 indicated that petroleum hydrocarbons present on the property had migrated from the Total Petroleum Refinery property and that nitrate contamination of the soil and groundwater had occurred in the area of the liquid nitrogen fertilizer storage tanks.

5.10 Releases of Nitrate, a hazardous substance, have occurred to the soils and groundwater at the property.

5.11 The City is "person" under MCL 299.601(W).

5.12 The City is the current owner of the property and was the owner of the property at the time of the release of a hazardous substance, namely nitrate.

5.13 Mueller Bean Company was the operator of the Facility at the time of the release of the hazardous substance, namely nitrate, at the Facility.

5.14 Terry is a "person" under MCL 299.601(W).

5.15 On February 22, 1994, the City accepted a "Letter of Intent" tendered by Terry for the lease, with option to purchase, of the property.

5.16 It is the intent of the City to conduct or cause to be conducted a Type C remediation plan for the Facility, thereby facilitating the reuse and redevelopment of the property by Terry.

VI. DETERMINATIONS

6.1 On the basis of the Findings of Fact, the MDNR makes the following determinations:

(a) The Agri-Fuels, Inc. property is a "Facility" as that term is defined in Section 3(m) of MERA, MCL 299.603(m).

(b) The City and Terry are each a "person" as that term is defined in Section 3(w) of MERA, MCL 299.603(w).

(c) Nitrate, a "hazardous substance" as that term is defined in Section 3(p) of MERA, MCL 299.603(p), is present in the soils and groundwater at the Facility.

(d) The presence of nitrates in the groundwater and soils at the Facility constitutes an actual or threatened "release" within the meaning of Sections 3(x) and 3(ff) of MERA, MCL 299.603(x) and MCL 299.603(ff).

(e) The actual or threatened releases of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare or the environment within the meaning of Section 10f of MERA, MCL 299.610f.

(f) In order to protect public health, safety, welfare and the environment, and to abate the danger or threat, it is necessary and appropriate that response activity be taken.

(g) The City is a person that may be liable within the meaning of Sections 10f and 12(1) of MERA, MCL 299.610f and MCL 299.612(1).

6.2 On the basis of the finding of facts, the MDNR and the Attorney General make the following determinations:

(a) The City will properly implement the response activities required by this Order.

(b) This Order is in the public interest, will expedite effective response activity, will minimize litigation and will foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential.

(c) "Existing Contamination" refers to any Hazardous Substance at any level above "Type A" or "Type B" levels as those terms are defined in Act 307 rules, in any media, including soils, groundwater, or surfacewater or the potential release of a discarded hazardous substance in a quantity that may become injurious to the environment or to the public health, safety or welfare, that (1) presently exists at the Property, (2) has emanated from the Property, (3) is subjacent to the Property or (4) regardless of its location, is attributable to past releases at the Property. For purposes of this definition "presently" means it exists on the effective date of this Order and "past" means it occurred prior to the effective date of this

Order. For further purpose of defining Existing Contamination, the State, the City and Terry agree that all data and technical reports for the Facility produced to date by, or on the behalf of, the City, Total Petroleum, or the State are probative evidence of the nature and extent of Existing Contamination for purposes of this agreement and shall be admissible as evidence in any proceeding involving a dispute over the same. In the event that any dispute arises between the State, the City or Terry concerning whether any release(s) or threat(s) of releases of hazardous substances occurred prior to the effective date of this Order, the burden of proof in such a dispute shall be borne by the parties in accordance with MERA subsections 12(7) and 12c(1).

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDNR, THE ATTORNEY GENERAL, THE CITY OF ALMA, AND TERRY HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VII. IMPLEMENTATION

7.1 Within one hundred and eighty (180) days of the effective date of this Order, the City shall commence, or cause to be commenced, the work detailed in the Proposed Remedial Investigation and Conceptual Remedial Action Plan ("RI/Conceptual RAP"), dated April 22, 1994, as attached hereto as Attachment 1, and as amended to address MDNR comments dated May 17, 1994 as attached hereto as Attachment 2.

Each component of the amended RI/Conceptual RAP, as amended, and approved modifications thereto, shall be deemed incorporated into this Order and made an enforceable part of this Order. All work shall be conducted in accordance with Act 307, the 307 Rules (Michigan Administrative Code ("MAC") R 299.5101 et seq), and any amendments thereto and the requirements of this Order, including any standards, specifications and schedules contained in the RI/Conceptual RAP, dated April 22, 1994, as amended.

(b) The City shall submit a Quality Assurance Plan ("QAPP"). The ("QAPP") shall, at a minimum, describe the quality control, quality assurance, sampling protocol and chain of custody procedures that shall be implemented in carrying out the tasks required by this Order. The QAPP shall be developed in accordance with the U.S. EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80, EPA-600/4-83-004; NTIS PB 83-170514; and the MDNR QAPP Guidance dated February 1993.

(c) The City shall submit a Health and Safety Plan to the MDNR which shall not be subject to MDNR approval as provided in Section XVIII. The Health and Safety Plan shall, at a minimum, assign Facility safety and security responsibilities to all on-site personnel, establish personnel safety and protection standards, establish mandatory safety operating procedures for physical and chemical hazards that may be encountered at the Facility, demarcate and classify various zones of contamination, establish decontamination procedures and provide for

contingencies that may arise during the course of the implementation of this Order. The Health and Safety Plan shall be developed in accordance with the standards promulgated pursuant to Section 126 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC § 9621, Section 6 of the Occupational Safety and Health Act of 1970 and the Michigan Occupational Safety and Health Act.

