

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

FRANK J. KELLEY, Attorney General
of the State of Michigan, ex rel,
and MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiffs,

Case No. 94-77806-CE
Honorable Michael G. Harrison

v.

PITTSFIELD PRODUCTS, INC.,
ACO DIVISION OF PITTSFIELD PRODUCTS,
MCIPHERSON OIL COMPANY,
PUTNAM MANAGEMENT, INC.,
ANDREW J. FRANK,
WILLIAM J. DONOVAN, and SONS, INC.,

Defendants,

CONSENT DECREE

INDEX

I.	JURISDICTION	2
II.	PARTIES BOUND	2
III.	STATEMENT OF PURPOSE	3
IV.	DEFINITIONS	4
V.	IMPLEMENTATION	6
VI.	ADDITIONAL RESPONSE ACTIVITY	9
VII.	FINANCIAL ASSURANCE MECHANISM	10
VIII.	ENGAGEMENT OF A CONTRACTOR	14
IX.	SAMPLING AND ANALYSIS	15
X.	PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES	17
XI.	ACCESS	19
XII.	CREATION OF DANGER	21
XIII.	COMPLIANCE WITH OTHER LAWS	23
XIV.	RECORD RETENTION/ACCESS TO INFORMATION	24
XV.	SUBMISSIONS AND APPROVALS	26
XVI.	PROGRESS REPORTS	28
XVII.	INDEMNIFICATION AND INSURANCE	29
XVIII.	MODIFICATIONS/INCORPORATED BY REFERENCE	31
XIX.	DELAYS IN PERFORMANCE	32
XX.	DISPUTE RESOLUTION	36
XXI.	REIMBURSEMENT OF COSTS	38
XXII.	STIPULATED PENALTIES	41
XXIII.	COVENANT NOT TO SUE BY PLAINTIFFS AND RESERVATION OF RIGHTS	43
XXIV.	COVENANT NOT TO SUE BY SETTLING DEFENDANTS	50
XXV.	CONTRIBUTION PROTECTION	51
XXVI.	CERTIFICATION	52
XXVII.	TERMINATION/TYPE C REMEDY	53
XXVIII.	SEPARATE DOCUMENTS	53
XXIX.	EFFECTIVE DATE	54
Appendix A	PROPERTY LEGAL DESCRIPTION	
Appendix B	ENVIRONMENTAL ESCROW AGREEMENT	
TABLE 1	IMPLEMENTATION SCHEDULE	

CONSENT DECREE

The Plaintiffs are Frank J. Kelley, Attorney General of the State of Michigan, and Michigan Department of Environmental Quality ("MDEQ")¹.

The Settling Defendants are Pittsfield Products, Inc., and ACO Division of Pittsfield Products.

The Consent Decree requires the preparation and performance of the Reconfigured Remedial Investigation ("RRI"), Focused Feasibility Study ("FFS"), Remedial Action Plan ("RAP"), and the Remedial Action ("RA") for the Hamburg Unadilla Roads Contamination Area, ID No. 470013, Livingston County, Michigan (hereafter "Facility"). Pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451², as amended, Part 201 ("Act 451, Part 201" or "Part 201"), MCL 324.20101 et seq.,³ (formerly known as the Michigan Environmental Response Act ("MERA"), 1982 PA 307, as amended, MCL 299.601 et seq.), the State has incurred costs in responding to a release of hazardous substances at the Facility. Settling Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Decree or, (b) any terms or conditions set forth herein.

The entry of this Consent Decree by Settling Defendants is neither an admission of liability with respect to any issue dealt with in this Consent Decree nor is it an admission or denial of any factual allegations or legal conclusions stated or

¹Please refer to Paragraph 2.3

²1994 PA 451, which took effect March 30, 1995, consolidates all Michigan environmental and natural resources laws. NREPA, or Act 451, is also known as the Environmental Code.

implied herein.

The Parties agree, and the Court by entering this Consent Decree finds, that the Remedial Action set forth herein is necessary to abate Releases of Hazardous Substances into the environment, to control future Releases and to protect public health, and welfare, safety and the environment.

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

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137. This Court also has personal jurisdiction over the Settling Defendants. Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this Circuit.

1.2 The Court determines that the terms and conditions of this Consent 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 Consent Decree and to resolve disputes arising under this Consent Decree, including those that may be necessary for its construction, execution or implementation, subject to Section XX.

II. PARTIES BOUND

2.1 This Consent Decree shall apply to and be binding upon Plaintiffs and Settling Defendants and their successors and assigns. No change or changes in the ownership or corporate status of Pittsfield Products, Inc., and ACO Division of Pittsfield Products, shall in any way alter Settling Defendants' responsibilities under this Consent Decree. Settling Defendants shall provide the Michigan Department of Environmental Quality (MDEQ) with written notice prior to the transfer of ownership of part or all of the Facility in Pinckney, Livingston County, Michigan and shall also provide a copy of this Consent Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Settling Defendants shall comply with the requirements of Section 20116 of the Natural Resources and Environmental Protection Act, 1994 PA 451, Part 201, as amended, (Act 451, Part 201), MCL 324.20116, formerly known as the Michigan Environmental Response Act, 1982 PA 307, as amended.

2.2 All Settling Defendants shall be jointly and severally liable for the performance of the activities specified in the Consent Decree and for penalties arising from violations of this Consent Decree. The signatories to this Consent Decree certify that they are authorized to execute and legally bind the Parties they represent.

2.3 On August 1, 1995, Governor John Engler issued Executive Order 1995-18, creating the Michigan Department of Environmental Quality ("MDEQ") and transferred specified powers, authorities, duties and responsibilities from the Michigan Department of Natural Resources to MDEQ, including all power and authorities, duties and responsibilities under Part 201 of NREPA, hence, the Parties stipulate that the Plaintiffs in the caption

of this case shall be styled FRANK J. KELLEY, Attorney General of the State of Michigan, ex rel, the Michigan Department of Environmental Quality, Plaintiffs.

III. STATEMENT OF PURPOSE

3.1 In entering into the Consent Decree, the mutual objectives of Plaintiffs and Settling Defendants are: (a) to submit a Reconfigured Remedial Investigation report which determines the nature and extent of contamination and any threat to the public health, safety, or welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the Facility; (b) to submit a Focused Feasibility Study which determines and evaluates alternatives for Remedial Action to prevent, mitigate, abate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants or any discharge of injurious substances from the Facility; (c) to develop detailed plans for implementing the selected Remedial Action through the preparation of an approved RAP; and (d) to remediate all releases or threatened releases of hazardous substances, pollutants, or contaminants or any discharge of injurious substances, through the implementation of the selected Remedial Action.

3.2 The activities conducted under this Consent Decree are subject to approval by MDEQ and Settling Defendants shall provide all appropriate and/or necessary information for the RRI and/or FFS, for the selection of a Remedial Action, for the development of the RAP, and for the implementation of the Remedial Action, that is consistent with Act 451, Part 201, MCL 324.20101 et seq; the Act 451, Part 201 Rules, AACRS R 299.5101 et seq; and other applicable or relevant and appropriate federal and state laws and regulations.

IV. DEFINITIONS

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

4.2 "Facility" means the Property identified in Attachment A and any area, place, or property where a Hazardous Substance in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of Act 451, Part 201; MCL 324.20120a(1)(a) or (17), has been released, deposited, disposed of, or otherwise comes to be located.

4.3 "Focused Feasibility Study" ("FFS") means a process for developing, evaluating, and selecting appropriate Response Activities with consideration to the interim Response Activities previously performed at the Facility and the availability of permits and permission necessary to effectuate the Remedial Action.

4.4 "Parties" means the Plaintiffs and Settling Defendants.

4.5 "Plaintiffs" means Frank J. Kelley, Attorney General, of the State of Michigan, ex rel, the Michigan Department of Environmental Quality.

4.6 "Property" means the property located at 461 North Dexter and the area commonly called Loy Bond Park, which is immediately west of 461 North Dexter, in the Village of Pinckney, Michigan. Legal property descriptions for both parcels are provided in Appendix A.

4.7 "Reconfigured Remedial Investigation" ("RRI") means a report encompassing and summarizing all soil and groundwater data, studies, analyses and conclusions previously compiled at the Facility as well as such additional information as may be required to comply with Part 201 and the Part 5 of the Administrative Rules.

4.8 "Settling Defendants" means Pittsfield Products, Inc., and ACO Division of Pittsfield Products.

4.9 All other terms used in this Consent Decree which are defined in Act 451, Part 201 and the Act 451, Part 201 Rules shall have the same meaning in the Consent Decree as in Act 451, Part 201 and its rules.

