

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION DIVISION

In the Matter of:

Riverview-Trenton Railroad Company  
12225 Stephens Road  
Warren, Michigan 48089  
doing business at  
18251 West Jefferson  
Cities of Trenton and Riverview, Wayne County, Michigan

WMRPD Order No. 111-06-2018

Site Identification No. MIK420024889

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CORRECTIVE ACTION CONSENT ORDER

This Corrective Action Consent Order ("Consent Order") is being entered into between Riverview-Trenton Railroad Company ("RTRR" or "Respondent") and the Michigan Department of Environmental Quality ("DEQ"), Waste Management and Radiological Protection Division ("WMRPD") pursuant to Sections 11115a and 11151 of Part 111, Hazardous Waste Management, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws ("MCL") 324.11101 *et seq.* ("NREPA"); Part 201, Environmental Remediation, of the NREPA; the rules promulgated under these parts; and the authority vested in the DEQ as an authorized state under the federal Resource Conservation and Recovery Act of 1976, as amended ("RCRA").

I. STATEMENT OF PURPOSE

- 1.1 In entering this Consent Order, the mutual objectives of the parties are:
- a. For the Respondent to conduct a first phase of a Part 111 corrective action at known and identified: (i) Waste Management Units ("WMUs") and (ii) Areas of Concern ("AOCs") as necessary to protect public health, safety, welfare, and the environment and as specified in the Statement of Work in Attachment A (the "SOW") of this Consent Order.

- b. For the Respondent to use the applicable environmental protection standards promulgated under Part 201 and adopted in Part 111, R 299.9629(3)(a)(ii) and (iii), for corrective action purposes at known and identified WMUs and AOCs for "contaminants," as that term is defined in Part 111, and "hazardous substances," as that term is defined in Part 201.
- c. For the DEQ to act as the lead agency so that the WMUs and AOCs can be comprehensively addressed as specified in the SOW through entry of this Consent Order.
- d. For the Respondent to perform the first phase of corrective action in accordance with the SOW consistent with the RCRA and perform the corrective action Environmental Indicators ("EI") demonstrations required by the U.S. Environmental Protection Agency ("U.S. EPA") under the federal Government Performance and Results Act of 1993 ("GPRA") for control of human exposures and migration of contaminated groundwater.
- e. For the Respondent to complete investigation tasks as outlined in the SOW to determine the need for additional corrective measures that may be necessary for a second phase of corrective action that would be incorporated into a Phase II Corrective Action Consent Order.
- f. For the DEQ to determine the need for additional corrective action based on the outcomes of the SOW, that will include, but not be limited to, the following considerations:
  - a. The need to develop and implement corrective measures to address groundwater contamination.
  - b. The need to implement stormwater/surface water run-off mitigation measures identified.
  - c. The need for additional unplanned monitoring and maintenance determined to be necessary after completion of the Work pursuant to the Work Plan.
  - d. The need to further investigate and implement corrective measures for new WMUs or AOCs identified during the course of the SOW that are not otherwise required to be addressed through Interim Measures.

- e. The need to further investigate and/or address contamination whose source is the RTRR Facility in soil, groundwater, or sediment beyond the RTRR Facility boundary, where necessary, to protect human health and the environment.

## II. JURISDICTION

- 2.1 Pursuant to its authority under MCL 324.105 and Part 111, the DEQ has promulgated administrative rules pertinent to the identification, generation, treatment, storage, disposal, and transportation of hazardous wastes in Michigan. These rules are set forth in the 2013 *Annual Administrative Code Supplement* as revised by 2017 *Michigan Register* 6, R 299.9101 *et seq.* ("Part 111 Rules").
- 2.2 On October 30, 1986, the state of Michigan was granted final authorization by the Administrator of the U.S. EPA, pursuant to Section 3006(b) of the RCRA, Title 42 of the United States Code ("U.S.C."), Section 6926(b), to administer a hazardous waste program in Michigan in lieu of the federal program, Title 40 of the Code of Federal Regulations ("CFR"), Part 272, Subpart X, 51 *Federal Register* 36804 (October 16, 1986). This authorization is maintained through periodic updates. Section 3008 of the RCRA, 42 U.S.C. § 6928, provides that the U.S. EPA may enforce state regulations in those states authorized to administer a hazardous waste program.
- 2.3 Pursuant to Executive Order 2011-1, MCL 324.11115a, and MCL 324.11151(1), the Director of the DEQ is authorized to issue corrective action orders and orders to comply. The Director of the DEQ has delegated the authority to enter into this Consent Order to the Director of the Waste Management and Radiological Protection Division ("WMRPD").
- 2.4 This Consent Order is issued to the Respondent, the current owner of the RTRR Facility located at 18251 West Jefferson, Riverview, Wayne County, Michigan.
- 2.5 The Respondent consents and agrees to the issuance and entry of this Consent Order and stipulates that the resolution of this matter by a final order to be entered as a consent order is proper and acceptable. This Consent Order is a final order of the DEQ and becomes effective on the date it is signed by the Director of the WMRPD.

- 2.6 The Respondent further consents to and agrees not to contest the DEQ's jurisdiction and authority to issue this Consent Order and to enforce its terms. In addition, the Respondent will not contest the DEQ's jurisdiction and authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings, either administrative or judicial; require full or interim compliance by the Respondent with the terms of this Consent Order; or impose sanctions consistent with this Consent Order for violations of this Consent Order.
- 2.7 The Respondent and the DEQ agree that signing this Consent Order is for settlement purposes only and does not constitute an admission by the Respondent that any law has been violated or an admission of any factual allegation or legal conclusion stated or implied in this Consent Order. The Respondent expressly reserves all rights it may have in law or in equity to maintain or defend against any claim brought by or against it by any person.

### III. DEFINITIONS

- 3.1 Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in Part 111 or the RCRA or the regulations promulgated under those statutes will have the definitions given to them in Part 111 or the RCRA or in such regulations.
- 3.2 "WMU" means any discernible unit at which contaminants have been placed at any time, or at which contaminants have been released, or at which there is a threat of release regardless of the intended use of such unit, and which is subject to the corrective action requirements of MCL 324.11115a(1) and (2) and MCL 324.11115b or R 299.9629. The term "WMU" includes the term "Solid Waste Management Unit" ("SWMU") as defined by the U.S. EPA in 61 *Federal Register* 19442 (May 1, 1996).
- 3.3 "Area of Concern" ("AOC") means those units that may not meet the definition of a WMU but that may have released contaminants to the environment on a nonroutine basis, which may present an unacceptable risk to public health, safety, welfare, or the environment and are subject to the corrective action requirements of Part 111.

- 3.4 "RTRR Facility" means the facility located at 18251 West Jefferson, Riverview, Wayne County, Michigan. The map in Attachment B delineates the boundaries of the RTRR Facility.
- 3.5 The word "contaminant" has the same meaning as defined in Part 111.
- 3.6 "Day" means calendar day.
- 3.7 The terms "hazardous substance" and "institutional control" have the same meanings as defined in Part 201.
- 3.8 The term "Effective Date" is the date this Consent Order is signed by the Director of the WMRPD, designee of the Director of the DEQ as set forth in MCL 324.20101(1)(j) and Executive Order 2011-1.
- 3.9 The term "GPRA" refers to the Government Performance and Results Act of 1993, Public Law 103-62, 107 Stat. 285.
- 3.10 "Responsible Official" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons, or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumers Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- 3.11 "Oversight Costs" means the costs incurred by the DEQ after the Effective Date of this Consent Order lawfully incurred while performing oversight of activities conducted by the Respondent under this Consent Order and includes, but is not limited to, costs to: monitor response activities at the RTRR Facility; observe and comment on field activities; review and comment on submissions; collect and analyze samples; evaluate data; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare and review cost reimbursement documentation; and

enforce, monitor, and document compliance with this Consent Order. Nothing in the definition of "Oversight Costs" shall preclude the DEQ from seeking cost reimbursement as described in Paragraph 17.4.

