STATE OF MICHIGAN
IN THE 30th JUDICIAL CIRCUIT COURT
INGHAM COUNTY

MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,
Plaintiff,

CASE NO: 03-1862-CE

v
DIAMOND CHROME PLATING, INC.

Honorable

Defendant.

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FIRST AMENDED CONSENT DECREE

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CONSENT DECREE

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ).

The Defendant is Diamond Chrome Plating, Inc. (Defendant).

This First Amended Consent Decree (Decree) amends a Consent Decree previously signed by the Court on July 28, 2006 (Initial Consent Decree). In light of additional information having been acquired, legislative changes, and acts or omissions of Defendant since the date of the Initial Consent Decree, the Parties have negotiated and agreed to enter into this Decree. This Decree requires certain actions to be taken by Defendant with respect to complying with certain environmental laws, and investigating and taking any necessary response activities with respect to soil, groundwater, surface water (including storm water), air pollution, and contaminated structures at the Diamond Chrome Plating, Inc. facility in Livingston County, Michigan.

Upon the Effective Date of this Decree, this Decree shall replace and nullify the Initial Consent Decree except for Section XIX (Covenant Not To Sue By State), Section XX (Reservation Of Rights By State), and Section XXI (Covenant Not To Sue By Defendant), which shall survive termination and continue in full force and effect as set forth and as modified in this Decree. To the extent any conflict exists between this Decree and the Initial Consent Decree, the language in this Decree shall govern.

Defendant agrees not to contest (a) the authority or jurisdiction of the Court to enter this Decree or (b) any terms or conditions set forth herein.

The entry of this Decree by Defendant is not an admission of liability with respect to any issue dealt with in this Decree nor is it an admission of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Decree finds, that the response activities and other actions set forth herein are necessary to abate the release or threatened release of hazardous substances into the environment, to control future releases, and to protect public health, safety, and welfare, and the environment.

NOW, THEREFORE, 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 324.3115; MCL 324.5530; MCL 324.11151(1) and MCL 324.20137. This Court also has personal jurisdiction over the Defendant. Defendant waives all objections and defenses that it may have with respect to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Decree are reasonable, adequately resolve the environmental issues raised, and properly protect 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 XVII (Dispute Resolution).

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon Plaintiff and Defendant and their successors. No change or changes in the ownership or corporate status or other legal status of the Defendant, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendant's responsibilities under this Decree. Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility and shall also provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Defendant shall comply with the disclosure requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20116, and the Part 201 Administrative Rules.

2.2 Defendant shall provide a copy of this Decree to all staff, contractors and consultants that are retained to conduct any portion of the response activities to be performed pursuant to this Decree within seven (7) calendar days of the effective date of such retention.

2.3 Notwithstanding the terms of any contract that Defendant may enter with respect to the performance of response activities pursuant to this Decree, Defendant is responsible for compliance with the terms of this Decree.

2.4 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

3.1 In entering into this Decree, the mutual intent of Plaintiff and Defendant is to:

(a) cease all unauthorized releases of hazardous wastes and adequately address all releases of hazardous substances at or from Defendant's Property;

(b) conduct additional evaluation to determine the nature and extent of any releases of hazardous substances or hazardous wastes and any threat to the public health, safety, or welfare, or the environment caused by the release or threatened release of hazardous substances or hazardous waste from the Facility and to support the selection of appropriate response activity for the Facility;

(c) evaluate and perform interim response activities;

(d) prepare a Conceptual Site Model (CSM) in order to evaluate exposure pathways at the Facility to determine and implement necessary

remedial actions to satisfy and maintain compliance with Part 201 and the performance objectives of this Decree;

(e) reimburse the State for Past and Future Response Activity Costs as described in Section XV (Reimbursement of Costs and Payment of Civil Penalties);

(f) resolve any compliance issues under Parts 31, 55, 111, 213 and 201; and

(g) minimize litigation.

IV. DEFINITIONS

4.1 "AQD" means the Air Quality Division of the MDEQ.

4.2 "Conceptual Site Model" or "CSM" means a site-specific conceptual site model of the Facility using ASTM Standard Guide for Developing Conceptual Site Models for Contaminated Site E1689-95 (reapproved 2008) to evaluate exposure pathways, risks, and conditions to determine what response activities are necessary, to satisfy the requirements of Part 201 of the NREPA, including but not limited to, Sections 20118, 20120a, 20120b and 20120d, and the Part 201 Administrative Rules and this Decree.

4.3 "Contamination" means the term defined in Section 21302(g) of NREPA and environmental contamination defined in Section 20101(1)(p) of NREPA.

4.4 "Day" or "day" means a calendar day, unless otherwise specified in this Decree.

4.5 "Decree" means this First Amended Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications and schedules required by the Decree which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Decree.

4.6 "Defendant" or "Diamond Chrome" or "DCP" means Diamond Chrome Plating, Inc. and its successors. Diamond Chrome is a Connecticut corporation authorized to do business in Michigan.

4.7 "Effective Date" means the date that the Court enters this Decree. All dates for the performance of obligations under this Decree shall be calculated from the Effective Date.

4.8 "Facility" shall have two different meanings as set forth below:

(a) except as to Paragraph 5.2, it shall mean any area where a hazardous substance released at the Property identified in Attachment A has been released, deposited, disposed of, or otherwise comes to be located in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use as provided in Section 20120a and the Part 201 Rules. Facility does not include any area, place, or property where the conditions of Section 20101(1)(s)(i-iii) are satisfied; and

(b) solely with respect to Paragraph 5.2, it shall mean all contiguous land and structures, other appurtenances, and improvements on the Property used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills or surface impoundments, or combinations of operations units.

4.9 "Future Response Activity Costs" means costs incurred by the State to oversee, inspect, enforce, monitor, and document compliance with this Decree and to perform response activities under this Decree, including, but not limited to, costs incurred to: monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; 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 Section X (Emergency Response) and Paragraph 6.14 (MDEQ's Performance of Response Activities).

4.10 "Hazardous Waste(s)" is defined as set forth in Part 111 of the NREPA and the Part 111 rules.

4.11 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.12 "OWMRP" means the Office of Waste Management and Radiological Protection of the MDEQ and its successor entities.

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

4.14 "Part 55" means Part 55, Air Pollution Control, of the NREPA, MCL 324.5501 *et seq.*, and the Administrative Rules promulgated thereunder.

4.15 "Part 111" means Part 111, Hazardous Waste Management, of the NREPA, MCL 324.11101 *et seq.*, and the Administrative Rules promulgated thereunder.

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

4.17 "Part 213" means Part 213, Leaking Underground Storage Tanks, of the NREPA, MCL 324.21301 *et seq.*

4.18 "Party" means the Plaintiff or Defendant. "Parties" means the Plaintiff and Defendant.

4.19 "Past Response Activity Costs" means response activity costs that the State incurred and paid during the dates set forth in the attached Summary Report, Attachment B, including those costs that were billed to Defendant under the Initial Consent Decree, but are unpaid.

4.20 "Plaintiff" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.21 "Property" means the property located at 604 South Michigan Avenue, Howell, Michigan 48843, and described in the legal description provided in Attachment A.

4.22 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

4.23 "State" and "State of Michigan" means the Michigan Department of Attorney General (MDAG) and the MDEQ, and any authorized representatives acting on their behalf.

4.24 "Submissions" means all plans, reports, schedules, and other submittals that Defendant is required to submit to the State pursuant to this Decree. "Submissions" does not include the notifications set forth in Section XI (Delays in Performance, Violations, and *Force Majeure*), permit applications submitted by Defendant for consideration by Plaintiffs, or reports solely required by a permit issued to Defendant.

4.25 "WRD" means the Water Resource Division of the MDEQ.

4.26 Unless otherwise stated herein, all other terms used in this document, which are defined in Part 3 of the NREPA, MCL 324.301, Part 31 of the NREPA, MCL 324.3101, *et seq.*, Part 55 of the NREPA, MCL 324.5501, *et seq.*, Part 111 of the NREPA, MCL 324.11101, *et seq.*, Part 201 of the NREPA, MCL 324.20101, *et seq.*, Part 213 of the NREPA, MCL 324.21301, *et seq.*, or any administrative rules

applicable to these Parts shall have the same meaning in this document as in Parts 3, 31, 55, 111, 121, 213, and 201 of the NREPA and any corresponding administrative rules.

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 or relevant and appropriate state and federal laws, rules, and regulations, including, but not limited to, the NREPA. Other agencies may also be called upon to review the performance of response activities or other activities under this Decree.

5.2 On and after the Effective Date of this Decree, Defendant shall comply with the following requirements of Part 111 and undertake the actions set forth herein in accordance with the specified schedule:

(a) Comply on an ongoing basis with the generator requirements for hazardous waste in Mich Admin Code R 299.9306.

b) Submit to the OWMRP Project Coordinator within one hundred and twenty (120) days of the Effective Date, for review and approval, a Hazardous Waste Management Plan (HWMP) that includes: 1) a list of each routinely generated hazardous and liquid industrial waste and the management plan for each; 2) how any hazardous waste that is spilled, released or leaked within or from the Facility will be contained, collected and containerized in a timely fashion; 3) a schedule to replace containment

materials and devices that assures replacement will take place before degradation or failure occurs that may or will result in leaks or releases of hazardous waste or hazardous waste constituents; 4) inspection form(s) and schedule(s) for inspections, of all equipment, structures, conduit, pits, trenches, troughs, tanks, liners, devices, and processes that have a potential to release, generate or accumulate hazardous waste or hazardous waste constituents including but not limited to the chrome, cadmium and chromate pits and pit liners, the pipes transferring material from these pits to the wastewater treatment system, the filter press, the roll-off box area, the truck well, drums and totes containing hazardous waste and the hazardous waste accumulation area, such forms to include a log of any corrective actions taken to assure hazardous waste is properly accumulated, handled and managed, and; 5) a list of all records maintained on site pursuant to Part 111, Part 3 Rules, the approved HWMP, and Paragraph 5.2 of the Decree.

(c) Collect and contain any hazardous waste and liquid industrial waste releases within the Facility in a timely fashion that complies with 40 CFR 265.56 for releases that require implementation of the Part 111 contingency plan or 40 CFR 265.196 for releases from the waste water treatment unit tanks, whichever is applicable, as required by Mich Admin Code R 299.9306(1) and the HWMP.

(d) Within thirty days (30) of DEQ approval of the HWMP submitted pursuant to subparagraph 5.2(b) above, implement the HWMP.

Upon MDEQ approval, the HWMP shall replace any existing hazardous waste Standard Operating Procedure for the Facility.

(e) Within one hundred and twenty (120) days of the Effective Date, Defendant shall conduct and submit for approval to the OWMRP Project Coordinator a written chemical compatibility evaluation for the materials used at Defendant's Facility to provide containment for hazardous waste, liquid industrial waste and hazardous waste constituents so as to comply with Mich Admin Code R 299.9306(1)(f). Defendant may rely in whole or in part upon reasonable competent chemical compatibility evaluations conducted by third-parties when preparing its submission, which may include a letter stating that the material used is consistent with the industry practice and will provide competent containment under the operational conditions and practices at the Facility. Within thirty (30) days of receiving OWMRP approval of the evaluation, Defendant will conduct any necessary improvements to the containment structures and devices which may include sealing, treating, repairing, or replacing unsuitable materials. Where replacement of unsuitable materials is necessary, Defendant shall within forty-five (45) days of OWMRP approval of the evaluation, prepare a plan with a schedule to replace the materials or devices that assures replacement will take place before significant degradation or failure occurs that may or will result in releases of hazardous waste, but in no case shall the

replacement of unsuitable material be scheduled later than one hundred-eighty (180) days from the plan submittal date.

(f) Defendant shall prepare and submit for approval to the OWMRP Project Coordinator within one hundred and eighty (180) days of the Effective Date, a plan for eventual closure of all waste management units and hazardous waste accumulation areas, including all structures and contaminated media. This plan shall, at minimum, comply with Part 111 generator waste accumulation area closure requirements, including 40 CFR Part 265.111 and 265.114, or any other applicable law including Part 201. The plan shall include a scope of work, proposed closure methods and equipment, implementation schedule, estimates of waste type and quantity to be generated, proposed waste disposal methods, and cost estimates. Based upon the date the plan is submitted to OWMRP, the cost estimates shall thereafter be updated annually along with other plan changes approved by MDEQ based on new information developed from ongoing site operations, renovations, and remediation activity.