V. IMPLEMENTATION

5.1 In accordance with this Consent Decree, Settling Defendants shall submit work plans for the performance of the Reconfigured Remedial Investigation (if necessary) and Remedial Action. The MDEQ shall approve, approve with modifications or disapprove work plans in accordance with the procedures specified in Section XV of this Consent Decree. Each work plan shall include a detailed description of the tasks to be conducted during the response activity, including the methodology, specifications, and a schedule for implementation and completion of the response activity(ies) and submission of a final report. Settling Defendants shall implement each work plan upon approval of each plan pursuant to the procedures provided for in this Consent Decree. As approved, each component of each work plan, and approved modifications thereto, shall be deemed incorporated into this Consent Decree and made an enforceable part of this Consent Decree. Settling Defendants shall submit to MDEQ a complete written description of the activities conducted pursuant to this Section as part of any Submission

required under the terms of this Consent Decree. Such description shall include, but not be limited to, an overview of the response activity(ies) conducted, a complete description of the methodologies employed and documentation and analysis of data collected pursuant to this Consent Decree and the subject Submission.

5.2 All Response Activities conducted at the Facility must be conducted in accordance with this Consent Decree; MDEQ-approved work plans; Act 451, Part 201; the Act 451, Part 201 Rules and other applicable laws and regulations.

5.3 By January 2, 1996, Settling Defendants shall submit to MDEQ for review and approval a Reconfigured Remedial Investigation. The Reconfigured Remedial Investigation shall include all data, analyses, studies and conclusions compiled at the Facility since 1987. If MDEQ project coordinator determines that the Reconfigured Remedial Investigation does not comply with Part 201 and Part 5 of the Administrative Rules promulgated pursuant to Part 201, Settling Defendants shall within thirty days of receipt of MDEQ determination, submit a work plan and implementation schedule for additional investigation to determine the horizontal and vertical extent of soil and groundwater contamination at the Facility.

5.4 Within 30 days of receipt of MDEQ approval of the additional remedial investigation work plan, Settling Defendants shall implement the plan.

5.5 Within 30 days of completion of the additional investigation activities (if necessary), Settling Defendants shall submit a report of their findings for MDEQ review and approval.

5.6 Within 75 days of receipt of MDEQ approval of the

Reconfigured Remedial Investigation and additional investigation activities report, if necessary, Settling Defendants shall submit for MDEQ review and approval a draft Focused Feasibility Study report.

5.7 Within 90 days of receipt of MDEQ approval of the Focused Feasibility Study report, Settling Defendants shall submit for MDEQ review and approval a draft RAP and an implementation schedule.

5.8 If the MDEQ Project Coordinator determines that a draft plan or report submitted pursuant to this Consent Decree does not comply with this Consent Decree, Part 201 or the Part 5 Rules and issues a Notice of Disapproval, Settling Defendants shall, within forty-five (45) days thereafter, correct the deficiencies and resubmit the plan or report for approval in accordance with Section 15.3 of the Consent Decree. (Table 1 summarizes the schedule of Submissions for compliance with this Consent Decree by Settling Defendants).

5.9 Within 30 days of receipt of MDEQ approval of the RAP, and upon receipt of all necessary approvals from county or municipal authorities, whichever is later, Settling Defendants shall commence implementation of the RAP in accordance with the approved time schedule contained therein.

5.10 At the time of submittal of the RAP, Settling Defendants shall submit to MDEQ for review and approval a Quality Assurance Project Plan which describes the quality control, quality assurance, sampling protocol and chain of custody procedures that shall be implemented in carrying out the tasks required by this Consent Decree. The Quality Assurance Project Plan proposed in connection with the RAP shall be applicable to all aspects of the RAP and shall contain all such necessary provisions regarding quality control, quality assurance, and

protocol and chain of custody procedures as shall be acceptable to MDEQ.

5.11 At the time of submittal of the RAP, Settling Defendants shall submit to MDEQ a Health and Safety Plan that assigns Facility safety and security responsibilities to all on-site personnel, establishes personnel safety and protection standards, establishes mandatory safety operating procedures for physical and chemical hazards that may be encountered at the Facility, demarcates and classifies various zones of contamination, establishes decontamination procedures, and provides for contingencies that may arise during the course of the implementation of the requirements of this Consent Decree. The Health and Safety Plan shall contain all such necessary provisions and procedures as are currently acceptable for the implementation of a remedial action plan in the State of Michigan and shall be acceptable with the MDEQ. The Health and Safety Plan is not, however, subject to formal MDEQ approval as required in Section 15 of this Consent Decree.

5.12 The Parties acknowledge and agree that this Consent Decree does not constitute a warranty or representation of any kind by MDEQ that the response activity(ies) performed in accordance herein will result in the achievement of the remedial criteria as established by law.

VI. ADDITIONAL RESPONSE ACTIVITY

6.1 As used in this Section, "Additional Response Activity" shall mean all activities not specifically set forth in the approved work plans for the Reconfigured Remedial Investigation, Focused Feasibility Study, and Remedial Action that MDEQ determines are necessary to meet the performance and cleanup standards described in the Act 451, Part 201 Rules, and

all applicable state and federal requirements, and that do not fundamentally change the overall remedial approach outlined in the approved Reconfigured Remedial Investigation, Focused Feasibility Study and Remedial Action. These activities may include modifications to the components of the Reconfigured Remedial Investigation, Focused Feasibility Study and Remedial Action and to the type and cost of materials, equipment, facilities, services and supplies used to implement the Reconfigured Remedial Investigation, Focused Feasibility Study and Remedial Action.

6.2 In the event that MDEQ determines that Additional Response Activity is necessary, notification of such Additional Response Activity will be provided to the Settling Defendants' project coordinator. Settling Defendants may also propose Additional Response Activities which shall be subject to approval by MDEQ. Any Additional Response Activities determined to be necessary by MDEQ, or otherwise agreed to by the Parties, shall be completed by Settling Defendants in accordance with the standards, specifications, and schedules approved by MDEQ.

6.3 Unless MDEQ agrees to extend the time period, within forty-five (45) days of receipt of notice from MDEQ that Additional Response Activities are necessary, or from the date on which the Parties otherwise agree that Additional Response Activities are necessary, Settling Defendants shall submit a plan for the Additional Response Activities to MDEQ for approval. The plan shall be developed in conformance with the requirements of this Consent Decree. The plan shall also include an estimate of the additional costs for the Additional Response Activity in accordance with Paragraph 7.5. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Consent Decree. Settling Defendants shall implement the plan for Additional Response Activities in accordance with the schedule contained therein, and shall make additional cash deposits to the

Environmental Escrow to reflect the costs of the Additional Response Activity pursuant to the requirements of Paragraph 7.5.

6.4 Nothing in this Section shall limit the power and authority of MDEQ, the State of Michigan, or this Court, to take, direct, or order all appropriate action to protect public health, welfare, and safety, 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.

VII. FINANCIAL ASSURANCE MECHANISM

7.1 Settling Defendants shall establish and fund an Environmental Escrow (Appendix B). The Escrow Agent shall be selected by Settling Defendants subject to the approval of the MDEQ. The Environmental Escrow shall be used solely and exclusively to reimburse the Plaintiff's response costs (if any) and oversight costs, and to conduct the Response Activities set forth in this Consent Decree, except for stipulated penalties or other monies deposited into it during the dispute resolution procedures provided for in Section XX, which may be withdrawn for those same purposes following completion of the dispute resolution process. In the event Settling Defendants are placed under Chapter 7 or 11 of the United States Bankruptcy Code, voluntarily or involuntarily, all of Settling Defendants rights, claims or interests in the Environmental Escrow shall be immediately vested in the State alone.

7.2 On or before December 27, 1995, Settling Defendants shall deposit the sum of six hundred thousand dollars (\$600,000) in cash into the Environmental Escrow.

7.3 On or before August 15, 1996, Settling Defendants shall deposit an additional four hundred thousand dollars

(\$400,000) in cash into the Environmental Escrow.

7.4 Each year thereafter, on the anniversary of the effective date of this Consent Decree, Settling Defendants' Project Coordinator shall submit to MDEQ for review and approval a Draft Cost Projection which itemizes the costs of all Response Activities to be conducted during the next calendar year and includes a fifteen (15) percent allowance for cost overruns and MDEQ oversight expenses. Within sixty (60) days of receipt of MDEQ approval of the Final Cost Projection, Settling Defendants shall deposit such additional sums of cash into the Environmental Escrow as may be necessary to supplement shortages in the Environmental Escrow in order to conduct the Response Activities for that year and reimburse MDEQ for response costs (if any) and oversight costs.