- 3.12 "Phase II" or the "second phase" means corrective actions necessary at the RTRR Facility to comply with Part 111 of the NREPA that are not defined in the Scope of Work (SOW) attached to this Consent Order. The need for, and scope of, any corrective actions in Phase II will be determined based on the outcomes of the SOW, and may include the following:
- a. The need to develop and implement corrective measures to address groundwater contamination.
  - b. The need to implement stormwater/surface water run-off mitigation measures identified.
  - c. The need for additional unplanned monitoring and maintenance determined to be necessary after completion of the Work pursuant to the Work Plan.
  - d. The need to further investigate and implement corrective measures for new WMUs or AOCs identified during the course of implementation of the Work that are not required to be addressed through Interim Measures.
  - e. The need to further investigate and/or address contamination whose source is the RTRR Facility in soil, groundwater, or sediment beyond the RTRR Facility boundary, where necessary to protect human health and the environment.
- 3.13 A "New Area of Interest" shall mean a new (i) WMU or AOC or (ii) release of hazardous substances subject to response activities under Part 111 or Part 201 that is identified during the Work.
- 3.14 An "Imminent and Substantial Threat to Human Health or the Environment" shall mean a site condition that presents a reasonable probability of a near-term threat of significant and serious future harm to public health or the environment. This definition shall apply only and specifically to Paragraphs 8.5 and 8.7 for the purposes of this Consent Order.

#### IV. PARTIES BOUND

- 4.1 The provisions of this Consent Order apply to and are binding upon the Respondent, the DEQ, and their successors and assigns.
- 4.2 No change in ownership or corporate or partnership status relating to the RTRR Facility will in any way alter the responsibility of the Respondent under this Consent Order unless agreed to in writing between the DEQ and the Respondent. Any conveyance of title, easement, or other interest in the RTRR Facility, or a portion of the RTRR Facility, will not affect the obligations of the Respondent under this Consent Order. The Respondent will be responsible and liable for any failure to carry out all activities required of the Respondent by the terms and conditions of this Consent Order, regardless of the Respondent's use of employees, agents, contractors, or consultants to perform any such tasks. This Paragraph will not apply if the DEQ and the Respondent agree that this Consent Order has been terminated as to the RTRR Facility or any relevant portion of the RTRR Facility.
- 4.3 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained after the Effective Date of this Consent Order to conduct or monitor any portion of the work to be performed pursuant to this Consent Order within one (1) week after the effective date of this Consent Order, or within one (1) week after the date of retention of such person(s), whichever occurs later. Notwithstanding the terms of any such contract, the Respondent is responsible for compliance with the terms of this Consent Order.
- 4.4 The Respondent shall give notice of this Consent Order to any successor in interest prior to transfer of ownership or operation of the RTRR Facility, and shall notify the DEQ in writing no later than ninety (90) days prior to such scheduled transfer. This written notice will describe how the Respondent has ensured that, despite the transfer, all institutional controls that are or may be required for the RTRR Facility will be implemented and maintained.



## V. FINDINGS OF FACT

- 5.1 The Respondent is a person as defined by Section 301(h) of the NREPA and R 299.9106(i).
- 5.2 The Respondent is a Michigan Corporation authorized to do business in the state of Michigan and is the current owner of the RTRR Facility.
- 5.3 The RTRR Facility coordinates are 42.175 North Latitude and 83.167 West Longitude.
- 5.4 The RTRR Facility was owned and operated by McLouth Steel Products Corporation and DSC Ltd. as a hazardous waste management facility subject to the requirements to have a license under MCL 324.11118 and MCL 324.11123, R 299.9601, R 299.9502, and Section 3004 of the RCRA, 42 U.S.C. § 6924. Therefore, the RTRR Facility is subject to the regulations, environmental standards and corrective action requirements of Part 111, and the rules promulgated under that part, and to the corrective action requirements of Section 3004(u) and Section (v) of the RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6924(u) and (v).
- 5.5 The RTRR Facility is zoned as industrial and is approximately 76 acres bounded by the Trenton Channel of the Detroit River to the east, the Gross Isle Toll Bridge and Monguagon Creek to the north, West Jefferson Avenue to the west, and a portion of the former McLouth Steel facility owned by the Treasurer of the County of Wayne to the south.
- 5.6 The RTRR Facility consists of a portion of an industrial site occupying approximately 270 acres, which was previously owned and operated as an integrated steel and iron production facility by McLouth Steel Products Corporation ("Trenton Steel Facility"). McLouth used both basic oxygen furnaces and electric arc furnaces ("EAF") to produce steel. During its operation of the Trenton Steel Facility, McLouth established and operated a storage pile for EAF air pollution control dust, a listed hazardous waste pursuant to Part 111 of the NREPA and the RCRA. McLouth filed a notification of waste activity and a RCRA Part A permit application on November 17, 1980, for the EAF dust pile. In 1995 McLouth filed for Chapter 11 protection in the Bankruptcy Court for the



Eastern District of Michigan, Eastern Division. On July 11, 1996, the sale of McLouth's assets to Hamlin Holdings, Inc., was approved by the Bankruptcy Court. On August 14, 1996, title to the Trenton Steel Facility, as well as other assets, were transferred to DSC Ltd. On November 4, 1996, DSC filed a Notification of Hazardous Waste Activity Form for the Trenton Steel Facility and filed a Part A hazardous waste permit application for the Trenton Steel Facility on September 18, 1997. The Trenton Steel Facility obtained interim status pursuant to the RCRA and Part 111 of the NREPA. In 2000 RTRR acquired the portion of the Trenton Steel Facility that now consists of the RTRR Facility. RTRR acquired the RTRR Facility after preparing a Baseline Environmental Assessment ("BEA") in accordance with Part 201 of the NREPA and submitted the BEA to the DEQ.

- 5.7 The Trenton Steel Facility was initially investigated in 1997 by Techna Corporation ("Techna") on behalf of DSC Ltd. and described in the "Summary of Initial Site Assessment Results DSC Ltd. - Trenton Plant," dated October 20, 1997, and a "RCRA Facility Assessment Report," prepared by Techna, dated September 22, 1998, and revised by Environmental Strategies Corporation on November 2, 1999.
  
- 5.8 On December 17, 1999, DSC Ltd. entered into a Comprehensive Corrective Action and Remedial Consent Order with the DEQ and Jennifer M. Granholm, Attorney General for the State of Michigan, pursuant to the authority vested in the DEQ as an authorized state under the RCRA and pursuant to the authority of Part 111 and Part 201 of the NREPA with respect to the Trenton Steel Facility and a second facility located at 28000 West Jefferson, Gibraltar, Michigan (the "DSC Consent Order"). The DSC Consent Order identified 46 WMUs and 33 AOCs across the Trenton Steel Facility, but only 5 WMUs and 5 AOCs were identified on the RTRR Facility. The 5 AOCs on the RTRR Facility were not identified as requiring further action at that time.
  
- 5.9 DSC initiated some work pursuant to the DSC Consent Order but did not complete its obligations or the work required pursuant to the DSC Consent Order; and substantial work, as detailed in that order, remains to be done.
  
- 5.10 On May 19, 2009, the Michigan Pollution Emergency Alerting System ("PEAS") responder took a report that said, in part, that there was a thick, green liquid on an easement in front of the RTRR Facility. Between April 25 and October 14, 2011, the

U.S. EPA completed a time-critical removal action to temporarily stabilize the high-pH leachate (pH as high as 13.2 standard units) and prevent it from entering Jefferson Avenue and Monguagon Creek. The results of the subsurface investigation performed by the U.S. EPA indicated high pH soil/subsurface debris was extensive throughout the site.

- 5.11 The WMUs at the RTRR Facility identified, to date, are summarized below and shown on the figure in Attachment C of this Consent Order.

WMU NUMBER	WMU NAME	WORK REQUIRED PER THIS CACO?  (YES OR NO)
26	North Debris Pile	Yes
27	Equipment Storage Yard	Yes
29	TSCA Storage Building	Yes
30	Former Electric Arc Furnace Emission Control/Dust Storage Pile	Yes
31	Electric Arc Furnace Emission Control Sludge/Dust Storage Tanks	Yes

- 5.12 This Consent Order applies to all WMUs identified in Paragraph 5.11, above; the Work as specified in the SOW; and the IM to be implemented, if any.
- 5.13 Certain wastes and waste constituents found at the RTRR Facility may be contaminants.
- 5.14 There is, has been, or is a potential for, a release of contaminants at or from the RTRR Facility.
- 5.15 The Respondent has agreed to perform actions required by this Consent Order that are necessary to protect public health, safety, welfare, and the environment.