7.3 The parties acknowledge and agree that this Order does not constitute a warranty or representation of any kind by the MDNR that the work performed in accordance herein will result in the achievement of the remedial criteria as established by law.

7.4 The City shall submit to the MDNR a complete written description of the activities conducted pursuant to this Section, as part of any submission, report, plan or other document required under the terms of this Order. Such description shall include, but not be limited to, an overview of the work conducted, a complete description of the methodologies employed and documentation and analysis of data collected pursuant to this Order and the subject submission, report, plan or other document.

7.5 Terry shall use the Property for the specific purposes set forth in the Economic Development Plan, as attached hereto as Attachment 3 and made a part hereof, adopted by the City on March 28, 1994, and the Letter of Intent as attached hereto as Attachment 4 and made a part hereof, dated February 21, 1994, and in a manner which is

not inconsistent with response activities that shall be performed by the City at the Facility. In accordance with Section 14a(3) of MERA, Terry shall cooperate with the MDNR or other persons conducting Response Activities approved by the MDNR and shall use due care and reasonable precautions with respect to the Existing Contamination. Terry's use of the Property shall not cause contamination or contribute to or exacerbate the Existing Contamination, interfere with the implementation or completion of any Response Activity, pose health risks, or cause an increase in the cost of Response Activities.

7.6 The City and Terry shall notify the MDNR of any new use(s) they intend to make of the Property and shall be responsible for implementation of additional Response Activities, as approved by the State, which are required to protect the public health and safety or the environment in light of such new use(s).

VIII. ADDITIONAL RESPONSE ACTIVITY

8.1 As used in this Section, "Additional Response Activity" shall mean all activities not specifically set forth in the approved RI/Conceptual RAP, as amended, that the MDNR determine are necessary to meet the Performance and Cleanup Standards described in the administrative rules pursuant to MERA, MAC R 299.5101 et seq., and all applicable state and federal requirements, and that do not fundamentally change the overall remedial approach outlined in the RI/Conceptual RAP, as amended.

These activities may include modifications to the components of the remedial action and to the type and cost of materials, equipment, facilities, services and supplies used to implement the remedial action.

8.2 In the event that the MDNR determines that additional response activity is necessary, notifications of such additional response activity will be provided to the City's project coordinator. The City may also propose additional response activity which shall be subject to approval by the MDNR. Any additional response activity determined to be necessary by the MDNR, or otherwise agreed to by the parties, shall be completed by the City in accordance with the standards, specifications and schedules approved by the MDNR.

8.3 Unless the MDNR agrees to extend the time period, within sixty (60) days of receipt of notice from the MDNR that additional response activity is necessary, or from the date on which the parties otherwise agree that additional response activity is necessary, the City shall submit a plan for the additional response activity to the MDNR for approval. The plan shall be developed in conformance with the requirements of this Order. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Order. The City shall implement the plan for additional response activity in accordance with the schedule contained therein.

8.4 Nothing in the preceding paragraph shall limit the power and authority of the MDNR, the Attorney General or a court, to take,

direct or order all appropriate action to protect public health, welfare and safety or the environment or to prevent, abate or minimize an actual or threatened release of contaminants.

IX. ENGAGEMENT OF A CONTRACTOR

G.R. Kunkle has been designated by the City to be its contractor to perform the technical activities required under this Order. All work performed by said contractor pursuant to this Order shall be under the general direction and supervision of a qualified individual with a minimum of five (5) years direct experience and expertise in the investigation and cleanup of sites of environmental contamination. The City's contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A statement of qualifications and identification of personnel designated for the project, shall be provided to the MDNR within thirty (30) days of the effective date of this Order.

X. QUALITY ASSURANCE/SAMPLING

10.1 The City shall assure that the MDNR and its authorized representatives are allowed access to any laboratory utilized by the

City in implementing this Order for quality assurance monitoring.

10.2 The City shall submit to the MDNR the results of all sampling or tests and all other data generated by the City or its contractor(s), or on the City's behalf, in the course of implementing this Order. Said results shall be included in progress reports as set forth in Section XVIII.

10.3 At the request of the MDNR, the City shall allow the MDNR or its authorized representatives to take split and/or duplicate samples of any samples collected by the City pursuant to the implementation of this Order. Except as may be necessary for sampling required pursuant to Section XIII, the City shall notify the MDNR not less than seven (7) days in advance of any sample collection activity. In addition, the MDNR shall have the right to take any additional samples that it deems necessary.

10.4 Notwithstanding any provision of this Order, the MDNR and the Attorney General shall retain all of their information gathering, inspection and enforcement authorities and rights under Act 307 and any other applicable statute or regulation, with the exception of those matters covered by the covenants in XXVI and XXVII.

XI. PROJECT COORDINATORS

11.1 Within ten (10) days after the effective date of this Order, the City shall designate a project coordinator who shall have primary responsibility for implementation of the work at the Facility. The MDNR's project coordinator shall be Eric VanRiper, Environmental Quality Analyst, Environmental Response Division, MDNR. The MDNR's project coordinator will be the primary designated representative for the MDNR at the Facility. Terry's project coordinator shall be Charles Barbieri of Foster, Swift, Collins and Smith, PC. Terry's project coordinator will be the primary designated representative for Terry at the Facility. All communication between the parties and all documents, reports, approvals and other submissions and correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. If any party decides to change its designated project coordinator, the name, address and telephone number of the successor shall be provided, in writing, to the other party seven (7) days prior to the date on which the change is to be effective. This paragraph does not relieve the City from other reporting obligations under the law.