7.5 If, at any time, an event arises that would require additional costs or expenditures in excess of the costs or expenditures contemplated by the RRI, FFS or RAP, Settling Defendants shall: (a) notify MDEQ, in writing, within ten (10) days of the event; (b) provide MDEQ a preliminary estimate of the cost of addressing such an event within thirty (30) days after giving notice; and (c) make an additional cash deposit, if necessary, into the Environmental Escrow equal to the cost of addressing the event within sixty (60) days after MDEQ receives notice from Settling Defendants pursuant to subparagraph 7.7(a). If the event which requires additional costs or expenditure also requires Additional Response Activity pursuant to Section VI, then Settling Defendants shall concurrently comply with the plan submittal and implementation requirements of that Section.

7.6 Stipulated penalties and civil penalties shall not be paid from the Environmental Escrow except for any Stipulated Penalty amounts which are deposited to the Environmental Escrow in accordance with the provisions of the

Dispute Resolution procedures in Section XX.

7.7 If at any time after the commencement of Response Activities, Settling Defendants demonstrate to MDEQ that the funds deposited into the Environmental Escrow equal or exceed the funds necessary to operate, maintain and monitor such systems for the duration of the Response Activities, and Settling Defendants receive MDEQ's written approval, Settling Defendants' contribution to the Environmental Escrow pursuant to paragraph 7.4 shall not be required until such time as MDEQ notifies Settling Defendants that additional contributions by Settling Defendants are necessary.

7.8 The Escrow Agreement shall provide that the Escrow Agent will prepare and submit to MDEQ, audited annual financial reports on contributions to and disbursements from the Environmental Escrow, the balance of the accounts in the Escrow, and the expenses to maintain the Environmental Escrow, within ninety (90) days of each anniversary of the effective date of this Consent Decree.

7.9 The Environmental Escrow shall be released upon the issuance by MDEQ of the Certificate of Completion as provided in Section XXVI of this Consent Decree.

VIII. ENGAGEMENT OF A CONTRACTOR

8.1 Quantum Environmental Inc., has been designated by Settling Defendants to be their contractor to perform the technical activities required under this Consent Decree. All work performed by Settling Defendants' contractor pursuant to this Consent Decree shall be under the general direction and supervision of a qualified individual with a minimum of five (5) years direct experience in the investigation and cleanup of sites

of environmental contamination. Settling Defendants' contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A statement of qualifications and identification of personnel designated for the project shall be provided to the MDEQ within thirty (30) days of the entry of this Consent Decree.

8.2 Settling Defendants shall provide a copy of this Consent Decree to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the Response Activities performed pursuant to this Consent Decree, no later than fourteen (14) days after the effective date of this Consent Decree or after the date of such retention. Notwithstanding the terms of any contract, Settling Defendants are responsible for compliance with this Consent Decree and for ensuring that their contractors, subcontractors, laboratories, and consultants perform all work in conformance with the terms and conditions of this Consent Decree.

IX. SAMPLING AND ANALYSIS

9.1 All sampling and analysis conducted to implement this Consent Decree shall follow the methodologies prescribed by the Act 451, Part 201 Rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits and analytical methods.

9.2 Settling Defendants, or their consultant(s) or subcontractor(s), shall provide MDEQ ten (10) days notice prior to any sampling activity undertaken pursuant to this Consent Decree to allow the Environmental Response Division (ERD) Project Coordinator, or his/her authorized representative, to take split or duplicate samples and/or to observe the sampling procedures.

In circumstances where ten (10) days notice is not possible, Settling Defendants, or their consultant(s) or subcontractor(s), shall provide notice of the planned sampling activity as soon as possible to the ERD Project Coordinator and explain why earlier notification was not possible. If the ERD Project Coordinator concurs with the explanation provided, Settling Defendants may forego the 10-day notification period.

9.3 Settling Defendants shall provide MDEQ with the results of all environmental sampling, treatment system sampling, underground storage tank (UST) system tightness tests, aquifer pump tests and other data generated in the performance or monitoring of any requirement under this Consent Decree, the FAM, Parts 201, 211 or 213 of Act 451, or other relevant authorities. Said results shall be included in progress reports as set forth in Section XVI.

9.4 Settling Defendants shall assure that MDEQ and its authorized representatives are allowed access to any laboratory utilized by Settling Defendants in implementing this Consent Decree for quality assurance monitoring.

9.5 Notwithstanding any provision of this Consent Decree, the MDEQ and the Attorney General shall retain all of their information gathering, inspection and enforcement authorities and rights under Act 451, Part 201 and any other applicable statute or regulation.

X. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

10.1 Settling Defendants' project coordinator shall be Mr. Keith Gadway. MDEQ's Project Coordinator is Mr. Farsad Fotouhi. Whenever notice is required to be given or a communication, report, sampling data, analysis of data or other

technical Submission is required to be forwarded by one party to the other party under this Consent Decree, such communication shall be directed to the Project Coordinators at the below listed addresses. 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.

As to MDEQ:

- A. For Record Retention pursuant to Section XIV and Financial/Escrow matters pursuant to Section VII:

Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: 517-373-2794
Fax: 517-373-2637

(Via courier)
300 South Washington Square
Lansing, MI 48933

- B. For all payments pertaining to this Consent Decree:

Administration Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926

- C. For all other matters pertaining to this Consent Decree:

Mr. Farsad Fotouhi, Project Coordinator
Environmental Response Division
Shiawassee District Office
Michigan Department of Environmental Quality
10650 Bennett Road, Morrice, Michigan 48857
Telephone: 517-625-4600
Fax: 517- 625-5000

As to Defendant:

- A. Pittsfield Products, Inc.

Mr. Theodore Fosdick, President
P.O. Box 1027
5741 Jackson Road
Ann Arbor, Michigan 48103
Telephone: 313-665-3771
Fax: 313-665-3132

B. Notices shall also go to:

Mr. Bruce T. Wallace, Esq.
Hooper, Hathaway, Price, Beuche & Wallace
126 South Main Street
Ann Arbor, Michigan 48104-1945
Telephone: 313-662-4426
Fax: 313-662-9559

10.2 Defendants' Project Coordinator shall have primary responsibility for overseeing the implementation of the Response Activities and other requirements specified in this Consent Decree.

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

XI. ACCESS

11.1 To the extent access to the Facility is owned, controlled by, or available to Settling Defendants from the effective date of this Consent Decree, MDEQ, its authorized employees and representatives, upon presentation of proper

credentials, shall have access at all reasonable times to the Facility for the implementation of the Response Activities under the Consent Decree, or otherwise fulfilling any responsibility under federal or state law with respect to the environmental conditions at the Facility, including, but not limited to:

(a) Monitoring the Response Activities or any other activities taking place under this Consent Decree on the Facility;

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

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

(d) Obtaining samples;

(e) Assessing the need for or planning and implementing response actions at the Facility;

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

(g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents required to assess compliance with this Consent Decree; and

(h) Interviewing employees, contractors, agents, or representatives of Settling Defendants.

11.2 To the extent that the Facility or any other area where the Response Activities are to be performed by Settling Defendants under this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees and representatives. To the extent that any access agreement is embodied in a written document, Settling Defendants shall provide MDEQ with a copy of each access agreement secured pursuant to this subsection. For purposes of this subsection, "best effort" includes, but is not limited to, reasonable compensation to the owner to secure such access and taking judicial action to secure such access pursuant to Section 20135a of Part 201.

11.3 Any lease, purchase, contract or other agreement entered into by Settling Defendants which transfers to another party a right of control over the Property or a portion of the Property shall contain a provision preserving for the MDEQ or another party undertaking the Response Activities and their authorized representatives, the access provided under Section XI.

11.4 All Parties granted access to the Facility pursuant to this Consent Decree shall comply with all applicable health and safety laws and regulations.

11.5 Notwithstanding any provision of this Consent

Decree, MDEQ shall retain all of its inspection and access authorities under any applicable state and federal statute or regulation.

XII. CREATION OF DANGER

12.1 Upon obtaining information concerning the occurrence of any event during performance of Response Activities conducted pursuant to this Consent Decree that causes a release or threat of a release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare, or the environment, Settling Defendants shall immediately undertake all appropriate action to prevent, abate, or minimize such release, threat or endangerment and shall immediately notify MDEQ's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by Settling Defendants shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan of Paragraph 5.11. Settling Defendants shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent recurrence of such an incident.

Regardless of whether Settling Defendants notify MDEQ under this subsection, if Response Activities undertaken under this Consent Decree cause or threaten a release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare, or to the environment, the MDEQ may:

(a) require Settling Defendants to stop Response Activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat, or endangerment; (b) require Settling Defendants to undertake any such activities that MDEQ determines are necessary to prevent or abate any such release, threat, or endangerment; and/or (c) undertake any actions that MDEQ determines are necessary to prevent or abate such release, threat, or endangerment ("future response activities"). In the event that MDEQ undertakes any action to abate such a release, threat, or endangerment, Settling Defendants shall reimburse the State for all costs incurred by the State that are lawfully incurred. Payment of such costs shall be made in the manner provided in Paragraph 21.3.

