

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 31ST JUDICIAL CIRCUIT
ST. CLAIR COUNTY

ATTORNEY GENERAL DANA NESSEL, on
behalf of the People of the State of Michigan,
and the STATE OF MICHIGAN,

Plaintiffs,

v

DOMTAR INDUSTRIES, INC. and
E.B. EDDY PAPER, INC.

Defendants.

and

DOMTAR INDUSTRIES, LLC,

Third-Party Plaintiff,

v

TECHNI-COMP (COMPOSTING
SPECIALISTS), Inc.,

Third-Party Defendant.

No. 22-002604-NZ

HON. CYNTHIA A. LANE

CONSENT DECREE

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Attachment B – Areas Identified for Removal

Attachment C – Sediment Locations

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CONSENT DECREE

The Plaintiffs are Attorney General Dana Nessel, on behalf of the People of the State of Michigan, and the State of Michigan (collectively the State).

The Defendants are Domtar Industries LLC, a Delaware limited liability corporation with its principal place of business at 234 Kingsley Park Drive, Fort Mill, South Carolina 29715, and E.B. Eddy Paper, Inc., a Delaware corporation who formerly operated at 1700 Washington Avenue, Port Huron, Michigan 48060.

The State filed a Complaint alleging that Defendants released and/or arranged for the transport, disposal and/or treatment of hazardous perfluoroalkyl and polyfluoroalkyl substances (PFAS) at Techni-Comp Environmental located at 4152 Dove Road, Port Huron, Michigan (the Techni-Comp Site).

The State's Complaint alleges that the contamination at the Techni-Comp Site poses a substantial and imminent threat to the public health, safety, welfare, and the environment and requires immediate remediation and other response activities to abate the hazards at the Techni-Comp Site.

The State's Complaint alleges claims under Part 201, Environmental Remediation, (Part 201) of the Michigan Natural Resources and Environmental Protection Act (NREPA), MCL 324.20101 *et seq.*, Part 31, Water Resources Protection, of the NREPA (Part 31), and Part 17, Michigan Environmental Protection Act, of the NREPA (Part 17) based on Defendants' responsibility for causing a "release," as defined in Section 20101(1)(pp) of the NREPA, MCL 324.20101(1)(pp), that resulted in PFAS contamination at and emanating from the

Techni-Comp Site. The State sought to recover monetary damages for the cost of identifying, monitoring, and remediating contamination resulting from Defendants' actions causing releases of hazardous substances within the State and to protect and restore Michigan's natural resources from widespread contamination and injury caused by PFAS and other hazardous substances, in addition to injunctive, declaratory, and other equitable relief. Additionally, the State asserted that Defendants are responsible for response activities to address the release and to pay the State's costs for oversight, surveillance and performance of response activities, provision of alternative water supplies, natural resource damages, and State-led or State-approved health assessments or health studies. The Complaint also alleged that Defendants were liable to the State under common law for the State's damages resulting from Defendants' releases of PFAS Substances.

This Consent Decree (Decree) requires Defendants to conduct response activities to remove compost-containing sludge piles from the Techni-Comp Site and conduct certain investigative activities to determine if there are PFAS contaminated sediments, as further described herein, that may be located above the clay barrier that rests on the bottom of the surface waters on the Techni-Comp Site, and fully resolves all claims alleged by, or that could have been alleged by, the State in the Complaint related to the Techni-Comp Site. The Parties agree, and the Court by entering this Decree finds, that the Decree is necessary to abate the release or threatened release of hazardous substances, contaminants, and wastes into the environment, to control future releases, and to protect public health, safety, and

welfare, and the environment with respect to the releases or threatened releases of PFAS Substances alleged herein.

The execution of this Decree by the Defendants is for settlement purposes only and is neither an admission of liability with respect to any issue dealt with in this Decree nor an admission of any factual allegations or legal conclusions stated or implied herein. Each Defendant is a separate entity, and nothing in this agreement shall imply that one Defendant is liable for any obligations of the other.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.605. Venue is proper in this Court, because the State is the Plaintiff and State natural resources and/or property have been contaminated, injured, and damaged by Defendant's PFAS and PFAS-containing products in St. Clair County.

1.2 The Court determines that the terms and conditions of this Decree are fair, reasonable, adequately resolve the environmental issues raised, is in the public interest, and properly protects the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Decree and to resolve disputes arising under this

Decree, including those that may be necessary for its construction, execution, or implementation, subject to Section XVI (Dispute Resolution).

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon Defendants and the State and their successors and assigns. Any change in ownership, corporate, or legal status of Defendants including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter Defendants' responsibilities under this Decree. To the extent a Defendant becomes the owner of a part or all of the Techni-Comp Site, such Defendant shall provide the State with written notice prior to their transfer of ownership of part or all of the Techni-Comp Site and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of MCL 324.20116, and the Part 201 Administrative Rules (Part 201 Rules).

2.2 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of response activities pursuant to this Decree, Defendants are responsible for compliance with the terms of this Decree and shall ensure that their contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Decree.

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

III. STATEMENT OF PURPOSE

The Parties have determined that entry of this Decree will:

- 3.1 Facilitate the continued performance of response activities as required under this Decree;
- 3.2 Ensure the Defendants will perform the response activities required by this Decree;
- 3.3 Require Defendants to develop and implement Response Activity Plans as prescribed in this Decree;
- 3.4 Provide for the Defendants' reimbursement of the State's Past Costs, Attorney Fees, and Future Response Activity Costs in accordance with Section XIV (Attorney Fees and Reimbursement of Costs); and
- 3.5 Serve the public interest and minimize litigation.

IV. DEFINITIONS

- 4.1 "Business Day" means Monday through Friday but does not include State recognized holidays when State of Michigan business offices are closed.
- 4.2 "Day" means a calendar day.
- 4.3 "Decree" means this Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications and schedules required by the Consent Decree which, upon approval by EGLE, shall be incorporated into and become an enforceable part of this Consent Decree.
- 4.4 "Defendants" means Domtar Industries, LLC, a Delaware limited liability corporation with its principal place of business at 234 Kingsley Park Drive,

Fort Mill, South Carolina 29715, and E.B. Eddy Paper, Inc., a Delaware corporation who formerly operated at 1700 Washington Avenue, Port Huron, Michigan 48060, and their successors and assigns.