## VI. APPROVAL OF SUBMITTALS

- 6.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted by the Respondent to the DEQ for approval, the following process and terms of approval shall apply.
- 6.2 Any work plan, proposal, or other document required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 6.3 The DEQ may approve, disapprove, or approve with specific modifications, the required work plan, proposal, or other document, all subject to the Dispute Resolution provisions of Section XIV. Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order. Any material noncompliance with the due dates or performance standards of a DEQ-approved work plan, proposal, or other document is a violation of this Consent Order and shall subject the Respondent to the stipulated penalty provisions included in Section XIII, Costs and Stipulated Penalties. The DEQ will determine if a compliance issue is "material" or "non-material" and reserves the right to identify noncompliance with the Consent Order and assess stipulated penalties for "non-material" compliance issues that are not remedied promptly to the satisfaction of the DEQ.
- 6.4 In the event the DEQ disapproves a work plan, proposal, or other document, it shall notify the Respondent, in writing, of the specific reasons for such disapproval. The Respondent shall submit, within forty-five (45) days of receipt of such disapproval, a revised work plan, proposal, or other document that adequately addresses the reasons for the DEQ's disapproval.
- 6.5 In the event that the DEQ determines that a work plan, proposal, or other document is deficient and requires modification, the DEQ shall specify the deficiencies and provide the Respondent an opportunity to cure the deficiencies, except that the DEQ may approve the document with specific modification if awaiting resubmission by the

Respondent would cause substantial disruption to the Work. In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it shall notify the Respondent, in writing, of the specific modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require the Respondent to submit, prior to implementation and within twenty (20) days of receipt of such notice of deficiency or approval with specific modifications, a revised work plan, proposal, or other document that adequately addresses such modifications; however, if necessary, the Respondent may request an extension of time. Such request(s) will not be unreasonably denied.

- 6.6 Failure by the Respondent to submit any work plan, proposal, or other plan on the date it was first due, pursuant to the schedules set forth in Section VIII, Corrective Action to be Performed, or the schedules approved as part of a work plan, proposal, or other document, will subject the Respondent to imposition of stipulated penalties by the DEQ commencing on the date the work plan proposal or other document was due, all subject to the Dispute Resolution provisions of Section XIV. Failure by the Respondent to submit an approvable revised work plan, proposal, or other document within the applicable time period specified in Paragraphs 6.4 and 6.5 of this Consent Order will subject the Respondent to application of the enforcement provisions of this Consent Order by the DEQ, including, but not limited to, the stipulated penalty provisions commencing on the date the revised work plan, proposal, or other document was due and accumulating until an approvable work plan, proposal, or other document is submitted, all subject to the Dispute Resolution provisions of Section XIV.
- 6.7 Any delays caused by the Respondent's failure to submit an approvable work plan, proposal, or other document when due will in no way affect or alter the Respondent's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 6.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent will be construed as relieving the Respondent of the obligation to obtain written approval, if and when required by this Consent Order.

## VII. PROJECT COORDINATOR

- 7.1 Unless the DEQ is otherwise notified in writing, the Project Coordinator for the Respondent shall be Dennis Schreiber. The DEQ Project Coordinator shall be Richard Conforti, Supervisor, Management and Tracking Unit, phone 517-284-6558, e-mail confortir@michigan.gov, unless the Respondent is notified otherwise in writing. The Project Coordinators shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent practicable, all communications between the Respondent and the DEQ, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Consent Order, shall be directed through the Project Coordinators.

## VIII. CORRECTIVE ACTION TO BE PERFORMED

- 8.1 The Respondent agrees to and is hereby ordered to perform the first phase of corrective action investigations and activities set forth in the SOW (sometimes referred to as the "Work"), set forth at Attachment A to this Consent Order.
- 8.2 All work undertaken pursuant to this Consent Order shall be performed in a manner consistent with the following: Part 111, Part 201, the administrative rules promulgated under Part 111 and Part 201, the RCRA, and other applicable state and federal laws and their implementing regulations; all DEQ-approved work plans, proposals, or other documents; and relevant and appropriate DEQ and U.S. EPA guidance documents. Relevant DEQ and EPA guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance (Interim Final, February 5, 1999); relevant portions of the Model Scopes of Work for RCRA Corrective Action, the U.S. EPA's risk assessment guidance, the Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action for Facilities Subject to Corrective Action Under Subtitle C of the Resource Conservation and Recovery Act (EPA 530-R-04-030, April 2004); EPA's Final Guidance on Completion of Corrective Action Activities at RCRA Facilities (February 25, 2003, *Federal Register*, Vol. 68, No. 37, pp. 8757 – 8764); and the applicable environmental protection standards promulgated under Part 201 and adopted on March 17, 2008, in R 299.9629(3)(a)(ii) and (iii) for corrective action purposes.

- 8.2.1 The Respondent agrees to address releases or threats of releases of contaminants and hazardous substances at the known and identified WMUs as set forth in the SOW and required by this Consent Order.
- 8.2.2 All sampling and analysis conducted pursuant to this Consent Order will be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan ("QAPP") Policy (April 1998) as modified by the DEQ and as appropriate for the RTRR Facility and be sufficient to identify and characterize the nature and extent of all releases as required by this Consent Order. The DEQ reserves the right to audit laboratories selected by the Respondent or require the Respondent to purchase and have analyzed any Performance Evaluation ("PE") samples selected by the DEQ that are compounds of concern.
- 8.2.3 Any risk assessments conducted by the Respondent must propose, in accordance with appropriate state and federal guidance, appropriate risk screening levels or criteria to estimate human health and ecological risk under reasonable exposures, cleanup objectives, and points of compliance that comply with the RCRA and Part 111. Risk assessments shall be based upon current and reasonably expected future land-use scenarios and provide the basis and justification for the conclusions reached and decisions made. Any and all risk assessments that are acceptable under this Consent Order must utilize health and environmental standards that are not less stringent than allowed pursuant to the RCRA.
- 8.2.4 The Respondent will notify the DEQ in writing at least fourteen (14) days prior to beginning field work to be performed under this Consent Order. At the request of the DEQ, the Respondent will provide or allow the DEQ or its authorized representative to take split or duplicate samples of all samples collected by the Respondent pursuant to this Consent Order.
- 8.3 Within ninety (90) days after the Effective Date, the Respondent shall submit to the DEQ, for review and approval, a Work Plan to implement the Work specified in the SOW.

- 8.3.1 The Work Plan shall include a detailed schedule for construction and implementation of the Work and for submittal of a final completion report for the Work (the "Phase I Final Completion Report"). This schedule will provide that as much of the Work as practicable shall be completed within eighteen (18) months after the DEQ approves the final Work Plan and that all Work shall be completed within a reasonable period thereafter.
- 8.3.2 The Work Plan shall include provisions to address continuing operation and maintenance of wells necessary to perform the groundwater investigation set forth in the SOW.
- 8.3.3 The DEQ shall provide the public with an opportunity to review and comment on the Respondent's proposed Work Plan. Following the public comment period, the DEQ shall act upon the Work Plan pursuant to Section VI, Approval of Submittals.
- 8.3.4 Upon approval of the Work Plan by the DEQ, the Respondent shall implement the approved Work Plan in accordance with the schedule therein and consistent with the cleanup criteria set forth in Parts 111 and 201.
- 8.4 In the event that the DEQ determines any unplanned monitoring and maintenance is required after completion of the Work pursuant to the Work Plan, the DEQ shall identify the additional monitoring and maintenance it determines is required. The Respondent shall promptly advise the DEQ if it will incorporate the additional monitoring and maintenance into an Operation and Maintenance ("O&M") Plan and implement the revised O&M Plan. If the Respondent does not agree to prepare and implement an O&M Plan at that time, the additional O&M shall be added to a second phase of corrective action.



