

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Seven Lakes Development, LLC  
Walker Landfill  
Washington Township, Macomb County

MDEQ Reference No. AOC-RRD-04-002

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**ADMINISTRATIVE ORDER BY CONSENT  
FOR PAYMENT OF PAST COSTS**

A. This Administrative Order by Consent for Payment of Past Costs (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Attorney General for the State of Michigan (collectively, the State) and Seven Lakes Development, LLC, pursuant to the authority vested in the State by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* All terms used in this Order, which are defined in Part 201 or the Part 201 Administrative Rules, 2002 AACRS, R 299.5101 *et seq* (Part 201 Rules), shall have the same meaning in this Order as in Part 201 and the Part 201 Rules.

B. This Order concerns the settlement between the State and Seven Lakes Development, LLC, (Reimbursing Party) for the State's past response activity costs incurred as a result of responding to the release or threat of release of hazardous substances at and emanating from the property of the Walker Landfill, Macomb County, Michigan (the Property). The Property and any associated area, place, or property where concentrations of hazardous

substances exceed the residential cleanup criteria of Section 20120a(1)(a) and (17) of the NREPA (the Facility), as further defined in the Part 201 Rules, is a facility as defined by Part 201 and is subject to regulation under Part 201.

C. Pursuant to Part 201, the State incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. Pursuant to Section 20126a(1)(a) of the NREPA, a person who is liable under Section 20126 is liable for all response activity costs lawfully incurred by the State. The parties to this Order desire to resolve all claims for past response activity costs that the State has incurred and paid. Settlement of this claim is in the public interest and will minimize litigation.

D. The execution of this Order by the Reimbursing Party is neither an admission of liability with respect to any issue covered under this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

E. This Order shall apply to and be binding upon the Reimbursing Party and its successors and assigns. No change or changes in the ownership or corporate status of the Reimbursing Party shall alter in any way the Reimbursing Party's obligations under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

**BASED UPON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND THE ATTORNEY GENERAL ORDER, AND SEVEN LAKES DEVELOPMENT, LLC, AGREES TO, THE FOLLOWING:**

1. For the purposes of this Order, the term "past response activity costs" means costs that the State has incurred for response activities at the Facility and paid prior to and during the time periods set forth in the attached Final Summary Report, Attachment A, in the amount of

\$550,422.34. "Costs incurred" does not include outstanding costs that the State has incurred, but has not yet paid.

2. If the Reimbursing Party enters into an Administrative Order by Consent for the Performance of Response Activities (AOCRA) with the State within twelve (12) months of the effective date of this Order, which response activities shall include but not be limited to those activities delineated in MDEQ's January 15, 2004 Demand Letter to the Reimbursing Party, the Reimbursing Party shall pay to the State a reduced amount of Three Hundred and Fifty Thousand Dollars (\$350,000) to resolve all claims for past response activity costs for the Facility. Payments in the amount of Fifty Thousand Dollars (\$50,000) shall be made every six months beginning on the effective date of the AOCRA until the amount owed is paid in full.

3. If the Reimbursing Party fails to enter into an AOCRA with the State within twelve (12) months of the effective date of this Order, the Reimbursing Party shall pay to the State the past response activity costs due to the State in the amount of Five Hundred and Fifty Thousand Dollars (\$550,000) to resolve all claims for past response activity costs for the Facility. Payments in the amount of One Hundred Thousand Dollars (\$100,000) shall be made beginning twelve (12) months from the effective date of this Order and continuing every six months until the amount owed is paid in full. (This takes into account the initial \$50,000 payment made pursuant to paragraph 4 of this Order). The Two Hundred Thousand dollar (\$200,000) difference between the payment option provided for in this paragraph and the payment option provided for in paragraph 1, may be deposited into a DEQ restricted fund for the sole purpose of funding the performance of response activities, as appropriated by the legislature, necessary to protect the public health, safety, welfare and the environment, at the Facility, and may be subject to a future cost recovery action by the State.