4.5 “EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

4.6 “Effective Date” means the date that the Court enters this Decree.

4.7 “Facility” means any portion of the Techni-Comp Site and any area, place, parcel or parcels of property, or portion of parcel of property where a hazardous substance from the Techni-Comp Site in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use as provided in Section 20120a and the Part 201 Rules, has come, or otherwise comes, to be located.

4.8 “Future Response Activity Costs” means all costs incurred by the State after the Effective Date that are response activity costs as defined in MCL 324.20101(ww), to oversee, enforce, monitor, and document compliance with this Decree, and to perform response activities as defined in MCL 324.20101(vv) that are required by this Decree: evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, costs related to health assessments or health effect studies carried out under the supervision, or with the approval of, DHHS related to response activities, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Future Response Activity costs also include, but are not limited

to, the State's costs incurred after the Effective Date to monitor response activities, observe and comment on field activities, review and comment on submissions, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, prepare and review cost reimbursement documentation and perform response activities pursuant to Paragraph 6.11 (EGLE's Performance of Response Activities) and Section X (Emergency Response). Contractor costs are also considered Future Response Activity Costs.

4.9 "Part 201" means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, criteria developed pursuant to MCL 324.20120a(1), and the Part 201 Administrative Rules.

4.10 "Part 201 Rules" or "Part 201 Administrative Rules" means the administrative rules promulgated under Part 201.

4.11 "Party" means the Defendants or the State. "Parties" means the Defendants and the State.

4.12 "PFAS" or "PFAS Compounds" means a perfluoroalkyl or polyfluoroalkyl substance that includes any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

4.13 "Response Activity Plan" means a plan for undertaking response activities. A Response Activity Plan may include one or more of the following:

- (a) A plan to undertake interim response activities;
- (b) A plan for remedial investigation;

- (c) A Feasibility Study; or
- (d) A Remedial Action Plan.

4.14 “RRD” means the Remediation and Redevelopment Division of EGLE and its successor entities.

4.15 “Submissions” means all plans, reports, schedules, and other submissions that Defendants are required to provide to the State or EGLE pursuant to this Decree. “Submissions” does not include the notifications set forth in Section XI (*Force Majeure*) of this Decree.

4.16 “Techni-Comp Site” means the property owned by Techni-Comp (Composting Specialist) Inc. located at 4152 Dove Road in Port Huron, Michigan as identified in Attachment A.

4.17 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301, Part 31 of NREPA, MCL 324.3101 *et seq.*, or Part 201, shall have the same meaning in this Decree as in Part 3, Part 31, and Part 201.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable state and federal laws, rules, and regulations, including, but not limited to, Part 31, the Part 31 Rules, Part 201, the Part 201 Rules, and laws relating to occupational safety and health. Other State agencies may also be called upon to review the performance of response activities under this Decree.

5.2 This Decree does not relieve the Defendants' obligations to obtain and maintain compliance with applicable permits.

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Performance Objectives

Defendants shall perform response activities at the Facility as described in this Decree in a manner that complies with the requirements of Part 201, including MCL 324.20114(1)(g) to meet the following performance objectives:

(a) Removal of PFAS contaminated compost-containing sludge, as required by Paragraph 6.5 of this Consent Decree, and disposal in compliance with the law to protect human health, safety, welfare, and the environment.

(b) Investigation of potential PFAS contaminated sediments on the Techni-Comp Site as required by Paragraph 6.5 of this Consent Decree.

(c) Provide funding, as required by this Consent Decree, for EGLE to conduct additional response activities at the Facility, as determined by the State to be necessary to protect public health, safety, and welfare and the environment.

6.2 In accordance with this Decree, Defendants shall assure that all Response Activity Plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 6.1(a) and (b). Defendants shall develop each Response Activity Plan and perform the response activities contained in each EGLE-approved Response Activity Plan in accordance with the requirements of Part 201 and this Decree. Upon EGLE approval, each component of each Response Activity Plan and any approved modifications shall be deemed

incorporated into this Decree and made an enforceable part of this Decree. If there is a conflict between the requirements of this Decree and any EGLE-approved Response Activity Plan, the requirements of this Decree shall prevail.

6.3 Quality Assurance Requirements

(a) Within thirty (30) days of the Effective Date of this Decree, Defendants shall submit to EGLE for review and approval, a Quality Assurance Project Plan (QAPP), which describes the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Decree. Defendants agree to develop a QAPP in accordance with the United States Environmental Protection Agency's, "EPA Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," American National Standard ANSI/ASQC E4-1994.

(b) Defendants agree to utilize recommended sampling methods, analytical methods, and analytical detection levels specified in the "March 2016 Application of Target Detection Limits and Designated Analytical Resource Materials." Defendants agree to comply with the above documents or documents that supersede or amend these documents, and may utilize other methods demonstrated by Defendants to be appropriate as approved by EGLE.

6.4 Health and Safety Plan (HASP)

Within thirty (30) days of the Effective Date of this Decree, Defendants shall submit to EGLE a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* Response activities performed by Defendants pursuant to this Decree shall be in accordance with the HASP. The HASP is not subject to EGLE's approval under Section VII (Submissions and Approvals) of this Decree.

6.5 Required Response Activities

Within thirty (30) days of the Effective Date, Defendants shall submit to EGLE for its review and approval one Response Activity Plan covering the following activities further described in Paragraph 6.5(a) and (b):

(a) **Removal of Contaminated Compost-Containing Sludge.**

The Response Activity Plan shall provide for the removal of approximately 75,000 cubic yards of contaminated compost-containing sludge that is located above-grade at the Facility from the areas identified in Attachment B. The Response Activity Plan shall include, at a minimum, (a) a map of where the contaminated compost-containing soil to be removed is located; (b) identification of where the contaminated compost-containing soil will be disposed of in accordance with the law; and (c) a schedule for removal of the contaminated compost-containing soil.