- 8.5 In the event that a New Area of Interest is identified, the Respondent agrees that:
- a. Within thirty (30) days of discovery, the Respondent shall provide written notification to the DEQ. The written notification shall include all available information pertaining to the New Area of Interest.
  - b. Based on a review of all of the information, the DEQ may determine that corrective action for the New Area of Interest is appropriate pursuant to the authorities referenced in Paragraph 8.2.
  - c. If the DEQ determines that corrective action for the New Area of Interest is appropriate, a work plan for such corrective action shall be incorporated into the second phase of corrective action. However, if the New Area of Interest requires action to address an Imminent and Substantial Threat to Human Health or the Environment such threats will be addressed by the Respondent through Interim Measures as set forth in Section 8.7.
- 8.6 Upon completion of the Work required by the Work Plan, if the DEQ determines after consideration of the conditions at the RTRR Facility and the applicable environmental protection standards promulgated under Part 201, provided not less stringent than RCRA, that a second phase of corrective action work is necessary, the DEQ shall submit to the Respondent an identification of the additional corrective action it believes is required. Within thirty (30) days of the DEQ's identification of the additional corrective action it believes is necessary, the Respondent shall have the opportunity to comment on the proposed additional work. At the time that the Respondent submits its comments to the DEQ, the Respondent may request an opportunity to confer with the DEQ regarding the proposed additional work. Within sixty (60) days of the DEQ's identification of the Phase II corrective action work it believes is necessary, the Respondent and the DEQ shall enter into good faith negotiations for the completion of a Phase II Corrective Action Consent Order ("CACO"). Prior to the finalization of an agreement on Phase II corrective action work, the DEQ will provide the public an opportunity to comment on that work. If the DEQ and the Respondent fail to enter into a Phase II CACO, the DEQ may exercise any of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, reserved in Part XVII of this Consent Order, Reservation of Rights, including requesting the listing of the RTRR Facility on the CERCLA National Priorities List.

## 8.7 Interim Measures ("IM")

- 8.7.1 "Interim Measures" or "IM" shall mean those actions relating to a New Area of Interest that shall be initiated in advance of implementation of the final corrective action for the RTRR Facility that are necessary to control or abate an Imminent and Substantial Threat to Human Health or the Environment from releases of hazardous waste or hazardous constituents while a second phase of corrective action is being evaluated.
- 8.7.2 With regard to any IM that may be identified as necessary due to a New Area of Interest, Respondent shall within sixty (60) days, or such other shorter time as is specified by the the DEQ as necessary to address the exigency of the threat, submit to the DEQ a written IM Work Plan, including a schedule for implementation, for review and approval. The IM Work Plan shall ensure that the IMs are designed to mitigate the imminent and substantial threat.
- 8.7.3 The Respondent shall implement an approved IM Work Plan(s) in accordance with the approved schedule. The Respondent shall continuously maintain the IM as required by the approved Work Plan(s) until the appropriate cleanup standard has been achieved and cessation has been approved by the DEQ.
- 8.7.4 In the event the Respondent identifies current or potential threats to public health, safety, welfare, or the environment, as defined in the authorities referenced in Paragraph 8.2, in addition to the threats being addressed by an IM, the Respondent shall immediately notify the DEQ orally, and in writing within five (5) days, summarizing the immediacy and magnitude of the potential threat to public health, safety, welfare, or the environment.

## 8.8 Reporting and Other Requirements

- 8.8.1 The Respondent shall provide quarterly progress reports to the DEQ detailing work performed to date, data collected, problems encountered, project schedule, and percent of project completed by the 15th day of each month following a

quarter (e.g., January 15, April 15, July 15, and October 15). The Respondent and the DEQ may agree to less frequent progress reporting pursuant to the provisions of Paragraph 16.1 of this Consent Order.

- 8.8.2 The parties will communicate frequently and cooperate in good faith to timely respond to submittals and to assure successful completion of the requirements of this Consent Order and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Consent Order. The parties may agree to less frequent meetings pursuant to the provisions of paragraph 16.1 of this Consent Order.
- 8.8.3 Within sixty (60) days after completion of the work performed in accordance with the approved Work Plan required in Paragraph 8.3, the Respondent shall submit to the DEQ a Phase I Final Completion Report documenting all work performed pursuant to the Work Plan.
- 8.8.4 If during performance of the Work or any other action the Respondent causes or threatens to cause a release on, at, or from the site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the Respondent shall, immediately, upon acquiring knowledge of such an event, take all action necessary to prevent, abate, or minimize such release or threat of release. The Respondent shall take these actions in accordance with all applicable provisions of this Consent Order.
- 8.8.5 The Respondent shall immediately, upon acquiring knowledge of such an event described in Paragraph 8.8.4 of this Order, orally notify the DEQ Project Coordinator or, in the event of his/her unavailability, shall notify the National Response Center at 800-424-8802 and Michigan's Pollution Emergency Alerting System at 800-292-4706.
- 8.8.6 For any event described in Paragraph 8.8.4 of this Order, the Respondent shall submit a written report to the DEQ within seven (7) days after the discovery of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or

endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## IX. FINANCIAL CAPABILITY

### 9.1 Cost Estimate for Corrective Action

- 9.1.1 The Respondent shall prepare detailed written cost estimates for the Work and any IM required to be performed under this Consent Order. The cost estimates shall comply with the requirements of R 299.9712.
- 9.1.2 For any IM or SOW Work Plan, at the Facility, the Respondent shall submit the written cost estimate to the DEQ, for review and approval, in conjunction with the associated Work Plan(s) required by this Consent Order.
- 9.1.3 The Respondent shall revise the cost estimates described in Paragraph 9.1.2 whenever there is a modification in the Work or the addition of an IM to be performed under this Consent Order if the modification increases the cost previously approved by the DEQ. The Respondent shall provide the amended cost estimate for review and approval within thirty (30) days after the DEQ has approved a modification to the Work or the addition of an IM to be performed under this Consent Order (R 299.9712[6]).
- 9.1.4 Requests for a deadline extension to submit any cost estimate shall be submitted by the Respondent, in writing, to the DEQ Project Coordinator prior to the original cost estimate due date. The DEQ Project Coordinator may approve or deny the extension request, within reason.
- 9.1.5 The DEQ shall approve any cost estimate submitted under this Consent Order or provide a written Notice of Deficiency on the cost estimate. The Respondent shall modify the cost estimate in accordance with the Notice of Deficiency and submit a new cost estimate to the DEQ for approval within thirty (30) days of receipt of the Notice of Deficiency. Pursuant to R 299.9713, the Respondent shall maintain financial assurance for any Work or IM to be performed pursuant

to this Consent Order at the Facility based upon the DEQ-approved cost estimate. Upon approval by the DEQ, the cost estimate becomes an enforceable provision of this Consent Order.

9.1.6 Until the DEQ notifies the Respondent, in writing, that the Respondent is no longer required by R 299.9713 to maintain financial assurance for any Work or IM to be performed pursuant to this Consent Order at the Facility or until the WMRPD Director issues a Notice of Termination as provided in Section XXII of this Consent Order: (a) the Respondent shall adjust any cost estimate to account for inflation within sixty (60) days prior to the anniversary of the date of the establishment of the financial instrument(s) used to demonstrate financial assurance for the work to be performed (R 299.9712[5]); (b) the Respondent shall revise the cost estimate whenever there is a change in the Work or the addition of an IM to be performed under this Consent Order if the modification increases the cost of the Work to be performed under this Consent Order (R 299.9712[6]); and (c) the Respondent shall revise the cost estimate as Work or an IM is completed pursuant to the Consent Order and the Director shall approve a reduction in the amount of financial assurance when the Respondent demonstrates that the amount of the financial assurance exceeds the remaining cost of the Work or any IM required pursuant to this Consent Order (R 299.9713[3]).

9.1.7 The Respondent shall keep the latest cost estimate(s) on file at 12225 Stephens Road, Warren, Michigan 48089.

## 9.2 Financial Assurance for Corrective Action

9.2.1 Within forty-five (45) days after the DEQ approves the cost estimates submitted pursuant to Paragraphs 9.1.1, 9.1.2, and 9.1.3, the Respondent shall provide initial financial assurance in an amount that represents the approved estimate. The Respondent shall maintain the financial assurance for the Work required under this Consent Order until the Work is completed and the Respondent is released from financial assurance as specified in Paragraph 9.3.1 or until the WMRPD Director issues a Notice of Termination as provided in Section XXII of this Consent Order. Financial assurance shall be provided as required by

R 299.9713, utilizing one or more of the permissible financial assurance mechanism(s) specified in R 299.9704 thru R 299.9709, in an amount at least equal to the initial cost estimate or subsequent cost estimate approved and required by Paragraphs 9.1.1, 9.1.2, and 9.1.3 of this Consent Order. If more than one mechanism is used, the total amount of financial assurance provided for the facility shall at least equal the amount of the initial cost estimate or the cost estimate approved and required by Paragraphs 9.1.1, 9.1.2 and 9.1.3 of this Consent Order. The Respondent shall submit all proposed changes in the permissible financial assurance mechanism(s) specified in R 299.9704 through R 299.9709, other than renewals, extensions, or increases in the amount of assurance, to the DEQ for review prior to implementation. The Respondent shall provide the DEQ with a signed original of all revisions and renewals within sixty (60) days after such revision or renewal and at least thirty (30) days prior to the anniversary of the establishment of the financial mechanism(s) provided to satisfy the requirements of this Paragraph.