(g) On and after the Effective Date, Defendant shall provide at least seven (7) days' notice to the OWMRP and RRD Project Coordinators prior to conducting any scheduled work that might expose areas where releases of hazardous waste or hazardous waste constituents may have occurred, or where hazardous waste might be accumulated or generated. If unscheduled work is determined to be necessary, Defendant shall immediately notify the

MDEQ's OWMRP Project Coordinator upon making that determination. In the event direct contact with the DEQ project coordinator is not possible, Defendant shall immediately notify the DEQ PEAS Hotline at (800) 292-4706. Unscheduled work notifications shall include a brief description of the type and extent of work anticipated including equipment and structures involved, the location of the work, the name(s) and contact information of the supervisors, the approximate number of employees assigned, the date and time work will commence, and the expected duration of the unscheduled effort.

5.3 On and after the Effective Date, Defendant shall comply with the following requirements of Part 55 and undertake the actions set forth herein in accordance with the specified schedule:

(a) On and after the Effective Date, Defendant shall have a professionally-drawn plan prepared that identifies the current ductwork at the Property, in segments not to exceed ten (10) foot segments, within the building from the chrome tanks to the roof top ductwork and on the roof top between the chrome tanks and the control unit, for use in structural identification as well as maintenance and recordkeeping. Defendant shall mark and maintain identifying descriptions or markings on each segment of this ductwork for clear identification. The plan shall be updated periodically, as necessary, to maintain and assure accuracy. Defendant shall maintain the

plan at the Property, and shall provide a copy of it to the MDEQ upon written or verbal request.

(b) On and after the Effective Date, Defendant shall inspect all ductwork and control equipment at the Property each day the Facility is in production to identify any release of an air contaminant to the environment that fails to be appropriately conveyed to the control equipment for control and removal. All releases must be repaired within forty-eight (48) hours of being identified. Defendant shall conduct and maintain at the Property a written record that identifies the person(s) conducting the required inspection, any release(s) identified during the inspection, the ductwork segment for each release identified, and the date any release is repaired. Defendant shall submit a copy of the written record to the AQD Project Coordinator on the same day it submits Progress Reports as required under Paragraph 6.11, and additionally upon written or verbal request.

(c) If the MDEQ identifies on three (3) separate dates within any three (3) year period that releases from the ductwork were not identified, documented, or repaired as required under Paragraph 5.3(b), within ninety (90) days of receiving written notice from MDEQ of the violations, Defendant shall submit evidence to the AQD Project Coordinator that it has (i) installed demisters on all chrome plating processes (tanks) associated with the ductwork where the release was identified; (ii) is using surfactants on all chrome plating processes (tanks) associated with the ductwork where the

release was identified; or (iii) replaced all ductwork for the chrome plating processes associated with the releases. Defendant may propose an alternative control technology besides the three (3) listed in this Paragraph pursuant to Section XXIII (Modification). MDEQ shall notify Defendant in writing upon discovery of any release that was not identified, documented or repaired as required under Paragraph 5.3(b). Defendant's obligations are subject to Section XI (Delays in Performance, Violations, and *Force Majeure*). If Defendant proposes an alternative control technology or seeks a modification of the above deadlines pursuant to Section XI (Delays in Performance, Violations, and *Force Majeure*), in addition to providing the information required in Paragraph 11.3, Defendant must provide at the same time a proposed implementation schedule to the AQD Coordinator for the installation and use of the alternative control technology, demisters, surfactants or ductwork replacement.

(d) On and after the Effective Date for each chrome plating tank where surfactant is used, Defendant shall establish and maintain ongoing recordkeeping of quantities of surfactants purchased, and usage (as applied), and monitoring of surface tension consistent with the chrome National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. The records shall be maintained on site and provided to AQD upon written or verbal request.

(e) After the Effective Date, Defendant shall replace each and any ductwork segment within sixty (60) days for which ten (10) releases are identified.

(f) Within sixty (60) days of the Effective Date, Defendant shall submit to the AQD Project Coordinator, a professionally-prepared plan identifying the current exit points of all air process equipment through vents to the ambient air through Defendant's building sidewalls and roof. Defendant shall mark and maintain identifying descriptions or markings on such exit points, pipes, stacks, or vents for clear identification from the exterior of the building. This plan shall be updated periodically, as necessary, to maintain and assure accuracy. Defendant shall also maintain the plan at the Property, and shall provide a copy of it to MDEQ upon written or verbal request.

(g) Within sixty (60) days after the Effective Date, Defendant shall submit to the AQD Project Coordinator, for review and approval, an updated SOP to identify appropriate pressure drop for each scrubber, manufacturer recommendations on frequency of scrubber wash and acid wash cycles to remove acid build-up, and outline preventative maintenance of the air pollution control equipment, ductwork maintenance, and chrome plating processes. Defendant shall maintain the SOP at the Property, and shall provide a copy of it to the MDEQ upon written or verbal request. The SOP

and any updates or replacements shall be incorporated by reference as an enforceable part of this Decree.

(h) AQD may require Defendant to conduct acceptable performance tests, at the owner's or operator's expense as required by Mich Admin Code R 336.2001 and Mich Admin Code R 336.2003, the conditions specified in the Permit to Install 367-83B and 386-85A, and any new or revised PTI (air use PTIs for chrome processes). The Defendant shall submit an acceptable stack test protocol for review and approval not less than sixty (60) days in advance of the proposed test date.

(i) Defendant shall notify the AQD Project Coordinator by telephone call or email not less than one (1) business day in advance of any material change or alteration of Defendant's air quality process, devices, control equipment, structures or materials, and in writing within seven (7) business days, together with an explanation of the same, addressing applicable Part 55 rules and the chrome NESHAP requirements.

(j) Defendant shall comply with air use PTIs for chrome processes at the Property.

5.4 On and after the Effective Date, Defendant shall comply with Part 31 and undertake specific actions set forth herein in accordance with the schedule below:

(a) Defendant shall comply with the National Pollutant Discharge Elimination System (NPDES) Permit No. MI0058204 issued to DCP on November 14, 2014 and effective on December 1, 2014 and any future NPDES permits for the Facility upon issuance or reissuance by MDEQ. DCP waives any right it may have to contest the issuance of Permit No. MI0058204.

(b) Due to existing contaminated groundwater conditions, the Parties acknowledge that Defendant may from time to time exceed permitted effluent limitations for Monitoring Point 001A-Manhole 1379 for total chromium. In order to achieve compliance with those effluent limitations, Defendant shall implement all required activities set forth in Section VI (Performance of Response Activities) of this Decree. Defendant shall comply with the total chromium effluent limitations for Monitoring Point 001A-Manhole 1379 by December 31, 2019.

(c) Defendant shall comply with any requirements of the City of Howell regarding the elimination of contaminated groundwater infiltration to sanitary sewer lines.

5.5 In addition to the Submission requirements set forth in this Section all testing, sampling, or monitoring data gathered by DCP pursuant to Paragraphs 5.2-5.4 shall be considered in developing the Conceptual Site Model and if not otherwise

provided to MDEQ, shall be included in the Progress Reports required in Section VI (Performance of Response Activities).

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Defendant shall perform all necessary response activities at the Facility to comply with the requirements of Parts 31, 201, and 213 including, but not limited to, the response activities required to meet the objectives outlined in this Decree, as follows:

(a) To the extent that the Defendant is the owner or operator of part or all of the Facility, Defendant shall undertake all response activities necessary to achieve and maintain compliance with Section 20107a of the NREPA, and the Part 201 Administrative Rules.

(b) Defendant shall perform interim response activities (IRA). The objective of the IRA set forth in Paragraph 6.6 is to:

(i) comply with the notification provisions of Section 20114(1)(b)(ii); and,

(ii) evaluate the appropriateness of and perform IRA based on the relevant factors set forth in Part 201 and undertake IRA if required by Part 201.

(c) Defendant shall conduct complete investigations of soil and groundwater contamination at the Facility to fully define the vertical and horizontal extent of contamination and evaluate groundwater contamination by analysis of contaminant concentrations over time on and off the Property (Contamination Investigation). The objective of the Contamination

Investigation is to assess Facility conditions, in order to prepare a CSM consistent with the ASTM standard Guide for Developing Conceptual Site Models for Contaminated Sites, E1689-95 (Reapproved 2008).

(d) Defendant shall evaluate exposure pathways identified in the CSM to determine necessary response activities to achieve the objectives of the remedial actions as provided in Paragraph 6.1(e).

(e) Defendant shall perform remedial actions. The objectives of the remedial actions are to:

> (i) Satisfy and maintain compliance at the Facility with the cleanup criteria as established under Section 20120a or Section 20120b, and Section 21304a of the NREPA, and comply with all applicable requirements of Sections 20118, 20120a, 20120d, and 20120e of the NREPA, and the Part 201 Administrative Rules.
>
> (ii) Satisfy requirements of Part 213 provided in Section 21304(a) of NREPA with regard to releases of regulated substances from the former underground storage tanks owned or operated by the Defendant for contamination that is not comingled with releases regulated by Part 201.
>
> (iii) Assure the ongoing effectiveness and integrity of the remedial action.
>
> (iv) Allow for the continued use of the Facility consistent with local zoning pursuant to Section 20120a(6) of the NREPA.

Nothing in this Decree shall limit Defendant's obligations to otherwise comply with Part 201 of the NREPA.

6.2 In accordance with this Decree, Defendant shall assure that all response activities, and their corresponding implementation schedules, are designed

to achieve the objectives identified in Paragraph 6.1(a) through (e). Defendant shall perform the response activities contained in each implementation schedule in accordance with the requirements of Part 201 and this Decree. Each component of each implementation schedule or plan and any modifications submitted to or, as appropriate, approved by the MDEQ 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 implementation schedule or plan, the requirements of this Decree shall prevail.

6.3 Quality Assurance Project Plan (QAPP)

Defendant shall follow the QAPP that MDEQ approved on March 12, 2012, and any subsequent MDEQ approved revisions, 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. The QAPP shall continue to be in accordance with the United States Environmental Protection Agency's (USEPA's or EPA'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. Defendant shall utilize recommended sampling methods, analytical methods, and analytical detection levels specified in the RRD Operational Memorandum No. 2, Sampling and Analytical Guidance, dated October 22, 2004, including all applicable attachments.

Defendant shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria (S^3TM) to determine the number of samples required to verify the cleanup and to determine sampling strategy. Defendant shall comply with any documents that supersede or amend the documents referenced in this Paragraph, and may utilize other methods demonstrated by Defendant to be appropriate as approved by the MDEQ.

6.4 Health and Safety Plan (HASP)

Defendant shall maintain compliance with the HASP that was submitted to the MDEQ on September 5, 2006 and 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 the Defendant pursuant to this Decree shall be in accordance with the HASP and any subsequent revisions thereto. The HASP is not subject to the MDEQ's approval under Section XIV (Submissions and Approvals) of this Decree.

6.5 Documentation of Compliance with Section 20107a of the NREPA

To the extent that the Defendant owns or operates a part or all of the Facility, the Defendant shall maintain and upon the MDEQ's request, submit documentation to the MDEQ for review and approval that summarizes the actions the Defendant has taken or is taking to comply with Section 20107a of the NREPA

and the Part 201 Administrative Rules. Failure of the Defendant to comply with the requirements of this Paragraph, Section 20107a of the NREPA, or the Part 201 Administrative Rules shall constitute a violation of this Decree and shall be subject to the provisions of Section XVI (Stipulated Penalties) of this Decree.

6.6 Interim Response Activities

(a) If the Defendant has reason to believe that one (1) or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of the Property at a concentration in excess of cleanup criteria for unrestricted residential use, the Defendant shall notify the MDEQ and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated, as required in Section 20114(1)(b)(ii) of the NREPA. Defendant shall notify the owners of property where hazardous substances are known to have migrated, but have not previously received notice, within 30 days of the Effective Date of this Decree.

