



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Remediation and Redevelopment Division

POSTCLOSURE AGREEMENT PART 201

This document provides instructions on the use of the attached Postclosure Agreement to facilitate the development and implementation of consensual agreements pursuant to Section 20114d(4) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protections Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and the attached model document are provided to the public as preliminary guidance as to the content, format, and terms of a Postclosure Agreement and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

If the No Further Action Report addresses all hazardous substances in all media at the entire facility, use the word “Facility” throughout the Postclosure Agreement. If the No Further Action Report only addresses a portion of the facility, then the Postclosure Agreement shall describe the exact release, area, hazardous substances, and/or media addressed. The area shall be described in Attachment A, and the term “Property” should be used throughout the Postclosure Agreement.

Please contact Erica Bays, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), Michigan Department of Environment, Great Lakes, and Energy, at BaysE@michigan.gov or 269-350-0080 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***italicized bold font within bold brackets***, and word choices appear as **[regular bold font within bold brackets]**.

--END OF GUIDANCE AND INSTRUCTION--

POSTCLOSURE AGREEMENT MODEL

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

In the Matter of:

[insert legal name of person submitting NFA report]
[insert county name] County, Michigan

EGLE Reference No.
PCA-RRD-[YR]-[number]

POSTCLOSURE AGREEMENT FOR A **[insert as appropriate: LIMITED RESIDENTIAL, LIMITED NONRESIDENTIAL or LIMITED SITE-SPECIFIC]** REMEDIAL ACTION

This Agreement for a **[insert category of remedial action]** Remedial Action (Agreement) is entered into voluntarily by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Remediation and Redevelopment Division (RRD), and **[insert legal name of person submitting NFA report (SUBMITTER)]** to specify the agreed upon activities required to be undertaken to maintain the effectiveness and integrity of the remedial action at the **[insert Facility or Property name] [insert as appropriate: Facility or Property]**. By execution of this Agreement, EGLE and **[SUBMITTER]** agree to be bound by all of its terms.

BACKGROUND

A No Further Action (NFA) Report submitted to EGLE for approval pursuant to Section 20114d(3)(c) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA), must include a Postclosure Plan and a Postclosure Agreement.

Section 20114d(4) of the NREPA requires that a Postclosure Agreement submitted as part of a NFA Report include all of the following: (a) provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action; (b) financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined

by EGLE to be necessary to assure the effectiveness and integrity of the remedial action; (c) a provision requiring notice to EGLE of the owner's intent to convey any interest in the facility; and (d) a provision granting EGLE access to the property.

NOTE: Select one of the following options as appropriate:

OPTION A: If this Postclosure Agreement is submitted in conjunction with a NFA Report that addresses all hazardous substances in all media for the entire Facility, use the following paragraph:

This Agreement pertains to the remedial action for the Facility as defined in Paragraph 2.3 of this agreement, as it relates to the release of hazardous substances at the Property as defined in paragraph 2.12 of this Agreement and legally described in Attachment A.

OPTION B: If this Postclosure Agreement is submitted in conjunction with a NFA Report that addresses only a portion of the Facility use the following two paragraphs:

This Agreement pertains to the remedial action for the Property as defined in Paragraph 2.12 of this Agreement and legally described in Attachment A, as it relates to ***[insert language with respect to what is addressed in the NFA Report (i.e. specific release(s), hazardous substance(s), or media)]***.

The remedial action set forth in the NFA Report does not comprehensively address all environmental contamination at the Facility and therefore, does not constitute a NFA for the Facility. Additional response activities may be necessary to address environmental contamination at the Facility that is not addressed under this NFA and may be the subject of subsequent postclosure agreements with EGLE, as appropriate.

NOTE: End of Options

Based on the information submitted to EGLE, as of the Effective Date, the NFA Report for a ***[insert category of remedial action]*** Remedial Action, including its Postclosure Plan, its attachments, and any EGLE-approved modifications, is approved by EGLE.

In order to meet the requirements of Section 20114d(4) of the NREPA, **[SUBMITTER]** and EGLE stipulate and agree as follows:

I. PARTIES BOUND

1.1 This Agreement shall apply to and be binding upon **[SUBMITTER]** and EGLE and their successors. No change in ownership or corporate or legal status of **[SUBMITTER]**, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter **[SUBMITTER]**'s responsibilities under this Agreement.

NOTE: If SUBMITTER is the current owner or operator of the Facility or Property, include Paragraph 1.2 below, if paragraph is not used, renumber subsequent paragraph, and verify all cross references in the Agreement.