(i) Within thirty (30) days of receiving EGLE's approval of the Response Activity Plan Defendants shall initiate the removal of the compost-containing sludge. Removal of the compost-containing sludge shall be complete within one (1) year following EGLE's approval of the Response Activity Plan.

(ii) Defendants shall notify EGLE upon completion of the removal of the above-grade contaminated compost-containing sludge. EGLE will confirm based on a visual inspection that the above-grade contaminated compost-containing sludge at the Facility has been removed as required by the Response Activity Plan.

(b) **Sediment Response Activities.** The Response Activity Plan shall provide for a sediment investigation and include an implementation schedule to determine whether the sediments in surface waters on the Techni-Comp Site identified on Attachment C are impacted by PFAS, as further defined in Paragraph 6.5(b)(i)(C). The Response Activity Plan should include a plan to evaluate the potential impacts to sediments in the surface water on the Techni-Comp Site.

(i) The Response Activity Plan for the sediment investigation shall include:

(A) sediment sampling in the ditch, drain, and creek on the Techni-Comp Site as identified on Attachment C based on the following methodology: an initial sample collection event consisting of up to one sediment sample location per 200 lineal feet of ditch, drain or creek shown on Attachment C; and, sampling at each location would consist of collecting one sample between 0 and

12 inches below the sediment surface, or until hitting clay barrier, whichever occurs first, using manual or mechanical sediment sampling tools for analysis of PFOA, PFOS, PFNA, PFHxA, PFHxS, and PFBS using United States Environmental Protection Agency (USEPA) analytical Method 1633A;

(B) supplemental sampling if required to aid in further delineation of certain areas that may require additional assessment; and

(C) comparison of analytical results for sediment samples obtained on the Techni-Comp Site to a criteria consisting of the 95% upper confidence level (UCL) for upgradient sediment concentrations at the sample locations shown on Attachment C for PFOA, PFOS, PFNA, PFHxA, PFHxS, and PFBS. The sediments will not be analyzed for HFPO-DA.

(ii) Within forty-five (45) days of receiving EGLE's approval of the Response Activity Plan, Defendants shall commence to perform the sediment investigation.

(iii) The obligations set forth in this Section 6.5(b) constitute the full extent of Defendants' obligations in relation to sediment response activities at or related to the Facility, and Defendants shall not be responsible for any sediment removal at or related to the Facility.

6.6 Land Use Restrictions

(a) Within sixty (60) days of the Effective Date of this Decree, Defendants shall submit to EGLE for its review and approval a draft restrictive covenant to restrict the use of groundwater at the Techni-Comp Site, to restrict the

Techni-Comp Site to non-residential land use, and to restrict the relocation of soil at the Techni-Comp Site as may be necessary under MCL 324.20120c.

(b) EGLE shall be responsible to have the restrictive covenant finalized and executed by the Techni-Comp Site property owner. Upon execution, EGLE shall be responsible to have the restrictive covenant filed for recording.

6.7 Completion Report

(a) Defendants shall submit a Completion Report to EGLE for its review and approval within sixty (60) days of completing the response activities set forth in Paragraph 6.5 as follows:

(i) documents that Defendants have completed the response activities required by the Response Activity Plan; and

(ii) documents that EGLE has completed a visual inspection verifying that the above-grade contaminated compost-containing sludge at the Facility has been removed as required by the Response Activity Plan and this Consent Decree.

6.8 Modification of a Response Activity Plan

(a) If EGLE determines that a modification to a Response Activity Plan is necessary to meet and maintain the performance objectives specified in Paragraph 6.1 of this Decree, EGLE may require that such modification be incorporated into a Response Activity Plan previously approved by EGLE under this Decree.

(b) Defendants may request that EGLE consider a modification to a Response Activity Plan by submitting such request for modification along with the proposed change in the Response Activity Plan and the justification for that change to EGLE for review and approval. Any such request for modification by Defendants must be forwarded to EGLE at least thirty (30) days prior to the date that the performance of any affected response activity is due.

(c) Any Response Activity Plan modifications or any new Response Activity Plans shall be developed in accordance with the applicable requirements of this Section and shall be submitted to EGLE for review and approval in accordance with the procedures set forth in Section VII (Submissions and Approvals) of this Decree.

(d) Upon receipt of EGLE's approval, Defendants shall perform the response activities specified in a modified Response Activity Plan or a new Response Activity Plan in accordance with EGLE-approved implementation schedules.

6.9 Public Notice and Public Meeting Requirements pursuant to MCL 324.20120d

Pursuant to Part 201, public notice may be required. If public notice is required, upon EGLE's request, Defendants shall cooperate with EGLE to prepare portions of the draft responsiveness summary document and the final responsiveness summary document.

6.10 Semi-annual Reports

(a) Defendants shall provide to EGLE's Project Manager written progress reports regarding response activities at the Facility related to the implementation of this Consent Decree. These progress reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Consent Decree during the specified reporting period.

(ii) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Decree received by Defendants, its employees, or authorized representatives during the specified reporting period.

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how Defendants propose to resolve those issues and the schedule for resolving the issues.

(iv) A description of the nature and amount of contaminated compost-containing sludges removed from the Facility and the name and location of the facilities that were used for the off-site transfer, storage, and treatment or disposal of those waste materials.

(v) A description of data collection and other activities scheduled for the next reporting period.

(vi) Any other relevant information regarding other activities or matters at the Facility that the Defendants are aware of that affect or may affect the implementation of the requirements of this Decree.

(b) The first progress report shall be submitted to EGLE within one hundred and eighty (180) days following the Effective Date of this Decree.

Thereafter, progress reports shall be submitted semi-annually until such time as the Completion Report is approved by EGLE. Pursuant to Paragraph 22.1 of this Decree, EGLE may approve modification of the schedule for the submission of progress reports.