(b) Throughout the duration of this Decree, Defendant shall continue to evaluate the appropriateness of IRA based on the relevant factors set forth in Part 201 and undertake IRA if required by Part 201. The evaluation and compliance with the IRA requirements shall be documented and provided to the MDEQ in the Progress Reports submitted pursuant to Paragraph 6.11.

(c) After review of the documentation provided, if the MDEQ determines IRA or revised IRA are required for compliance with Part 201, Defendant shall submit to the MDEQ, for review and approval an implementation schedule, within thirty (30) days of the MDEQ's notice, or the date the need for IRA or revised IRA is determined. The IRA implementation schedule shall provide for the following:

> (i) A detailed description of the specific work tasks that will be conducted and a description of the objectives to be achieved for each task.
>
> (ii) A description of how the proposed IRA will be consistent with the remedial action that is anticipated to be selected for the Facility to achieve the objectives described in Paragraph 6.1(e).
>
> (iii) Implementation schedules for conducting the response activities and for submission of progress reports.

(d) Defendant shall perform the response activities contained in the plan and submit Progress Reports in accordance with the MDEQ-approved implementation schedule.

6.7 Contamination Investigation (Investigation)

Subject to Section XI (Delays in Performance, Violations, and *Force Majeure*), Defendant shall complete investigations of soil and groundwater contamination at the Facility that achieves the objective in Paragraph 6.1(c) by no later than June 30, 2016.

(a) Within thirty (30) days of the Effective Date, the Defendant shall submit to the MDEQ an implementation schedule for conducting the

Contamination Investigation (Investigation Schedule) sufficient in scope to provide the necessary information and data to achieve the objectives in Paragraph 6.1 (c). All exposure pathways shall be investigated, including, but not limited to, air, groundwater, surface water, and soil.

(b) The Investigation Schedule shall provide a description of the specific work tasks that will be conducted and when they will be conducted; for submission of Progress Reports on a quarterly basis as provided in Paragraph 6.11, and; for the submittal of the Submissions required in Paragraph 6.8.

(c) Defendants shall perform the response activities and submit Progress Reports in accordance with the Investigation Schedule.

(d) The evaluation and compliance with the Investigation Schedule shall be documented and provided to the MDEQ in the Progress Reports submitted pursuant to Paragraph 6.11.

6.8 Conceptual Site Model (CSM) and Evaluation

Defendant shall prepare and submit a CSM and evaluation of exposure pathways, risks, and conditions to meet the objectives in Paragraph 6.1(e) by no later than December 31, 2016. Based on this evaluation, Defendant shall determine necessary remedial actions to achieve the objectives in Paragraph 6.1(e).

(a) The Defendant shall prepare two separate remedial action implementation schedules (RA Schedules) as described in subparagraph (b) for conducting response activities sufficient in scope that, when implemented, together shall satisfy the objectives in Paragraph 6.1(e).

(b) Implementation of the response activities shall be divided into two categories: on the Property and off the Property. The implementation of response activities on and off the Property shall be scheduled to be conducted simultaneously, and both sets of response activities shall be initiated no later than April 1, 2017, with all physical components of the remedial action constructed and fully operational by no later than December 31, 2019.

(c) The RA Schedules shall provide a description of the specific work tasks that will be conducted, when they will be conducted, and a description of the objectives to be achieved for each task, including the cleanup category proposed pursuant to Section 20120a of NREPA. The RA Schedules shall also provide for submission of Progress Reports on a quarterly basis as provided in Paragraph 6.11.

6.9 Remedial Actions

(a) Defendants shall perform the response activities and submit Progress Reports in accordance with the RA Schedules provided in Paragraph 6.8, and achieve the objectives of Paragraph 6.1(e).

(b) If Defendant intends to inject materials into the groundwater to treat contamination at any time during the pendency of this Decree, Defendant shall submit a plan in compliance with Mich Admin Rule 323.2210(u)(iii) of the Part 22 Administrative Rules for MDEQ review and approval.

(c) Compliance with the RA Schedules shall be documented and provided to the MDEQ in the Progress Reports on a quarterly basis submitted pursuant to Paragraph 6.11.

6.10 Achievement Report and Postclosure Plan.

(a) If Defendant determines the objectives in Paragraph 6.1 of this Decree have been achieved and the cleanup criteria provided in the RA Schedules have been satisfied at the Facility, Defendant agrees to submit an Achievement Report to the MDEQ for review and approval.

(b) The Achievement Report shall include:

(i) A summary of response activities undertaken to satisfy the objectives of this Decree and cleanup criteria provided in the RA Schedules, and any supporting documentation and data.

(ii) If the remedial actions do not satisfy cleanup criteria for unrestricted residential use, a Postclosure Plan that complies with Section 20114c of Part 201, including a Notice of Aesthetic Impact, if the only cleanup criteria exceeded is criteria based on aesthetic impacts.

(iii) If the performance of monitoring, or operation and maintenance are necessary to assure the ongoing effectiveness and integrity of the remedial action, a plan describing those

monitoring and/or operation and maintenance response activities.

(c) If the Postclosure Plan requires the placement of land and resource use restrictions in a Restrictive Covenant or a Notice of Aesthetic Impact, Defendant shall provide a true copy of the Restrictive Covenant(s) or the Notice of Aesthetic Impact and the Liber and page numbers to the MDEQ.

(d) Upon receipt of the Achievement Report, MDEQ shall review it pursuant to the procedures set forth in Section XIV (Submissions and Approvals). Defendant may appeal the MDEQ's decision or any alleged failure to make a decision within a reasonable time period in accordance with Section XVII (Dispute Resolution) of this Decree. Defendant shall not assert that any actual or alleged failure of MDEQ to timely review an Achievement Report results in an approval of that Report.

6.11 Progress Reports

(a) The Defendant shall provide to the RRD Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Decree (Progress Reports). These Progress Reports shall include the following information unless such information has been previously provided to MDEQ as a separate submittal, in which case, Defendant shall specifically reference such submittal in the Progress Report:

(i) A description of the activities that have been taken toward achieving compliance with this Decree, including any schedule, 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 the Defendant, its employees, or authorized representatives during the specified reporting period.

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

(iv) An evaluation of the current understanding of environmental conditions based on the CSM, to date.

(v) Any proposed restrictive covenants or Notice of Aesthetic Impact, prior to filing with the county Register of Deeds. The proposed restrictive covenant(s) shall comply with applicable requirements of Part 201.

(vi) A description of the nature and amount of waste materials that were generated as part of the response activities 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 including copies of all waste manifests.

(vii) A description of how soil relocation, if any, will be in compliance with Section 20120c of the NREPA.

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

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

(b) Progress Reports shall be submitted to the MDEQ, electronically and via mail in accordance with Paragraph 13.1(a)(i), quarterly, with submittals due on the first day of February, May, August, and November. Progress Reports shall be submitted solely by electronic mail on the same

dates to the AQD, WRD, and OWMRP Project Coordinators identified in Paragraphs 13.1(a)(ii)-(iv). The MDEQ may approve modification of the schedule for the submission of Progress Reports.

6.12 Modification of a Response Activity Work Plan or Implementation Schedule.

(a) If the MDEQ determines that a modification to an implementation schedule or work plan is necessary to meet and maintain the applicable objectives specified in Paragraph 6.1, to comply with Part 201, or to meet any other requirement of this Decree, the MDEQ may require that such modification be incorporated into an existing implementation schedule or previously submitted work plan. If extensive modifications are necessary, the MDEQ may require the Defendant to develop and submit a new implementation schedule or plan. The Defendant may request that the MDEQ consider a modification to an implementation schedule or work plan by submitting such request for modification along with the proposed change and the justification for that change to the MDEQ for review and approval, as appropriate. Any such request for modification by the Defendant must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Any modification to an implementation schedule or work plan pursuant to Section VI (Performance of Response Activities) may be made only upon written notification from the RRD Project Coordinator. Any modifications or any new work tasks or plans

shall be developed in accordance with the applicable requirements of this section and shall be submitted to the MDEQ for review and approval as appropriate, in accordance with the procedures set forth in Section XIV (Submissions and Approvals).

(b) The Defendant shall perform the response activities specified in a MDEQ-approved modified implementation schedule or work plan as submitted or MDEQ-approved, as appropriate.

6.13 Public Notice and Public Meeting Requirements under Section 20120d of the NREPA

If the MDEQ determines there is significant public interest in the results of an investigation or proposed remedial action required by this Decree; if the Defendant proposes a remedial action based on categorical criteria provided for in Section 20120a(1)(c) or (d) or 20120a(2) of the NREPA; or if Section 20118(5) or (6) of the NREPA applies to the proposed remedial action, the MDEQ will make those reports or CSM available for public comment. When the MDEQ determines that a report or CSM is acceptable for public review, a public notice regarding the availability of those reports or CSM will be published, and those reports or plans shall be made available for review and comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDEQ. If the MDEQ determines there is significant public interest or the MDEQ receives a request for a public meeting, the MDEQ will hold

such public meeting in accordance with Section 20120d(1) and (2) of the NREPA. Following the public review and comment period or a public meeting, the MDEQ may refer the report or CSM back to the Defendant for revision to address public comments and the MDEQ's comments. The MDEQ will prepare the final responsiveness summary document that explains the reasons for the selection or approval of a CSM in accordance with the provisions of Sections 20120d(4) and (5) of the NREPA. Upon the MDEQ's request, the Defendant shall provide information to the MDEQ for the final responsiveness summary document or the Defendant shall prepare portions of the draft responsiveness summary document.

6.14 The MDEQ's Performance of Response Activities

(a) If the Defendant ceases to perform the response activities required by this Decree, fails to meet any of the deadlines in Paragraphs 6.7 and 6.8, is not performing response activities in accordance with this Decree, is not performing response activities necessary to achieve the objectives of Paragraph 6.1, or is performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option, upon providing thirty (30) days prior written notice to the Defendant, either:

(i) take over the performance of those response activities; or

(ii) direct the Defendant with reasonable specificity to undertake response activities within a specified timeframe.

(b) The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section X (Emergency Response) of this Decree. If the MDEQ finds it necessary to take over the performance of response activities that the Defendant is obligated to perform under this Decree, the Defendant shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, 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 shall be considered to be "Future Response Activity Costs" and the Defendant shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraph 15.4 of Section XV (Reimbursement of Costs and Payment of Civil Penalties) of this Decree.

(c) MDEQ may access the funds in the Escrow Fund established by Defendant pursuant to Paragraph 8.1 in order to conduct response activities if Defendant fails to meet any of the deadlines set forth in Paragraph 6.7 for completion of the investigation of soil and ground water contamination, Paragraph 6.8 for the submission of a CSM, and Paragraph 6.8(b) for the implementation of response activities on and off the Property. If Defendant fails to meet any of these deadlines and MDEQ accesses the funds in the

Escrow Agreement, Defendant further agrees to give MDEQ unrestricted access to its property to conduct response activities and to continue making the annual payments into the Escrow Fund as set forth in Paragraph 8.1(b). Nothing stated herein should be construed as a limitation on the State's right to obtain reimbursement from Defendant of any response activity costs that exceeds the available funds in the Escrow Fund.

VII. ACCESS

7.1 Upon the Effective Date of this Decree and to the extent access to the Facility and the associated property is owned, controlled by, or available to Defendant, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials and providing reasonable notice to Defendant, shall have access at all reasonable times to the Facility and the associated property for the purpose of conducting any activity to which access is required for the implementation of this Decree or to otherwise fulfill any responsibility under federal or State law with respect to the Facility, including, but not limited to:

(a) Monitoring response activities or any other activities taking place pursuant to this Decree at the Facility;

(b) Verifying any data or information submitted to the MDEQ;

(c) Conducting investigations relating to contamination at or near the Facility;

(d) Obtaining samples;

(e) Assessing the need for or planning or conducting response activities at or near the Facility;

(f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the remedial action;

(g) Inspecting and copying non-privileged records, operating logs, contracts or other documents;

(h) Communicating with the Defendant's Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Decree;

(i) Determining whether the Facility or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Decree; and

(j) Assuring the protection of public health, safety, and welfare and the environment.