- 9.2.2 The Respondent shall continuously maintain the financial mechanism(s) in an amount at least equal to the initial cost estimate or the cost estimate approved and required under Paragraphs 9.1.1, 9.1.2, and 9.1.3. The Respondent shall submit to the DEQ documentation of all increases in financial assurance necessary to cover the inflationary adjustment specified in Paragraph 9.1.6 prior to the anniversary of the establishment of the financial mechanism(s).
- 9.2.3 Whenever the current cost estimate(s) increases to an amount greater than the current amount of the associated financial mechanism(s) for reasons other than inflation, the Respondent shall, within sixty (60) days after approval of a modified cost estimate described in Paragraph 9.1.3, either increase the amount of the mechanism(s) to an amount at least equal to the increased cost estimate or provide an additional financial mechanism approved by the DEQ for an amount at least equal to the difference between the current amount of financial assurance and the increased cost estimate. Evidence of such increased financial assurance must be submitted to the DEQ during the sixty- (60-) day period.

- 9.2.4 The Respondent shall notify the DEQ, by certified mail, of the commencement of a voluntary or involuntary proceeding under the bankruptcy provisions of Public Law 95-598, 11 U.S.C., §§ 1 to 151302, naming the Respondent as debtor, within ten (10) days after commencement of the proceeding.
- 9.2.5 If the Respondent fulfills the requirements of Part 111 and the rules for financial capability by obtaining a trust fund, surety bond, letter of credit, certificate of deposit, or insurance policy, the Respondent shall be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution. The Respondent shall also be deemed to be without the required financial assurance in the event of a suspension or revocation of the authority of the trustee institution to act as trustee. Furthermore, the Respondent shall be deemed to be without the required financial assurance in the event of a suspension or revocation of the authority of the institution issuing the surety bond, letter of credit, certificate of deposit, or insurance policy to issue such instruments. The Respondent shall establish other financial assurance within sixty (60) days after such an event.
- 9.2.6 If the Respondent fulfills the requirements of this Consent Order by obtaining a trust fund:
- a. If the value of the trust fund is more than the total amount of the current corrective action cost estimate, the Respondent may submit a written request to the Director for release of the amount in excess of the current corrective action cost estimate.
  - b. If the Respondent substitutes other financial assurance, as specified in R 299.9704 through R 299.9709, for all or part of the trust fund, the Respondent may submit a written request to the Director for release of the amount in excess of the current corrective action cost estimate covered by the trust fund.
  - c. Within sixty (60) days after receiving a request from the Respondent for release of funds as specified in Subparagraphs (1) or (2), above, the Director shall instruct the trustee to release to the Respondent such funds as the Director specifies in writing.



- d. After beginning Work or any IM, the Respondent or any other person authorized to perform corrective action may request reimbursements for corrective action expenditures by submitting itemized bills to the Director. The Respondent may request reimbursement for Work or any IM implementation only if sufficient funds are remaining in the trust fund to cover the maximum costs of the Work or any IM remaining. Within sixty (60) days after receiving bills for corrective action activities, the Director shall determine whether the corrective action expenditures, are in accordance with the approved Work or any IM or otherwise justified and, if so, he or she shall instruct the trustee to make reimbursement in such amounts as the Director specifies in writing. If the Director does not instruct the trustee to make such reimbursements, the Director shall provide the Respondent with a detailed written statement of reasons.
- e. If the Director has reason to believe that the cost of Work or any IM will be significantly more than the value of the trust fund, the Director may withhold reimbursement of such amounts as he or she deems prudent until he or she determines, in accordance with R 299.9713, that the Respondent is no longer required to maintain financial assurance or until the WMRPD Director issues a Notice of Termination as provided in Section XXII of this Consent Order.
- f. During the period of corrective action monitoring and maintenance, the Director may approve a release of funds if the Respondent demonstrates to the Director that the value of the trust fund exceeds the remaining cost of Work or any IM.

### 9.3 Termination of Financial Assurance

- 9.3.1 After completion of the Work required by this Consent Order, the Respondent may submit a written request to the Director to terminate financial assurance pursuant to this Consent Order. The Respondent must demonstrate that the Work required by this Consent Order has been completed as specified in the SOW.

- 9.3.2 If, based upon a review of the Respondent's request, pursuant to Paragraph 9.3.1, and other relevant information, the Director determines that the Work has been completed as specified in the SOW, the Director will notify the Respondent that it is no longer required to maintain financial assurance. If the Director determines that the Work has not been completed as specified in the SOW, the Director shall provide the Respondent with a detailed written statement of any reason to believe the Work has not been completed in accordance with the SOW.
- 9.3.3 Upon issuance by the WMRPD Director of a Notice of Termination, as provided in Section XXII of this Consent Order, the Respondent shall no longer be required to maintain financial assurance.
- 9.3.4 A determination to terminate financial assurance is subject to the Reservation of Rights in Section XVII.

#### X. ON-SITE AND OFF-SITE ACCESS

- 10.1 To enforce and evaluate compliance with this Consent Order, the DEQ and its agents, employees, and representatives are authorized to enter and freely move about the RTRR Facility for the purposes of, but not limited to, interviewing the Respondent's personnel and contractors; inspecting records, operating logs, and contracts related to the RTRR Facility; reviewing the Respondent's progress in carrying out the terms of this Consent Order; conducting such tests, sampling, or monitoring as the DEQ or its Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to the DEQ by the Respondent in accordance with the terms of this Consent Order. The DEQ and its representatives listed in this paragraph shall provide the Respondent with no less than forty-eight (48) hours of advance notice prior to seeking entry to the RTRR Facility, except in cases of emergency. The Respondent shall permit the DEQ and its representatives as named in this Paragraph to inspect all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to Work undertaken pursuant to this Consent Order, and provide copies thereof if requested by the DEQ. The provisions of MCL 324.11129 shall apply to the

Respondent's designation, and the DEQ's handling, of records or other information that is properly designated as confidential under MCL 324.11129.

- 10.2 To the extent that work being performed pursuant to this Consent Order must be done on property not owned or controlled by the Respondent, the Respondent will use its best efforts to obtain access agreements necessary to complete work required by this Consent Order from the present owner(s) or operators of such property within thirty (30) days of the date that the need for access becomes known to the Respondent. "Best efforts" shall include paying reasonable compensation to the owner(s) and/or operator(s) of such property and/or seeking a judicial order for access under MCL 324.20135a and, at a minimum, complying with R 299.9629(2). Any access agreement shall provide for access by the DEQ and its representatives. The Respondent will ensure that the DEQ's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within thirty (30) days, the Respondent will notify the DEQ in writing, within fourteen (14) days, of both the efforts undertaken to obtain access and the reasons for failing to obtain access agreements. The DEQ may, at its discretion, assist the Respondent in obtaining access.
- 10.3 Nothing in this Section limits or otherwise affects the DEQ's right of access and entry pursuant to applicable state or federal law, including the NREPA and the RCRA.
- 10.4 Nothing in this Section shall be construed to limit or otherwise affect the Respondent's liability and obligation to perform corrective action, including corrective action beyond the RTRR Facility boundary, notwithstanding the lack of access.

#### XI. RECORD PRESERVATION

- 11.1 The Respondent agrees to preserve, during the life of this Consent Order and for five (5) years after termination of this Consent Order, unless a longer period is required by Part 111 or its rules: all records and documents in its possession or in the possession of its divisions, officers, employees, agents, contractors, successors, and assigns that relate in any way to this Consent Order. Upon request from the DEQ, the Respondent shall make such records available to the DEQ for inspection or shall provide copies of any such records to the DEQ. The Respondent shall obtain permission from

the DEQ, in writing, prior to the destruction of any such records by the Respondent and shall provide the DEQ with the opportunity to take possession of any such records.

