

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Allied Paper, Inc./Portage Creek/Kalamazoo River
Superfund (National Priorities List) Site
Kalamazoo and Allegan Counties, Michigan

MDEQ Reference No. :
AOC-RRD-2007-002

ADMINISTRATIVE ORDER BY CONSENT
FOR
TERMINATION OF FINAL ORDER NO. DFO-ERD-91-001

This Administrative Order by Consent for Termination of Final Order No. DFO-ERD-91-001 (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Attorney General (MDAG), collectively the "State"; Millennium Holdings, LLC (MHLLC), formerly known as HM Holdings, Inc. and Allied Paper, Inc., and Georgia-Pacific LLC (GP), formerly known as Georgia Pacific Corporation, collectively the "Respondents"; pursuant to the authority vested in the MDEQ and the MDAG by Sections 20119 and 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This Order concerns the termination of the Administrative Order by Consent, Final Order No. DFO-ERD-91-001 (State 1990 AOC), and reimbursement of the MDEQ costs incurred in association with the development of the final remedial investigation report of the Allied Paper Landfill (OU1 RI Report) of the listed Superfund site known as the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (Site).

RECITALS

1. On December 28, 1990, the State and Respondents, collectively the "Parties," entered into the State 1990 AOC that required the preparation of, performance of, and reimbursement of oversight costs for the remedial investigation and feasibility study (RI/FS) for the Site. The objectives of the State 1990 AOC were: (a) to determine the nature and extent of contamination and any threat to the public health or welfare, or the environment caused by the

release or threatened release of hazardous substances, pollutants, or contaminants from the Site by conducting a remedial investigation; and (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants from the Site by conducting a feasibility study.

2. In February 2002, the MDEQ and the U.S. Environmental Protection Agency (U.S. EPA) entered into a Site-Specific Amendment to the Superfund Memorandum of Agreement, dated December 26, 1989, designating certain areas of the Site as federal enforcement lead. Subsequently, the U.S. EPA and Respondents have entered into an Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (Federal SRI/FS AOC), attached hereto as Exhibit A, which concerns the preparation and performance of supplemental remedial investigations and feasibility studies (SRI/FS) at the Site. The objectives of the SRI/FS are, in part, to: (a) supplement existing information in determining the nature and extent of contamination and any current or potential threat to the public health or welfare, or the environment posed by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site and to collect sufficient additional data, for developing and evaluating effective remedial alternatives by conducting supplemental remedial investigations for areas of the Site identified in the SRI/FS statement of work (SOW); and (b) identify and evaluate remedial alternatives that protect human health and the environment by preventing, eliminating, reducing, or controlling any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site by conducting feasibility studies for areas of the Site as more specifically set forth in the SOW.

3. The Parties agree that the objectives of the Federal SRI/FS AOC are consistent with the objectives of the State 1990 AOC. Therefore, in recognition that portions of the Site, including the areas of the Site that are the subject of the SRI/FS, have been designated as federal-enforcement lead, it is appropriate to terminate the State 1990 AOC.

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

5. The execution of this Order by Respondents is neither an admission of liability by either party 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.

TERMS OF AGREEMENT

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

6. Parties Bound. This Order shall apply to and be binding upon the Parties and their successors and assigns.

7. Termination of the State 1990 AOC. Upon: (a) the MDEQ's receipt of Respondents' payment of \$287,714.90 in reimbursement of the State's response activity costs incurred in 2006 under the State 1990 AOC, and (b) the complete execution of this Order, the State 1990 AOC (including without limitation, the financial assurance obligation) is terminated.

8. Reimbursement of the MDEQ's Costs by MHLLC.

(a) Except as provided in this paragraph, MHLLC shall pay to the State the sum of Forty Thousand Dollars (\$40,000) as reimbursement of the MDEQ's response activity costs incurred and paid in connection with the finalization and submittal of the OU1 RI Report (state-approved OU1 RI Report) to the U.S. EPA. If the U.S. EPA approves the state-approved OU1 RI Report without the need for MHLLC to modify the OU1 RI Report, then MHLLC shall pay the State the agreed upon sum within thirty (30) calendar days of receiving notice from the U.S. EPA that the OU1 RI Report is approved by the U.S. EPA.