6.11 EGLE's Performance of Response Activities

If Defendants cease to perform the response activities required by this Decree; are not performing response activities in accordance with this Decree; or are performing response activities in a manner that causes or may cause an endangerment to human health or the environment, EGLE may, at its option and upon providing thirty (30) days prior written notice to Defendants, take over the performance of those response activities. EGLE, however, is not required to provide thirty (30) days written notice prior to performing response activities that EGLE determines are necessary pursuant to Section X (Emergency Response) of this Decree or to abate an imminent risk to public health, safety, welfare or to the environment. If EGLE finds it necessary to take over the performance of response activities that Defendants are obligated to perform under this Decree, Defendants shall reimburse the State for its costs to perform these response activities, including

any accrued interest. Interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph due to Defendants failure to perform response activities in accordance with this Decree or Defendants performance of response activities pursuant to this Decree that causes or may cause an endangerment to human health or the environment shall be considered to be "Future Response Activity Costs" and Defendants shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 14.4, 14.5, and 14.6 of Section XIV (Attorney Fees and Reimbursement of Costs) of this Decree.

VII. SUBMISSIONS AND APPROVALS

7.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and shall be delivered to EGLE in accordance with the schedule set forth in this Decree. All Submissions delivered to EGLE pursuant to this Decree shall include a reference to the Techni-Comp Site and Court Case No. 22-002604-NZ. All Submissions delivered to EGLE for approval shall also be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: *"Disclaimer: This document is a DRAFT document that has not received approval from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). This document was prepared pursuant to a court Consent Decree. The opinions, findings, and conclusions expressed are those of the authors and not those of EGLE"*. Response

Activity Plans required or submitted under this Decree are not subject to the provisions of MCL 324.20114b of the NREPA.

7.2 For any Submission relating to response activities that are required to be submitted for approval pursuant to this Decree, EGLE will in writing:

(a) approve the Submission; (b) approve the Submission with conditions; (c) disapprove the Submission; or (d) notify Defendants that the plan does not contain sufficient information for EGLE to make a decision. Upon receipt of a notice of approval or approval with conditions from EGLE, Defendants shall proceed to take the actions and perform the response activities required by the Submission, as approved or as approved with conditions, and shall submit a new cover page and any modified pages of the Submission marked “Approved.”

7.3 Upon receipt of a notice of disapproval from EGLE pursuant to Paragraph 7.2(c) of this Decree, Defendants shall correct the deficiencies and provide the revised Submission to EGLE for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in EGLE’s notice of disapproval, Defendants shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30) day period or other time period specified for Defendants to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and EGLE demands payment of stipulated penalties pursuant to Section XV

(Stipulated Penalties) of this Decree. EGLE will review the revised Submission in accordance with the procedure set forth in Paragraph 7.2 of this Decree. If EGLE disapproves a revised Submission, EGLE will so advise Defendants and, as set forth above, stipulated penalties shall accrue from the date of EGLE's disapproval of the original Submission and continue to accrue until Defendants deliver an approvable Submission.

7.4 If any initial Submission contains significant deficiencies such that the Submission is not in the judgment of EGLE a good faith effort by Defendants to deliver an acceptable Submission that complies with Part 201 and this Decree, EGLE will notify Defendants of such, and will deem Defendants to be in violation of this Decree. Stipulated penalties, as set forth in Section XV (Stipulated Penalties) of this Decree, shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to EGLE.

7.5 Upon approval by EGLE, any Submission and attachments to Submissions required by this Decree, or any conditions that are the basis for an approval, shall be considered part of this Decree and are enforceable pursuant to the terms of this Decree. If there is a conflict between the requirements of this Decree and any Submission or an attachment to a Submission, the requirements of this Decree shall prevail.

7.6 An approval or approval with conditions of a Submission shall not be construed to mean that EGLE concurs with all of the conclusions, methods, or statements in any Submission or warrants that the Submission comports with law.

7.7 Informal advice, guidance, suggestions, or comments by EGLE regarding any Submission provided by Defendants shall not be construed as relieving Defendants of their obligation to obtain any formal approval required under this Decree.

VIII. ACCESS

8.1 Defendants agree to use their best efforts to secure from the Facility owner a written agreement or judicial Decrees that provides access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Defendants shall provide EGLE with a copy of any written agreement or judicial Decree secured pursuant to this Section. For purposes of this Paragraph, “best efforts” includes, but is not limited to, taking judicial action to secure such access. In the event the Facility owner fails to agree to provide access, Defendants may request that EGLE make contact with the Facility owner to request the owner’s agreement to provide such access. EGLE shall provide Defendants with written notice that it has contacted the Facility owner. If judicial action is required to obtain access, Defendants shall provide documentation to EGLE that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after Defendants’ receipt of EGLE’s approval of the Response Activity Plan for which such access is needed. If Defendants have not been able to obtain access within sixty (60) days after filing judicial action, Defendants shall promptly notify EGLE of the status of their efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response

activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XI (*Force Majeure*).

8.2 Any person granted access to the Facility pursuant to this Decree shall comply with all applicable health and safety laws and regulations.

IX. SAMPLING AND ANALYSIS

9.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the QAPP specified in Paragraph 6.3 and EGLE-approved Response Activity Plan.

9.2 Defendants, or their consultants or subcontractors, shall provide EGLE notice ten (10) days prior to any sampling activity or five (5) business days prior to any compost-containing sludge removal activities to be conducted pursuant to this Decree to allow EGLE's Project Manager, or his or her authorized representative, the opportunity to take split or duplicate samples, to observe the sampling procedures or to observe removal activities. In circumstances where a ten (10) day or five (5) day, as applicable, advance notice is not possible, Defendants, or their consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to EGLE Project Manager and explain why earlier notification was not possible. If EGLE Project Manager concurs with the explanation provided, Defendants may forego the notification period for that particular event.

9.3 Defendants shall provide EGLE with the results of all environmental sampling, and other analytical data generated relating to the Facility in the performance or monitoring of any requirement under this Decree. These results shall be included in the semi-annual progress reports set forth in Paragraph 6.10 of this Decree.