12.2 Nothing in the preceding subsection shall limit the power and authority of MDEQ, the State of Michigan, or this Court to take, direct, or order all appropriate action to protect the public health, welfare, and safety, 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.

XIII. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Act 451, Part 201, the Act 451, Part 201 Rules, laws relating to occupational safety and health, and other state and federal environmental laws. Other agencies may also be called upon to review the conduct of Response Activities under this Consent Decree. Further, Settling Defendants must designate, in a report to MDEQ, any facilities that Settling Defendants propose to use for such off-site transfer, storage, treatment, or disposal of any waste materials.

XIV. RECORD RETENTION/ACCESS TO INFORMATION

14.1 Settling Defendants and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Decree and for a period of ten (10) years after its termination, all records, sampling or test results, charts, and other documents relating to historical hazardous substance disposal, treatment or handling activities at the facility or that are maintained or generated pursuant to any requirement of this Consent Decree. After the ten (10) year

period of document retention, Settling Defendants and their successors and assigns shall obtain the written permission of the MDEQ prior to the destruction of such documents and, upon request, Settling Defendants and/or their successors shall relinquish custody of all documents to MDEQ. Settling Defendants' request shall be accompanied by a copy of this Consent Decree and sent to the address specified in Paragraph 10.1.

14.2 Settling Defendants shall, upon request, provide to MDEQ all documents and information within its possession, or that is in the possession or control of its employees, contractors, agents or authorized representatives relating to the Response Activities at the Facility or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence, or other documents or information related to the Response Activities. Settling Defendants shall also, upon request, make available to MDEQ, upon reasonable notice, Settling Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the Response Activities.

14.3 Settling Defendants may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information requested under this Consent Decree. Such an

assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to MDEQ, it may be made available to the public by MDEQ without further notice to Settling Defendants. Analytical data shall not be claimed as confidential or privileged by Settling Defendants.

XV. SUBMISSIONS AND APPROVALS

15.1 All plans, reports, documents, schedules and Submissions ("Submissions") shall be delivered to MDEQ in accordance with the schedule set forth in this Consent Decree. Prior to receipt of MDEQ approval, any report submitted to MDEQ for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from MDEQ. This document was prepared pursuant to a Court Order. The opinions, findings, and conclusions expressed are those of the authors and not those of MDEQ."

15.2 Upon receipt of any Submission relating to the Response Activities that is required to be submitted for approval under this Consent Decree, MDEQ project coordinator will in writing: (a) approve the Submission; (b) disapprove the Submission, notifying Settling Defendants of deficiencies; or (c)

approve the Submission with modifications. Upon receipt of a notice of approval or modification from MDEQ, Settling Defendants shall proceed to take any action required by the Submission as approved or as modified, and shall submit a new cover page marked "Final". In the event that modifications are required, the Parties shall mutually agree upon such time extensions, if any, as will be reasonably required to comply with the substance of the modification.

15.3 Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from MDEQ, Settling Defendants shall, within forty-five (45) days thereafter, correct the deficiencies and resubmit the Submission for approval. Notwithstanding a notice of disapproval, Settling Defendants shall proceed with any response activity(ies) not directly related to the deficient portion of the Submission. If, upon one or more resubmission(s) within the forty-five (45) day period, or the longer time period if the notice so specifies, the final Submission is not approved, MDEQ shall so advise Settling Defendants and Settling Defendants shall, upon receipt of said notice, be deemed to be in violation of this Consent Decree.

15.4 A finding of approval or an approval with modifications shall not be construed to mean that MDEQ concurs

with all conclusions, methods, or statements in the Submissions or warrants that the Submission comports with law.

15.5 No informal advice, guidance, suggestions, or comments by MDEQ regarding any Submissions by Settling Defendants shall be construed as relieving Settling Defendants of their obligation to obtain such formal approval as may be required by this Consent Decree.

XVI. PROGRESS REPORTS

Settling Defendants shall provide to MDEQ written monthly progress reports until the selected Remedial Action has obtained operational status. Quarterly progress reports shall be submitted thereafter until the Certificate of Completion has been issued. Progress reports shall: (a) describe the activities that have been taken toward achieving compliance with this Consent Decree during the previous month or quarter; (b) describe data collection and activities scheduled for the next month or quarter; and (c) include all results of sampling and tests and other data received by Settling Defendants, their employees or authorized representatives during the previous month or quarter relating to the Response Activities performed pursuant to this Consent Decree. The first monthly report shall be submitted to the MDEQ within sixty (60) days following the entry date of this

Consent Decree by the Court and thereafter until issuance of the Certificate of Completion as provided in Section XXVI.

XVII. INDEMNIFICATION AND INSURANCE

17.1 Settling Defendants 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 arising from or on account of acts or omissions of Settling Defendants, their officers, employees, agents, and any persons acting on their behalf or under their control in carrying out Response Activities pursuant to this Consent Decree. Neither the State of Michigan nor its departments, agencies, officials, agents, employees, contractors, and representatives shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any contractor shall be considered an agent of the State.

17.2 Settling Defendants waive any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, 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 Settling Defendants and any person for performance of Response Activities at the Facility or any other property where response activities are performed under this Consent Decree, including claims on account of construction delays.

17.3 Settling Defendants 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 arising from, or on account of, any contract, agreement, or arrangement between Settling Defendants and any person for performance of Response Activities at the Facility or any other property where Response Activities are performed under this Consent Decree, including claims on account of construction delays.

17.4 Prior to commencing Response Activities on or near the Facility, Settling Defendants shall secure, and shall maintain for the duration of this Consent Decree, comprehensive general liability insurance with limits of one million dollars (\$1,000,000), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured Parties. If Settling Defendants demonstrate 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, Settling Defendants need to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, Settling Defendants shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and MDEQ's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Consent Decree, Settling Defendants 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 Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Response Activities under this Consent Decree, Settling Defendants shall provide to MDEQ written confirmation of such insurance.

XVIII. MODIFICATIONS/INCORPORATION BY REFERENCE

18.1 If this Consent Decree, other than work plans for the Reconfigured Remedial Investigation, Focused Feasibility Study, Remedial Action or Time Schedules contained in this Consent Decree, is modified, such modification shall be in writing by signature of the Director of the MDEQ and the Attorney General and Settling Defendants' project coordinator or other

authorized representative after entry by the court. Modifications to the Reconfigured Remedial Investigation, Focussed Feasibility Study and Remedial Action Plan and Time Schedules contained in this Consent Decree shall be made in writing by the MDEQ Project Coordinator.

18.2 All modifications to the Reconfigured Remedial Investigation, Focused Feasibility Study, and Remedial Action and Time Schedules contained herein are incorporated into this Consent Decree and are an enforceable part thereof. Any plans, specifications and schedules required by this Consent Decree are, upon approval by MDEQ, incorporated into this Consent Decree and made enforceable parts thereof. Any delay or noncompliance with such Submissions or attachments to a Submission shall be considered delay or noncompliance with the requirements of this Consent Decree and shall subject Settling Defendants to penalties pursuant to Section XXII.

XIX. DELAYS IN PERFORMANCE

19.1 Defendant shall perform the requirements of this Consent Decree within the schedules required to be submitted pursuant to Section V, VI, XVI, unless performance is prevented or delayed by events which constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall

not be deemed a violation of Settling Defendants' obligations under this Consent Decree in accordance with this Section.

19.2 For the purpose of this Consent Decree, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of and without the fault of Settling Defendants, such as: an Act of God; untimely review of administratively complete permit applications or Submissions by the State, county or municipal authority; and acts or omissions of third parties with whom Settling Defendants have no contractual relationships or are otherwise not responsible for, that could not have been avoided or overcome by Settling Defendants' due diligence, and that delay the performance of an obligation under this Consent Decree. The failure of State, county or municipal units of government to issue a permit or permission may be considered a "Force Majeure" by a demonstration by Settling Defendants that it was not foreseeable, and that it was beyond the control of and without the fault of Settling Defendants. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, or failure to obtain a permit or license as a result of Settling Defendants' actions or omissions.

19.3 When circumstances occur that Settling Defendants believe constitute a "Force Majeure", Settling Defendants shall

notify the MDEQ by telephone or telefax of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Within five (5) working days after Settling Defendants first becomes aware of such circumstances, Settling Defendants shall supply MDEQ, in writing: an explanation of the cause(s) of any actual or expected delay; the obligations of this Consent Decree effected by the delay; the anticipated duration of the delay; the measures taken and to be taken by Settling Defendants to avoid, minimize or overcome the delay and the timetable for implementation of such measures.