## XII. REPORTING AND DOCUMENT CERTIFICATION

12.1 Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order, shall be in writing and shall be distributed as follows:

a. Three hard copies and one digital copy of all documents to be submitted to the DEQ should be sent to:

Attention: Richard Conforti, Supervisor,  
Management and Tracking Unit  
Waste Management and Radiological Protection Division  
Department of Environmental Quality  
P.O. Box 30241  
Lansing, Michigan 48909-7741  
E-mail confortir@michigan.gov  
Telephone 517-284-6558 Facsimile 517-373-4051

b. Documents to be submitted to the Respondent should be sent to:

Attention: Dennis Schreibeis  
RTRR  
12225 Stephens Road  
Warren, Michigan 48089  
586-467-1707  
dschreibeis@gocrown.ws

12.2 A Responsible Official, or designated Project Coordinator, if authorized in writing by a Responsible Official, shall sign each final document, certifications of compliance, and documents evidencing that compliance has been achieved. The Respondent shall include an unsigned certification statement that meets the requirements specified below in all draft documents submitted to the DEQ.

12.3 The certification required by Paragraph 12.2 shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief,

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### XIII. COSTS AND STIPULATED PENALTIES

13.1 Except as provided in Section XIV, Dispute Resolution, and Section XV, Force Majeure, or unless there has been a written modification of a compliance date by the DEQ pursuant to Section XVI, Subsequent Modification, in the event the Respondent fails to meet any requirement set forth in the Consent Order, the DEQ may demand, and the Respondent shall pay upon such demand, stipulated penalties as set forth below:

13.1.1 For failure to submit quarterly progress reports by the dates scheduled in Section VIII, Corrective Action to be Performed, Paragraph 8.8.1; or for failure to provide notifications and reporting detailed in Paragraphs 8.8.4, 8.8.5, or 8.8.6: \$100 per day for the first fourteen (14) days and \$500 per day thereafter.

13.1.2 For failure to submit the Phase I Work Plan as required by Paragraph 8.3: \$100 per day for the first fourteen (14) days and \$500 per day thereafter.

13.1.3 For failure to implement the Work in accordance with the approved schedule as required by Paragraph 8.3.4: \$100 per day for the first fourteen (14) days and \$500 per day thereafter.

13.1.4 For failure to submit the Phase I Final Completion Report in accordance with the approved schedule as required by Paragraph 8.8.3: \$ 100 per day for the first fourteen (14) days and \$500 per day thereafter.

- 13.1.5 For failure to submit any financial assurance cost estimate or financial assurance instrument by the date such estimate or instrument is first due as required by Section IX, Financial Capability: \$100 per day for the first one (1) to fifteen (15) days of delay; \$500 per day thereafter.
- 13.2 All stipulated penalties identified under this Section shall begin to accrue on the date that complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.
- 13.3 All stipulated penalties owed to the DEQ under this Section shall be due within thirty (30) days after receipt of a written demand from the DEQ. Such demand shall describe the noncompliance and shall indicate the amount of penalties due.
- 13.4 The Respondent shall reimburse the DEQ for Oversight Costs lawfully incurred while performing oversight of activities conducted by the Respondent under this Consent Order. As soon as possible after each anniversary of the Effective Date of this Consent Order, the DEQ will provide the Respondent with a written demand for Oversight Costs incurred by the DEQ. Any such demand will not exceed \$75,000 for any given calendar year and shall state with reasonable specificity the nature of the Oversight Costs incurred. The Respondent may review the DEQ's underlying Oversight Costs documentation, which specifically details the basis for each Oversight Cost. The Respondent shall reimburse the DEQ for such Oversight Costs within thirty (30) days of receipt of a written demand from the DEQ or receipt of underlying documentation, whichever occurs later, unless the Respondent challenges the demand for Oversight Costs pursuant to the dispute resolution procedures set forth in Section XIV, Dispute Resolution. Any Oversight Costs paid by the Respondent shall not be deemed to be stipulated penalties or monetary penalties under this Consent Order.
- 13.5 To ensure timely payment of the above stipulated penalties and Oversight Costs, the Respondent shall pay an interest penalty each time it fails to make a complete or timely payment. Interest shall begin to accrue on the unpaid balance at the rate specified in Section 20126a(3) of Part 201 on the day after payment was due until the date the Respondent pays the required principal amount and the accrued interest to the DEQ.

- 13.6 The Respondent shall pay the above stipulated penalties and Oversight Costs and any interest accrued due to late payment of these amounts - by check made payable to the "State of Michigan – Environmental Pollution Prevention Fund." Payment must be mailed to the Department of Environmental Quality, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the Payment Identification Number RMD 50007. All payments shall reference the RTRR Facility, the Respondent's name and address, and this Consent Order number. A copy of the transmittal letter and the check shall be provided simultaneously to the Managers of the Enforcement Section and the Hazardous Waste Section, Department of Environmental Quality, Waste Management and Radiological Protection Division, P.O. Box 30241, Lansing, Michigan 48909-7741, and to the Assistant Attorney General at the address listed in the signatory section of this Consent Order. Oversight Costs recovered pursuant to this Section shall be deposited into the Environmental Pollution Prevention Fund in accordance with the provisions of Section 11130 of Part 111.
- 13.7 The payment of stipulated penalties shall not alter in any way the Respondent's obligation to complete the performance required under this Consent Order.
- 13.8 The Respondent agrees not to contest the legality of any stipulated penalties assessed pursuant to Paragraph 13.1, above, or the DEQ's legal authority to impose such penalties, except as provided in Section XIV, Dispute Resolution, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties is made.
- 13.9 The stipulated penalties set forth in this Section do not preclude the DEQ from pursuing any other remedies or sanctions that may be available to the DEQ by reason of the failure of the Respondent to comply with any of the requirements of this Consent Order. Notwithstanding the foregoing, the DEQ and the Respondent agree that any monetary penalties, including stipulated penalties that the DEQ seeks for any single and discrete violation of this Consent Order, shall not exceed the statutory maximum penalty for such violation as provided in applicable Michigan law. Nothing herein shall prevent the DEQ



from seeking separate penalties for separate violations. The Respondent reserves the right to contest and defend against the DEQ's pursuit of any such remedies.

- 13.10 Notwithstanding any other provision of this Section, the DEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order.

#### XIV. DISPUTE RESOLUTION

- 14.1 Unless otherwise provided in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order and shall apply to all provisions of this Consent Order. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations of the Respondent that have not been disputed in accordance with this Section. Engagement of a dispute resolution between the parties shall not be cause for the Respondent to delay the performance of any compliance requirements or corrective action.
- 14.2 Any dispute that arises under this Consent Order shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed twenty (20) days from the date of written notice by any party that a dispute has arisen, unless the time period for negotiations is modified by written agreement between the parties. The dispute shall be considered to have arisen when one party sends the other party a written notice of dispute. If agreement cannot be reached on any issue within this twenty- (20-) day period, the DEQ shall provide a written statement of its decision to the Respondent and, in the absence of initiation of formal dispute resolution by the Respondent under Paragraph 14.3, the DEQ's position, as outlined in its written statement of decision, shall be binding on the parties.
- 14.3 If the Respondent and the DEQ cannot informally resolve a dispute under Paragraph 14.2, the Respondent may initiate formal dispute resolution by requesting review of the disputed issues by the WMRPD Director. This written request must be filed with the WMRPD Director within fifteen (15) days of the Respondent's receipt of the DEQ's statement of decision that is issued at the conclusion of the informal dispute

resolution procedure set forth in Paragraph 14.2. The Respondent's request 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 Respondent bases its position. Within fourteen (14) days of the WMRPD Director's receipt of the Respondent's request for a review of disputed issues, the WMRPD Director will provide a written statement of decision to the Respondent, 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 relied upon by the WMRPD Director's review of the disputed issues. The WMRPD Director's review of the disputed issues may be extended by written agreement of the parties.