9.4 For the purpose of quality assurance monitoring, Defendants shall endeavor so that EGLE and its authorized representatives are allowed access to any laboratory used by Defendants in implementing this Decree.

X. EMERGENCY RESPONSE

10.1 If during the course of Defendants performing response activities pursuant to this Decree, Defendants become aware of an act or the occurrence of an event that causes a release or threat of release of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, Defendants shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation as a result of Defendants' performance of response activities pursuant to this Decree; and shall immediately notify the EGLE Project Manager. In the event of the EGLE Project Manager's unavailability, Defendants shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendants shall be in accordance with all applicable health and safety laws and

regulations and with the provisions of the HASP referenced in Paragraph 6.4 of this Decree.

10.2 Within ten (10) days of notifying EGLE of such an act or event, Defendants shall submit a written report, setting forth a description of the act or event that occurred which related to Defendants' performance of response activities pursuant to this Decree and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by such act or event and to prevent recurrence of such an act or event. Regardless of whether Defendants notify EGLE under this Section, if an act or event related to Defendants' performance of response activities pursuant to this Decree causes a release, threat of release, or exacerbation, EGLE may: (a) require Defendants to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require Defendants to undertake any actions that EGLE determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or (c) undertake any actions that EGLE determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVI (Dispute Resolution) of this Decree.

XI. FORCE MAJEURE

11.1 Defendants shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by

events that constitute a “*Force Majeure*.” Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this Section.

11.2 For the purposes of this Decree, a *Force Majeure* event is defined as any event arising from causes beyond the control of and without the fault of Defendants, of any person controlled by Defendants, or of Defendants’ contractors that delays or prevents the performance of any obligation under this Decree despite Defendants’ “best efforts to fulfill the obligation.” The requirement that Defendants exercise “best efforts to fulfill the obligation” includes Defendants using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Defendants minimize any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of Defendants, such as an act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the diligence of Defendants and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of Defendants.

11.3 Defendants shall notify EGLE by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay; the cause or causes of delay; the measures taken by Defendants to prevent or minimize the delay; and the timetable by which those measures shall be implemented. Defendants shall use its best efforts to avoid or minimize any such delay.

11.4 Failure of Defendants to comply with the notice requirements of Paragraph 11.3, above, shall render Section XI (Force Majeure) of this Decree void and of no force and effect as to the particular incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 11.3 of this Decree.

11.5 If the parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated and the parties to this Decree may agree upon an appropriate modification of this Decree. If the parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVI (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of Defendants, and that all the requirements of this Section have been met by Defendants, is on Defendants.

11.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Defendants qualify for an extension of a subsequent

compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XII. RECORD RETENTION/ACCESS TO INFORMATION

12.1 Defendants shall preserve and retain, for a period of five (5) years after completion of all response activities required under this Decree, all records, sampling and test results, charts, and other documents relating to the response activities required under this Decree, and the disposal, treatment, and handling of hazardous substances from the Facility; and any other records that are maintained or generated pursuant to any requirement of this Decree, including records that are maintained or generated by representatives, consultants, or contractors of Defendants.

12.2 Upon request, Defendants shall provide to EGLE copies of all non-privileged documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of response activities or other requirements of this Decree including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to response activities. Upon request Defendants shall also make available to EGLE, upon reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

12.3 If Defendants submit documents or information to EGLE that Defendants believe are entitled to protection as provided for in MCL 324.20117(10) of the NREPA, Defendants may designate in that submission the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to EGLE, EGLE may provide the information to the public without further notice to Defendants. Information described in MCL 324.20117(11)(a)–(h), shall not be claimed as confidential or privileged by Defendants. Information or data generated under this Decree shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

XIII. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES

13.1 Each Party shall designate one or more Project Managers. Whenever notices, progress reports, information on the collection and analysis of samples, sampling data, work plan and Response Activity Plan submissions, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Decree; or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Managers at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

The Project Manager for each party shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Decree for Defendants.

(a) As to EGLE:

Cynthia Paslawski, Project Manager
Warren District Office
Remediation and Redevelopment Division
Michigan Department of Environment Great Lakes, and Energy
2700 Donald Court
Warren, MI 48092
Phone: 586-668-6433
E-mail Address: paslawskic@michigan.gov

(b) As to Defendants:

Linda Belanger, Sr. Director, Soil Rehabilitation
Domtar Industries LLC
395 de Maisonneuve Blvd. West
Montreal, QC H3A 1L6 Canada
Phone: 514-848-5555, Ext. 86205
E-mail Address: Linda.Belanger@domtar.com

13.2 EGLE may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Decree.

XIV. ATTORNEY FEES AND REIMBURSEMENT OF COSTS

14.1 Within ten (10) business days after the Effective Date of this Decree, Defendants shall pay eight hundred and fifty thousand Dollars (\$850,000.00) to cover the State's attorney fees and litigation costs incurred relating to this action. Payment shall be made by wire:

Callow and Utter LLC IOLTA Account

Acct No. 4181332773
ACH 041000124

PNC Bank
500 First Avenue
Pittsburg PA 15219

14.2 Within ten (10) business days after the Effective Date of this Decree, Defendants shall pay the State thirty-five thousand Dollars (\$35,000.00) for all Past Response Activity Costs. Payment shall be made by wire.

14.3 Defendants shall pay EGLE three hundred thousand Dollars (\$300,000.00) for all Future Response Activity Costs that that the State may incur as a result of the hazardous substances at the Facility, except that Future Response Activity Costs that the State incurs pursuant to Paragraph 6.11 (EGLE's Performance of Response Activities), under Section XVI (Dispute Resolution), or to otherwise enforce a breach of the terms this Decree by Defendants shall be invoiced and paid in accordance with Paragraph 14.4. The three hundred thousand Dollars (\$300,000.00) shall be paid in three equal installments on the following schedule.

(a) No later than one (1) year after the Effective Date, Defendants shall pay the State one hundred thousand Dollars (\$100,000.00).