1.2 **[SUBMITTER]** shall provide EGLE with written notice at least fourteen (14) days prior to consummating the conveyance of any interest in the **[insert as appropriate: Facility or Property]** as required by Section 20114d(4)(c) of the NREPA. No conveyance of title, an easement, or other interest in property that comprises some or all of the **[insert as appropriate: Facility or Property]** shall be consummated by the **[SUBMITTER]** without adequate and complete provision for compliance with the terms and conditions of the NFA Report and this Agreement. No transfer of ownership interest shall occur without adequate and complete provision that allows **[SUBMITTER]** to carry out its obligations under this Agreement and to assure the effectiveness and integrity of the remedial action. **[SUBMITTER]** shall inform any transferee that the real property is a facility, provide a copy of this Agreement to any subsequent owners or successors prior to the transfer of any ownership interests, and comply with the requirements of Section 20116 of the NREPA.

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

II. DEFINITIONS

2.1 "Day" or "day" means a calendar day, unless otherwise specified in this Agreement.

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

2.3 “Effective Date” means the date that this Agreement is fully executed by all parties to it and a No Further Action Letter is issued to **[SUBMITTER]**.

NOTE: Use only if the entire Facility is addressed by NFA Report, if paragraph is not used, renumber subsequent paragraphs, and verify all cross references in the Agreement.

2.4 “Facility” means any portion of the Property identified in Attachment A and any area, place, parcel or parcels of property, or portion of parcel of property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use, has been released, deposited, disposed of, or otherwise comes to be located.

NOTE: Use only if a FAM is required, if paragraph is not used, renumber subsequent paragraphs, and verify all cross references in the Agreement.

2.5 “FAM” means the financial assurance mechanism that is provided pursuant to Section V (Financial Assurance) of this Agreement, to pay for monitoring, operation and maintenance, oversight, and other costs determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action.

2.6 “Long-Term Remedial Action Costs” shall mean those costs necessary to assure the performance of monitoring, operation and maintenance, oversight, and other costs that are determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action as set forth in the NFA Report, including this Agreement, in perpetuity.

2.7 “No Further Action Report” or “NFA Report” means the written report detailing the completion of the remedial action for ***[insert as appropriate: the Facility or (describe the exact release, area, hazardous substances, and/or media addressed) at the Property described in Attachment A]***, the Postclosure Plan included in Attachment B, and this Agreement. The NFA

Report, submitted to EGLE on **[insert date]**, is entitled, **[insert title of document in italics]**, dated **[insert date]**, for the **[insert Facility Name]** **[insert as appropriate: Facility or Property]** prepared by **[insert consultant name]**.

2.8 “Part 31” means Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated thereunder.

2.9 “Part 201” means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, and the Administrative Rules promulgated thereunder.

2.10 “Postclosure Plan” means the plan set forth in Attachment B.

2.11 “Postclosure Agreement” means this Agreement.

2.12 “Property” means **the [insert as appropriate: property or properties]** located at **[insert address or addresses of Property]**, **[insert Name of County]**, Michigan and legally described in Attachment A.

2.13 “Response Activity Costs” means all costs lawfully incurred by EGLE to oversee, enforce, monitor, and document compliance with this Agreement, including, but not limited to, costs incurred to: monitor response activities at the **[insert as appropriate: Facility or Property]**; observe and comment on field activities; review and comment on documents or reports required to be submitted to EGLE under this Agreement; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare cost reimbursement documentation; and perform response activities pursuant to Paragraph 13.3 **[renumber if necessary]** of this Agreement.

2.14 Unless otherwise stated herein, all other terms used in this Agreement, which are defined in Part 3, Definitions, of the NREPA; or Part 201, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA.

III. IMPLEMENTATION

3.1 **[SUBMITTER]** agrees to implement and comply with the terms of the NFA Report, including the Postclosure Plan and this Agreement. As approved, each component of the NFA Report shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement. The scope of the remedial action detailed in the NFA Report consists of **[describe scope of remedy (e.g., description of the remedial action constructed; maintenance of exposure barriers or other remedial action related devices constructed; establishment of land use and resource use restrictions; performance monitoring)]**.

3.2 **[SUBMITTER]** certifies, to the best of **[insert as appropriate: his/her/its]** knowledge, the remedial action completed at the **[insert as appropriate: Facility or Property]** satisfies **[insert appropriate: residential, nonresidential, or site-specific]** cleanup criteria established under Part 201, and all other requirements of Part 201 that are applicable to the remedial action. The specific performance objectives for the remedial action at the **[insert as appropriate: Facility or Property]** are as follows:

NOTE: Insert all remedial action-specific performance objectives that will be used in the future to determine whether the remedial action continues to be protective of the public health, safety, and welfare, and the environment. Performance objectives are used in the future to determine whether the remedial action has failed to continue to satisfy the cleanup criteria that were the basis for the no further action report approval, and when a party may have liability for additional response activities at the Facility or Property pursuant to Section 20126(4)(e)(v) of the NREPA. Specific performance objectives to address all applicable exposure pathways must be addressed by the NFA Report. A performance objective is a goal or purpose, not a specific task, such as the following: (reletter sections as needed and verify all cross references in the Agreement.)