19.4 In the event that Settling Defendants comply with this Section and MDEQ concurs that an event causing a delay is a "Force Majeure", MDEQ shall not deem Settling Defendants to be out of compliance with this Consent Decree as to the obligation directly affected by the "Force Majeure". MDEQ shall communicate its concurrence to Settling Defendants and shall identify which obligations are directly affected by the "Force Majeure". Such a MDEQ determination does not excuse or limit Settling Defendants' obligations under this Consent Decree which are not identified by MDEQ as being directly affected by the "Force Majeure."

19.5 Settling Defendants' failure to comply with the verbal and written notice provisions of this Section shall constitute a waiver of Settling Defendants' right to assert a claim of "Force Majeure" with respect to the circumstances in

question, and MDEQ may, accordingly, deem Settling Defendants to be in noncompliance with this Consent Decree. Similarly, if MDEQ determines that an event is not a "Force Majeure", MDEQ may deem Settling Defendants to be in noncompliance with this Consent Decree if Settling Defendants do not timely perform the obligation or any other obligation imposed upon Settling Defendants by this Consent Decree. Any dispute regarding events claimed as "Force Majeure" or Settling Defendants' noncompliance with this Section shall be negotiated in good faith by the Parties and, lacking resolution, shall be subject to Dispute Resolution, as provided for in Section XX.

19.6 Settling Defendants shall have the burden of demonstrating that: (i) the delay is or was caused by a "Force Majeure" event; and (ii) that the amount of additional time requested is necessary to compensate for that event. An extension of one compliance date based upon a particular "Force Majeure" incident does not mean that Settling Defendants qualify for an extension of a subsequent compliance date without meeting their burden of proof as specified in this Section for each incremental step or other requirement for which an extension is sought.

XX. DISPUTE RESOLUTION

20.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree and shall apply to all provisions of this Consent Decree, excluding Section XII, Creation of Danger. Any dispute that arises under this Consent Decree shall, in the first instance, be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by an agreement of the Parties. If the Parties fail to resolve a dispute informally, Settling Defendants may submit the issue in dispute and all supporting documentation to the Chief, Environmental Response Division, for review and a decision. Within five (5) days of receipt of the dispute, the Chief shall schedule a meeting of the Project Coordinators for the Parties and their representatives. Within five (5) days of the meeting between the Parties, the Chief shall issue a decision which shall become the resolution proposed by MDEQ. Within five (5) days of receipt of the decision, the Settling Defendants' Project Coordinator shall notify the MDEQ's Project Coordinator as to whether they accept or reject the decision. The period for informal negotiations with the Division Chief shall end upon receipt of the Settling Defendants' position as to acceptance or rejection of the decision of the Division Chief, or at the conclusion of the fifth day, whichever is sooner. All dates in this paragraph may be extended by an agreement of the Parties.

20.2 If the Parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by MDEQ unless, within ten (10) days after receipt of MDEQ's proposed resolution, Settling Defendants submit a Notification to the MDEQ that they are invoking nonbinding mediation as the next step in the dispute resolution process. Said Notification shall set forth the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting their position; and all supporting documentation on which the Settling Defendants rely. The Notification shall also include the efforts made by the Parties to resolve the dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Decree. At the time of said Notification, Settling Defendants shall provide MDEQ a list of three names of proposed mediators from which MDEQ shall either select a mediator or propose a list of three additional persons for selection by the Settling Defendants. The mediator shall be a person who is mutually agreed to by the Parties. The services of the mediator shall be paid by the Settling Defendants.

20.3 Within ten (10) days of the selection of a mediator, the MDEQ shall submit to the mediator and the Settling Defendants a response to the Notification. The mediator shall set a date for the presentation of oral arguments with regard to

the positions taken by the Parties and shall issue a decision as to whether the position of the MDEQ is arbitrary, capricious or otherwise not in accordance with law. Within five (5) days of receipt of the decision, the Parties shall notify the mediator and each other as to whether they accept or reject the decision.

20.4 If the Parties fail to resolve a dispute by accepting the decision of the mediator, then the dispute shall be considered resolved in accordance with the resolution proposed by MDEQ unless, within ten (10) days after receipt of the MDEQ's response to the mediator's decision, the Settling Defendants file a Petition For Resolution with this Court setting forth 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 on which the Settling Defendants rely. The Petition For Resolution shall also include the efforts made by the Parties to resolve the dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Decree. The Petition For Resolution, and any other Pleading or argument submitted to this Court, may not include any reference to the decision of the mediator, unless agreed to by the Parties or ordered by this Court.

20.5 The sending of a Notification of the filing of a Petition For Resolution asking the Court to resolve a dispute

shall not of itself extend or postpone any obligation of Settling Defendants under this Consent Decree, provided that payment of a demand from MDEQ for reimbursement of costs or stipulated penalties with respect to the disputed matter, with any applicable interest, shall be to the Environmental Escrow established pursuant to Section VII during the pendency of the dispute resolution. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any material term or condition of this Consent Decree. Penalties shall be paid into this account as they continue to accrue, at least every seven (7) days. Upon each deposit, Settling Defendants shall provide MDEQ with a copy of the deposit slip. In the event, and to the extent, that Settling Defendants do not prevail on the disputed issue, stipulated penalties and any applicable interest shall be paid within ten (10) days in the manner provided in Paragraph 21.4.

20.6 Notwithstanding this section, Settling Defendants shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Sections XXI and XXII, as appropriate.

20.7 In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the work,

Settling Defendants shall have the burden of demonstrating on the administrative record that the position of MDEQ is arbitrary and capricious or otherwise not in accordance with law. For purposes of this subsection, the adequacy of the work includes: (1) the adequacy or appropriateness of permits, licenses, and plans, and procedures to implement such permits, licenses, or plans, or any other item requiring approval by MDEQ under this Consent Decree; and (2) the adequacy of construction and remedial action performed pursuant to this Consent Decree. In proceedings on any dispute, Settling Defendants shall bear the burden of persuasion on factual issues. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to all disputes under this Consent Decree.

XXI. REIMBURSEMENT OF COSTS

21.1 For the purposes of this Consent Decree, the term "past response activity costs" shall mean those costs incurred and paid by the Plaintiffs prior to the entry of this Consent Decree. For purposes of this Consent Decree, the term "Oversight costs" include, but are not limited to, costs 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; enforce, monitor and document compliance with this Consent Decree.

21.2 To resolve all claims for past response activity costs relating to matters covered in this Consent Decree, Settling Defendants shall pay MDEQ a total of One Million Two Hundred Thousand (\$1,200,000) dollars. The first payment of Two Hundred Thousand (\$200,000) dollars shall be made on or before December 27, 1995. Additional annual payments of Two Hundred Thousand (\$200,000) dollars each shall be made on or before December 27 of each succeeding year until the total amount sum is paid. All payments shall be made pursuant to Section 21.4.

21.3 Settling Defendants shall reimburse the Plaintiffs for future response activity costs incurred by Plaintiffs and all future oversight costs incurred by the Plaintiffs in overseeing the remedial activities of Settling Defendants for matters covered in this Consent Decree. As soon as possible after each anniversary of the effective date of this Consent Decree, pursuant to Sections 20119(4) and 20137(1) of Act 451, Part 201; MCL 324.20119(4) and MCL 324.20137(1), MDEQ will provide Settling Defendants with a written demand of oversight and response activity costs lawfully incurred by the Plaintiffs. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

21.4 Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of Act 451, Part 201, MCL 324.20108(3). Settling Defendants shall also have the right to request a full and complete accounting of all demands made hereunder, including timesheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to MDEQ. Provision of these documents by the MDEQ may result in MDEQ incurring additional oversight costs which will be included in the annual demand of oversight costs. Except as provided by Section XX (Dispute Resolution), Settling Defendants shall reimburse MDEQ for such costs within thirty (30) days of receipt of a written demand from MDEQ. In any challenge by Settling Defendants to a demand for recovery of costs by MDEQ, Settling Defendants shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(1)(a) of Act 451, Part 201, MCL 324.20126a(1)(a). All payments made pursuant to this Consent Decree, with the exception of deposits to the Environmental Escrow Account, shall be by check payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first-class mail to the address in Section X. The "Hamburg Unadilla Roads Groundwater Contamination Area" site name and "MERA Site ID Number 470013" Site ID Number shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to MDEQ Project Coordinator and the Assistant Attorney General in Charge,

Natural Resources Division, Department of Attorney General,
Stevens T. Mason Building, 8th Floor, 530 W. Allegan, P.O. Box
30028, Lansing, Michigan 48909.