(b) No later than two (2) years after the Effective Date, the Defendants shall pay the State one hundred thousand Dollars (\$100,000.00).

(c) No later than three (3) years after the Effective Date, the Defendants shall pay the State one hundred thousand Dollars (\$100,000.00).

14.4 Future Response Activity Costs that the State incurs pursuant to Paragraph 6.11 (EGLE's Performance of Response Activities), under Section XVI

(Dispute Resolution), or to otherwise enforce a breach of the terms of this Decree by Defendants will be periodically invoiced to Defendants. An invoice will include a summary report that identifies the nature of those costs and the dates through which those costs were incurred by the State and a full and complete accounting, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the State. Except as provided in Section XVI (Dispute Resolution) of this Decree, Defendants shall reimburse the State for such costs within sixty (60) days of Defendants' receipt of an invoice from the State.

14.5 All payments made pursuant to Paragraph 14.2, 14.3, and 14.4 shall be made by wire transfer or by certified check. If payments are made by wire transfer, they shall be made according to the instructions in Attachment D and shall reference RRD Account Number RRD50167

If payment is made by certified check it should be made payable to the "State of Michigan—Environmental Response Fund," and shall be sent to:

By first class mail:

Michigan Department of Environment, Great Lakes, and Energy
Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

Via courier:

MDOT Accounting Services Division
Cashier's Office for EGLE
Van Wagoner Building, 1st Floor West
425 West Ottawa Street
Lansing, MI 48933

The TechniComp Site, Court Case No. 22-002604-NZ, and the RRD Account Number RRD50167 shall be designated on any certified check. A copy of the transmittal letter and the check, or in the case of a wire transfer, a letter confirming each wire transfer, shall be provided simultaneously to the EGLE Project Manager at the address listed in Paragraph 13.1(a) and to the MDAG at:

Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
P.O. Box 30755
Lansing, MI 48909
Phone: 517-335-7664
Fax: 517-335-7636

Costs recovered pursuant to Paragraph 14.2 and 14.4 and payment of stipulated penalties pursuant to Section XV (Stipulated Penalties) of this Decree shall be deposited into the Environmental Response Fund in accordance with the provisions of MCL 324.20108(3). Costs recovered pursuant to Paragraph 14.3 shall be deposited into a restricted subaccount in the Environmental Response Fund in accordance with the provisions of MCL 324.20108(2)–(4). The funds deposited into the subaccount shall be used by EGLE to pay costs of future response activities to be conducted by or for it and costs determined by EGLE as necessary to facilitate response activities to be conducted by or for it related to the Facility. If EGLE determines funds from paragraph 14.3 are not necessary after 10 years, then the funds can be released to the Environmental Response Fund.

14.6 If Defendants fail to make full payment to EGLE for Past Response Activity Costs or Future Response Activity Costs as specified in Paragraphs 14.2,

14.3, and 14.4 of this Decree, interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the unpaid balance on the day after payment was due, until the date upon which Defendants make full payment of those costs and the accrued interest to EGLE. In any challenge by Defendants to an EGLE demand for reimbursement of costs, Defendants shall have the burden of establishing that EGLE did not lawfully incur those costs in accordance with MCL 324.20126a(1)(a).

14.7 Not later than ten days from the effective date of this Consent Decree, Defendants shall submit to EGLE a completed Internal Revenue Service W-9 form, attached to this Consent Decree as Attachment E.

XV. STIPULATED PENALTIES

15.1 Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 15.2 and 15.3 of this Decree, for failure to comply with the requirements of this Decree, unless excused under Section XI (*Force Majeure*) of this Decree. “Failure to Comply” by Defendants shall include failure to complete Submissions and notifications as required by this Decree and failure to perform response activities in accordance with EGLE-approved Response Activity Plans, this Decree, and all applicable requirements of law, within the specified implementation schedules established by or approved under this Decree.

15.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VI (Performance of Response Activities) of this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
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\$250	1st through 14th day
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\$500 15th through 30th day

\$1,000 31st day and beyond

15.3 Except as provided in Paragraph 15.2, Section XI (*Force Majeure*) and Section XVI (Dispute Resolution) of this Decree, if Defendants fail or refuse to comply with any other term or condition of this Decree, Defendants shall pay the State stipulated penalties of two hundred and fifty Dollars (\$250) a day for each and every failure or refusal to comply.

15.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

15.5 Except as provided in Section XVI (Dispute Resolution) of this Decree, Defendants shall pay stipulated penalties owed to the State no later than thirty (30) days after Defendants' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 14.5 of Section XIV (Reimbursement of Attorneys' Fees and Costs) of this Decree. Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which the Defendants make full payment of those stipulated penalties and the accrued interest to the State. 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 Decree.

15.6 The payment of stipulated penalties shall not alter in any way Defendants' obligation to perform the response activities required by this Decree.

15.7 If Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties. However, the assessment of stipulated penalties is not the State's exclusive remedy if Defendants violate this Decree. For any failure or refusal of Defendants to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not limited to, seeking civil fines, injunctive relief, and the specific performance of response activities and reimbursement of costs.

15.8 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Decree.

XVI. DISPUTE RESOLUTION

16.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree, including review and approval of a Response Activity Plan, except for Section X (Emergency Response) of this Decree, which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendants' obligations that

have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for Defendants to delay the performance of any response activity required under this Decree.

16.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Defendants provide to the State under Paragraphs 16.3 through 16.5 of this Decree, and any documents EGLE and the State rely on to make the decisions set forth in Paragraphs 16.3 through 16.5 of this Decree.