7.2 Any lease, purchase, contract or other agreement entered into by Defendant, which transfers to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the MDEQ or any other person undertaking the response activities and their authorized

representatives, the access provided under this Section VII (Access) and Section XII (Record Retention/Access to Information).

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

VIII. FINANCIAL ASSURANCE

8.1 Defendant shall establish an escrow fund in the form attached to this Decree as Attachment C.

(a) Within thirty (30) days after the Effective Date, Defendant shall make a payment into the Escrow Fund of $100,000.00.

(b) Defendant shall annually thereafter pay an additional $100,000.00 into the Escrow Fund. The annual amount may be paid by Defendant in installments or a lump sum so long as the total annual amount equals $100,000.00 and the total amount is paid by the annual anniversary of the Effective Date.

(c) Defendant shall continue to make the annual payments of $100,000.00 into the Escrow Fund until implementation of response activities on and off the Property are completed as required under Paragraph 6.8(b) have been met, or until such time as Defendant can demonstrate to the satisfaction of the MDEQ that the Escrow Fund provides funds in excess of those needed to 1) meet its response activity obligations pursuant to

Paragraph 6.8(d); 2) implement the closure plan obligations under Paragraph 5.2(f), and; 3) meet the requirements of MCL 324.20114(d) as set forth in Paragraph 8.1(d). If Defendant demonstrates the Escrow Fund provides funds in excess of those required under Paragraph 6.8(d) and Paragraph 8.1(d), it shall thereafter annually re-evaluate those costs and make necessary contributions not to exceed $100,000 per year to ensure that amount in the Escrow Fund is sufficient.

(d) If Defendant completes implementation of the response activities on and off the Property as required under Paragraph 6.8(b), any remaining funds in the Escrow Fund shall be maintained to provide for the payment of costs associated with the implementation of the closure plan required under Paragraph 5.2(g). If the remaining funds do not exceed the existing current cost estimate for the implementation of the closure plan, Defendant shall make necessary contributions to ensure the amount in the Escrow Fund is equal to the current cost estimate. Defendant shall make any additional contributions to the Escrow Fund within thirty (30) days of any subsequent annual update to the closure plan required under Paragraph 5.2(g) to ensure the amount in the Escrow Fund is equal to the current cost estimate. Defendant's obligation to make any contribution to the Escrow Fund shall not exceed $100,000.00 for any annual period. If the remaining funds in the Escrow Fund exceed the current cost estimate for the implementation of the closure plan, Defendant may use such excess funds as

part of its obligation to meet any necessary financial assurance requirements for monitoring, operation and maintenance, oversight, and other costs determined by MDEQ under MCL 324.201114d(4)(b) to be necessary to assure the effectiveness and integrity of the response activities set forth in any Postclosure Plan submitted under Paragraph 6.10. If Defendant can alternatively demonstrate that the Escrow Fund provides funds in excess of those needed for implementation of the closure plan and the necessary financial assurance requirements under MCL 324.201114(d), it may request a modification in the amount. Any requested modification must be accompanied by a demonstration that the proposed amount to remain in the Escrow Agreement provides adequate funds to address implementation of the closure plan and to assure effectiveness of the response activities set forth in the Postclosure Plan. Upon MDEQ approval of the request, Defendant may modify the amounts in the Escrow Fund as approved by the MDEQ. Modification to the Escrow Fund pursuant to this Paragraph shall be approved by the MDEQ's RRD Chief or his or her authorized representative.

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 any work plans.

9.2 With the exception of any sampling conducted in accordance with Defendant's permits, Defendant, or its consultants or subcontractors, shall provide the MDEQ seven (7) days' notice prior to any sampling activity to be performed

pursuant to Section VI (Performance of Response Activities) of this Decree to allow the applicable MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures (this does not include the routine collection of groundwater elevation and survey data). In circumstances where seven (7) days' notice is not possible, Defendant, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the MDEQ Project Coordinator and explain why earlier notification was not possible. If the MDEQ Project Coordinator concurs with the explanation provided, Defendant may forego the 7-day notification period for that particular sampling event.

9.3 Defendant shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Decree.

9.4 For the purpose of quality assurance monitoring, Defendant shall make provisions or arrangements that will allow the MDEQ and its authorized representative's access to any laboratory that is used by Defendant in implementing this Decree.

9.5 Either Party may take split samples of all sampling events at the Property.

X. EMERGENCY RESPONSE

10.1 Within thirty (30) days of the Effective Date, Defendant shall prepare and submit for approval to the Project Coordinators identified in Paragraph 13.1 a contingency plan to assure timely reporting to MDEQ of any violations or releases and required information relating to such violations or releases as required under Parts 3, 31, 55, 111, 213, and 201 of the NREPA and any corresponding administrative rules. The plan shall include, but not be limited to, an emergency coordinator assignment to at least one employee, who has to be at all times either on the Defendant's Property or on call (i.e., available to respond to an emergency by reaching the Facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the contingency plan, all operations and activities at the Facility, the location and characteristics of waste handled, the location of all records within the Property, and the Facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. Defendant's plan shall also require that notice of any such violations or release be immediately provided to the applicable MDEQ Project Coordinator, the Pollution Emergency Alerting System (PEAS) Hotline at (800) 292-4706, and the National Response Center (NRC) at (800) 424-8802. Following approval of the contingency plan by all Project Coordinators, Defendant shall comply with the plan and any permit conditions.

10.2 If during Defendant's performance of response activities conducted pursuant to this Decree, an act or the occurrence of an event 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, Defendant shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat of release, exacerbation or endangerment and shall immediately notify the MDEQ's RRD Project Coordinator. In the event of his or her unavailability, Defendant shall notify the PEAS Hotline at (800) 292-4706. In such an event, any actions taken by Defendant shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP as set forth in Paragraph 6.4.

10.3 Within ten (10) days of notifying the MDEQ of such an act or event, Defendant shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, exacerbation, or endangerment caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether Defendant notifies the MDEQ under this Section, if an act or event causes a release, threat of release, or exacerbation, or poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare or the environment, the MDEQ may: (a) require Defendant 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, exacerbation, or endangerment; (b) require Defendant to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, exacerbation, or endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, exacerbation, or endangerment. This Section is not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

XI. DELAYS IN PERFORMANCE, VIOLATIONS, AND *FORCE MAJEURE*

11.1 Except as otherwise required under a permit issued by MDEQ, Defendant 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*." Defendant shall not be deemed to be in violation of this Decree if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to Paragraph 11.4(a) or if Defendant's position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If Defendant otherwise fails to comply with or violates any requirement of this Decree and such noncompliance or violation is not attributable to a *Force Majeure* event, Defendant shall be subject to the stipulated penalties set forth in Section XVI (Stipulated Penalties).

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 Defendant, of any entity controlled by Defendant, or of Defendant's contractors that

delays or prevents the performance of any obligation under this Decree despite Defendant's "best efforts to fulfill the obligation." The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event as it is occurring and following the potential *Force Majeure* event, such that any delay is minimized to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes, or failure to obtain a permit or license as a result of Defendant's acts or omissions.

11.3 Except as otherwise required under a permit issued by MDEQ, if either (a) an event occurs that causes or may cause a delay in the performance of any obligation under this Decree, whether or not such delay is caused by a *Force Majeure* event, or (b) a delay in performance or other violation occurs due to Defendant's failure to comply with this Decree, Defendant shall do the following:

(a) Notify the MDEQ by telephone or electronic mail within two (2) business days of discovering the event or violation; and

(b) Within ten (10) days of providing the two (2) business days' notice, provide a written notice, action plan, and supporting documentation to the MDEQ, which includes the following:

(c) A description of the event, delay in performance, or violation and the anticipated length and precise causes of the delay, potential delay, or violation;

(d) The specific obligations of this Decree that may be or have been affected by a delay in performance or violation;

(e) The measures Defendant has taken or proposes to take to avoid, minimize or mitigate the delay in performance or the effect of the delay, or to cure the violation, and an implementation schedule for performing those measures;

(f) If Defendant intends to assert a claim of *Force Majeure*, Defendant's rationale for attributing a delay or potential delay to a *Force Majeure* event;

(g) Whether Defendant is requesting an extension for the performance of any of its obligations under this Decree and, if so, the specific obligations for which it is seeking such an extension, the length of the requested extension, and its rationale for needing the extension; and

(h) A statement as to whether, in the opinion of Defendant, the event, delay in performance, or violation may cause or contribute to an endangerment to public health, safety, or welfare or the environment and how the measures taken or to be taken to address the event, delay in

performance or violation will avoid, minimize, or mitigate such endangerment.

11.4 The State will provide written notification of its approval, approval with modifications, or disapproval of Defendant's written notification under Paragraph 11.3 and will notify Defendant of one of the following:

(a) If the State agrees with Defendant's assertion that a delay in performance or potential delay is attributable to a *Force Majeure* event, the MDEQ's written notification will include the length of the extension, if any, for the performance of specific obligations under this Decree that are affected by the *Force Majeure* event and for which Defendant is seeking an extension. An extension of the schedule for performance of a specific obligation affected by a *Force Majeure* event shall not, by itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with Defendant's assertion that a delay in performance or anticipated delay has been or will be caused by an alleged *Force Majeure* event, the State will notify Defendant of its decision. If Defendant disagrees with the State's decision, Defendant may initiate the dispute resolution process specified in Section XVII (Dispute Resolution) of this Decree. In any such proceeding, Defendant shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay in performance or anticipated delay has been or will be caused by a *Force*

Majeure event; (ii) the duration of the delay or the extension sought by Defendant was or will be warranted under the circumstances; (iii) Defendant exercised its best efforts to fulfill the obligation; and (iv) Defendant has complied with all requirements of this Section XI (Delays in Performance, Violations, and Force Majeure).

(c) If Defendant's notification pertains to a delay in performance or other violation that has occurred because of its failure to comply with the requirements of this Decree, Defendant shall undertake those actions determined to be necessary and appropriate by the MDEQ to address the delay in performance or violation, including the modification of a response activity work plan, and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment as set forth in Section XVI (Stipulated Penalties). Penalties shall accrue as provided in Section XVI (Stipulated Penalties) regardless of when Defendant notifies the MDEQ or when the MDEQ notifies Defendant of a violation.

11.5 This Decree shall be modified as set forth in Section XXIII (Modifications) to reflect any modifications to the implementation schedule of the applicable response activity work plan that are made pursuant to Paragraph 11.4(a) or that are made pursuant to the resolution of a dispute between the Parties under Section XVII (Dispute Resolution).

11.6 Defendant's failure to comply with the applicable notice requirements of Paragraph 11.3 shall render this Section XI (Delays in Performance, Violations, and *Force Majeure*) void and of no force and effect with respect to an assertion of *Force Majeure* by Defendant; however, the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to Defendant of any such waiver.

11.7 Defendant's failure to notify the MDEQ as required by Paragraph 11.3 constitutes an independent violation of this Decree and shall subject Defendant to stipulated penalties as set forth in Section XVI (Stipulated Penalties).

XII. RECORD RETENTION/ACCESS TO INFORMATION

12.1 Defendant and its representatives, consultants and contractors shall preserve and retain, during the pendency of this Decree and for a period of five (5) years after completion of operation and maintenance and long-term monitoring at the Facility, all records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances and the storage, generation, disposal, treatment or handling of hazardous substances at the Facility, and any records that are maintained or generated pursuant to any requirement of this Decree. However, if Defendant chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(b) through (d) or (2) and that remedial action provides for land or resource use restrictions, Defendant shall retain any records pertaining to these land or resource use restrictions in perpetuity or until the MDEQ determines that land and resource

use restrictions are no longer needed. After the five (5) year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, Defendant may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, Defendant may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period of time, or Defendant may offer to relinquish custody of all documents to the MDEQ. In any event, Defendant shall obtain the MDEQ's written permission prior to the destruction of any documents. Defendant's request shall be accompanied by a copy of this Decree and sent to the address listed in Paragraph 13.1(a)(vi) or to such other address as may subsequently be designated in writing by the MDEQ.

12.2 Upon request, Defendant shall provide to the MDEQ 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 implementation of 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, Defendant also shall make available to the MDEQ, upon reasonable notice, Defendant's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of response activities.