11.2 The MDNR may designate other authorized representatives, employees, contractors and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

XII. ACCESS

12.1 To the extent access to the Facility is owned, controlled by, or available to the City and Terry, from the effective date of this Order, the MDNR, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Order, including, but not limited to:

- (a) Monitoring the work or any other activities taking place pursuant to this Order on the Facility;
- (b) Verifying any data or information submitted to the MDNR;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning and implementing response actions at or near the Facility; and
- (f) Inspecting and copying nonprivileged records, operating logs, contracts or other documents.
- (g) Interviewing employees, contractors, agents, or representatives of the City and Terry.

12.2 Upon reasonable notice, Terry shall grant the City, or its authorized contractors, the right to access the Facility for the purpose of conducting response activities, to the extent the property is

owned, controlled by or available to Terry provided the response activities are being conducted in accordance with a work plan which has been reviewed and approved by the MDNR. Any party who is conducting response activities pursuant to an MDNR-approved work plan will request its consultant and contractors to coordinate all activities at the Facility with Terry, to use its best efforts to minimize interference and, whenever possible, to employ efforts that are the least intrusive to Terry's property, operation or activities unless such interference is necessary for implementation to response activities. For the purpose of this section, "Best Efforts" does not mean taking actions that would result in the undue disruption or halt of Terry's operation or activities at the Property.

12.3 To the extent that the Facility or any other area where the work is to be performed by the City under this Order is owned or controlled by persons other than the City or Terry, the City shall use its best efforts to secure from such persons access from the parties and their authorized employees, agents, representatives, contractors and consultants. The City shall provide the MDNR with a copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best effort" includes, but is not limited to, reasonable compensation to the owner to secure such access or taking judicial action to secure such access. If, after using best efforts, the City is unable to obtain access within forty-five (45) days of the effective date of this Order, the City shall promptly notify the MDNR. The State may thereafter assist the City in obtaining access. The City shall,

within thirty (30) days of receipt of a written request from the MDNR, reimburse the State for all costs not inconsistent with law incurred by the State in obtaining access in the manner provided by Section XXVI.

12.4 All parties granted access to the Facility pursuant to this Order shall comply with all applicable health and safety laws and regulations.

12.5 Notwithstanding any provision of this Order, the MDNR and the Attorney General shall retain all of their inspection and access authorities under any applicable statute or regulation.

XIII. CREATION OF DANGER

13.1 Upon obtaining information concerning the occurrence of any event during performance of Response Activities conducted pursuant to this Order that causes or threatens a release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, welfare or the environment, the City or Terry, as appropriate, shall immediately undertake all appropriate action to prevent, abate or minimize such release or endangerment and shall immediately notify the MDNR's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by the

City or Terry, shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan. The City or Terry, as appropriate, shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent recurrence of such an incident.

Regardless of whether the City or Terry notifies the MDNR under this subsection, if Response Activities undertaken under this Order cause or threaten a release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare or to the environment, the MDNR may: (a) require the City or Terry, as appropriate, to stop Response Activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment; (b) require the City or Terry, as appropriate, to undertake any such activities that the MDNR determines are necessary to prevent or abate any such release, threat or endangerment; and/or (c) undertake any actions that the MDNR determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDNR undertakes any action to abate such a release, threat or endangerment, the City shall reimburse the state for all costs incurred by the state that are lawfully incurred. Payment of such costs shall be made in the manner provided in Paragraph 25.3.

13.2 Nothing in the preceding subsection shall limit the power and authority of the MDNR, the State of Michigan to take, direct or order all appropriate action to protect the public health, welfare

and safety, or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

XIV. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Act 307, the Act 307 Rules, laws relating to occupational safety and health and other state environmental laws. Other agencies may also be called upon to review the conduct of work under this Order. Further, the City and Terry must designate, in a report to the MDNR, any facilities that the City and Terry proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XV. RECORD RETENTION/ACCESS TO INFORMATION

15.1 The City and Terry and their representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of ten (10) years after its termination, all records, sampling or test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant

to any requirement of this Order. After the ten (10) year period of document retention, the City and Terry and their successors shall obtain the MDNR's written permission prior to the destruction of such documents and, upon request, the City and Terry and/or its successors shall relinquish custody of all documents to the MDNR. The City and Terry's request shall be accompanied by a copy of this Order and sent to the following address or at such other address as may subsequently be designated in writing by the MDNR:

Chief
Environmental Response Division
Michigan Department of Natural Resources
P.O. Box 30426
Lansing, MI 48909

15.2 The City shall, upon request, provide to the MDNR 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 Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the work. The City and Terry shall also, upon request, make available to the MDNR, upon reasonable notice, the City or Terry's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the work.

15.3 The City or Terry may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information

requested by this Order. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDNR, it may be made available to the public by the MDNR without further notice to the City or Terry. Analytical data shall not be claimed as confidential or privileged by the City or Terry.