- 14.4 The written statement of the WMRPD Director issued under Paragraph 14.3 shall be binding on the parties unless, within twenty (20) days after receipt of the DEQ's written statement of decision, the Respondent files a petition for judicial review in a court of competent jurisdiction that shall set forth a description of 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 ensure orderly implementation of this Consent Order. Nothing in this Consent Order affects the limitations on the timing of judicial review of the DEQ's decision(s) regarding the selection, extent, or adequacy of any response activity as provided for in Part 201.
- 14.5 An administrative record of the dispute shall be maintained by the DEQ. The administrative record shall include all of the information provided by the Respondent pursuant to Paragraph 14.3, as well as any other documents relied upon by the DEQ in making its final decision pursuant to Paragraph 14.3. Where appropriate, the DEQ shall allow submission of supplemental statements of position by the parties to the dispute.
- 14.6 Any judicial review of a DEQ decision, pursuant to Paragraph 14.4, shall be limited to the administrative record. In proceeding on any dispute regarding the selection, extent, or adequacy of any response activity, the Respondent shall have the burden of demonstrating based on the administrative record that the position of the DEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by the Respondent, the Respondent shall bear the burden of persuasion on factual issues. Nothing herein shall prevent the DEQ from arguing that a court should

apply the arbitrary and capricious standard of review to any dispute under this Consent Order.

- 14.7 Notwithstanding the invocation of dispute resolution proceedings, stipulated penalties shall accrue in accordance with the terms of Section XIII, Costs and Stipulated Penalties, from the first day of any failure or refusal to comply with any term or condition of this Consent Order, but payment shall be stayed pending resolution of the dispute. Stipulated penalties shall be paid within thirty (30) days after the resolution of the dispute, including any judicial review. The Respondent shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section XIII, Costs and Stipulated Penalties.

#### XV. FORCE MAJEURE

- 15.1 The Respondent shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" as defined in this Section shall not be deemed a violation of obligations of the Respondent under this Consent Order.
- 15.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes beyond the reasonable control of and without the fault of the Respondent, such as an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, failure to obtain access after using its best efforts to obtain access as set forth in Paragraph 10.2, and acts or omissions of third parties that could not have been avoided or overcome by the diligence of the Respondent and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of the Respondent.
- 15.3 The Respondent shall notify the DEQ by telephone within seventy-two (72) hours of discovering any event that potentially qualifies as a "Force Majeure" under this Consent Order. Verbal notice shall be followed by written notice within ten (10) calendar days

and shall describe in detail the anticipated length of delay, the cause or causes of delay, the measures taken by the Respondent to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

- 15.4 Failure of the Respondent to comply with the notice requirements of Paragraph 15.3, above, shall render this Section void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 15.3.
- 15.5 If the parties agree that the delay or anticipated delay was beyond the control of the Respondent, this may be so stipulated and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. If the parties to this Consent Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section XIV, Dispute Resolution, of this Consent Order. The Respondent has the burden of proving that any delay was beyond its reasonable control and that it met all the requirements of this Section.
- 15.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Respondent qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

#### XVI. SUBSEQUENT MODIFICATION

- 16.1 This Consent Order may be amended only by mutual agreement of the DEQ and the Respondent. Such amendments shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by the DEQ, and shall be incorporated into this Consent Order.
- 16.2 The Project Coordinators can agree in writing to extend any deadline contained in Section VIII, Corrective Action to be Performed. Any extension of more than three (3) months must also be approved by the WMRPD Director in accordance with this Paragraph 16.1.

## XVII. RESERVATION OF RIGHTS

- 17.1 This Consent Order is not intended to be nor shall it be construed to be a permit. This Consent Order does not relieve the Respondent of any obligation to obtain and comply with any local, state, or federal permits.
- 17.2 The DEQ expressly reserves all rights and defenses that it may have, including the rights to disapprove of work performed by the Respondent pursuant to this Consent Order and to request that the Respondent perform tasks in addition to those stated in the Consent Order. The Respondent reserves all rights and defenses it may have to any such action by the DEQ.
- 17.3 The DEQ reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the failure of the Respondent to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under MCL 324.11151. The Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the DEQ has under Part 111, Part 201, the RCRA, or any other statutory, regulatory, or common law enforcement authority of the state of Michigan with respect to the failure of the Respondent to comply with this Consent Order.
- 17.4 The DEQ reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect public health, safety, welfare, and/or the environment. If, after forty-five (45) days written notice by accountable mail (registered, certified, or other), the Respondent fails to perform any work or action requested by the DEQ, then the DEQ may exercise its authority under any applicable state or federal law to undertake any remedial actions at any time. Nothing herein shall be construed to limit the DEQ's right to take action in the case of an emergency or in any situation where there is an imminent and substantial hazard to the health of persons or to the natural resources or in any situation endangering or causing damage to public health or the environment. Nothing herein shall limit or prevent the DEQ's right or authority to seek assistance from other local, state and federal agencies to address any risks to public

health and the environment. The DEQ reserves its right to seek reimbursement from the Respondent for such additional costs incurred by the State as may be provided under applicable law. Notwithstanding compliance with the terms of this Consent Order, the Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by the DEQ after the Effective Date of this Consent Order. The Respondent reserves the right to defend against such action by the DEQ.

- 17.5 The DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of Part 111, Part 201, the RCRA, and the rules promulgated under these statutes. The Respondent reserves all rights and defenses it may have to any such action by the DEQ.
- 17.6 Notwithstanding any other provision of this Consent Order, an enforcement action may be brought by the DEQ pursuant to Part 111, Part 201, the RCRA, or other statutory authority where the generation, storage, transportation, treatment, or disposal of hazardous waste at the RTRR Facility may present an imminent and substantial hazard to the health of persons or to the natural resources or is endangering or causing damage to public health or the environment. The Respondent reserves all rights and defenses it may have to any such action by the DEQ.
- 17.7 The Respondent consents to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 111. The Respondent reserves all rights and defenses it may have to any such action by the DEQ.
- 17.8 This Consent Order in no way affects the responsibility of the Respondent to comply with any other applicable local, state, or federal laws or regulations.
- 17.9 Nothing in this Consent Order is or shall be considered to affect any liability the Respondent may have for natural resource damages caused by the Respondent's ownership and/or operation of the RTRR Facility. The state of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.



XVIII. OTHER CLAIMS AND PARTIES

- 18.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation who is not a party to this Consent Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any contaminants found at, taken to, or taken from the RTRR Facility.

XIX. OTHER APPLICABLE LAWS

- 19.1 All action required to be taken by the Respondent pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XX. INDEMNIFICATION OF THE MICHIGAN STATE GOVERNMENT

- 20.1 The Respondent shall indemnify and save and hold harmless the state of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action by third parties arising from or on account of acts or omissions of the Respondent, its officers, employees, agents, and any persons acting on its behalf or under its control in carrying out work pursuant to this Consent Order. The state of Michigan shall not be held out as a party to any contract entered into by or on behalf of the Respondent in carrying out actions pursuant to this Consent Order. Neither the Respondent nor any contractor shall be considered an agent of the State.
- 20.2 The Respondent waives any and 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 the Respondent and any person for performance of work at the RTRR Facility, pursuant to this Consent Order, including claims on account of construction delays.



20.3 The Respondent shall indemnify and hold harmless the state of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action for damages or reimbursement from the State solely arising from or on account of any contract, agreement, or arrangement between the Respondent and any third person for performance of work at the RTRR Facility, pursuant to this Consent Order, including claims on account of construction delays.

#### XXI. SEVERABILITY

21.1 If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.

#### XXII. TERMINATION

22.1 This Consent Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the WMRPD Director. The Respondent may request that the WMRPD Director issue a written Notice of Termination at any time after achieving compliance with this Consent Order at the RTRR Facility or any relevant portion of the RTRR Facility. A Notice of Termination shall not be withheld if all SOW items have been completed except for the obligation to maintain dust control. A request for a written Notice of Termination shall not unreasonably be withheld. Such a request shall consist of a written certification that the Respondent is in compliance with and has completed all obligations of the Respondent under this Consent Order, including payment of any stipulated penalties required in this Consent Order. Specifically, this certification shall include:

- a. The completion date of all work required, and the date any stipulated penalties and oversight costs were paid;
- b. A statement that all information required under this Consent Order has been reported to the Project Coordinator; and
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the designated location.