12.3 If Defendant submits to the MDEQ documents or information that Defendant believes it is entitled to protection as provided for in Section 20117(10) and (11) of the NREPA, Defendant may designate in that submittal the documents or information to which it believes it is entitled such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to Defendant. Information described in Section 20117(11)(a) through (h) of the NREPA shall not be claimed as confidential or privileged by Defendant. 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 COORDINATORS AND COMMUNICATIONS/NOTICES

13.1 Each Party shall designate one or more Project Coordinators. Whenever notices are required to be given or Progress Reports, information on the collection and analysis of samples, sampling data, work plan submittals, 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 Project Coordinators at the addresses listed below. If any Party changes its designated Project Coordinator, the name, address and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

(a) As to MDEQ:

(i) For all matters set forth in Paragraphs 6.3-6.15 and 10.1:

Rebecca Taylor, RRD Project Coordinator
Remediation and Redevelopment Division
Lansing District
Michigan Department of Environmental Quality
525 West Allegan, 1st Floor, South Tower
Lansing, Michigan 48933
Email: TaylorR@michigan.gov
Phone: (517) 284-5160
Fax: (517) 241-3571

This Project Coordinator will have primary responsibility for overseeing the performance of response activities in Section VI (Performance of Response Activities). A copy of all Submissions that are submitted under 13.1(a)(ii)-(v) shall also be provided to the RRD Project Coordinator.

(ii) For all matters set forth in Paragraph 5.4 and 10.1:

Carla Davidson, WRD Project Coordinator
WRD Lansing District Office
Michigan Department of Environmental Quality
525 West Allegan, 1st Floor, South Tower
P.O. Box 30242
Lansing, Michigan 48933
Email: DavidsonC@michigan.gov
Phone: (517) 284-6663
Fax: (517) 241-3571

This Project Coordinator will have primary responsibility for overseeing the performance of response activities in Paragraph 5.4.

(iii) For all matters set forth in Paragraphs 5.3 and 10.1:

Dan McGeen, AQD Project Coordinator
Air Quality Division
Lansing District
Michigan Department of Environmental Quality
525 West Allegan, 1st Floor, South Tower
Lansing, Michigan 48933
Email: McGeenD@michigan.gov
Phone: (517) 284-6638
Fax: (517) 241-3571

This Project Coordinator will have primary responsibility for overseeing the performance of response activities in Paragraph 5.3.

(iv) For all matters set forth in Paragraphs 5.2 and 10.1:

William Yocum, OWMRP Project Coordinator
Office of Waste Management and Radiological Protection
Lansing District
Michigan Department of Environmental Quality
525 West Allegan, 1st Floor, South Tower
Lansing, Michigan 48933
Email: YocumW@michigan.gov
Phone: (517) 614-7673
Fax: (517) 241-3571

This Project Coordinator will have primary responsibility for overseeing the performance of response activities in Paragraph 5.2.

(v) For all matters specified in this Decree that are to be directed to the RRD Division Chief:

Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: 517-284-5144
FAX: 517-241-9581

(Via courier)

525 West Allegan
Constitution Hall
South Tower, 5th Floor
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the RRD Project Coordinator designated in Paragraph 13.1(a)(i).

(vi) For Record Retention pursuant to Section XII (Record Retention/Access to Information), and questions concerning financial matters pursuant to Section VI (Performance of Response Activities (financial assurance mechanisms)), Section XV (Reimbursement of Costs and Payment of Civil Penalties), and Section XVI (Stipulated Penalties):

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-284-5120
FAX: 517-241-9581
(Via courier)
525 West Allegan
Constitution Hall
South Tower, 5th Floor
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the RRD Project Coordinator designated in Paragraph 13.1(a)(i).

(vii) For all payments pursuant to Paragraphs 14.1, and 14.2 and Section XVI (Stipulated Penalties):

Accounting Services Center
Cashier's Office for MDEQ
P.O. Box 30657
Lansing, MI 48909-8157

(Via Hand Delivery)
Accounting Services Center
Cashier's Office for MDEQ
425 West Ottawa Street
VanWagoner Building
1st Floor
Lansing, MI 48933-2125

To ensure proper credit, all payments made pursuant to Paragraphs 14.1, and 14.2, and Section XVI (Stipulated Penalties) must reference Diamond Chrome Plating, Inc., the Ingham County Circuit Court Number and the MDEQ Account Number MUL 3011.

A copy of all correspondence that is sent to the Accounting Services Center shall also be provided to the RRD Project Coordinator designated in Paragraph 13.1(a)(i), the Chief of the Compliance and Enforcement Section designated in Paragraph 13.1(a)(v), and the Assistant Attorney General in Charge designated in Paragraph 13.1(b).

(b) As to the Department of Attorney General:

Assistant Attorney General in Charge
Environment, Natural Resources, and
Agriculture Division
Department of Attorney General
525 West Ottawa, Williams Building, 6th Floor
P.O. Box 30755
Lansing, MI 48909
Telephone: 517-373-7540
FAX: 517-373-1610

(c) As to Defendant:

Mr. John Wagner (Project Coordinator)
Diamond Chrome Plating, Inc.
604 South Michigan Avenue
P.O. Box 557
Howell, MI 48844
Email: env@diamondchromeplating.com
Telephone: 517-546-0150
FAX: 517-546-3666

Todd C. Fracassi (P62651)
Pepper Hamilton LLP
4000 Town Center
Suite 1800
Southfield, MI 48075
Email: fracassit@pepperlaw.com
Telephone: 248-359-7304
FAX: 248-359-7700

Mr. Jim Colmer
B B & E
235 E. Main Street, Suite 107
Northville, MI 48167
Email: jcolmer@bbande.com
Telephone: 248-489-9636
FAX: 248-489-9646

13.2 Defendant's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Decree for Defendant.

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

XIV. SUBMISSIONS AND APPROVALS

14.1 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 the MDEQ in accordance with the schedules set forth in this Decree. All Submissions delivered to the MDEQ pursuant to this Decree shall include a reference to the Diamond Chrome Plating and Court Case No. 03-1862-CE. All Submissions delivered to the MDEQ 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 Environmental Quality (MDEQ). 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 the MDEQ."* Except as provided herein, submittals required or submitted under this Decree are not subject to the provisions of Section 20114b of the NREPA, and therefore a review request form is not required, and MDEQ's review is not subject to the time frames specified in Section 20114b of NREPA.

14.2 After receipt of any Submission relating to response activities or other actions under this Decree that is required to be submitted for approval pursuant to this Decree, the applicable MDEQ Project Coordinator will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify the Defendant of the deficiencies in the Submission. Any disapproval shall state the reasons why MDEQ has disapproved the Submission.

Subject to the terms of this Decree, upon receipt of a notice of approval or approval with modifications from the MDEQ, the Defendant shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Approved."

14.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2(c), the Defendant shall correct the deficiencies and resubmit the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, the Defendant 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 the Defendant to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and the MDEQ demands payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties). The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 14.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise the Defendant and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until the Defendant delivers an approvable Submission.

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

14.5 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Decree 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.

14.6 An approval or approval with modifications of a Submission shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in any Submission or warrants that the Submission comports with law.

14.7 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by the Defendant shall not be construed as relieving the Defendant of its obligation to obtain any formal approval required under this Decree.

XV. REIMBURSEMENT OF COSTS AND PAYMENT OF CIVIL PENALTIES

15.1 Subject to the potential waivers stated below, Defendant shall make payments of $69,003.19 on June 30, 2016, December 31, 2016, and December 31, 2019 to reimburse MDEQ for Past Response Activity Costs. The listed dates correspond to response activities that Defendant is required to complete by deadlines listed in Paragraphs 6.7 and 6.8. If Defendant completes the response activities required in Paragraphs 6.7 and 6.8 by the stated dates or any modifications or extensions of the dates made pursuant to Sections XI (Delays in Performance, Violations, and *Force Majeure*), XVII (Dispute Resolution), and XXIII (Modification), MDEQ shall waive and release Defendant from any obligation to make the payment owed on the corresponding date. Thus, if Defendant meets each of the compliance dates in Paragraphs 6.7 and 6.8, or any modification or extensions of the dates made pursuant to Sections XI (Delays in Performance, Violations, and *Force Majeure*), XVII (Dispute Resolution), and XXIII (Modification) it shall not have to make any of the listed payments to MDEQ subject to Section XI (Delays in Performance, Violations, and *Force Majeure*), XVII (Dispute Resolution), and XXIII (Modification). Defendant shall not be entitled to a waiver and release if it fails to timely complete the response activities required for the corresponding date(s). Defendant's failure to timely complete any of the response activities will not preclude it from receiving a waiver and release for a subsequently owed payment if it meets later compliance date(s).

15.2 Defendant shall reimburse the State for all Future Response Activity Costs incurred by the State. As soon as possible after each anniversary of the Effective Date of this Decree, the MDEQ will provide Defendant with an invoice for payment of Future Response Activity Costs that have been lawfully incurred by the State. An invoice shall include a summary report that identifies all Future Response Activity Costs, the nature of those costs, and the dates through which those costs were incurred by MDEQ. Except as provided by Section XVII (Dispute Resolution), Defendant shall reimburse the MDEQ a maximum of $5,000 per year for such costs within thirty (30) days of receipt of a written demand from the MDEQ. Any costs above the capped amount of $5,000 that was incurred by the MDEQ and not paid by the Defendant shall roll over into the costs to be paid in the following annual invoice, and shall continue to roll over into the next annual invoice in succession until all Future Response Activity Costs have been paid in full.

15.3 Defendant shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Defendant may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

15.4 All payments made pursuant to Paragraphs 15.1 and 15.2 of this Decree shall be by check and shall include any additional items as directed in the invoice sent under Paragraph 15.2 of this Decree. All payments shall be sent by

first class mail to the Accounting Services Center at the address listed in Paragraph 13.1(a)(vii) of Section XIII (Project Coordinators and Communications/Notices). Diamond Chrome Plating Facility, Inc., the Ingham County Circuit Court Case Number, and the MDEQ Account Number MUL 3011 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 13.1(a)(vi), the RRD Project Coordinator, at the address listed in 13.1(a)(i), and the Assistant Attorney General in Charge, at the address listed in Paragraph 13.1(b).

15.5 If Defendant fails to make full payment to the MDEQ for Past or Future Response Activity Costs as specified in Paragraphs 15.1 and 15.2, interest at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Defendant makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by Defendant to a MDEQ demand for reimbursement of costs, Defendant shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA.

XVI. STIPULATED PENALTIES

16.1 Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 for failure to comply with the requirements of this Decree, unless excused under Section XI (Delays in Performance, Violations, and *Force Majeure*). "Failure to Comply" by Defendant shall include, but is not

limited to, failure to deliver Submissions and notifications, failure to perform response activities in accordance with any plans and this Decree, and failure to pay response activity costs and penalties in accordance with all applicable requirements of law and this Decree within the specified implementation schedules established by and approved under this Decree.

16.2 The following stipulated penalties shall accrue per violation per day for any violation of Paragraphs 5.2 - 5.5 and Section VI (Performance of Response Activities):

Penalty Per Violation Per Day	Period of Noncompliance
$ 250	1st through 14th day
$ 500	15th through 30th day
$1,000	31st day and beyond

16.3 Except as provided in Paragraph 16.2 and Sections XI (Delays in Performance, Violations, and *Force Majeure*) and XVII (Dispute Resolution), if Defendant fails or refuses to comply with any other term or condition of this Decree, Defendant shall pay the MDEQ stipulated penalties of $250.00 a day for each and every failure or refusal to comply.

16.4 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.

16.5 Except as provided in Section XVII (Dispute Resolution), Defendant shall pay stipulated penalties owed to the State no later than thirty (30) days after Defendant's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 15.4 Section XV (Reimbursement of Costs and Payment of Civil Penalties). Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 20126a(3) of NREPA on the day after payment was due until the date upon which Defendant makes full payment of those stipulated penalties and the accrued interest to the MDEQ. 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.

16.6 The payment of penalties shall not alter in any way Defendant's obligation to complete the performance of response activities required by this Decree.