XVI. NOTICES

Whenever, under the terms of this Order, notice is required to be given or a report, sampling data, analysis or other document is required to be forwarded by one party to the other, such correspondence shall be directed to the following individuals at the specified addresses or at such other address as may subsequently be designated in writing:

As to MDNR:

Eric VanRiper
Environmental Response Division
10650 S. Bennett Drive
Morrice, Michigan 48857
Telephone: (517) 625-4621

As to the City:

Doug Thomas, City Manager
525 East Superior
P.O. Box 278
Alma, Michigan 48801
Telephone: (517) 463-8336

As to Terry Industries:

Charles Barbieri
Foster, Swift, Collins and Smith, P.C.
313 South Washington Square
Lansing, Michigan 48903
Telephone: (517) 371-8155

As to MDNR for financial/escrow matters:

Chief, Cost Recovery Unit
Environmental Response Division
Telephone: (517) 335-3378

Regular Mail:
Cost Recovery Unit
Environmental Response Division
P.O. Box 30426
Lansing, Michigan 48909

Via Courier:
Mr. David Koski
Cost Recovery Unit
Environmental Response Division
300 South Washington Square
Lansing, Michigan 48903

As to MDNR for record retention:

Chief
Environmental Response Division
Telephone: (517) 373-9837

Regular Mail:
Environmental Response Division
P.O. Box 30426
Lansing, MI 48909

Via Courier:
300 South Washington Square
Lansing, Michigan 48903

XVII. SUBMISSIONS AND APPROVALS

17.1 All plans, submissions and reports (submissions") identified in the RI/Conceptual RAP, as amended shall be delivered to the MDNR in accordance with the schedule set forth in this Order. Prior to receipt of MDNR approval, any report submitted to the MDNR for approval shall be marked "Draft" and shall include, in a prominent

location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the Michigan Department of Natural Resources ("MDNR"). This document was prepared pursuant to a government Administrative Order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDNR."

17.2 Upon receipt of any plan, report or other item relating to the work that is required to be submitted for approval pursuant to this Order, the MDNR project coordinator will in writing: (a) approve the submission; (b) disapprove the submission, notifying the City of deficiencies; or (c) approve the submission with modifications. Upon receipt of a notice of approval or modification from the MDNR, the City shall proceed to take any action required by the plan, report, or other item as approved or as modified, and shall submit a new cover page and the modified pages of the plan marked "Final."

17.3 Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDNR, the City shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the plan, report or other item for approval. Notwithstanding a notice of disapproval, the City shall proceed to take any response action not directly related to the deficient portion of the submission. If, upon resubmission, the plan, report or other item is not approved,

the MDNR shall so advise the City, and the City shall be deemed to be in violation of this Order.

17.4 A finding of approval or approval with modifications shall not be construed to mean that the MDNR concurs with all conclusions, methods or statements in the submissions or warrants that the submission comports with law.

17.5 No informal advice, guidance, suggestions or comments by the MDNR regarding reports, plans, specifications, schedules or any other writing submitted by the City shall be construed as relieving the City of its obligation to obtain such formal approval as may be required by this Order.

XVIII. PROGRESS REPORTS

The City shall provide to the MDNR written quarterly progress reports relating to response action that shall: (a) describe the actions that have been taken toward achieving compliance with this Order during the previous quarter; (b) describe data collection and activities scheduled for the next quarter; and (c) include all results of sampling and tests and other data received by the City, its employees or authorized representatives during the previous quarter relating to the response activities performed pursuant to this Order. The first quarterly report(s) shall be submitted to the MDNR within one hundred and eighty

(180) days following the effective date of this Order and Quarterly thereafter until the issuance of the Certificate of Completion as provided in Section XXXIII.

XIX. INDEMNIFICATION AND INSURANCE

19.1 The City shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of the City, its officers, employees, agents or any persons acting on its behalf or under its control in carrying out response actions pursuant to this Order. 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 entered into by or on behalf of the City in carrying out actions pursuant to this Order. Neither the City nor any contractor shall be considered an agent of the State.

19.2 The City waives any and 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 City and any person for performance of Response

Activities at the Facility, including claims on account of construction delays.

19.3 The City shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, agreement or arrangement between the City and any person for performance of Work at the Facility, including claims on account of construction delays.

19.4 Prior to commencing any response activities on or near the site, the City's shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance with limits of one million dollars (\$ 1,000,000), combined single limit, naming the MDNR, the Attorney General and the State of Michigan as additional insured parties. If the City demonstrates by evidence satisfactory to the MDNR that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, the City 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 method used to insure, the City shall provide the MDNR and the Attorney General with certificates evidencing said insurance and the MDNR's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Order, the City 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 action on behalf of the City in furtherance of this Order. Prior to commencement of the Work under this Order, the City shall provide to the MDNR satisfactory proof of such insurance.

19.5 Terry shall indemnify and save and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Terry, its officers, employees, agents or contractors in connection with the Facility. This requirement shall be subject to Sections XXXIII and XXXIV.

19.6 This Agreement shall not be construed as an indemnity by the State for the benefit of Terry or any other party.

19.7 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 entered into by Terry or on behalf of Terry in carrying out actions pursuant to the Agreement. Neither Terry nor any contractor shall be considered an agent of the State.