(i) If MHLLC receives written notification from the U.S. EPA that the U.S. EPA has concluded that the state-approved OU1 RI Report requires modification and such modifications pertain to data or information gathered for or included in the state-approved OU1 RI Report, costs incurred by MHLLC in modifying the state-approved OU1 RI Report may be deducted from the \$40,000, but costs eligible for deduction shall not exceed \$40,000.

(ii) In the event the U.S. EPA directs MHLLC to undertake additional response activities and to incorporate new data or information beyond that included in the state-

approved OU1 RI Report, costs incurred by MHLLC in association with undertaking those additional response activities and incorporating the new data into the state-approved OU1 RI Report shall not be eligible for deduction from the \$40,000 owed by MHLLC to the State.

(iii) In the event MHLLC incurs costs that are eligible to be deducted from the \$40,000 as described in subparagraph 8(a)(i), MHLLC shall, within thirty (30) calendar days of completion of the U.S. EPA-directed modifications to the state-approved OU1 RI Report, provide documentation to the MDEQ that sets forth, with reasonable specificity, the nature of the eligible costs. Payment of the adjusted amount to the MDEQ shall be due within thirty (30) calendar days of the Respondents' receipt of written notification from the MDEQ of the final adjusted amount to be paid.

(b) If MHLLC fails to make payments as required under Paragraph 8(a) of this Order pursuant to the schedules set forth therein, MHLLC shall also pay the MDEQ interest on the unreimbursed amount at the rate provided for in Section 20126a(3) of the NREPA.

(c) Payments pursuant to Paragraph 8(a) of this Order shall be made by certified check made payable to the State of Michigan, Environmental Response Fund; shall identify the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site and the MDEQ Reference No. AOC-RRD- 2007-002; and shall be mailed to:

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

Via Courier:

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

A copy of the transmittal letter and the certified check shall be provided simultaneously to the MDEQ Project Coordinator:

Paul Bucholtz
Superfund Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426

Lansing, Michigan 48909-7926

(d) 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.

9. Other Claims. Nothing in this Order shall constitute or be construed as a release or covenant not to sue regarding any claim, cause of action, or demand in law or equity against any person, firm, trust, trustee, joint venture, partnership, corporation, or other entity, for any liability it may have arising out of or relating, in any way, to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site. This Order shall not estop or limit any legal or equitable claims of the State against the Respondents, their agents, contractors, or assigns, including, but not limited to, claims related to the releases of hazardous substances or other pollutants or contaminants. Respondents further waive all other statutory and common law claims against the State for costs of conducting the RI/FS, including the OU1 RI Report, and any contribution and counterclaims for such costs. Respondents agree to withhold any judicial challenge relating to or arising out of the performance of this Order until the issuance of the final Record of Decision for Operable Unit 1.

10. Termination of this Order. Except for the provisions of Paragraph 9, all other provisions of this Order shall terminate upon the date the Respondents receive notification from the MDEQ that the obligations under Paragraph 8 of this Order have been fulfilled.

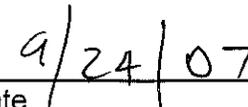
11. Effective Date. This Order shall become effective on the date it is fully executed by all Parties to it.

IT IS SO AGREED BY:

MILLENNIUM HOLDINGS, LLC



Deborah W. Kryak
Director, Retained Liabilities and Remediation



Date

GEORGIA-PACIFIC LLC

J. Michael Davis
Principal Counsel

Date

IT IS SO AGREED BY:

MILLENNIUM HOLDINGS, LLC

Deborah W. Kryak
Director, Retained Liabilities and Remediation

Date

GEORGIA-PACIFIC LLC

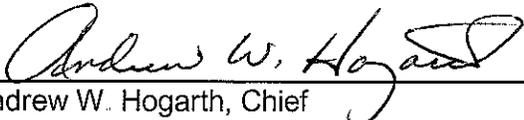


J. Michael Davis
Principal Counsel

SEPTEMBER 14, 2007
Date

IT IS SO AGREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Andrew W. Hogarth, Chief
Remediation and Redevelopment Division

9/28/07

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Polly A. Synk (P 63473)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division

9-27-07

Date

EXHIBIT A

Administrative Settlement Agreement and Order on Consent
for Remedial Investigation/Feasibility Study
at the
Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site