(a) Prevent the unacceptable exposure to hazardous substances in the groundwater as a result of the use of the groundwater for drinking water.

(b) Prevent the unacceptable exposure to hazardous substances in the soil as a result of direct contact with the soil.

(c) Prevent the unacceptable exposure to hazardous substances in the groundwater as the result of those hazardous substances venting to surface water.

- (d) Prevent unacceptable exposure to hazardous substances in the groundwater as a result of volatilization of those hazardous substances into indoor air.
- (e) Prevent unacceptable exposure to hazardous substances in the soil as a result of volatilization of those hazardous substances into indoor air.
- (f) Prevent unacceptable exposure to hazardous substances in the soil as a result of the inhalation of those hazardous substances being emitted and dispersed in ambient air.
- (g) Prevent the unacceptable exposure to hazardous substances in the soil as a result of those hazardous substances leaching from the soil to the ground water.
- (h) Prevent unacceptable exposure to hazardous substances in the soil as result of the direct transport of those substances to surface water due to erosion, runoff, or other similar means.
- (i) Prevent the migration and accumulation of methane in structures above applicable Part 201 cleanup criteria.
- (j) Assure continued compliance with the Postclosure Plan.
- (k) Assure the effectiveness and integrity of any exposure control mechanisms employed by the approved NFA Report.
- (l) Maintain financial assurance in an amount sufficient to cover Long-Term Remedial Action Costs at the **[insert as appropriate: Facility or Property]** for a thirty (30)-year period.
- (m) Assure that the continued use of the **[insert as appropriate: Facility or Property]** is consistent with the land and resource uses allowed in restrictive covenant or other institutional control.
- (n) Maintain compliance with mixing-zone authorization of the venting groundwater discharge.
- (o) Comply with applicable notice requirements pursuant to this Agreement.

[insert additional remedial action-specific performance objectives as necessary.]

3.3 The following describes the general response activities to be performed for monitoring, operation and maintenance, and oversight at the **[insert as appropriate: Facility or Property]**. These response activities are more specifically described in Attachment C. **[Insert a list of general response activities to be performed at the Facility or Property. For example,**

- (a) Perform Monitoring Plan.**
- (b) Operate hydraulic control system.**
- (c) Inspect and maintain integrity of direct contact barrier.]**

3.4 Within sixty (60) days after of the first anniversary of this Agreement and within sixty (60) days after each anniversary thereafter, **[SUBMITTER]** shall provide an annual report to EGLE project manager describing the implementation of the response activities, including, but not limited to, operation and maintenance, monitoring activities, and any other response activities that have been undertaken by **[SUBMITTER]** at the **[insert as appropriate: Facility or Property]** for the prior year. The report shall include an assessment and documentation of the integrity of all exposure control mechanisms on which the remedial action is dependent (e.g., barriers, permanent markers); and compliance with land or resource use restrictions, including institutional controls.

3.5 Approval of the NFA Report shall not be construed to mean that EGLE concurs with all conclusions, methods, or statements in the NFA Report or warrants that the NFA Report comports with law.

3.6 **[SUBMITTER]** attests that all wells and other response activity related devices that were installed as part of the response activities at or related to the **[insert as appropriate: Facility or Property]** that will not be used in the long-term operation or monitoring of the remedial action provided in the NFA Report have been properly plugged and abandoned or removed.

3.7 **[SUBMITTER]** shall submit a plan for EGLE approval for additional response activities within sixty (60) days of discovery, if:

- (a) Monitoring demonstrates additional response activities are necessary to address potential exposure to the environmental contamination;
- (b) The remedial action that was the basis for the NFA Report fails to meet the performance objectives identified in the NFA Report; or

(c) Any modifications are needed to assure the continued effectiveness and integrity of the remedial action.

3.8 If additional response activities are implemented in accordance with Paragraph 3.7 of this Agreement, **[SUBMITTER]** shall submit an amended NFA Report, including revised attachments, if applicable, for EGLE approval within sixty (60) days of completing those additional response activities.

3.9 **[SUBMITTER]** may submit an amended NFA Report at any time. The amended NFA Report shall include the proposed change(s) to the original NFA Report including revised attachments, if applicable; and an accompanying rationale for the proposed change(s). The process for review and approval set forth in Section 20114d of the NREPA shall be used for review and approval of an amended NFA Report.

3.10 This Agreement and the remedial action may only be modified through an amended NFA Report approved by EGLE **[If a FAM is needed include: except as provided for in Paragraph 5.9 of this Agreement]**.

IV. LAND USE OR RESOURCE USE RESTRICTIONS

NOTE: Adjust singular and plural references as necessary depending on the number and types of necessary land or resource use restrictions and renumber paragraphs as needed, and verify all cross references in the Agreement.