XX. PUBLIC REVIEW OF REPORTS

The MDNR reserves the right to hold a public comment period if determined to be necessary. When the MDNR determines that the RI/Conceptual RAP, as amended required under this Order is acceptable for public review, the RI/Conceptual RAP, as amended shall be made available by the MDNR for public comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDNR. Following the public review and comment period, the MDNR may refer the RI/Conceptual RAP, as amended back to the City for revision pursuant to public comments and MDNR comments. In addition, the City shall provide information for the responsiveness summary as required by the MDNR. The City shall prepare all portions of a draft responsiveness summary specified by the MDNR. The MDNR will prepare the final responsiveness summary for the RI/Conceptual RAP, as amended.

XXI. MODIFICATIONS/INCORPORATION BY REFERENCE

21.1 If this Order, other than the RI/Conceptual RAP, as amended or Time Schedules referenced herein, is modified, such modifications shall be in writing by signature of the Director of the MDNR and Attorney General and the City and Terry's designated Project Coordinator or other authorized representative. Amendments to

RI/Conceptual RAP, as amended and Time Schedules referenced in this Order shall be made in writing by the MDNR Project Coordinator.

21.2 The RI/Conceptual RAP, as amended and Time Schedules referenced herein are incorporated into this Order and are an enforceable part thereof. Any plans, specifications and schedules required by this Order are, upon approval by the MDNR, incorporated into this Order and made enforceable parts thereof.

XXII. DELAYS IN PERFORMANCE

22.1 Any delay attributable to a Force Majeure shall not be deemed a violation of the City's obligations under this Order in accordance with this Section.

22.2 The City shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure". "Force Majeure" is defined, for the purpose of this Order, as an occurrence or nonoccurrence arising from causes beyond the control of the City, and which could not be avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes or failure to obtain a permit or license as a result of the City's actions or omissions.

22.3 When circumstances occur that the City believe constitute a Force Majeure, the City shall notify the MDNR by telephone or telefax of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Within five (5) working days after the City first become aware of such circumstances, the City shall supply the MDNR, in writing, with an explanation of the causes(s) of any actual or expected delay, the anticipated duration of the delay, and the measures taken and to be taken by the City to avoid, minimize or overcome the delay and the timetable for implementation of such measures. Failure of the City to comply with the written notice provision of this subsection shall constitute a waiver of the City's right to assert a claim of Force Majeure with respect to the circumstances in question.

22.4 If the MDNR agrees that a delay is or was caused by Force Majeure, the City's delay shall be excused and the MDNR shall provide the City such additional time as may be necessary to compensate for the Force Majeure event. The City shall have the burden of demonstrating (i) that the delay is or was caused by a Force Majeure event; and (ii) that the amount of additional time requested is necessary to compensate for that event.

22.5 An extension of one compliance date based upon a particular Force Majeure incident does not mean that the City qualifies for an extension of a subsequent compliance date without meeting its

burden of proof as specified in this (Section XXII) for each incremental step or other requirement for which an extension is sought.

XXIII. DISPUTE RESOLUTION

23.1 If any party objects to any notice of disapproval, modification or decision concerning a "Covered Matter" as defined in subparagraph 26.2, including Section VIII, hereof, and factual matters arising under Sections XXVI and XXVII, hereof, the parties shall notify the MDNR, in writing, of their objections within seven (7) days of receipt of the notice. The MDNR and the parties shall have ten (10) days from the receipt by the MDNR of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this ten (10) day period, the MDNR shall provide written statement of its decision to the parties, and the parties shall commence the activities required by the MDNR decision within five (5) days of receipt of the MDNR decision.

23.2 In the event the City does not commence the activities required by the MDNR decision, the MDNR, in cooperation with the Department of Attorney General, may take such civil enforcement actions against the City as may be provided for by Sections 10f(4) and 16(1) of MERA, MCL 299.610f(4) and MCL 299.616(1), and other statutory and/or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by law. In such an

event, the MDNR retains the right to perform necessary response activities and to recover the costs thereof from the City. Engagement of a dispute resolution among the parties shall not be cause for the delay of any Work.

23.3 Should a dispute arise, the City shall establish a Dispute Resolution Escrow and shall pay that portion of a demand, with any applicable interest that is subject to a good faith dispute into the Dispute Resolution Escrow. The Escrow Agent shall be selected by the City and subject to the approval of MDNR. The Dispute Resolution Escrow shall be solely and exclusively to reimburse the State's oversight costs and to conduct the response activities set forth in this Order. During the pendency of any dispute concerning the reimbursement of future oversight costs or the payment of stipulated penalties the City shall pay that portion of a demand, with any applicable interest, that is subject to a good faith dispute into the Dispute Escrow established pursuant to this Section. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order. Penalties shall be paid into this account as they continue to accrue, at least every seven (7) days. Upon each deposit, the City shall provide the MDNR with a copy of the deposit slip. Within ten (10) days of the MDNR decision, the escrow agent shall pay the balance of the account, including all accrued stipulated penalties or any relevant portion thereof, to the respective party to the extent each party prevailed in dispute resolution. Payments to the MDNR shall be in the manner provided in Section XXIV.

23.4 Notwithstanding this Section, the City shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Section XXIV and XXV, as appropriate.

23.5 No action or decision of the MDNR or the Attorney General shall constitute final agency action giving rise to any rights of judicial review, prior to the Attorney General's initiation of judicial action to compel the City to comply with this Order to enforce a term, condition or other action required by this Order in accordance with Section 16 of MERA, MCL 299.616. Nothing in this Order shall expand the City's ability to obtain pre-enforcement review of this Order. The City or Terry may seek review of disputed issues by the Chief of the Environmental Response Division ("ERD"). A written request for review must be filed with the Chief of ERD and the appropriate ERD District Office within ten (10) working days of the City's or Terry's receipt of MDNR's statement of its decision.