- 22.2 The Notice of Termination shall act as a determination that the Respondent is in compliance with and has completed all obligations of the Respondent under this Consent Order with respect to all known conditions at the RTRR Facility or any relevant portion of the RTRR Facility known or identified through the investigation undertaken pursuant to the Consent Order.
- 22.3 A determination to terminate this Consent Order shall not preclude the DEQ from requiring further corrective action at a later date, if new information or subsequent analysis indicates that a release or threat of a release of a hazardous waste or hazardous waste constituent at or from a WMU or a release of hazardous substances from an AOC at the RTRR Facility may pose a threat to public health, safety, welfare, or the environment or if there is a change in the use of any portion of the RTRR Facility such that the Part 201 generic cleanup criteria upon which the corrective action is based are no longer applicable.
- 22.4 In lieu of the termination provision in Paragraphs 22.2 and 22.3, after the Respondent has performed the response activities required by the SOW, the Respondent may request the DEQ to terminate this Consent Order and enter into an alternative agreement for the long-term requirements associated with performance of the CM. Long-term requirements associated with the performance of the CM means ensuring that any land- and resource-use restrictions are maintained and enforced; performing operation, maintenance, and long-term monitoring activities; establishing and maintaining financial assurance; and establishing and maintaining permanent markers as identified in the CM. Termination of this Consent Order shall be at the discretion of the DEQ. If an alternative agreement is entered into between the parties, the Respondent's obligations set forth in this Consent Order shall terminate, with the exception of Section XI, Record Preservation, and Section XX, Indemnification of the Michigan State Government. Termination of the Respondent's obligations set forth in this Consent Order shall not affect the DEQ's Reservation of Rights set forth in Section XVII and Paragraph 22.3.

XXIII. DUPLICATE ORIGINALS

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

Signatories

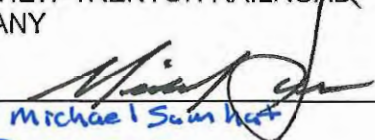
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

RIVERVIEW-TRENTON RAILROAD  
COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_


Date: \_\_\_\_\_

  
Michael S. Smith  
President  
10/26/18

DEPARTMENT OF ENVIRONMENTAL QUALITY

C. Heidi Grether  
Director

By: \_\_\_\_\_

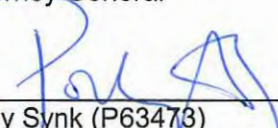
  
Jack Schinderle, Director  
Waste Management and Radiological  
Protection

Date: \_\_\_\_\_

11/1/18

Approved As To Form:

Bill Schuette  
Attorney General

  
Polly Synk (P63473)  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
Department of Attorney General  
P.O. Box 30755  
Lansing, Michigan 48933

Date: \_\_\_\_\_

10-30-18

## Attachment A

### Statement of Work

Former McLouth Steel Facility  
RTRR Facility  
DEQ CACO Required Items

A Work Plan, detailing the statement of work described below and a schedule for undertaking it, will be provided to the DEQ prior to conducting any activities listed below.

1. **Groundwater Investigation:** A hydrogeological investigation will be conducted on the RTRR Facility to determine the vertical and horizontal extent of impacts including: (a) an evaluation of the flow direction and hydrogeologic conductivity across the RTRR Facility; (b) an evaluation of groundwater contamination on the RTRR Facility, including an assessment of the nature of any off-site sources of groundwater contaminants and an assessment of the nature and extent of groundwater contamination at the RTRR Facility; and (c) a determination of groundwater flow (including volume and contaminant composition) from the RTRR Facility to the Detroit River and Monguagon Creek. The investigation will include up to ten groundwater monitoring wells to be installed in the upper aquifer along the property line and river to determine upgradient and downgradient impacts. Seven of these wells will include a nested well in the lower aquifer, and four wells will include nested pairs in the upper and lower portions of the upper aquifer. An additional two monitoring wells will be installed in the upper aquifer, one each downgradient of WMU27 and WMU29. When possible, groundwater monitoring wells from previous investigations will be used for sample collection. Four quarterly sampling events will be completed. Samples will be analyzed for chemicals of interest as identified in Appendix 1. Analytical results will be compared to applicable non-residential criteria under Part 201 of Michigan Act 451. A report detailing the results of the investigation will be prepared and provided to the DEQ.
2. **Dust Control:** A dust control plan for the RTRR Facility will be prepared and implemented until the property has been developed or meets restricted non-residential criteria under Part 201 of Michigan Act 451. This plan will consist of the following items: haul roads will be covered with asphalt millings; other exposed surfaces where site activities will be conducted will be wetted as required to control dust; trucks will be decontaminated, as necessary, before leaving the property. Dust monitoring for manganese will be conducted at the property line during soil or material removal or excavation.
3. **Surfacewater Run-Off:** Options for stormwater management to eliminate sheet flow to the Trenton Channel and Monguagon Creek will be assessed. This will include, among other options, regrading the site to collect stormwater. Options for stormwater management will include on-site retention, discharge under a general permit, discharging it to the Trenton Channel according to an NPDES permit, or discharge to the City of Trenton POTW. A report indicating feasible options for stormwater control will be prepared and provided to the DEQ.
4. **Investigation of WMU26 North Debris Pile:** The area of the former North Debris Pile will be inspected and surveyed to document that the pile has been removed and that the

remaining surfacing materials are similar to other materials on the RTRR Facility. A report detailing the results of the investigation will be prepared and provided to the DEQ.

5. Investigation of MWU27 Equipment Storage Yard: A soils investigation around the former storage yard will be conducted to determine the horizontal and vertical extent of PCBs in soils that exceed 25 ppm (parts per million). Sample results will be compared to the low-occupancy closure options under TSCA. Based on the DEQ guidance document titled "Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria" dated 2002, or optionally using incremental sampling, an estimated 20 randomly selected boring locations will be installed, with two to three samples collected per boring location, based on site conditions, and shall include surface samples (1-3 inches BGS) for PCBs. A report providing the results of sampling and analysis, and further identifying any necessary measures to be taken to prevent unacceptable human exposure to PCBs, will be provided to the DEQ.
6. Cleaning and Investigation of WMU29 TSCA Storage Building: The existing concrete pad from the former TSCA storage building will have the surfaces removed or cleaned by power washing. Cleaning liquids will be characterized and either disposed off-site as allowed under 40 CFR 761.79(g) and 761.79(b)(1), or discharged to the City of Trenton POTW under permit. Following surface removal or cleaning activities, concrete samples will be collected and analyzed for total PCBs. If the sampling results indicate the presence of PCBs over 25 ppm, the contaminated surfaces will be removed for off-site disposal or recleaned and retested until sampling results indicate PCBs below 25 ppm.

A soils investigation around the former storage building will be conducted to determine the horizontal and vertical extent of PCBs in soils that exceed 25 ppm. Sample results will be compared to the low-occupancy closure options under TSCA. Based on the DEQ guidance document titled "Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria" dated 2002, or optionally using Incremental Sampling, an estimated 16 boring locations will be installed around and beneath the concrete pad, with two to three samples collected per boring location, based on site conditions, and shall include surface samples (1-3 inches BGS) for PCBs. A report providing the results of sampling and analysis, and further identifying any necessary measures to be taken to prevent unacceptable human exposure to PCBs, will be provided to the DEQ.

7. Investigation of WMU30 Former Electric Arc Furnace Admission Control/Dust Storage Pile: This regulated unit was "clean closed" under Part 111 on September 1, 1998. A soils investigation in this area will be conducted to determine the horizontal extent of lead in surface soils that exceed nonresidential generic direct contact criteria. In conducting the soils investigation, existing data from other studies in this area may be used. A report providing the results of the investigation and analysis will be provided to the DEQ, including measures to be taken to prevent unacceptable human exposure to lead, if any.
8. Investigation of WMU31 Electric Arc Furnace Emission Control Sludge/Dust Storage Tanks: This WMU was cleaned and closed in 1996. In the event that appropriate closure documentation can be identified it will be provided to the DEQ. In the event that documentation is insufficient, concrete samples from the remaining enclosure will be collected and analyzed for the ten Michigan metals. If concentrations are above the applicable non-residential criteria for soils using the groundwater surface water interface criteria under Part 201 of Michigan Act 451, the concrete will again be recleaned and

retested, or will be removed for off-site disposal. A report providing the results of investigation and analysis will be provided to the DEQ.

9. Manganese: Historic data will be used to identify dust control measures to be taken to prevent unacceptable human exposure to manganese. As additional data are available, the dust control measures will be adjusted to continue to prevent unacceptable human exposure to manganese.

#### APPENDIX 1

Samples from groundwater monitoring wells will be analyzed for the following chemicals of interest:

- Ammonia
- Arsenic
- Barium
- Chloride
- Chromium
- Copper
- Cyanide, Free
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Vanadium
- Zinc
- VOCs
- SVOCs
- PCBs
- pH
- Total Dissolved Solids



Attachment B

RTRR FACILITY





**Attachment C**  
WMUs and AOCs