XXII. STIPULATED PENALTIES

22.1 Except as provided by Sections XIX, and XX, if Settling Defendants fail or refuse to comply with any material term or condition in Sections V, VI, VII, XII, XVII, and XXI, Settling Defendants shall pay MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$300
16th through 30th Day	\$500
Beyond 30 Days	\$1,000

A "material term" shall include, for example, all dates upon which all Submissions and obligations are due.

22.2 Except as provided in Section XIX and XX, if Settling Defendants fail or refuse to comply with any other term or condition of this Consent Decree, other than Paragraph 22.1 and Section XIII, Settling Defendants shall pay MDEQ stipulated

penalties of \$250.00 a day for each and every failure or refusal to comply.

22.3 Settling Defendants shall notify MDEQ, in writing, of any violation of this Consent Decree no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify MDEQ as required by this Paragraph constitutes an independent violation of this Consent Decree.

22.4 Stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred, and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Decree.

22.5 Except as provided in Section XX, stipulated penalties owed to MDEQ shall be paid no later than thirty (30) days after receiving a written demand from MDEQ. Payment shall be made in the manner provided in Paragraph 21.3. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 20126a(3) of Act 451, Part 201, MCL 324.20126a(3). Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes an independent violation of the terms and

conditions of this Consent Decree.

22.6 Liability for or payment of stipulated penalties are not MDEQ's exclusive remedy in the event Settling Defendants violate this Consent Decree. MDEQ reserves the right to pursue any other remedy or remedies that it is entitled to under this Consent Decree or any applicable law for any failure or refusal of Settling Defendants to comply with the requirements of this Consent Decree, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan, and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

**XXIII. COVENANT NOT TO SUE BY PLAINTIFFS AND
RESERVATION OF RIGHTS**

23.1 In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in this Section, Plaintiffs covenant not to sue or to take administrative action against Settling Defendants for Covered Matters.

23.2 "Covered Matters" shall include any liability to

the State of Michigan under applicable state and federal law relating to the Facility for the following:

- (a) Performance of Response Activities by Settling Defendants under the Consent Decree;
- (b) Reimbursement of past costs incurred by the State as set forth in Section 21 of this Consent Decree; and
- (c) Payment of oversight costs incurred by the State as set forth in Section 21 of this Consent Decree.

23.3 With respect to liability for Facility response costs incurred prior to the effective date of this Consent Decree, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraph 21.2. With respect to liability for performance of Response Activities required to be performed under this Consent Decree, response activity costs incurred by the Plaintiffs after the effective date of this Consent Decree, and reimbursement of MDEQ oversight costs by Settling Defendants pursuant to Paragraph 21.3 of this Consent Decree, the covenant not to sue shall take effect upon issuance by MDEQ of the Certificate of Completion in accordance with Section XXVI. The covenant not to sue extends only to the Settling Defendants, their successors and assigns, and does not extend to any other person.

23.4 The covenant not to sue set forth in this Section

does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 23.2. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(a) Liability arising from a violation by Settling Defendants of a requirement of this Consent Decree, including conditions of approved Submissions required herein;

(b) Liability for any other Response Activities required at the Facility after entry of this Consent Decree,

(c) Liability for response costs incurred by the Plaintiffs after entry of this Consent Decree, other than those referred to in Section XXI,

(d) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) outside of the Facility and not attributable to Facility;

(e) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) taken from the Facility;

(f) Liability for damages for injury to, destruction of, or loss of natural resources;

(g) Liability for criminal acts;

(h) Any matters for which the State is owed indemnification under Section XVII of this Consent Decree; and

(i) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

23.5 Plaintiffs and Settling Defendants acknowledge and understand that Plaintiffs have relied upon the corporate financial information disclosed by the Settling Defendants and that Plaintiff's execution of this Consent Decree is based upon the truth, accuracy and completeness of said information. Plaintiffs and Settling Defendants further acknowledge and understand that if the corporate information was materially inaccurate or incomplete at the time it was submitted to Plaintiffs, the Court may declare this Consent Decree and the covenant not to sue contained herein, null and void and of no effect.

23.6 Plaintiffs' Pre-Certification of Completion
Reservations: Notwithstanding any other provision of this

Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further Response Activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, prior to Certification of Completion of the remedial activities:

(a) Conditions at the Facility, previously unknown to MDEQ, are discovered after the entry of this Consent Decree; or

(b) Information is received, in whole or in part, after the entry of this Consent Decree; and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of the public health, safety, or welfare, or the environment.

23.7 Plaintiffs' Post-Certification of Completion Reservations: Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue and administrative order seeking to compel Settling Defendants (1) to perform further Response Activities relating to the Facility or (2) to

reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(a) Conditions at the Facility, previously unknown to MDEQ, are discovered after the Certification of Completion; or

(b) Information is received, in whole or in part, after the Certification of Completion; and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of the public health, safety, or welfare, or the environment.

23.8 For purposes of Paragraph 23.6, the information previously received by and the conditions known to MDEQ shall include only that information and those conditions set forth in the administrative record regarding this Facility or otherwise supporting the Remedial Action. For purposes of Paragraph 23.7, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in the administrative record regarding this Facility or otherwise supporting the Remedial Action, and any information received by MDEQ pursuant to the requirements of this Consent Decree prior to Certification of Completion of the

Remedial Action.

23.9 In the event MDEQ determines that Settling Defendants have failed to implement any provisions of the Consent Decree in an adequate or timely manner, MDEQ reserves the right to perform, or contract to have performed, any and all portions of the Response Activity(ies) as MDEQ determines necessary and to recover response activity costs.

23.10 Notwithstanding any other provision of this Consent Decree, MDEQ retains all authority and reserves all rights to take any and all Response Activity(ies) authorized by law.

23.11 Nothing in this Section shall limit the power and authority of the MDEQ, the State of Michigan, or this Court, to take, direct, or order all appropriate action to protect public health, welfare, and safety, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants on, at, or from the Facility.

XXIV. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

24.1 Settling Defendants hereby covenant not to sue

and agree not to assert any claim or cause of action against the State of Michigan with respect to the Facility or Response Activities relating to the Facility arising from this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of Act 451, Part 201, MCL 324.20119(5) or any other provision of law.

24.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Settling Defendants agree not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the MDEQ or the Attorney General in the subsequent 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 XXIII (Covenants Not to Sue by the State).

XXV. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of Act 451, Part 201, MCL

324.20129(5) and to the extent provided in Section XXIII, Settling Defendants shall not be liable for claims for contribution regarding matters addressed in this Consent Decree. Entry of the Consent Decree does not discharge the liability of any other person(s) liable under Section 20126 of Act 451, Part 201, MCL 324.20126. In any action by Settling Defendants for contribution from any person not a party to this Consent Decree, Settling Defendants' cause of action shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to Act 451, Part 201 or other applicable federal or state law, in accordance with Section 20129(9) of Act 451, Part 201, MCL 324.20129(9) .

XXVI. CERTIFICATION

26.1 When Settling Defendants determine that they have completed all the Response Activities required by this Consent Decree, they shall submit to MDEQ a Notification of Completion and a draft final report. The draft final report shall summarize all Response Activities performed under this Consent Decree. The draft final report shall include or reference any supporting documentation.

26.2 Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion, the draft

final report, any supporting documentation, and the actual Response Activities performed pursuant to this Consent Decree. Within ninety (90) days of receipt of the Notification of Completion, MDEQ will determine whether Settling Defendants have satisfactorily completed all requirements of this Consent Decree, including, but not limited to, completing the Response Activities required by this Consent Decree, complying with all terms and conditions of this Consent Decree, and paying any and all cost reimbursement and stipulated penalties owed to MDEQ. If MDEQ determines that all requirements have been satisfied, MDEQ will so notify Settling Defendants, and upon receipt of a "Final" final report in accordance with Section XV, shall issue a Certificate of Completion. The Environmental Escrow established pursuant to Section VII may be dissolved, after issuance of the Certificate of Completion.

XXVII. TERMINATION/LIMITED CATEGORY REMEDY

Upon completion of the Response Activities addressing the existing contamination in connection with the Facility and issuance of a Certificate of Completion in accordance with Section XXVI, Settling Defendants' obligations as set forth in Sections V, VI and XI shall automatically terminate except to the extent that such obligations may be incorporated into a written agreement between the State and Settling Defendants with respect

to a Limited Category Closure pursuant to Act 451, Part 201 and the Act 451, Part 201 administrative rules.