16.7 If Defendant fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Defendant violates this Decree. For any failure or refusal of Defendant 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 penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to Section 20119(4) of the NREPA in the amount of three (3) times the costs incurred by the State as a result of Defendant's violation of or failure to comply with this Decree, and sanctions for contempt of court.

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

XVII. DISPUTE RESOLUTION

17.1 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, except for Section X (Emergency Response), which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations of Defendant that have not been disputed in accordance with this Section. Engagement of dispute resolution under this Section XVII (Dispute Resolution) shall not be cause for Defendant to delay the performance of any response activity required under this Decree.

17.2 The State shall maintain an administrative record of any disputes that are initiated pursuant to this Section. The administrative record shall include the

information Defendant provides to the State under Paragraphs 17.3-17.5 and any documents the MDEQ and State rely on to make the decisions set forth in Paragraphs 17.3-17.5. Defendant shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(7).

17.3 Any dispute that arises under this Decree with respect to RRD's disapproval, modification, or other decision concerning the requirements of Paragraphs 6.1, and 6.4-6.11, of Section VI (Performance of Response Activities), Section IX (Sampling and Analysis), or Section XIV (Submissions and Approvals) shall in the first instance be the subject of informal negotiations between the RRD Project Coordinators and Defendant's Project Coordinator. 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. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which the Party bases its position. 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, the RRD District Supervisor will thereafter provide a written RRD Statement of Decision to Defendant. In the absence of initiation of formal dispute resolution by Defendant

under Paragraph 17.4, the MDEQ's position as set forth in the RRD Statement of Decision shall be binding on the Parties.

17.4 If Defendant and the MDEQ cannot informally resolve a dispute under Paragraph 17.3, Defendant may initiate formal dispute resolution by submitting a written request for review of the disputed issues (Request for Review) to the RRD Division Chief. Defendant must file a Request for Review with the RRD Division Chief and the MDEQ Project Coordinator within fifteen (15) days of Defendant's receipt of the RRD Statement of Decision issued pursuant to Paragraph 17.3. The time period for filing the Request for Review may be extended by written agreement between the Parties. Defendant's Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which Defendant bases its position. Within twenty (20) days of the RRD Division Chief's receipt of Defendant's Request for Review, the RRD Division Chief will provide a written Final RRD Statement of Decision to Defendant, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation he/she relied upon in making the decision. The time period for the RRD Division Chief's review of the Request for Review may be extended by written agreement between the Parties. The Final RRD Statement of Decision shall be binding on the Parties, unless either Party files a motion with the court as set forth in paragraph 17.6.

17.5 If Defendant seeks to challenge any decision or notice issued by the MDEQ or the State under this Decree, except for any decision or notice regarding matters covered by Section X (Emergency Response), Paragraphs 17.3, 17.4, and 17.10-17.12, Defendant shall send a written Notice of Dispute to both the RRD Division Chief and the Assistant Attorney General assigned to this matter within twenty (20) days of Defendant's receipt of the decision or notice from the MDEQ or State. The Notice of Dispute shall include the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which Defendant bases its position. The Parties shall have thirty (30) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If an agreement is not reached on any issue within the thirty (30) day period, the State will thereafter issue, in writing, the State's Statement of Decision to Defendant, which shall be binding on the Parties unless either Party files a motion with the Court as set forth in Paragraph 17.6.

17.6 The Final RRD Statement of Decision or the State's Statement of Decision pursuant to Paragraph 17.4 or 17.5, respectively, shall control unless, within twenty (20) days after Defendant's receipt of a Statement of Decision Defendant files 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) days of Defendant's filing of a motion asking the Court to resolve a dispute, Plaintiff will

file with the Court the administrative record that is maintained pursuant to Paragraph 17.2.

17.7 Any judicial review of the Final RRD Statement of Decision or the State'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 the subject of this Decree, Defendant shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, Defendant shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent Plaintiff from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

17.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of any 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 Defendant does not prevail on the disputed issue, the MDEQ may demand payment of stipulated penalties and Defendant shall pay stipulated penalties as set forth in Paragraph 16.5 (Stipulated Penalties). Defendant shall not be assessed stipulated penalties for disputes that are resolved in its favor.

17.9 Notwithstanding the provisions of this Section and in accordance with Sections XV (Reimbursement of Costs and Payment of Civil Penalties) and Section XVI (Stipulated Penalties), as appropriate, Defendant shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an on-going dispute resolution proceeding.

17.10 For disputes arising under or relating to Paragraph 5.4, the procedures set forth in this Section shall apply except the Project Coordinator shall be the person identified in 13.1(a)(ii) and the WRD District Supervisor and the WRD Chief shall be the decision makers in Paragraphs 17.4 and 17.5, as appropriate.

17.11 For disputes arising under or relating to Paragraph 5.2 the procedures set forth in this Section shall apply except the Project Coordinator shall be the person identified in 13.1(a)(iv) and the OWMRP District Supervisor and the OWMRP Chief shall be the decision-makers in Paragraphs 17.4 and 17.5, as appropriate.

17.12 For disputes arising under or relating to Paragraph 5.3 the procedures set forth in this Section shall apply except the Project Coordinator shall be the person identified in 13.1(a)(iii) and the AQD District Supervisor and the AQD Chief shall be the decision makers in Paragraphs 17.4 and 17.5, as appropriate.

XVIII. INDEMNIFICATION AND INSURANCE

18.1 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 Defendant or any other person.

18.2 Defendant 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, any acts or omissions of Defendant, its officers, employees, agents, or any persons acting on its behalf, or under its control, in performing the activities required by this Decree.

18.3 Defendant 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 for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendant and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

18.4 The State will provide Defendant notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 18.2 and 18.3.

18.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors or representatives shall be held out as a party to any contract that is entered into by or on behalf of Defendant for the

performance of activities required by this Decree. Neither Defendant nor any contractor shall be considered an agent of the State.

18.6 Defendant waives 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 Defendant and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

18.7 Prior to commencing any response activities pursuant to this Decree and for the duration of this Decree, Defendant shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars ($1,000,000.00), combined single limit, which names the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If Defendant demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Defendant shall 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 Defendant, prior to the commencement of response activities pursuant to this Decree, Defendant shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney

General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Decree, Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Defendant in furtherance of this Decree.

XIX. COVENANTS NOT TO SUE BY STATE

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

(a) Response activities related to the release of hazardous substances at the Facility.

(b) Reimbursement of Past and Future Response Activity Costs that are incurred by the State and paid by Defendant as set forth in Section XV (Reimbursement of Costs and Payment of Civil Penalties), including any applicable interest accrued pursuant to Paragraph 15.5 of this Decree.

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

(a) With respect to Defendant's liability for response activities performed related to the release of hazardous substances at the Facility, the covenant not to sue shall take effect upon approval of the Achievement Report pursuant to Paragraph 6.10 of this Decree.

(b) With respect to Defendant's liability for Past and Future Response Activity Costs incurred by the State and paid by Defendant, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs and any applicable interest.

19.3 The covenants not to sue extend only to Defendant and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY STATE

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1. These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in Paragraph 19.1 until such time as these covenants become effective as set forth in Paragraph 19.2. The MDEQ and the Attorney General reserve the right to bring an action against Defendant under federal and state laws for any matters for which Defendant has not received a covenant not to sue as set forth in Section XIX (Covenants Not to Sue by State). The State 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 Defendant with respect to all other matters, including, but not limited to, the following:

(a) Defendant's failure to perform the response activities that are required to achieve and maintain the objectives specified in Paragraph 6.1;

(b) Any Past or Future Response Activity Costs which Defendant has not paid;

(c) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility;

(d) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances taken from the Facility;

(e) damages for injury to, destruction of, or loss of natural resources and the costs for any natural resource damage assessment;

(f) criminal acts;

(g) any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance) of this Decree;

(h) liability that arises out of conditions that are unknown at the time the covenant not to sue takes effect; and

(i) the release or threatened release of hazardous substances or for violations of federal or state law that occur during or after the performance of response activities required by this Decree.

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

20.3 The MDEQ and the Attorney General expressly reserve all rights and defenses pursuant to any available legal authority that they may have to enforce this Decree or to compel Defendant to comply with the NREPA.

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

20.5 In addition to, and not as a limitation of any provision of this Decree, the MDEQ and the Attorney General retain all of their information gathering, inspection, access, and enforcement authorities and rights under the NREPA and any other applicable statute or regulation.

20.6 Failure by the MDEQ or the Attorney General 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 Defendant's noncompliance with any such term, condition or requirement of this Decree; or

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

20.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Defendant in accordance with the MDEQ-approved work plans required by this Decree will result in the achievement of the objectives stated in Paragraph 6.1 or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

20.8 Except as provided in Paragraph 19.1(a), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

XXI. COVENANT NOT TO SUE BY DEFENDANT

21.1 Except as provided in Section XVII (Dispute Resolution), Defendant hereby covenants 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 Section 20119(5) of the NREPA or any other provision of law.

21.2 After the Effective Date of this Decree, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Defendant agrees 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 the MDEQ or the Attorney General 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 XIX (Covenants Not to Sue by State).

XXII. CONTRIBUTION PROTECTION

22.1 Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC (CERCLA) and to the extent provided in Section XIX (Covenants Not to Sue by State), Defendant shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of this Decree, to the extent allowable by law. The Parties agree that entry of this Decree constitutes a judicially approved settlement,

pursuant to which the Defendant has, as of the Effective Date, resolved its liability to the MDEQ for matters set forth in Paragraph 19.1. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or the CERCLA, 42 USC 9607 and 9613. Pursuant to Section 20129(9) of the NREPA, any action by Defendant 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 federal or state law.

XXIII. MODIFICATIONS

23.1 The Parties may only modify this Decree according to the terms of this Section. The modification of any Submission or schedule required by this Decree may be made upon written agreement signed by the appropriate MDEQ Project Coordinator and Defendant's Project Coordinator or as provided in Paragraph 6.12 if the modification relates to response activities in Section VI (Performance of Response Activities).

23.2 Modification of any other provision of this Decree shall be made only by written agreement between the Defendant's Project Coordinator, the Director of the MDEQ, or his or her authorized representative, and the designated representative of the MDAG, and shall be entered with the Court.

XXIV. TERMINATION OF PARAGRAPHS 5.2-5.4

24.1 At any time after three years from the Effective Date of this Decree, and when Defendant determines that it has completed all of the activities required under Paragraph 5.2, 5.3, or 5.4 of this Decree, it may submit to the MDEQ, a notice of compliance and final report for Paragraph 5.2, 5.3, or 5.4. The final report shall consist of a written certification that Defendant has fully complied with all of the requirements of Paragraphs 5.2, 5.3 or 5.4 of this Decree (collectively or individually). The certification shall include the date of compliance with each provision of Paragraphs 5.2, 5.3, or 5.4, and any additional relevant information if requested by the MDEQ.

24.2 Upon receiving the notice of compliance, the MDEQ will review the notice, the final report, any supporting documentation, and the actual activities performed under Paragraphs 5.2, 5.3, or 5.4 of this Decree. The MDEQ will issue a written certificate of compliance for the Paragraph or Paragraphs in which the notice and final report is submitted unless the MDEQ determines that the Defendant has either not submitted the certification required under this Section, has failed to submit information specifically requested by the MDEQ, or has failed to comply with or complete all the requirements of the Paragraph or Paragraphs in which the notice and final report is submitted.

24.3 Upon issuance of the MDEQ's certification of compliance, the Defendant's obligations under Paragraphs 5.2, 5.3, or 5.4 of this Decree shall be

terminated. With the exception of Paragraphs 5.2-5.4, all other requirements of this Decree shall remain in full force and effect.

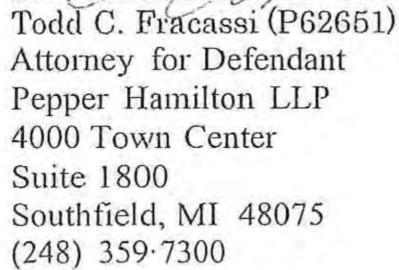
XXV. TERMINATION OF CERTAIN OTHER PROVISIONS

25.1 Upon MDEQ's receipt of all payments required to be made under this Decree and approval of the Achievement Report and all documents submitted by Defendant pursuant to Section VI (Performance of Response Activities) , all obligations under Sections VI (Performance of Response Activities), VII (Access), IX (Sampling and Analysis), X (Emergency Response), XIII (Project Coordinates and Communications/Notices), XIV (Submissions and Approvals), XV (Reimbursement of Costs and Payment of Civil Penalties), and XVI (Stipulated Penalties) of this Decree are terminated.