XXIV. REIMBURSEMENT OF COSTS

24.1 The City shall reimburse the State for future oversight, excluding enforcement costs, incurred by the State in overseeing the remedial activities of the City for matters covered in this Order. As soon as possible after each anniversary of the effective date of this Order, pursuant to Sections 10f(4) and 16(1) of MERA, MCL 299.610f(4)

and MCL 299.616(1), the MDNR will provide the City with a written demand of oversight costs lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred. The State's entitlement to be reimbursed for oversight costs shall be limited to two thousand, five hundred dollars (\$2,500.00) per year.

24.2 Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 9(3) of MERA, MCL 299.609(3). The City shall also have the right to request a full and complete accounting of all demands made hereunder, including timesheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to the MDNR. Except as provided by Section XXIII, the City shall reimburse the MDNR for such costs within thirty (30) days of receipt of a written demand from the MDNR. In any challenge by the City to a demand for recovery of costs by the MDNR, the City shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 12(2)(a) of MERA, MCL 299.612(2)(a). All payments made to the State pursuant to this Order shall be by check payable to the "State of Michigan - Environmental Response Fund", and shall be sent by first-class mail to the following address:

Administration Section
Environmental Response Division
Department of Natural Resources
P.O. Box 30426
Lansing, MI 48909

The former Agri-Fuels facility and AOC-ERD-94-014 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDNR Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources Division, 530 Mason Building, Lansing, Michigan 48909.

XXV. STIPULATED PENALTIES

25.1 Except as provided by Sections XXIII and XXIV, if the City fails or refuses to comply with any term or condition in Sections VII, VIII, XIII and XXV, the City shall pay the MDNR stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

| <u>Period of Delay</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------|--------------------------------------|
| 1st through 15th day | \$ 100.00 |
| 15th through 30th day | \$ 250.00 |
| Beyond 30 Days | \$ 1,000.00 |

25.2 Except as provided in Sections XXIII and XXIV, if the City fails or refuses to comply with any other term or condition of this Order, other than Section XIV, the City shall pay the MDNR stipulated

penalties of \$ 100.00 a day for each and every failure or refusal to comply .

25.3 The City shall notify the MDNR, in writing, of any violation of this Order no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDNR as required by this Paragraph constitutes an independent violation of this Order.

25.4 Stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Order.

25.5 Except as provided in Section XXIII, stipulated penalties owed to the state shall be paid no later than thirty (30) days after receiving a written demand from the state. Payment shall be made in the manner provided in Section XXIV. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 12(4) of MERA, MCL 299.612(4). 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 Order.

25.6 Liability for or payment of stipulated penalties are not the state's exclusive remedy in the event the City violates this Order. The state reserves the right to pursue any other remedy or remedies that it is entitled to under this Order or any applicable law for any failure or refusal of the City to comply with the requirements of this Order, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan as a result of the City's violation of or failure to comply with this Order pursuant to Sections 10f(4) and 16(1) of MERA, MCL 299.610 f(4) and MCL 299.616(1) and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXVI. COVENANT NOT TO SUE TO THE CITY BY THE STATE

26.1 In consideration of the response activities that will be performed and the payments that will be made by the City under the terms of this Order, and except as specifically provided in this Section, the State of Michigan hereby covenants not to sue or take any civil, judicial or administrative action against the City (excluding any officers, directors or employees formerly employed by any previous owner or operator of the Property) for any claims arising from Covered Matters.

26.2 "Covered Matters" shall include any liability to the State of Michigan under applicable state and federal law relating to the Facility for existing contamination which was identified prior to the effective date of this Order for the following:

(a) Performance of the approved response activity by the City under the Order; and

(b) Payment of oversight costs incurred by the State as set forth in Paragraphs 25.1 and 25.2 of this Order.

26.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 26.2. The State reserves, and this Order is without prejudice to, all rights against the City with respect to all other matters, including, but not limited to, the following:

(a) Liability arising from a violation by the City of a requirement of this Order, including conditions of approved submittal required herein;

(b) Liability for any other response activities required at the Facility for unknown contamination;

(c) Liability for response activity costs other than those referred to in Section XXIV;

(d) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substance(s) outside of the Facility and not attributable to the Facility;

(e) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substance(s) taken from the Facility;

(f) Liability for damages for injury to, destruction of, or loss of natural resources;

(g) Liability for criminal acts;

(h) Any matters for which the State is owed indemnification under Section XIX of this Order; and

(i) Liability for violations of federal or state law which occur during or after implementation of the Remedial Activities .

26.4 With respect to the City's liability for Facility response costs incurred prior to the effective date of this Order, the State hereby covenant not to sue the City. With respect to liability for performance of response activities required to be performed under this Order, and response activity costs incurred by the State after the effective date of this Order and reimbursement of those costs by the

City's pursuant to Section XXIV of this Order, the covenant not to sue shall take effect upon issuance by the MDNR of the Certification of Completion in accordance with Section XXXIII. The covenant not to sue is conditioned upon the complete and satisfactory performance by the City of its obligations under this Order. The covenant not to sue extends only to the City and does not extend to any other person.