4.1 The NFA Report relies on one or more of the following land use or resource use restrictions **[insert as appropriate from the list below]**:

- (a) Restrictive Covenant
- (b) Local Ordinance
- (c) Michigan Department of Transportation (MDOT) License
- (d) Public Highway Institutional Control
- (e) **[insert other land use or resource use restriction(s)]**

4.2 **[Submitter]** attests that the land use or resource restriction(s) provided in the Postclosure Plan **[comply/complies]** with the applicable requirements of Section 20121 of the NREPA, and is provided in Attachment B.

4.3 Pursuant to Section 20114c(3) of the NREPA, **[Submitter]** attests the notice of the land use or resource use restriction(s) required by the remedial action was provided to the zoning authority for **[insert the local government in which the Facility is located]** within thirty (30) days after recording. A copy of the notice provided to the local zoning authority is provided in the NFA Report.

4.4 If the land use or resource use restriction(s) **[is/are]** rescinded, revoked, terminated, allowed to lapse, or is modified, the **[Submitter]** may become liable for additional response activities necessary to satisfy the performance objectives of Paragraph 3.2.

NOTE: Insert the following paragraph if SUBMITTER relies on a MDOT Environmental License Agreement:

4.5 **[SUBMITTER]** shall notify EGLE within 14 days of any modification or termination of the Environmental License Agreement with the MDOT. **[SUBMITTER]** may become liable for additional response activities necessary to satisfy the performance objective of Paragraph 3.2.

NOTE: Insert the following paragraph if SUBMITTER relies on a Public Highway Institutional Control

4.5 **[SUBMITTER]** shall notify EGLE within 14 days of becoming aware that the public highway is proposed to be relocated, vacated or abandoned, or other conditions that result in revocation of this institutional control. **[SUBMITTER]** may become liable for additional response activities necessary to satisfy the performance objective of Paragraph 3.2.

V. FINANCIAL ASSURANCE

NOTE: *This Section has three options:*

Option A is for use when the SUBMITTER is NOT a Municipality and uses an acceptable financial assurance mechanism as defined in Section 20101(1)(u) of the NREPA. Option B is

for use when the SUBMITTER is NOT a Municipality and it is determined that a financial assurance mechanism is not required. Option C is for use by a Municipality.

For the purpose of selecting the appropriate Option, the term “Municipality” is defined in Section 301 of the NREPA. Do NOT use more than one option in the same Agreement. Option A of this Agreement requires SUBMITTER to perform an ongoing assessment of Long-Term Remedial Action Costs (as defined in Section II of this Agreement) and the adequacy of financial assurance. Normally, since most exposure barriers must be maintained in perpetuity, SUBMITTER’s FAM is required to assure the performance of Long-Term Remedial Action Costs for a period of thirty (30) years at a time, in perpetuity, but shorter durations are possible depending on the nature of the selected remedial action.

OPTION A:

5.1 The [*insert type of instrument, e.g., Letter of Credit, Escrow, Financial Test, or Financial Test/Corporate Guarantee*] provided in Attachment D is the initial FAM approved by EGLE. [**SUBMITTER**] shall be responsible for providing and maintaining financial assurance in a mechanism acceptable to EGLE to assure the performance of the Long-Term Remedial Action Costs required by [**SUBMITTER**]'s selected remedial action.

5.2 The FAM shall remain in an amount sufficient to cover Long-Term Remedial Action Costs at the [*insert as appropriate: Facility or Property*] for a thirty (30)-year period. Unless the use of the Financial Test or Financial Test/Corporate Guarantee is approved as an acceptable FAM for the NFA Report, the FAM shall remain in a form that allows EGLE to immediately contract for the response activities for which financial assurance is required in the event [**SUBMITTER**] fails to implement the required tasks.

5.3 Sixty (60) days prior to the five (5)-year anniversary of the Effective Date of this Agreement and each subsequent five (5)-year anniversary, [**SUBMITTER**] shall provide to EGLE a report containing the actual Long-Term Remedial Action Costs for the previous five (5)-year period and an estimate of the amount of funds necessary to assure Long-Term Remedial Action Costs for the following thirty (30)-year period given the financial trends in existence at the time of preparation of the report (Long-Term Remedial Action Cost Report). The Long-Term Remedial Action Cost Report shall also include all assumptions and calculations used in preparing the necessary cost estimate and

shall be signed by an authorized representative of **[SUBMITTER]** who shall confirm the validity of the data. **[SUBMITTER]** may only use a present worth analysis if an interest accruing FAM is selected.