4. Within fifteen (15) days of the effective date of this Administrative Order by Consent for the Payment of Past Costs, the Reimbursing Party shall do the following: (a) make an initial payment to the State for past response activity costs in the amount of Fifty Thousand Dollars (\$50,000); and (b) provide the State with an accurate legal description suitable for recording for the property known as Phase III and Phase IV as depicted in Attachment B. The Reimbursing Party's failure to provide an accurate legal description may delay the State from sending the Lien Release to the Macomb County Register of Deeds for recording.

5. Within fifteen (15) days of the State's receipt of the initial payment of \$50,000, the State shall send a Lien Release to the Macomb County Register of Deeds for recording, to release the lien recorded by the DEQ on the Property on June 4, 2003 (Liber 13628, Page 574-5). Simultaneously, the State shall send for recording new liens under the provisions of Sections 20138(1) and 20138(4) of the NREPA, on the Property depicted in Attachment B, for the State's response activity costs at the Facility.

6. Within fifteen (15) days of the State's receipt of the final past cost payment made pursuant to paragraph 2 or 3 of this Order, the State shall send a Lien Release to the Macomb County Register of Deeds for recording, to release the lien recorded by the DEQ on the property legally described in Attachment B (Phase III and Phase IV).

7. Payments are to be made by certified check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
P.O. Box 30657  
Lansing, Michigan 48909-8157

Via Courier:  
Revenue Control Unit

Financial and Business Services Division  
Michigan Department of Environmental Quality  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933-2125

To ensure proper credit, payments made pursuant to this Order must be made by certified check referencing the Walker Landfill, the MDEQ Reference No. AOC-RRD-04-002, and the Remediation and Redevelopment Division Account Number RRD22193. A copy of the transmittal letter and the certified check shall be provided simultaneously to:

The MDEQ Project Coordinator:  
Benjamin Mathews  
Southeast Michigan District Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
38980 W. Seven Mile Road  
Livonia, Michigan 48152-1006  
Telephone: 734-953-1447  
Fax: 734-953-1544  
E-mail address: mathewsb@michigan.gov

and to:

Mark Matus  
Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
525 West Ottawa Street  
Lansing, Michigan 48933

Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

8. If the Reimbursing Party fails to pay the amount indicated in Paragraphs 2, 3 or 4 of this Order, pursuant to the schedule set forth therein, the Reimbursing Party shall also pay the State interest on balance not paid at the rate provided in Section 20126a(3) of the NREPA. If the

Reimbursing Party's payments are more than thirty (30) days past due, the Reimbursing Party shall also pay the State stipulated penalties of Two Hundred Dollars (\$200.00) per day for every day of its noncompliance with Paragraphs 2, 3 or 4, as appropriate.

9. In consideration of the payments to be made by the Reimbursing Party under the terms of this Order, except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against the Reimbursing Party for the past response activity costs addressed in Paragraph 2, 3 and 4 of this Order. With respect to the Reimbursing Party's liability for past response activity costs, the State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from the Reimbursing Party for the amount[s] specified in the Order and any associated interest and penalties that may have accrued pursuant to Paragraph 7. The covenant not to sue applies only to past response activity costs and shall not be construed as a covenant not to sue for any other liability that the Reimbursing Party may have to the State for the Facility. The covenant not to sue shall extend only to the Reimbursing Party and does not extend to any other person.

10. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Reimbursing Party and the Reimbursing Party specifically reserves its rights against such persons.

11. The Reimbursing Party agrees that all applicable statutes of limitation, if any, are tolled for six years from the date the MDEQ approves a remedial action plan for the Facility. The Reimbursing Party agrees that no on-site construction activity for a remedial action has commenced at this Facility for purposes of Section 20140(1)(a) of the NREPA.

12. The State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including action to seek injunctive relief, the recovery

of response activity costs not addressed by this Order, the recovery of natural resource damages and costs incurred to assess natural resource damages, monetary penalties, punitive damages for any violation of law or this Order, and liability for criminal acts. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

13. The Reimbursing Party reserves all its rights and defenses pursuant to any available legal authority, except as otherwise provided in this Order.

14. Nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

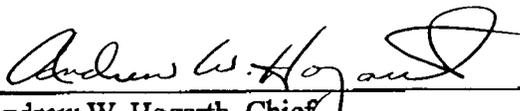
15. Pursuant to Section 20129(5) of the NREPA and to the extent provided in Paragraph 3, the Reimbursing Party shall not be liable for claims for contribution for the matters addressed in this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by the Reimbursing Party for contribution from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 or other applicable federal or state laws.

16. This Order shall become effective on the date that the State signs this Order. All dates for the performance of obligations under this Order shall be calculated from the effective

date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted.

MDEQ Reference No. AOC-RRD-04-002

IT IS SO AGREED TO AND ORDERED BY:

  
 \_\_\_\_\_  
 Andrew W. Hogarth, Chief  
 Remediation and Redevelopment Division  
 Michigan Department of Environmental Quality

12/26/04  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Suzanne D. Sonneborn (P55511)  
 Assistant Attorney General  
 Environment, Natural Resources, and Agriculture Division  
 Michigan Department of Attorney General

12/21/04  
 \_\_\_\_\_  
 Date

IT IS SO AGREED BY:

Seven Lakes Development, LLC

[Address] See attached

  
 \_\_\_\_\_  
 Signature  
 [Type or print name, title]

December 1, 2004  
 \_\_\_\_\_  
 Date

Attachment A – Summary Report  
 Attachment B – Legal Description of Phase III and IV

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MDEQ Reference No. AOC-RRD-04-002

IT IS SO AGREED TO AND ORDERED BY:

\_\_\_\_\_  
Andrew W. Hogarth, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

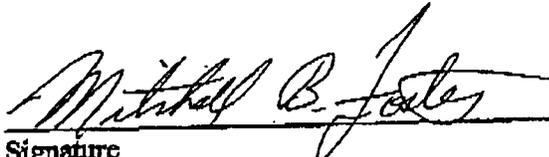
\_\_\_\_\_  
Date

\_\_\_\_\_  
Suzanne D. Sonneborn (P55511)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

\_\_\_\_\_  
Date

IT IS SO AGREED BY:

Seven Lakes Development, LLC  
c/o M.B. Foster  
28000 Southfield Road  
Lathrup Village, Michigan 48076

  
\_\_\_\_\_  
Signature  
Mitchell B. Foster, Manager

\_\_\_\_\_  
December 1, 2004  
Date

Attachment A -- Summary Report  
Attachment B -- Legal Description of Phase III and IV

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SUMMARY REPORT

Site Name Walker Landfill

County Macomb

Site ID Number 5000036

Project/Phase Number 454645/00

Original and Update #1

<b>Total for Employee Salaries and Wages</b>	
Period Covered: 4/5/1997 through 12/06/2003	\$118,105.70
Indirect Dollars	<u>\$23,006.63</u>
<b>Sub-Total</b>	<b><u>\$141,112.33</u></b>
<b>Total for Employee Travel Expenses</b>	
Period Covered: 3/23/1997 through 9/11/2003	\$4,485.83
<b>Total for Contractual Expenses</b>	
DLZ/SEG (P.O. P8000655)	
Period Covered: 2/18/1998 through 10/19/2000	\$312,815.01
DLZ Laboratories (P.O. B800018 Order Y80240)	
Period Covered: 8/30/1999 through 10/29/1999	\$33,170.00
DLZ Michigan (P.O. P0001503)	
Period Covered: 8/26/2000 through 11/9/2000	<u>\$ 43,737.98</u>
Contract Sub-Total	<u>\$389,722.99</u>
<b>Total for Miscellaneous Expenses</b>	
Period Covered: 5/16/1997 through 9/6/2000	\$2,943.66
<b>MDNR/MDEQ Lab</b>	
Period Covered: 03/01/1995 through 2/11/2001	\$12,157.53
<b>Total for MDPH/Community Health Expenses</b>	\$0.00
<b>Attorney General Expenses</b>	\$0.00
<b>Total Combined Expenses for Site</b>	<b><u>\$550,422.34</u></b>