XXVI. SEPARATE DOCUMENTS

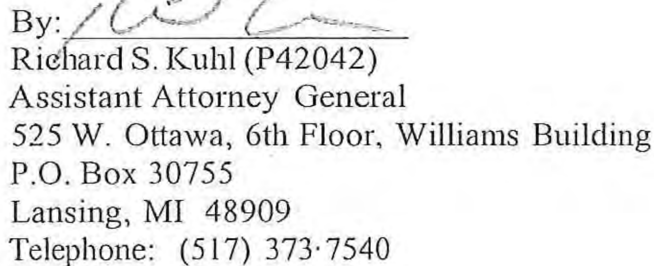
26.1 This Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Decree may be executed in duplicate original form.

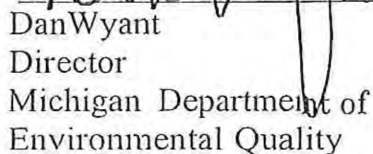
IT IS SO AGREED AND ORDERED BY:



Todd C. Fracassi (P62651)
Attorney for Defendant
Pepper Hamilton LLP
4000 Town Center
Suite 1800
Southfield, MI 48075
(248) 359-7300

Bill Schuette
Attorney General
Attorney for Plaintiff

By: 
Richard S. Kuhl (P42042)
Assistant Attorney General
525 W. Ottawa, 6th Floor, Williams Building
P.O. Box 30755
Lansing, MI 48909
Telephone: (517) 373-7540



Dan Wyant
Director
Michigan Department of
Environmental Quality

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 28th day of July, 2015.

CLINTON CANADY III

Honorable

Attachment A

PROPERTY LEGAL DESCRIPTION

Parcel No. 1:

A part of Lots 270, 271 and the South 1/2 of Lots 269 and 272 of "Crane and Brooks Addition to the Village (now City) of Howell," as recorded in the Book of Transcribed Records on Pages 180 and 181 of the Livingston County Records, Livingston County, Michigan, more particularly described as follows: Commencing at the Southeast corner of Lot 266 of "Crane and Brooks Addition to the Village (now City) of Howell," as recorded in the Book of Transcribed Records on Pages 180 and 181 of the Livingston County Records; thence along the North line of Livingston Street, N 61°53'26" W, 134.76 feet to the POINT OF BEGINNING of the Parcel to be described; thence continuing along the North line of Livingston Street, N 61°53'26" W, 136.62 feet; thence along the East line of Walnut Street, N 28°37'27" E, 198.92 feet; thence S 62°08'55" E, 135.06 feet; thence S 28°10'28" W, 199.52 feet to the POINT OF BEGINNING; Containing 0.62 acres, more or less, and subject to the rights of the public over the existing Livingston Street and Walnut Street. Subject to easements of record, if any.

Parcel No. 2:

A part of the Southwest 1/4 of Section 36, T3N-R4E, Howell Township, Livingston County, Michigan, more particularly described as follows: Commencing at the Southeast Corner of Lot 266 of "Crane and Brooks Addition to the Village (now City) of Howell," as recorded in the Book of Transcribed Records on Pages 180 and 181 of the Livingston County Records; thence along the West line of Michigan Avenue, S 28°03'00" W, 66.00 feet to the POINT OF BEGINNING of the Parcel to be described; thence continuing along the West line of said Michigan Avenue, S 28°01'28" W, 227.20 feet; thence N 62°40'10" W, 168.35 feet; thence N 65°52'34" W, 105.82 feet; thence along the East line of Walnut Street, N 28°28'36" E, 236.85 feet; thence along the South line of Livingston Street S 61°53'24" E, 272.04 feet to the POINT OF BEGINNING; Containing 1.44 acres, more or less, and subject to the rights of the public over the existing Livingston Street, Walnut Street and Michigan Avenue. Subject to easements of record, if any.

PROPERTY TAX I.D. NUMBER: 38-1438718

Attachment B

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDIATION AND REDEVELOPMENT DIVISION

Date: 05/05/2015
Source: ERNIE

Cost Recovery Summary Report - Combined

Site Name: Diamond Chrome Plating, Inc. County: Livingston
Site ID: 47000202
Packages: 455790-00 DIAMOND CHROME PLATING: 1I, Invoice 6I, Invoice 7I, 9, 2I, 3I, 5I
455790-65 Diamond Chrome Plating Settlement: 1I, 2I, 3I, 4I, 5I, 6I, 7I, 8

Total for Employee Salaries and Wages		
Period Covered: 08/12/2006 - 04/25/2015	$129,182.84	
Indirect Dollars	$19,003.30	
Sub-Total		$148,186.14
Total for Employee Travel Expenses		
Period Covered: 08/12/2006 - 02/14/2015		$1,116.55
Contractual Expenses		
Period Covered:	$0.00	
Contract Sub-Total		$0.00
Total for Miscellaneous Expenses		
Period Covered: 09/06/2006 - 02/18/2014		$27,256.50
MDNR/MDEQ Lab		
Period Covered: 08/12/2006 - 06/26/2012		$11,899.50
Total for MDPH/Community Health Expenses		
Alternate Water Supply		
Period Covered:	$0.00	
Bottled Water		
Period Covered: 08/12/2006 - 12/29/2007	$1,440.00	
MDPH/MDCH Lab		
Period Covered:	$0.00	
Sub-Total		$1,440.00
Attorney General Expenses		
Period Covered: 12/31/2006 - 03/31/2015		$47,110.88
Other Expenses		
Period Covered:		$0.00
Sub-Total		$237,009.57
Interest Calculated from through		$0.00
Total Combined Expenses for Site and Interest		**$237,009.57**

Run Date 06/15/2011

Less Payments

Date	Check No.	Amount
05/15/2008	41879	$5,000.00
09/24/2009	44088	$5,000.00
09/10/2010	45456	$5,000.00
11/03/2011	6923	$5,000.00
11/21/2012	71560	$5,000.00
10/28/2013	73109	$5,000.00

$30,000.00

$207,009.57

Attachment C

ESCROW AGREEMENT

This Escrow Agreement is entered into by and between Diamond Chrome Plating, Inc. (DCP); ***[insert name of Escrow Agent]***; and the Michigan Department of Environmental Quality (MDEQ) to provide financial assurance to assure the completion of certain activities required by the First Amended Consent Decree entered into by DCP and MDEQ (Consent Decree) dated ______ , 2015 for the Diamond Chrome Plating, Inc. Facility (Facility), Site ID No. MID005344973.

Whereas, the Consent Decree requires that DCP provide financial assurance to pay for the implementation of response activities and a closure plan for the Facility; and

Whereas, the Consent Decree and Section 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) also require that DCP provide financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the response activities set forth in any Postclosure Plan prepared under the Consent Decree; and

Whereas, the Grantor has elected to establish an Escrow to meet its financial assurance obligations specified in the Consent Decree; and

Whereas, the Grantor, acting through its duly authorized officers, has proposed an Escrow Agent under this Escrow Agreement; and

Whereas, the MDEQ approves the Escrow Agent proposed by the Grantor; and

Whereas, the Escrow Agent is willing to act as the Escrow Agent;

NOW, THEREFORE, the Grantor and Escrow Agent agree as follows:

I. DEFINITIONS

"Beneficiary" means the Director of the Michigan Department of Environmental Quality, or his designee, or any successor department or agency, or the Director's authorized representative.

"Escrow Agent" means the escrow agent who enters this Escrow Agreement and any successor or assigns of the Escrow Agent.

"Escrow Agreement" means this Escrow Agreement executed between DCP, the Escrow Agent and the MDEQ.

"Escrow Assets" means cash and/or direct obligations of the United States of America (U.S.A.) or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

"Fiduciary" means any person who exercises any power of control, management, or disposition, or renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of this Escrow, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this Escrow.

"Fund" or "Escrow" means the account by which deposits and earnings are maintained.

"Grantor" means DCP, and any successors or assigns of DCP.

"MDEQ" means the Director of the Michigan Department of Environmental Quality or his designee, or any successor department or agency, or the Director's authorized representative.

All other terms used in this Escrow Agreement which are defined in Part 201 of the NREPA shall have the same meaning as in Part 201 of the NREPA, and all terms which are defined in the Consent Decree shall have the same meaning as in the Consent Decree.

II. AMOUNT OF ESCROW FUND

The Grantor shall provide financial assurance in the form of an Escrow as required by Section VIII (Financial Assurance) of the Consent Decree. The Grantor shall pay into the Escrow $100,000 on ____, 2015 and annually thereafter pay an additional $100,000 until its obligation to implement response activities pursuant to the Consent Decree have been met, or until such time as Grantor can demonstrate to the satisfaction of the MDEQ that the Escrow provides funds in excess of those needed to 1) meet Grantor's response activity obligations pursuant to Paragraph 6.8(b) of the Consent Decree; 2) implement the closure plan obligations under Paragraph 5.2(f) of the Consent Decree, and; 3) meet the requirements of MCL 324.20114d(4)(b) as set forth in Paragraph 8.1(d) of the Consent Decree. If the Grantor demonstrates that the Escrow contains funds in excess of those required under the Consent Decree, upon MDEQ's approval of its request, it may modify the amounts in the Escrow. Grantor shall thereafter annually re-evaluate those costs and make necessary contributions, not to exceed $100,000 annually, to ensure the amount in the Escrow Fund is sufficient.

III. NOTICES

All notices, deliveries, or other communications required or permitted hereunder shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail addressed as follows:

(A) For Escrow Agent:

[*insert Escrow Agent name*]
ATTN: [*insert contact person's name*]
[*Address or P.O. Box*]
[*City*], [*State*] [*Zip Code*]
Telephone No.: [*insert telephone no.*]
FAX No.: [*insert fax no.*]

(B) For MDEQ:

(1) For questions regarding invoice reimbursement, escrow review and/or financial issues relating to response activities or any postclosure plan:

Meredith Hartman, Enforcement Coordinator
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926
Telephone No.: (517) 284-5066
Fax No.: (517) 241-9581

(2) For questions regarding invoice reimbursement, escrow review and/or financial issues relating to any closure plans:

Lansing District Supervisor
Office of Waste Management and Radiological Protection
Michigan Department of Environmental Quality
525 West Allegan, 1st Floor, South Tower
Lansing, Michigan 48933
Email: BeanL@michigan.gov
Phone: (517) 416-4375
Fax: (517) 241-3571

(3) For payments sent to the MDEQ:

Accounting Services Center
Cashier's Office for MDEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

(Via Courier)

Accounting Services Center
Cashier's Office for MDEQ
Van Wagoner Building, 1st Floor
425 West Ottawa Street
Lansing, Michigan 48933-2125

(C) For Grantor:

Diamond Chrome Plating, Inc.
ATTN: Mr. John Wagner
604 South Michigan Avenue
P.O. Box 557
Howell, MI 48844
Telephone No.: (517) 546-0150
FAX No.: (517) 546-3666

Copy to:

Todd C. Fracassi
Pepper Hamilton LLP
4000 Town Center, Ste. 1800
Southfield, MI 48075
Telephone No.: (248) 359-7304
FAX No.: (248) 359-7700

The Facility name, Ingham County Circuit Court Number, and Site Identification No. MID005344973 shall be included on any notices sent to the MDEQ.

IV. ESTABLISHMENT OF FUND

The Grantor and the Escrow Agent hereby establish the Fund for the use and benefit of the MDEQ and the Grantor with the intent to assure performance of the response activities, any postclosure plan, and closure plan as required by the Consent Decree. The Fund is established initially as consisting of the Escrow Assets described in Exhibit A of this Escrow Agreement, all of which are acceptable to the Escrow Agent. Such Escrow Assets or any other assets subsequently transferred to the Escrow Agent are collectively referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Escrow Agent pursuant to this Escrow Agreement. The Escrow will be held by the Escrow Agent, as hereinafter provided. The Escrow Agent undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments required to be made by the Grantor to the Escrow Agent or for payments required of the Grantor. The Escrow Agent shall notify the Beneficiary in writing of contributions made to the Escrow by the Grantor.