5.4 Within sixty (60) days after **[SUBMITTER]**'s submittal of the Long-Term Remedial Action Cost Report to EGLE, **[SUBMITTER]** shall capitalize or revise the FAM in a manner acceptable to EGLE to address Long-Term Remedial Action Costs consistent with the conclusions of the Long-Term Remedial Action Cost Report unless otherwise notified by EGLE. If EGLE disagrees with the conclusions of the Long-Term Remedial Action Cost Report, **[SUBMITTER]** shall capitalize the FAM to a level acceptable to EGLE within thirty (30) days of EGLE notification. If, at any time, EGLE determines that the FAM does not secure sufficient funds to address Long-Term Remedial Action Costs, **[SUBMITTER]** shall capitalize the FAM or provide an alternate FAM to secure any additional costs within thirty (30) days of request by EGLE.

5.5 If, pursuant to the Long-Term Remedial Action Cost Report, **[SUBMITTER]** can demonstrate that the FAM provides funds in excess of those needed for Long-Term Remedial Action Costs for **the [insert as appropriate: Facility or Property]**, **[SUBMITTER]** may request a modification in the amount. Any requested FAM modifications must be accompanied by a demonstration that the proposed FAM provides adequate funds to address future Long-Term Remedial Action Costs at the **[insert as appropriate: Facility or Property]**. Upon EGLE approval of the request, **[SUBMITTER]** may modify the FAM as approved by EGLE. Modifications to the FAM pursuant to this Paragraph shall be approved by EGLE RRD Director or his or her authorized representative.

5.6 If the use of the Financial Test is approved as an acceptable FAM for the NFA Report, **[SUBMITTER]** shall, within ninety (90) days after the end of **[SUBMITTER]**'s next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that **[SUBMITTER]** can continue to meet the Financial Test requirements. If **[SUBMITTER]** can no longer meet the financial test requirements, **[SUBMITTER]** shall submit a proposal for an alternate FAM to satisfy its financial obligations with respect to the NFA Report and this Agreement.

5.7 If the use of the Financial Test is approved as an acceptable FAM for the NFA Report, EGLE, based on a reasonable belief that **[SUBMITTER]** may no longer meet the requirements for the Financial Test, may require reports of financial condition at any time from **[SUBMITTER]**, and/or require **[SUBMITTER]** to submit updated Financial Test information to determine whether it meets the Financial Test criteria. **[SUBMITTER]** shall provide, with reasonable promptness to EGLE, any other data and information that may reasonably be expected to materially adversely affect the **[SUBMITTER]**'s ability to meet the Financial Test requirements. If EGLE finds that **[SUBMITTER]** no longer meets the Financial Test requirements, **[SUBMITTER]** shall, within thirty (30) days after notification from EGLE, submit a proposal for an alternate FAM to satisfy its financial obligations with respect to the NFA Report and this Agreement.

5.8 If the use of the Financial Test/Corporate Guarantee is approved as an acceptable FAM for the NFA Report, **[SUBMITTER]** shall comply with the terms of the Corporate Guarantee. The Corporate Guarantee shall remain in place until Long-Term Remedial Action Costs are no longer required at the **[insert as appropriate: Facility or Property]**, **[SUBMITTER]** establishes an alternate FAM acceptable to EGLE.

5.9 If **[SUBMITTER]** wishes to change the type of FAM or establish a new FAM, **[SUBMITTER]** shall submit a request to EGLE for approval. Upon EGLE approval of the request, **[SUBMITTER]** may change the type the FAM or establish the new FAM as approved by EGLE. Modifications to the FAM pursuant to this Paragraph shall be approved by EGLE RRD Director or his or her authorized representative.

5.10 If **[SUBMITTER]** dissolves or otherwise ceases to conduct business and fails to make arrangements acceptable to EGLE for the continued implementation of all activities required by the remedial action, all rights under this Agreement regarding the FAM shall immediately and automatically vest in EGLE in accordance with the FAM.

OPTION B: Note – SUBMITTER must provide an estimate of the Long-Term Remedial Action Costs for EGLE approval prior to selecting this option.

The current estimate of Long-Term Remedial Action Costs at the **[insert as appropriate: Facility or Property]** is less than the threshold amount determined by EGLE to be de minimis

pursuant to Section 20114d(3)(b). Therefore, EGLE concurs that a financial assurance mechanism is not required as of the Effective Date of this Agreement.

OPTION C: If SUBMITTER is a Municipality as defined in Section 301 of the NREPA:

[SUBMITTER] acknowledges that as part of the NFA Report, [SUBMITTER] has a continuing obligation to continue implementation of the remedial action in accordance with the NFA Report and this Agreement and agrees to make available adequate funds to meet this obligation.

VI. PERMANENT MARKERS

NOTE: Choose the appropriate option for Paragraph 6.1 as provided below. If permanent markers are necessary in accordance with Section 20114c(2)(b) of the NREPA, include Paragraphs 6.2 and 6.3 below.