Run Date 2/19/2003

## ATTACHMENT B

A parcel of land located in Section 5, T4N., R12E., Washington Township, Macomb County, Michigan is described as: Commencing at the East 1/4 corner of Section 5; thence S.01°07'40"E., 284.91 feet along the East line of Section 5 and the centerline of Mound Road to the Point of Beginning; thence continuing S.01°07'40"E., 2266.75 feet along said line to the S.E. corner of Section 5; thence S.88°56'05"W., 600.00 feet along the South line of Section 5; thence N.01°07'40"W., 60.00 feet; thence S.88°56'05"W., 1171.49 feet; thence N.00°41'35"E., 139.97 feet; thence S.88°56'05"W., 150.00 feet; thence S.00°41'35"W., 200.00 feet to a point on the South line of Section 5; thence S.88°56'05"W., 809.11 feet along the South line of Section 5 to the S. 1/4 corner of Section 5; thence S.88°11'23"W., 969.72 feet along the South line of Section 5; thence S.43°43'19"W., 385.40 feet; thence S.69°59'49"W., 178.85 feet; thence N.00°58'06"W., 949.24 feet; thence S.88°52'12"W., 410.41 feet; thence S.49°08'51"W., 246.91 feet; thence S.24°04'25"W., 107.20 feet; thence N.58°53'12"W., 316.02 feet; thence S.35°56'51"W., 100.00 feet; thence along a curve concave to the East of radius 300.00 feet, a central angle of 55°40'00", whose chord bears S.08°06'51"W., 280.14 feet, an arc length of 291.47 feet; thence along a curve concave to the West of radius 400.00 feet, a central angle of 18°20'00", whose chord bears S.10°33'09"E., 127.45 feet, an arc length of 127.99 feet; thence S.01°23'09"E., 100.00 feet; thence N.72°17'25"W., 98.73 feet to a point on the South line of Section 5; thence S.88°11'23"W., 233.99 feet along the South line of Section 5 to the S.W. corner of Section 5; thence N.01°25'37"W., 2650.89 feet along the West line of Section 5 to the W. 1/4 corner of Section 5; thence N.89°21'37"E., 2685.05 feet along the East-West 1/4 line of Section 5 to the Center Post of Section 5; thence N.89°49'50"E., 79.66 feet along the E.-W. 1/4 line Sec. 5; thence N.37°04'46"E., 68.44 feet to a point on the South Right of Way line of Seven Lakes Drive South; thence along a curve concave to the Northeast of radius 280.00 feet, a central angle of 14°28'22", whose chord bears S.54°00'16"E., 70.54 feet, an arc length of 70.73 feet; thence S.28°45'33"W., 341.10 feet to a point on an intermediate traverse line, said point being traverse point "65"; thence along the northerly edge of water of Crooked Lake, as witnessed by and described along an intermediate traverse line running from traverse point "65" N.73°47'23"E., 202.10 feet to traverse point "64"; thence N.83°51'39"E., 143.04 feet to traverse point "63"; thence S.79°13'25"E., 160.09 feet to traverse point "62", thence S.21°10'23"E., 91.34 feet; to a point N.58°06'02"E., 215 feet from the Northerly edge of water of Crooked Lake; thence N.66°41'33"E., 556.66 feet; thence N.81°05'40"E., 66.77 feet; thence S.21°53'32"E., 95.03 feet; thence S.00°03'05"E., 61.78 feet to a point on an intermediate traverse line, said point being traverse point "61"; thence along the Northerly edge of Mitchell Lake, as witnessed by and described along an intermediate traverse line running from traverse point "61" S.69°42'25"E., 119.34 feet to traverse point "60"; thence S.44°51'37"E., 282.41 feet to traverse point "58"; thence S.79°15'13"E., 99.87 feet to traverse point "57"; thence N.86°37'14"E., 599.71 feet; thence N.77°55'40"E., 315.00 feet; thence along a curve concave to the west of radius 1030.00 feet, a central angle of 2°25'54", whose chord bears N.13°17'17"W., 43.71 feet, an arc length of 43.71 feet; thence N.75°29'46"E., 352.27 feet to the Point of Beginning and containing 289.537 acres.