XXVIII. SEPARATE DOCUMENTS

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

XXIX. EFFECTIVE DATE

This Consent Decree shall be effective December 27, 1995. All times for performance of activities under this Decree shall be calculated from that date.

IT IS SO AGREED BY:

Frank J. Kelley
Attorney General
Attorney for Plaintiffs

By: *Sharon H. Whitmer*
Sharon H. Whitmer (P27244)
Assistant Attorney General
Natural Resources Division
Michigan Department of Attorney
General
530 West Allegan Street
Lansing, MI 48909
(517) 373-7540

Dated: 12/20/95

Bruce T. Wallace for
Bruce T. Wallace (P24148)
Attorney for Defendants
Hooper, Hathaway, Price,
Beuche & Wallace
126 South Main Street
Ann Arbor, MI 48104-1945
(313) 662-4426

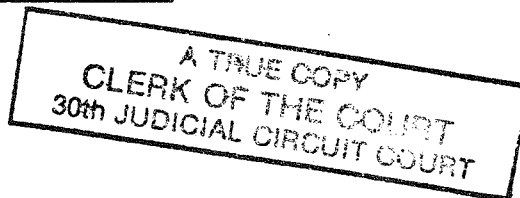
Dated: 12-19-95

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 21st day of
Dec., 199[5].

MICHAEL G. HARRISON
Honorable Michael G. Harrison

ATTEST: A TRUE COPY

JANETTE J. SMITH
Deputy Court Clerk



APPENDIX A

The legal description as obtained from the Livingston County Michigan Register of Deeds, (Liber 313, Page 456) for the property located at 461 North Dexter Street and the area commonly called Loy Bond Park, which is immediately west of 461 North Dexter in the Village of Pinckney, Livingston County, Michigan are:

Property No. 14-23-304-009
Lots 1,2,3,6,7 and 8 of Block 4, Range 3

Property No. 14-23-304-001
Lots 1,2,3,4,5,6,7 and 8 of Block 4 Range 4. J.W.
Hinchey's addition to the Village of Pinckney, as duly
laid out and recorded.

APPENDIX B

ENVIRONMENTAL ESCROW AGREEMENT

THIS AGREEMENT is entered into and effective this 27th day of December, 1995, by and among Edwards, Koshiw, Melton & Company, P.C., ("Escrow Agent"), the State of Michigan and its Department of Environmental Quality (together, "the State"), and the Pittsfield Products, Inc., a Corporation, ("Pittsfield Products").

R E C I T A L S

A. The terms used in this Environmental Escrow Agreement are the same as those defined in the Consent Decree effective on 27th of December, 1995.

B. Effective December 27, 1995, the State and Pittsfield Products entered into the Consent Decree. Pursuant to the terms of the Consent Decree, Pittsfield Products shall deposit cash in the amount of \$600,000.00 into the Environmental Escrow established by the parties herein.

Pittsfield Products shall deposit additional cash in the amount of \$400,000.00 into the Environmental Escrow on or before August 15, 1996.

The amount held in the Environmental Escrow and any earnings generated by the investment of this amount is hereinafter collectively referred to as the "Escrow Amount" pursuant to the instructions hereinafter set forth in this Escrow Agreement.

C. The State and Pittsfield Products have entered into the Consent Decree which provides that Pittsfield Products or persons authorized by Pittsfield Products ("Authorized Person") shall direct the use of the Escrow Amount for the purpose of conducting Response Activity (as that term is defined in Part 201 of the Natural Resources and Environmental Protection Act) at the facility approved by the Michigan Department of Environmental Quality (MDEQ).

D. Pending use of the Escrow Amount in accordance with the terms of this Agreement, the parties agree to the investment of the Escrow Amount as set forth in Subsection 3.2 of this Escrow Agreement.

E. The Escrow Agent shall invest and disburse the Escrow Amount on the terms and conditions provided below.

NOW, THEREFORE, in consideration of the premises herein, the parties hereto agree as follows:

I. DEPOSITS INTO ESCROW

1.1 INITIAL DEPOSIT

Pittsfield Products shall deposit cash in the amount of \$600,000.00 in the Escrow Account by transferring such amount to the Escrow Agent as follows:

Escrow Agent: Edwards, Koshiw, Melton & Company, P.C.
Address: 2855 Coolidge Highway, Ste., 103
Troy, MI 48084

FAX No. (810)643-4545
Telephone No. (810)643-7392
Account No.:
Attention: Richard Edwards

1.2 SUBSEQUENT DEPOSITS

a) On or before August 15, 1996, **Pittsfield Products** shall deposit cash in the amount of \$400,000.00 in the Escrow Account.

b) **Pittsfield Products** shall continue to deposit cash payments from time to time if and to the extent required by the **Consent Decree** on or before each anniversary date.

1.3 EARNINGS ON DEPOSITS

Earnings from the deposit will not be considered as part of the deposit maximum and shall be invested as part of the principal. Earnings on additional deposits also shall be invested as part of the principal. **Pittsfield Products** shall be responsible for the tax associated with the earnings on deposit.

1.4 GUARANTEE OF PAYMENT

In order to guarantee deposits to the escrow account as defined in Subsection 1.2, **Pittsfield Products** shall provide MDEQ with a first priority Court-ordered lien on the property as defined in the **Consent Decree** entered by the MDEQ and **Pittsfield Products** effective on December 27, 1995. Immediately after **Pittsfield Products** has deposited \$1,000,000.00, excluding earnings, into the Environmental Escrow, the lien of the MDEQ shall terminate. A

document shall be filed by MDEQ in accordance with this section to release the lien thereafter.

II. TERMS OF RELEASE OF ESCROW

2.1 USE OF ESCROW AMOUNT TO PAY RESPONSE ACTIVITY COSTS

At the written direction of the Authorized Person, delivered from time to time, and certifying that such direction is made for the purpose of paying **Response Activity Costs**, the Escrow Agent shall disburse funds held hereunder in an aggregate amount not to exceed the Escrow Amount to pay **Response Activity** costs incurred in connection with **Response Activity** undertaken pursuant to the terms of the **Consent Decree**. Such disbursements shall be made at the written direction of the Authorized Person, in the following form:

"I certify that the invoices attached hereto are true and correct copies of invoices prepared or received by me in connection with the remediation of existing environmental contamination at the facility located in Village of Pinckney, Michigan (as defined in **Consent Decree**)."

2.2 PAYMENT OF INVOICES

The Escrow Agent will pay the invoices attached to this statement, subject to the notice provisions specified in Section VI. Notice of all disbursements specifying the purpose thereof, together with copies of supporting documentation showing the **Response Activity**.

State costs paid from the Escrow Account, shall be remitted to the State as follows:

Administration Section Chief
Environmental Response Division
Department of Environmental Quality
P. O. Box 30028
Lansing, MI 48909

2.3 PAYMENT OF MDEQ RESPONSE ACTIVITY COSTS

For reasonable Response Activity Costs incurred by the MDEQ, the MDEQ, Environmental Response Division, Cost Recovery Unit shall submit annually to the Authorized Person a request for reimbursement for funds expended for Response Activity Costs with supporting documentation. The Authorized Person shall submit this billing to the Escrow Agent in accordance with Section 2.4 herein.

2.4 DISBURSEMENT PROCEDURE FOR ESCROW AMOUNT

The parties hereto acknowledge and agree that the Escrow Amount shall be held and disbursed pursuant to the forms, at times and otherwise in the manner reasonably prescribed by the Escrow Agent, which shall at all times be consistent with the terms of this Agreement. All requests for disbursements, including expenses, (excepting the Escrow Agent's Fee due the Escrow Agent pursuant to Subsection 4.12) shall be presented in writing to the Escrow Agent.

- a) Prior to the disbursement of any portion of the Escrow Amount

pursuant to the provisions hereof, the Escrow Agent shall promptly send a notice thereof, together with copies of any notices or demands pertaining thereto, to the MDEQ Project Manager and an additional copy to the Environmental Response Division, Cost Recovery Unit and to counsel for Pittsfield Products, Inc. A disbursement request made by the MDEQ for reimbursement of MDEQ expenditures does not require notification sent to the MDEQ. Each party shall have the right to object to the disbursement of the Escrow Amount by sending a written notice of objection to the parties identified in Section VI within 15 days after the date that the party receives a copy of the notice from the Escrow Agent, except that notice of an objection by Pittsfield Products to the payment of Response Activity Costs shall be sent by Pittsfield Products to the State and the Escrow Agent within 15 days after the date that the Authorized Person receives the request for Response Activity Costs from the Environmental Response Division, Cost Recovery Unit. Notification by FAX to the Escrow Agent constitutes objection in writing. If no objection is made within 15 days of receipt of request for reimbursement, the Escrow Agent shall, within seven days thereafter, remit payment.

b) If any disagreement or dispute shall arise between the Authorized Person and any other person regarding the Escrow Amount (and whether or not litigation has been instituted in this regard), the Escrow Agent shall refuse to comply with any claim or demand and shall continue to hold the Escrow Amount until the Escrow Agent has received (i) a written notice by the objecting party withdrawing its objection (ii) a written agreement executed by each of the parties hereto directing the disbursement of the Escrow Amount; or, (iii) a final non-appealable order by a court of competent jurisdiction and entered pursuant to any action,

suit or proceeding in which Pittsfield Products (and/or the Authorized Person) is a party. Any court order referred to in (iii) above shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to the Escrow Agent to the effect that said court order is final and non-appealable. The Escrow Agent shall act on such court order and legal opinions without further question.