26.5 The State's Pre-Certification of Completion Reservations:

Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings to enforce this Administrative Order or in a new action or to issue an administrative order seeking to compel the City (1) to perform additional response activities pursuant to Section VIII hereof, relating to existing contamination at the Facility or (2) to reimburse the State of Michigan for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the entry of this Order; or

(b) Information is received, in whole or in part, after the entry of this Order;

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action

is not protective of the public health, safety or welfare or the environment.

26.6 The State's Post-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel the City (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the Certification of Completion; or

(b) Information is received, in whole or in part, after the Certification of Completion;

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of the public health, safety or welfare or the environment.

26.7 For purposes of Paragraph 26.5, the information previously received by and the conditions known to the MDNR shall include only that information and those conditions set forth in the administrative record supporting the Remedial Action at the time of

entry of this Order. For purposes of Paragraph 26.6, the information previously received by and the conditions known to the MDNR shall include only that information and those conditions set forth in the administrative record supporting the Remedial Action, and any information received by the MDNR pursuant to the requirements of this Order prior to Certification of Completion of the Remedial Action.

26.8 With the exception of the covenants in Sections XXVI and XXVII, nothing contained in this Administrative Order by Consent shall affect the liability of any other Potentially Responsible Party, including Mueller Bean Company, for the release or threat of release of hazardous substances regarding the Agri-Fuels property.

XXVII. COVENANT NOT TO SUE TO TERRY BY THE STATE

27.1 In consideration of the response activities that will be performed and the payments that will be made by the City under the terms of this Order, and except as specifically provided in this Section, the State of Michigan hereby covenants not to sue or take further civil, judicial, or administrative action against Terry (excluding any officer, director or employees formerly employed by any previous owner or operator of the Property) for any claims arising from: (a) Existing Contamination associated with the Facility; and, (b) the acts or omissions of any owner or operator of the Property prior to the

effective date of this Order that may have contributed to or caused Existing Contamination at the Facility.

27.2 Terry shall not assign any of its rights or responsibilities under this Order, except as provided in this Section XXVII.

27.3 Terry may assign its rights and responsibilities under this Order in connection with the transfer of fee title to all or a portion of the Property, provided that the transferee demonstrates those items set forth in Paragraph 27.6 and the State first approves the transfer in writing. Upon consummation of such transfer the transferee assumes responsibility for the obligations of Terry as set forth in this Order. Terry shall continue to enjoy the protections afforded by the Order, but shall automatically be released from the responsibilities imposed by the Order upon Terry's receipt of the State's written approval of the transfer.

27.4 Terry may sell on land contract, lease or sublease or otherwise convey an interest which does not constitute a fee title interest with respect to all or any part of the Property; provided that the transferee demonstrates those items set forth in Paragraph 27.6 and the State first approves of the transfer in writing. In the event of such a transfer both Terry and the transferee shall have full rights, duties, obligations and benefits as afforded in this Order.

27.5 The State shall not unreasonably withhold any approval under this Section XXVII, and shall either grant or deny the approval, in writing, stating the reasons for any denial, within thirty (30) days following its receipt of a written request for approval. The State shall not, as a condition of approval of a transfer, require the expenditure of additional funds for investigation or remediation of Existing Contamination at the Facility, except for any investigation necessary to demonstrate that the transferee's proposed use of the Property will not be inconsistent with the obligations of Terry as set forth in this Order.

27.6 Prior to transfer of fee title to all or any portion of the Property, the transferee shall demonstrate to the satisfaction of the MDNR, all of the following:

(a) That the transferee is financially capable of redeveloping and reusing the Property in accordance with the covenant not to sue as set forth in this Section XXVII;

(b) That the transferee is not affiliated in any way with any person that may be liable under Section 12 of the MERA for Existing Contamination at the Facility;

(c) That the redevelopment or reuse of the Property by the transferee will not do any of the following:

(1) Exacerbate or contribute to Existing Contamination or cause new contamination;

(2) Interfere with the implementation of Response Activities;

(3) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the Facility.

XXVIII. COVENANT NOT TO SUE TO THE STATE BY THE CITY AND TERRY

28.1 The City and Terry 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 cause of action against the State with respect to the Facility arising from this Order including any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 10f(5) of MERA, MCL 299.610f(5) or any other provision of law.

28.2 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 the Facility, the City and Terry 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 the MDNR or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in the Paragraph affects the

enforceability of the covenants not to sue set forth in Sections XXVI, XXVII and XXVIII (Covenants Not to Sue by the State).

XXIX. CONTRIBUTION PROTECTION

Pursuant to Section 12c(5) of MERA, MCL 299.612 c(5) and to the extent provided in Sections XXVI and XXVII, the City and Terry shall not be liable for claims for contribution regarding matters addressed in this Order. Entry of this Order does not discharge the liability of any other person(s) liable under Section 12 of MERA, MCL 299.612. In any action by the City or Terry for contribution from any person not a party to this Order, the City's or Terry's cause of action shall be subordinate to the right of the State of Michigan if the State files an action pursuant to MERA or other applicable federal or state law, in accordance with Section 12c(8) of MERA, MCL 299.612c(8).

XXX. RESERVATION OF RIGHTS BY THE STATE AGAINST THE CITY

30.1 The MDNR and the Attorney General reserve the right to bring an action against the City under federal and state law for any matters that are defined by subparagraph 26.3

30.2 The MDNR and the Attorney General expressly reserve any and all rights and defenses that they may have to enforce this Order

against the City, including the MDNR's right both to disapprove of Response Activities performed by the City and to require the City to perform tasks in addition to those detailed in this Order.