6.1 [SUBMITTER] attests that, pursuant to Section 20114c(2)(b)(**choose applicable one: i, ii, iii, or iv**) of the NREPA, permanent markers are not required for this **insert as appropriate: Facility or Property**].

or

6.1 EGLE has waived the requirement for permanent markers at the **insert as appropriate: Facility or Property**].

or

6.1 [SUBMITTER] attests that the permanent markers in compliance with the Postclosure Plan, as set forth in Attachment B to this Agreement, have been installed at the **insert as appropriate: Facility or Property**].

NOTE: The permanent marker specifications provided in the Postclosure Plan shall specify the materials and method of construction; identify the location(s) of the permanent markers(s); include the text of the inscription, including EGLE Part 201 Facility ID Number and the liber and page numbers of the restrictive covenant; and shall include a graphical depiction of the areas subject to restriction relative to the Property boundaries.

6.2 **[SUBMITTER]** shall be responsible for maintaining the permanent markers in legible condition and in location(s) specified in the Postclosure Plan of the NFA Report.

6.3 If **[SUBMITTER]** fails to maintain the permanent markers as provided in the Postclosure Plan, **[SUBMITTER]** may become liable for additional response activities necessary to satisfy performance objectives of Paragraph 3.2.

VII. VENTING GROUNDWATER DISCHARGE AUTHORIZATION

NOTE: Insert the following Section if the remedial action relies upon mixing zone-based Groundwater Surface Water Interface (GSI) criteria and a venting groundwater discharge authorization to discharge in excess of the generic GSI criteria. If remedial action does not rely upon a GSI discharge in excess of the generic GSI criteria, then delete section and renumber sections as needed, and verify all cross references in the Agreement. Choose one of the following options.

OPTION A: If EGLE has already given authorization for a venting groundwater discharge as part of an approved response activity plan, insert the following paragraphs:

7.1 The approval of the response activity plan for a mixing-zone determination granting authorization for venting groundwater discharge at the ***[insert as appropriate: Facility or Property]***, as provided in Attachment E, shall be incorporated into this Agreement and made an enforceable part of this Agreement.

7.2 If **[SUBMITTER]** does not comply with the authorized mixing zone-based GSI criteria, or the venting groundwater discharge authorization is not renewed in accordance with the authorization provided in Attachment E, **[SUBMITTER]** may become liable for additional response activities necessary to satisfy performance objectives of Paragraph 3.2.

OPTION B: If EGLE has determined that a GSI Compliance Monitoring Plan is a necessary part of the NFA Report that relies upon mixing zone-based criteria that is approvable, insert the following paragraphs.

7.1 Based upon EGLE review and evaluation of the GSI compliance monitoring plan and the related GSI information in the NFA Report, EGLE authorizes the discharge without a permit of those hazardous substances identified in the NFA Report for which mixing zone-based GSI criteria have been developed by EGLE and included in Attachment E. The authorization is effective for a period of five (5) years beginning on the effective date of this Agreement. At no time does this approval allow for the discharge of:

- (a) Hazardous substances in excess of the mixing zone-based GSI criteria established in the NFA Report;
- (b) Hazardous substances that were not specified in the NFA Report; or
- (c) Hazardous substances in excess of the applicable water quality standards developed pursuant to Part 31 Water Resources Protection, of the NREPA.

7.2 To receive reauthorization of the venting groundwater discharge, **[SUBMITTER]** will, within one-hundred eighty (180) days prior to the five (5)-year anniversary effective date of this Agreement, submit a Supplemental Report to EGLE for review and approval. The Supplemental Report should include a request to reauthorize the venting groundwater discharge and contain all information and data concerning the discharge of contaminated groundwater venting from the Facility to the surface water that is necessary to assess **[SUBMITTER'S]** ongoing compliance with Part 201 and Part 31, Water Resources Protection, of the NREPA. A request to reauthorize the venting groundwater discharge will be required every five (5) years or until EGLE determines that a request is no longer necessary.

7.3 If **[SUBMITTER]** does not comply with the authorized mixing zone-based GSI criteria, or the venting groundwater discharge authorization is not renewed in accordance with paragraph 7.2, **[SUBMITTER]** may become liable for additional response activities necessary to satisfy performance objectives of Paragraph 3.2.

OPTION C: If EGLE determined that a GSI Compliance Monitoring Plan is NOT a necessary part of the NFA Report, insert the following paragraph.

7.1 Based upon EGLE review and evaluation of the GSI information contained in the NFA Report, EGLE authorizes the discharge without a permit of those hazardous substances identified in

the NFA Report for which mixing zone-based GSI criteria have been developed by EGLE and included in Attachment E. At no time does this approval allow for the discharge of:

- (a) Hazardous substances in excess of the mixing zone-based GSI criteria established in the NFA Report;
- (b) Hazardous substances that were not specified in the NFA Report; or
- (c) Hazardous substances in excess of the applicable water quality standards developed pursuant to Part 31 Water Resources Protection, of the NREPA.