V. SECURE PERFORMANCE

The Fund so established will be used to meet DCP's financial assurance obligations as set forth in the Consent Decree, and shall be used to pay the MDEQ for 1) the implementation of response activities required under the Consent Decree, and 2) monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ under M.C.L. 324.20114d(4)(b) to be necessary to assure the effectiveness and integrity of the response activities set forth in any Postclosure Plan.

MDEQ may access the funds in the Escrow in order to conduct response activities if the Grantor fails to meet the deadlines set forth in the Consent Decree for the completion of the investigation of soil and ground water contamination (Paragraph 6.7), the submission of a Conceptual Site Model (Paragraph 6.8), and for the implementation of response activities on and off the property (Paragraph 6.8(b)). MDEQ may also access funds in the Escrow in order to conduct response activities set forth in any Postclosure Plan if the Grantor fails to timely conduct such activities.

Grantor may access the funds in the Escrow to obtain reimbursement for legitimate expenses incurred in carrying out the closure plan required under Paragraph 5.2(f) of the Consent Decree. MDEQ may also access funds in the Escrow to complete or conduct closure activities in accordance with the closure plan if the Grantor fails to timely conduct such activities.

If at any time DCP demonstrates that the funds held in the Escrow exceed those required for implementation of the response activities pursuant to Paragraph 6.8(b) of the Consent Decree, implement the closure plan obligations under Paragraph 5.2(f) of the Consent Decree, and meet the necessary financial assurance requirements of MCL 324.20114d(4)(b) as set forth

in Paragraph 8.1(d) of the Consent Decree, DCP may request reimbursement of the excess funds upon receipt of MDEQ's approval of the request.

If either party is entitled to reimbursement from the Fund, that party will deliver written notice to the Escrow Agent and simultaneously to the other party. If neither MDEQ nor DCP deliver a written objection to the Escrow Agent within 15 days of receipt of the notice, the Escrow Agent shall disburse the requested funds. If either party delivers a timely objection to the Escrow Agent, the Escrow Agent will retain payment until (1) the Escrow Agent receives written instructions mutually agreed to by MDEQ and DCP, or (2) a court or arbitrator having jurisdiction orders reimbursement.

Funds disbursed to the MDEQ under this Paragraph shall be delivered to the address indicated in Subsection (B) (2) of Section III (Notices). Funds disbursed to Grantor under this Paragraph shall be delivered to the address indicated in Subsection (B) (1) of Section III.

VI. PAYMENTS COMPRISING THE FUND

The Escrow Assets placed with the Escrow Agent by the Grantor shall consist of cash and/or direct obligations of the U.S.A. or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

VII. ESCROW AGENT MANAGEMENT

The Escrow Agent shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with prudent investment guidelines. In investing, reinvesting, exchanging, selling, and managing the Fund, the Escrow Agent or any other fiduciary will discharge [***insert as appropriate:*** its ***or*** his ***or*** her] duties with respect to the Fund solely in the interest of the participants and the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matter, would use in the conduct of an enterprise of like character and with like aims, except that:

(A) Securities or other obligations of the Grantor or any other owner or operator of the Facility, or any of their affiliates as defined in the Investment Companies and Advisors Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), shall not be acquired or held on behalf of the Fund unless they are securities or other obligations of the U.S.A. or the State of Michigan;

(B) The Escrow Agent is authorized to invest the Fund in time or demand deposits of the Escrow Agent or any other financial institution to the extent such Escrow Assets are insured by an agency of the United States Government and to the extent such time and demand deposits shall mature not later than one (1) year from the date of the investment;

(C) The Escrow Agent is authorized to hold cash while awaiting investment or investment distribution for a reasonable time and without liability for the payment of interest thereon.

VIII. COMMINGLING AND INVESTMENTS

The Escrow Agent is expressly authorized in [*insert as appropriate:* its or his or her] discretion and in accordance with the investment policies and guidelines transmitted to the Escrow Agent pursuant to this Escrow Agreement to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective fund created by the Escrow Agent in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other escrows participating therein so long as such management does not conflict with the requirements of this Fund. To the extent of the equitable share of the Fund in any such commingled fund, such commingled funds will be part of the Fund.

IX. EXPRESS POWERS OF ESCROW AGENT

Without in any way limiting the powers and discretions conferred upon the Escrow Agent by the other provisions of this Escrow Agreement by law, the Escrow Agent is expressly authorized and empowered:

(A) To make, execute, acknowledge, and deliver any and all documents of transfers and conveyances and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(B) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Escrow Agent will at all times show that all such securities are part of the Fund;

(C) To deposit any cash in the Fund maintained in interest-bearing accounts or saving certificates issued by the Escrow Agent, in its separate corporate capacity, or in any other banking institution affiliated with the Escrow Agent, to the extent insured by an agency of the U.S.A. Government;

(D) To sell, exchange, convey, transfer or otherwise dispose of any other property held on behalf of the Fund, by public or private sale. No person dealing with the Escrow Agent shall be bound to see the application of the purchase money or to inquire onto the validity of expediency of any such sale or other disposition; and

(E) To comprise or otherwise adjust all claims in favor of or against the Fund.

X. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect to the Fund and monthly maintenance fee (such fee shall include any necessary advice of counsel) incurred by the Escrow Agent or Fund will be paid directly by the Grantor.

XI. ACCOUNTING FOR THE FUND

The Escrow Agent shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund; furnish to the Grantor and the Beneficiary a written statement of the current value of the Fund. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date established for the Fund.

The accounting shall show in reasonable detail the following:

(A) The total funds deposited into the Fund;

(B) Accrued earnings on the funds deposited into the Fund;

(C) The amount of the funds that have been paid out of the Fund;-and

(D) The remaining balance of the Fund.

XII. ADVICE OF COUNSEL

The Escrow Agent may from time to time consult with counsel with respect to any questions arising as to the construction of this Escrow Agreement or any action to be taken hereunder. The Escrow Agent shall be fully protected, to the extent permitted by law, in acting upon the advice of [*insert as appropriate*: **its** *or* **his** *or* **her**] own counsel.

XIII. ESCROW AGENT COMPENSATION

The Escrow Agent will be entitled to reasonable compensation for [*insert as appropriate:* **its** *or* **his** *or* **her**] services as agreed upon in writing from time to time with the Grantor. Payment shall be made directly by the Grantor and not from the Fund.

XIV. SUCCESSOR ESCROW AGENT

The Escrow Agent may be replaced upon providing ninety (90) days written notice to the Escrow Agent from the Beneficiary or the Grantor. The Escrow Agent may resign after giving ninety (90) days written notice to the Grantor and the Beneficiary. In either event, upon written concurrence of the Beneficiary, the Grantor will appoint a successor Escrow Agent who will have the same powers and duties as those conferred upon the Escrow Agent hereunder. Upon acceptance of the appointment of a successor Escrow Agent by the MDEQ, the successor Escrow Agent and the Grantor will sign a new Escrow Agreement with identical terms as this Escrow Agreement and forward it to the MDEQ for signature. Upon MDEQ signature, the Escrow Agent will assign, transfer, and pay over to the successor Escrow Agent, the funds then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent or for instructions. The successor Escrow Agent shall notify the Beneficiary, the Grantor, and the present Escrow Agent in writing by certified mail of the date upon which it will assume administration of the Fund ten at least ten (10) days before such change becomes effective. Any expenses incurred by the Escrow Agent as a result of any of the actions performed under this Section will be paid as provided in Section X (Taxes and Expenses).

XV. INSTRUCTIONS TO THE ESCROW AGENT

All orders, requests, and instructions by the Grantor or the Beneficiary to the Escrow Agent will be in writing and signed by the Grantor's authorized representative or the Beneficiary's authorized representative (in accordance with MDEQ delegation authority). The Escrow Agent shall act and, in so acting, will be fully protected if acting in accordance with such orders, requests, and instructions. The Escrow Agent will have no duty to act in the absence of such orders, requests, and instructions, except as provided for herein.

XVI. AMENDMENT OF THE ESCROW AGREEMENT

This Escrow Agreement may be amended by an instrument in writing executed by the Escrow Agent, Grantor, and the Beneficiary; or by the Escrow Agent and the Beneficiary if the Grantor ceases to exist.

XVII. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Escrow Agreement as provided in Sections XIV (Successor Escrow Agent) and XVI (Amendment of the Escrow Agreement), this Fund will be irrevocable and continue until terminated by the written notification of the Beneficiary.

If the Escrow Agreement is terminated for any reason, the Escrow Amount shall be transferred as directed in writing by the Grantor and the Beneficiary.

The Escrow Agreement shall be terminated when the Escrow Agent receives written notice from the Grantor and the Beneficiary that the Fund is no longer necessary.

XVIII. IMMUNITY AND INDEMNIFICATION

The Escrow Agent will not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this Fund, or in carrying out any directions by the Grantor or the MDEQ issued in accordance with this Escrow Agreement.

The Escrow Agent will be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Escrow Agent may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense.

XIX. CHOICE OF LAW

This Escrow Agreement will be administered, construed, and enforced according to the laws of the State of Michigan.

XX. INTERPRETATION

As used in this Escrow Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Escrow Agreement will not affect the interpretation or the legal efficacy of this Escrow Agreement.

The parties herein enter into and duly execute this Escrow Agreement. The effective date of this Escrow Agreement shall be the date it is entered by the last signatory.

FOR DIAMOND CHROME PLATING, INC., THE GRANTOR

By: ______________________________ ______________________
Signature Date

Name: ___________________________
Print or Type

Title: ___________________________
Print or Type

STATE OF ______________________)
) SS
COUNTY OF ____________________)

The foregoing instrument was acknowledged before me this ____ day of ______________, 2____), by [*insert name of Grantor's authorized representative*], the [*insert title of Grantor's authorized representative*] of Diamond Chrome Plating, Inc., a Connecticut corporation, on behalf of the corporation, the Grantor named in the foregoing instrument.

____
Signature of Notary

Commission Expires: _________________

FOR [*insert the name of the Escrow Agent*], THE ESCROW AGENT

By: ______________________________ ______________________
Signature Date

Name: ___________________________
Print or Type

Title: ___________________________
Print or Type

STATE OF ____________________)
) SS
COUNTY OF __________________)

The foregoing instrument was acknowledged before me this ____ day of ____________, 2____), by [*insert name of Escrow Agent's authorized representative*], the [*insert title of Escrow Agent's authorized representative*] of [*insert name of Escrow Agent*], a [*insert state of incorporation*] corporation, on behalf of the corporation, the Escrow Agent named in the foregoing instrument.

____
Signature of Notary

Commission Expires: ________________

FOR THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,
THE BENEFICIARY

By: ______________________________ ______________________
Signature Date

Name: ______________________________
Print or Type

Title: ______________________________
Print or Type

STATE OF ____________________)
) SS
COUNTY OF __________________)

The foregoing instrument was acknowledged before me this ____ day of _____________, 2____), by [***insert name of the MDEQ authorized representative***], the [***insert title of the MDEQ authorized representative***] on behalf of the Beneficiary named in the foregoing instrument.

____
Signature of Notary

Commission Expires: ________________

EXHIBIT A

Escrow Assets

The Escrow Fund is established initially as consisting of the following:

[*Describe the nature and amount(s) of the Escrow Assets.*]

By their signatures below, the parties agree that this Exhibit A is incorporated into and made a part of the Escrow Agreement dated [*Insert effective date of Escrow Agreement*].

FOR [*Insert name of Grantor*], THE GRANTOR

By: ______________________________ ______________________
Signature Date

Name: ___________________________
Print or Type

Title: ___________________________
Print or Type

FOR [*Insert name of Escrow Agent*], THE ESCROW AGENT

By: ______________________________ ______________________
Signature Date

Name: ___________________________
Print or Type

Title: ___________________________
Print or Type

FOR THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, THE BENEFICIARY

By: ______________________________ ______________________
Signature Date

Name: ___________________________
Print or Type

Title: ___________________________
Print or Type