16.3 Except for undisputable matters identified in Paragraph 16.1 of this Decree, any dispute that arises under this Decree with respect to EGLE's disapproval, modification, or other decision concerning requirements of this Decree shall, in the first instance, be the subject of informal negotiations between the district staff representing EGLE and Defendants. A dispute shall be considered to have arisen on the date that a Party to this Decree receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event Defendants object to any EGLE notice of disapproval, modification, or decision concerning the requirements of this Decree that is subject to dispute under this Section, Defendants shall submit the Notice of Dispute within ten (10) days of receipt of EGLE's notice of disapproval, modification, or decision. The period of informal negotiations shall not exceed

twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide EGLE's Statement of Position, in writing, to Defendants. In the absence of initiation of formal dispute resolution by Defendants under Paragraph 16.4 of this Decree, EGLE's position as set forth in EGLE's Statement of Position shall be binding on the Parties.

16.4 If Defendants and EGLE cannot informally resolve a dispute under Paragraph 16.3 of this Decree, Defendants may initiate formal dispute resolution by submitting a written Request for Review to the RRD Director, with a copy to the EGLE Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of Defendants' receipt of the Statement of Position issued by EGLE pursuant to Paragraph 16.3 of this Decree. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within twenty (20) days of the RRD Director's receipt of Defendants' Request for Review, the RRD Director will provide EGLE's Statement of Decision, in writing, to Defendants, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied

upon in making the decision. The time period for the RRD Director's review of the Request for Review may be extended by written agreement between the Parties. EGLE's Statement of Decision shall be binding on the Parties, unless Defendants file a motion with the Court as set forth in Paragraph 16.5.

16.5 EGLE's Statement of Decision pursuant to Paragraph 16.4, shall control unless, within twenty (20) day after Defendants' receipt of EGLE's Statement of Decision, Defendants file with this Court a motion for resolution of the dispute, which sets forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) day of Defendants' filing of a motion asking the Court to resolve a dispute, the State will file with the Court the administrative record that is maintained pursuant to Paragraph 16.2 of this Decree.

16.6 Any judicial review of EGLE's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are subject of this Decree, the Defendants shall have the burden of demonstrating on the administrative record that the position of EGLE is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the Defendants shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent the State from

arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

16.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Defendants' failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Defendants do not prevail on the disputed matters, the State may demand payment of stipulated penalties and Defendants shall pay stipulated penalties as set forth in Paragraph 15.5 of Section XV (Stipulated Penalties) of this Decree. Defendants shall not be assessed stipulated penalties for disputes that are resolved in their favor.

16.9 Notwithstanding the provisions of this Section and in accordance with Section XIV (Attorney Fees and Reimbursement of Costs) of this Decree, and Section XV (Stipulated Penalties) of this Decree, Defendants shall pay to EGLE that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

16.10 As provided for in MCL 324.20137(6), no action or decision of EGLE or the MDAG shall constitute a final agency action giving rise to any rights of judicial review prior to the MDAG's initiation of judicial action to compel Defendants to comply with this Decree or to enforce a term, condition, or other action required by this Decree. Nothing in this Decree shall expand Defendants' ability to obtain pre-enforcement review of this Decree.

XVII. INDEMNIFICATION AND INSURANCE

17.1 The State of Michigan does not assume any liability by entering into this Decree. This Decree shall not be construed to be an indemnity by the State for the benefit of Defendants or any other person.

17.2 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of Defendants, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Decree.

17.3 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

17.4 The State shall provide Defendants notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 17.2 or 17.3 of this Decree.

17.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be considered a party to any contract that is entered into by or on behalf of Defendants for the

performance of response activities required by this Decree. Neither Defendants nor their contractor shall be considered an agent of the State.

17.6 Defendants waive 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 Defendants and any other person for the performance of response activities at the Facility, including any claims resulting from construction delays.

17.7 Prior to commencing any response activities pursuant to this Decree, and for the duration of this Decree, Defendants shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00) of combined single limit, which names EGLE, the MDAG, and the State of Michigan as additional insured parties. If Defendants demonstrate by evidence satisfactory to EGLE that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Defendants need to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Defendants and prior to commencement of response activities pursuant to this Decree, Defendants shall provide EGLE Project Manager and the MDAG with certificates evidencing said insurance and EGLE, the MDAG, and the State of Michigan's status as additional

insured parties. Such certificates shall specify the Techni-Comp Site, Court Case No. 22-002604-NZ and the Remediation and Redevelopment Division.

XVIII. COVENANTS NOT TO SUE BY THE STATE

18.1 In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of this Decree, and except as specifically provided for in this Section and Section XIX (Reservation of Rights by the State) of this Decree, the State of Michigan hereby covenants not to sue or to take further administrative action against Defendants for:

(a) Response activities related to the release of PFAS contamination at or emanating from the Facility.

(b) Recovery of Attorney Fees and Past Response Activity Costs associated with or related to the release of PFAS contamination at or emanating from the Facility.

(c) Recovery of Future Response Activity Costs associated with or related to the release of PFAS contamination at or emanating from the Facility and any applicable interest required under this Decree.

(d) Recovery of natural resource damages and common law damages incurred by the State associated with or related to PFAS contamination at or emanating from the Facility, and any applicable interest.

18.2 The covenants not to sue shall take effect under this Decree as follows:

(a) With respect to Defendants' liability for PFAS contamination at or emanating from the Facility, the covenant not to sue shall take effect when all of the following conditions are met:

(i) The Completion Report is submitted pursuant to Paragraph 6.7 of this Decree is approved by EGLE; and

(ii) EGLE has received all payments for Future Response Activity Costs in accordance with Paragraphs 14.3 and 14.4.

(b) With respect to Defendants' liability for Past Response Activity Costs, the covenant not to sue shall take effect upon EGLE's receipt of the payment required by Paragraph 14.2, for Attorney Fees, the covenant not to sue shall take effect upon EGLE's verification that payment required by Paragraph 14.1 has been made, and for Future Response Activity Costs associated with or related to PFAS contamination at or emanating from the Facility, the covenant not to sue shall take effect upon EGLE's receipt of payments required by Paragraphs 14.3, and 14.4, including any applicable interest that has accrued pursuant to Section XIV (Attorney Fees and Reimbursement of Costs) of this Decree.