VIII. COMPLIANCE WITH STATE AND FEDERAL LAWS

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

8.2 Nothing in this Agreement shall be construed as releasing or waving [**SUBMITTER**] from its duties and obligations to obtain and maintain compliance with any permit, authorization, or other governmental approval required under any applicable federal or state laws, including Part 201.

IX. COMMUNICATIONS AND NOTICES

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

As to EGLE:

[Name], [Title]
[District Office Name]
Remediation and Redevelopment Division
Michigan Department of Environment,
Great Lakes, and Energy
[Street Address OR P.O. Box]
[City], [State] [Zip Code]
Telephone: [insert]
Fax: [insert]

(Via Courier)
[Insert if different from above]

As to [SUBMITTER]:

[Name]
[Company Name]
[Street Address or P.O. Box]
[City], [State] [Zip Code]
Telephone: [insert]
Fax: [insert]

(Via Courier)
[Insert if different from above]

NOTE: Courier requires street address

As to EGLE for submittals required under V (Financial Assurance), and XI (Reimbursement of Costs):

Manager, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy
P.O. Box 30426
Lansing, Michigan 48909-7926
Telephone: 517-284-5147
Fax: 517-241-9581

Via Courier
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933

X. ACCESS TO PROPERTY AND RECORDS

10.1 Upon the Effective Date of this Agreement, EGLE and its authorized employees and representatives shall, to the extent the **[insert as appropriate: Facility or Property]** is owned, controlled or available to **[SUBMITTER]**, have an irrevocable right-of-access at all reasonable times to the **[insert as appropriate: Facility or Property]** for the purpose of determining and monitoring compliance with the NFA Report, including the right to take samples, inspect the operation of remedial action measures, and inspect records related to the NFA Report.

10.2 Pursuant to Section 20114d(7) of the NREPA, **[SUBMITTER]** shall maintain all documents and data prepared, acquired, or relied upon in connection with the NFA Report for at least ten (10) years after the later of the date on which EGLE approved the NFA Report; or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the NFA Report. All documents and data required to be maintained under this provision shall be made available to EGLE upon request.

10.3 This Agreement does not restrict or limit any right that EGLE may have to enter the **[insert as appropriate: Facility or Property]** or other properties to which access may be required for the protection of the public health, welfare, safety, or the environment pursuant to specific statutory or regulatory authority. Consistent with EGLE responsibilities under federal or state law, EGLE and its authorized representatives shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and commercial activities on the **[insert as appropriate: Facility or Property]**. “Best efforts” shall not require EGLE to incur any material cost increases in carrying out its responsibilities to protect the public health, safety, or welfare, or the environment.

XI. REIMBURSEMENT OF COSTS

11.1 Following the first anniversary of the Effective Date of this Agreement, EGLE will provide **[SUBMITTER]** with a summary report (Summary Report) that identifies all Response Activity Costs incurred through the dates specified in the Summary Report. Thereafter, EGLE will periodically

provide **[SUBMITTER]** subsequent Summary Reports that set forth all Response Activity Costs incurred from the dates specified in the previous Summary Report through the dates specified in the current Summary Report. **[SUBMITTER]** shall pay the Response Activity Costs within thirty (30) days of receipt of each Summary Report. Payment is to be made by check payable to the “State of Michigan - Environmental Response Fund” and shall be sent to:

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

To ensure proper credit, payments made pursuant to this Agreement must be made by check referencing the **[insert Facility or Property name]**, EGLE Reference No. PCA-RRD-[YR]-**[number]**, and the Settlement ID No. **[inserted by EGLE staff]**.

11.2 **[SUBMITTER]** shall have the right to request a full and complete accounting of all Response Activity Costs identified in the Summary Report, including: timesheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to EGLE. EGLE provision of these documents to **[SUBMITTER]** may result in EGLE incurring additional Response Activity Costs, which will be included in the Summary Report for payment of Response Activity Costs.

NOTE: Insert the following paragraph, if applicable, given the type of EGLE-approved FAM, if paragraph is not used, renumber subsequent paragraphs, and verify all cross references in the Agreement:

11.3 If **[SUBMITTER]** fails to reimburse EGLE for any Response Activity Costs EGLE incurred pursuant to Paragraphs 11.1 or 12.3 **[renumber if necessary]** of this Agreement within thirty (30) days of **[SUBMITTER]**’s receipt of the Summary Report, EGLE may access the funds secured by the FAM, if any, for reimbursement of said costs.

XII. REMEDIES FOR BREACH OF AGREEMENT

12.1 **[SUBMITTER]** and EGLE recognize and agree that this Agreement is a legally enforceable contract as required by Section 20114d of the NREPA and may be enforced in a court of competent jurisdiction. For that purpose, **[SUBMITTER]** consents to the jurisdiction of the Ingham

County Circuit Court in any action by the State of Michigan to enforce this Agreement. **[SUBMITTER]** also recognizes and understands that EGLE remedies if **[SUBMITTER]** breaches the terms and conditions of this Agreement may include other statutory or common law remedies subject to the rights or defenses available to **[SUBMITTER]** under applicable law.