30.3 In the event the MDNR determines that the City has failed to implement any provisions of the Order in an adequate or timely manner, the MDNR may perform, or contract to have performed, any and all portions of the response activity(ies) as the MDNR determines necessary and to recover response activity costs.

30.4 Failure by the MDNR or the Attorney General to timely enforce any term, condition or requirement of this Order, shall not:

(a) Provide or be construed to provide a defense for Respondents' noncompliance with any such term, condition or requirement of this Order: or

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

30.5 Notwithstanding any other provision of this Order, the MDNR retains all authority and reserves all rights to take any and all response activity(ies) authorized by law.

XXXI. RESERVATION OF RIGHTS BY THE STATE AGAINST TERRY

The covenant stated in Section XXVII shall apply only to Existing Contamination. The State reserves the right to take independent judicial or administrative actions against Terry for any of the following: (a) Post-Existing Contamination associated with the Facility; (b) the release or threat of release of any Hazardous Substance resulting from the redevelopment or reuse of the Property by Terry; (c) the exacerbation of or contribution to the Existing Contamination associated with the Property, including; (i) the introduction of any substance (such as air or water), other than as part of an approved RAP, and (ii) redevelopment and construction which has the effect of exacerbating or contributing to Existing Contamination; (d) Terry's interference with or failure to cooperate with the MDNR, its contractors or other persons conducting MDNR approved Response Activities; (e) failure by Terry to exercise due care and reasonable precautions with respect to any release or threat of release; (f) any action by Terry which renders a Response Activity required by this Order less effective or more expensive than it might otherwise be; or (g) any other violations of law not relating to the Existing Contamination.

XXXII. VOIDANCE OF COVENANT NOT TO SUE TO TERRY

The covenant not to sue to Terry shall be null and void upon Terry's failure to fully comply with the provisions of Paragraphs 7.5 and 7.6 herein.

XXXIII. CERTIFICATION

33.1 When the City determines that it has completed all the work required by this Order, it shall submit to the MDNR a notification of completion and a draft final report. The draft final report shall summarize all response actions performed under this Order. The draft final report shall include or reference any supporting documentation.

33.2 Upon receipt of the Notification of Completion, the MDNR will review the Notification of Completion, the draft final report, any supporting documentation and the actual response actions performed pursuant to this Order. Within ninety (90) days of receipt of the Notification of Completion, the MDNR will determine whether the City has satisfactorily completed all requirements of this Order, including, but not limited to, completing the work required by this Order, complying with all terms and conditions of this Order and paying any and all cost reimbursement and stipulated penalties owed to the MDNR. If the MDNR determines that all requirements have been satisfied, the MDNR will so

notify the City, and upon receipt of a "Final" final report in accordance with Section XVII, shall issue a Certificate of Completion.

XXXIV. AGREEMENT FOR TYPE C REMEDY

Upon completion of the Response Activities addressing the Existing Contamination in connection with the Property, Terry's obligations set forth in Section VII of this Order shall automatically terminate except to the extent that such obligations may be incorporated into a written agreement between the State, the City and Terry with respect to a Type C closure, including contamination that has migrated beyond the boundaries of the legal description of the Agri-Fuels property.

XXXV. SEPARATE DOCUMENTS

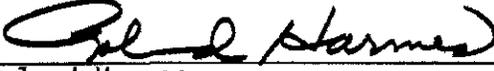
This Order may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXVI. EFFECTIVE DATE

This Order is effective upon the date that the City and Terry receives written notice that the Director has signed the Order. All

times for performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein.

IT IS SO AGREED AND ORDERED BY:



Roland Harmes
Director
Michigan Department of Natural Resources

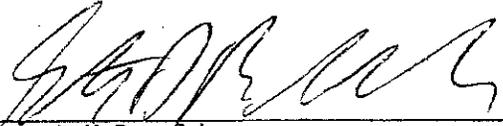
6/9/94
Date



Gary Finkbeiner
Assistant Attorney General
Natural Resources Division

6/9/94
Date

IT IS SO AGREED BY:



Stewart McDonald
Mayor
City of Alma

5-24-94
Date



William Stuckey
City Clerk/Treasurer
City of Alma

5-24-94
Date

IT IS SO AGREED BY:

Marc Terry, President
Marc Terry, President
Terry Materials of Michigan, Inc.

5/23/94
Date

almaoc3.dft

Exhibit A

A PART OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 35, TOWNSHIP 12 NORTH-RANGE 3 WEST, CITY OF ALMA, GRATIOT COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT A POINT 33 FEET WEST AND 33 FEET SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID SECTION 35; THENCE ALONG THE SOUTH LINE OF WILLIAMS STREET RIGHT-OF-WAY, 33 FEET SOUTH OF THE EAST-WEST $\frac{1}{4}$ LINE, 1107.82 FEET THENCE SOUTH $00^{\circ}11'31''$ WEST 972.12 FEET TO THE NORTH LINE OF THE RAILROAD RIGHT-OF-WAY; THENCE NORTHEASTERLY ALONG THE NORTH LINE OF THE RAILROAD RIGHT-OF-WAY TO A POINT ON THE WESTLINE OF JEROME ROAD 33 FEET WEST OF THE EAST LINE OF SAID SECTION 35; THENCE NORTH ALONG THE WEST LINE OF JEROME ROAD TO THE POINT OF BEGINNING.