(c) With respect to Defendants' liability for natural resource damages and common law damages suffered by the State associated with or related to PFAS contamination at or emanating from the Facility, the covenants not to sue shall take effect upon the Effective Date of this Decree, subject to the satisfactory performance of obligations under this Decree.

18.3 The covenants not to sue extend only to Defendants and do not extend to any other person.

XIX. RESERVATION OF RIGHTS BY THE STATE

19.1 The covenants not to sue apply only to those matters specified in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State) of this Decree. The State expressly reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Defendants with respect to the following:

(a) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances by the Defendants that occur outside of the Facility and that are not attributable to the Facility.

(b) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken by the Defendants from the Facility.

(c) Criminal acts.

(d) Any matters for which the State is owed indemnification under Section XVII (Indemnification and Insurance) of this Decree.

(e) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Decree or any other violations of state or federal law for which Defendants have not received a covenant not to sue.

(f) Any issue addressed in MCL 324.20132(6) as it relates to unknown conditions at the Facility; provided however, that the presence or potential presence of PFAS at, under, in or emanating from the Facility, whether discovered prior to or after the execution of this Decree, shall not be in any way considered an unknown condition.

19.2 The State reserves the right to take action against Defendants if it discovers at any time that any material information provided by Defendants prior to or after entry of this Decree was false or misleading.

19.3 The State, including EGLE and the MDAG, expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

19.4 In addition to, and not as a limitation of any other provision of this Decree, EGLE retains all of its authority and reserves all of its rights to perform, or contract to have performed, any response activities that EGLE determines are necessary.

19.5 In addition to, and not as a limitation of any provision of this Decree, the State, including EGLE and the MDAG, retain all of their information-gathering, inspection, access, and enforcement authorities and rights under Part 201, and any other applicable statute or regulation.

19.6 Failure by EGLE or the MDAG to enforce any term, condition, or requirement of this Decree in a timely manner shall not:

(a) Provide or be construed to provide a defense for Defendants' noncompliance with any such term, condition, or requirement of this Decree.

(b) Estop or limit the authority of EGLE or the MDAG to enforce any such term, condition, or requirement of the Decree, or to seek any other remedy provided by law.

19.7 This Decree does not constitute a warranty or representation of any kind by EGLE that the response activities performed by Defendants in accordance with EGLE-approved Response Activity Plans required by this Decree will result in the achievement of the performance objectives stated in Paragraph 6.1 of Section VI (Performance of Response Activities) of this Decree; or the remedial clean-up criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

19.8 Except as provided in Paragraph 18.1(a) of Section XVIII (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of EGLE or the State of Michigan, pursuant to MCL 324.20119 and MCL 324.20137, as provided for under MCL 324.20132(8), to direct or Decree 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.

XX. COVENANT NOT TO SUE BY DEFENDANT

20.1 Defendants hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized

representatives, for any claims or causes of action against the State that arise from this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to MCL 324.20119(5) or any other provision of law.

20.2 After the Effective Date of this Decree, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting; or that are based upon a defense that contends any claims raised by EGLE or the MDAG in such a proceeding were or should have been brought in this case, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenants Not to Sue by the State) of this Decree.

XXI. CONTRIBUTION PROTECTION

Pursuant to MCL 324.20129(5), and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC 9613(f)(2); and to the extent provided in Section XVIII (Covenants Not to Sue by the State) of this Decree, Defendants shall not be liable for claims for contribution for the matters set forth in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The Parties agree that entry of this Decree constitutes an

administratively approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Defendants have, as of the Effective Date, resolved its liability to EGLE for the matters set forth in Paragraph 18.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under MCL 324.20126 of the NREPA, or Section 9607 and Section 9613 of the CERCLA. Pursuant to MCL 324.20129(9) of the NREPA, any action by Defendants for contribution from any person that is not a Party to this Decree shall be subordinate to the rights of the State of Michigan, if the State files an action pursuant to the NREPA or other applicable state or federal law.

XXII. MODIFICATIONS

22.1 The Parties may only modify this Decree according to the terms of this Section. The modification by the Defendants of any Submission or schedule required by this Decree may be made only upon written approval from the EGLE Warren District Supervisor.

22.2 Modification of any other provision of this Decree shall be made only by written agreement between Defendants' Project Manager, the RRD Director, or his or her authorized representative, and the designated representative of the MDAG and the Defendants. Any material modification of this Decree shall be effective only upon approval by the Court. Material changes shall not include agreed-upon changes to Response Activity Plans required to be submitted under Section VI (Performance of Response Activities), changes to deadlines in any

schedules approved by EGLE in accordance with the provisions of this Decree, or changes in the project managers identified in Section XIII (Project Managers and Communications/Notices).

XXIII.SEPARATE DOCUMENTS

The Parties may execute this Decree in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

XXIV. FINAL JUDGMENT

24.1 This Decree and its attachments constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Decree. This Decree supersedes all prior representations, agreements, and understandings, whether oral or written, among the Parties regarding the subject matter of the Decree.

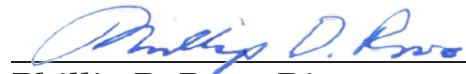
24.2 Upon entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties.

SO ORDERED THIS _____ DAY OF _____, 2025.

Court Case No. No. 22-002604-NZ

IT IS SO AGREED TO AND DECREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND
ENERGY



Phillip D. Roos, Director

Michigan Department of Environment, Great Lakes,
and Energy

June 16, 2025

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Danielle Allison-Yokom (P70950)

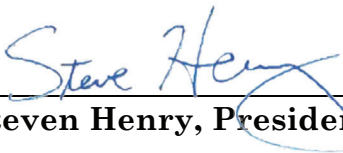
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

June 16, 2025

Date

IT IS SO AGREED BY:

Domtar Industries LLC

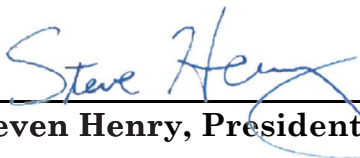


Steven Henry, President




Date

E.B. Eddy Paper, Inc.



Steven Henry, President



Date