12.2 EGLE has approved the NFA Report, and if any of the provisions lapse or are not complied with as provided in this Agreement or the NFA Report, **[SUBMITTER]** may become liable for additional response activities necessary to satisfy performance objectives of the Agreement.

12.3 If **[SUBMITTER]** fails to correct the lapse or noncompliance under Paragraph 12.2 **[renumber if necessary]** of this agreement within thirty (30) days of written notification by EGLE of the lapse or if **[SUBMITTER]** fails at any time to adequately implement the remedial action in accordance with the NFA Report and this Agreement, EGLE may implement those response activities that **[SUBMITTER]** has failed to perform. Costs which EGLE lawfully incurs in the performance of response activities shall be reimbursed by **[SUBMITTER]** pursuant to Section XII **[renumber if necessary]** (Reimbursement of Costs) of this agreement.

XIII. COVENANT NOT TO SUE EGLE / INDEMNIFICATION

13.1 **[SUBMITTER]** hereby covenants not to sue or to take any civil, judicial, or administrative action against EGLE or their authorized representatives, for any claims arising from or connected with EGLE approval or **[SUBMITTER]**'s implementation of the remedial action in the NFA Report or this Agreement.

13.2 **[SUBMITTER]** also agrees to indemnify EGLE, and their authorized representatives for any claims or for its costs of defending any claims brought by others that are based upon, arise from, or are connected with **[SUBMITTER]**'s implementation of the remedial action in the NFA Report or this Agreement.

XIV. RESERVATION OF RIGHTS

14.1 EGLE reserves all rights to take administrative action or to file a new action pursuant to any applicable authority against **[SUBMITTER]** with respect to the following:

- (a) A subsequent release not addressed in the NFA Report if **[SUBMITTER]** is liable for that release.
- (b) Environmental contamination that is not addressed in the NFA Report and for which **[SUBMITTER]** is liable.
- (c) **[SUBMITTER]**'s failure to perform additional response activities when monitoring necessary to assure the effectiveness and integrity of the remedial action demonstrates potential exposure to contamination in excess of the levels relied on in the NFA Report.
- (d) **[SUBMITTER]**'s failure to perform additional response activities when the remedial action that is the basis for the NFA Report fail to satisfy the performance objectives of the NFA Report or otherwise comply with Part 201.

14.2 The parties reserve all rights available to them pursuant to Part 201 or any other legal authority.

14.3 Nothing in this Agreement shall be construed as a release or covenant not to sue by EGLE for the benefit of **[SUBMITTER]** or any other person.

14.4 Nothing in this Agreement shall limit the power and authority of EGLE or the State of Michigan to direct or order all appropriate action to: protect the public health, safety, or welfare, or the environment; prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the **[insert as appropriate: Facility or Property]**; or to address a lapse or violation under the NFA Report or this Agreement.

XV. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of Michigan. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of Part 201 and any other applicable laws.

XVI. SEVERABILITY

The provisions of this Agreement are severable. If any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law and, therefore, unenforceable, the other provisions of this Agreement shall remain in effect, unless such severance causes this Agreement to fail in its essential intents and purposes, in which case, this Agreement shall become null and void.

XVII. SEPARATE DOCUMENTS

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

In the Matter of:
EGLE Reference No. PCA-RRD-[YR]-[number]

IT IS SO AGREED:

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

[insert Name], Assistant Division Director
Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy

Date

[insert SUBMITTER's Full Name in capital letters]

[Name of Authorized Representative of SUBMITTER, Title]
[insert Company Name]

Date

List of Attachments

Attachment A – Legal Description of Property

NOTE: Include legal description of all properties addressed by the NFA Report and covered by this Agreement

Attachment B – Postclosure Plan

NOTE: Include recorded or enacted copies of all land use or resource use restrictions that the remedial action relies upon, and the permanent markers specifications, if required.

Attachment C – Monitoring, Operation and Maintenance, and Oversight

NOTE: Include specific provisions for the long-term monitoring, operation and maintenance, and oversight of the remedial action pursuant to Section 20114d(3)(a).

Attachment D – FAM

NOTE: Include an executed copy of Escrow, Trust, Letter of Credit, Performance Bond, Certificate of Deposit, Corporate Guarantee, or other FAM.

Attachment E – Mixing Zone-Based GSI Criteria

NOTE: Include the response activity plan approval that documents EGLE authorization of the venting groundwater discharge and the conditions for renewal. Include all EGLE-approved mixing zoned-based GSI criteria developed for the Facility or Property.

If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at EGLE-NondiscriminationCC@Michigan.gov or 517-249-0906.

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