2.5 TERMINATION OF ESCROW

Upon the first to occur of (i) disbursement of the entire Escrow Amount in accordance with the direction of an Authorized Person or (ii) receipt by the Escrow Agent of written notice from the MDEQ that the Response Activity has been completed to the MDEQ's satisfaction, the Escrow Agent shall terminate this Escrow.

2.6 DISPOSITION OF ENVIRONMENTAL ESCROW REMAINDER

If any funds remain in the Environmental Escrow after all payments from the Environmental Escrow have been made, the Escrow Agent shall disburse such funds to Pittsfield Products.

III. MANAGEMENT AND INVESTMENT OF ESCROW DEPOSIT

3.1 PRESERVATION OF INCOME AND PRINCIPAL

Subject to Subsections 3.2 and 4.5, and at the direction of the

Authorized Person, the Escrow Agent shall at all times hold, manage and invest the assets of the Escrow Amount in a manner designed to maximize and preserve the earnings and principal of the Escrow Amount for the purpose of the Environmental Escrow.

3.2 INVESTMENT OF ESCROW FUNDS

The Escrow Agent shall invest and reinvest all or any part of the Escrow Amount, including any earnings therefrom, exclusively in the investments hereinafter listed: in United States direct obligations, obligations guaranteed by the United States or agencies of the United States, common trust funds or mutual funds which invest solely in United States direct or guaranteed obligations, bank certificates of deposit to the extent they are insured by the federal government, and common trust funds or money market funds investing in short term insured or at least "A" rated municipal bonds. In all cases, however, the total investments must be sufficiently liquid to enable the Escrow Agent to fulfill the purpose of the Escrow and to satisfy obligations when submitted by an Authorized Person.

IV. POWERS, DUTIES AND OBLIGATIONS OF THE ESCROW AGENT

4.1 DUTIES OF ESCROW AGENT

This Escrow Agreement expressly sets forth all the duties of the Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against the Escrow Agent.

The Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

4.2 AUTHORITY OF ESCROW AGENT

The Escrow Agent shall have the authority to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all instruments that may be necessary or appropriate to carry out the powers herein described.

4.3 DESIGNATION OF INVESTMENTS

The Escrow Agent may register or 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 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 instrumentally 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 this Environmental Escrow.

4.4 ACCOUNTING FOR THE ENVIRONMENTAL ESCROW

The Escrow Agent shall keep all records of this Environmental Escrow on a calendar-year basis. The Escrow Agent shall make a MONTHLY accounting to the parties designated in Section VI, within thirty (30) days following the close

of the period designated or portion thereof during which this Environmental Escrow Agreement is operative.

The accounting shall show in reasonable detail the following:

- 1) The total funds deposited into the Environmental Escrow;
- 2) accrued earnings on the funds deposited into the Environmental Escrow;
- 3) the amount of the Response Activity Costs that have been paid out of the Environmental Escrow;
- 4) the remaining balance of the Environmental Escrow.

4.5 STANDARD OF CARE

In investing, reinvesting, exchanging, selling and managing the Escrow, the Escrow Agent will discharge its duties with respect to the Escrow solely in the interest of the parties hereto, 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 matters, would use in the conduct of an enterprise of a like character and with like aims.

4.6 LIABILITY

The Escrow Agent shall not be liable for any acts, omissions or defaults of any agent or depository appointed or selected with reasonable care. The Escrow Agent shall be liable only for its own acts or omissions occasioned by

its willful misconduct, bad faith or negligence.

4.7 DISCRETION IN EXERCISE OF POWERS

The Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. The Escrow Agent may act in reliance upon any instrument or signature reasonably believed by it to be genuine.

4.8 ADVICE OF COUNSEL

The Escrow Agent may from time to time consult with counsel with respect to any question arising as to the construction of this Environmental 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 counsel.

The expense related to the advice of counsel shall be covered as part of the services rendered for the monthly fee paid to the Escrow Agent.

4.9 INDEPENDENT ESCROW

The Escrow Agent does not have any interest in the Environmental Escrow, but is serving as escrow holder only and having only possession thereof. This Subsection and Subsection 4.6 of this Section 4 shall survive notwithstanding

termination of this Agreement or the resignation of the Escrow Agent.

4.10 RESIGNATION OR REMOVAL OF ESCROW AGENT

The Escrow Agent may be removed by a joint written notice of removal signed by the MDEQ and Pittsfield Products and delivered to the Escrow Agent. The Escrow Agent may resign by giving 30 days' prior written notice to each of the parties hereto. Such removal or resignation shall take effect at the end of 30 days following delivery of the notice of removal or resignation as the case may be, or when a successor escrow holder has been appointed by the State, and Pittsfield Products, and has assumed the responsibilities of the Escrow Agent hereunder, whichever is earlier.

4.11 DISPUTES RE: ACTION OF ESCROW AGENT

In the event that the Escrow Agent in good faith is in doubt as to what action it should take hereunder, the Escrow Agent shall be entitled to retain the Escrow Amount until the Escrow Agent shall have received (I) a final non-appealable order of a court of competent jurisdiction directing the delivery of the Escrow Amount; or (ii) a written agreement executed by each of the parties hereto directing delivery of the Escrow Amount. Any court order referred to in (I) above shall be accompanied by a legal opinion by counsel for the presenting party satisfactory to the Escrow Agent to the effect that said court order is final and non-appealable. The Escrow Agent shall act on such court order and legal opinions without further question.

4.12 PAYMENT OF ESCROW AGENT

Fees for the services to be rendered by the Escrow Agent hereunder shall be paid to the Escrow Agent from the Escrow Amount in accordance with the fee schedule attached hereto, as Exhibit A. The Escrow Agent shall be reimbursed from the Escrow Amount for all reasonable expenses and disbursements incurred or made by the Escrow Agent in performance of its duties hereunder. It is understood that the Escrow Agent's fees may be adjusted from time to time upon 90 days' prior written notice to all the parties hereto.

V. SUCCESSORS / GOVERNING JURISDICTION / MODIFICATION

5.1 SUCCESSORS AND ASSIGNS

This Escrow Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and assigns, heirs, administrators and representatives and shall not be enforceable by or inure to the benefit of any third party. No party may assign any of its rights or obligations under this Escrow Agreement without the written consent of the other parties.

5.2 GOVERNING JURISDICTION

This Environmental Escrow Agreement shall be construed in accordance with and governed by the internal laws of the State of Michigan.

5.3 MODIFICATION

This Escrow Agreement may only be modified by written agreement signed by all of the parties hereto, and no waiver hereunder shall be effective unless in writing and signed by the affected parties.

VI. NOTICES

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

- a) if to Escrow Agent, to:
Edwards, Koshiw, Melton & Company, P.C.
2855 Cooldige Highway, Ste., 103
Troy, MI 48084
(810) 643-4545 (Phone)
(810) 643-7392 (Fax)

- b) if to State, to:
 - 1 Department of Environmental Quality
P.O. Box 30028
Lansing, Michigan 48909
Attn: Division Chief, Environmental Response
Division

 - 2 David Koski, Accounting Specialist
Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
300 S. Washington Square
Lansing, MI 48909
Phone: (517) 373-4818
Fax: (517) 373-2637

 - 3 Farsad Fotouhi, Project Coordinator
Environmental Response Division
Shiawasse District Office
Michigan Department of Environmental Quality
10650 Bennett Drive
Morrice, MI 48857
Phone: (517) 625-4600
Fax: (517) 625-5000

c) Pittsfield Products, Inc.
P.O. Box 1027
Ann Arbor, MI 48106
Attn: Theodore Fosdick

Or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above. Such communications shall be deemed to have been delivered on the day of delivery if delivered personally, two days after mailing if sent by mail, and one business day after delivery to an overnight courier, if sent by overnight courier; provided that notice of any change of address shall be effective only upon receipt thereof.

VII. EXECUTION

Execution of this Agreement by the Escrow Agent will constitute its acceptance of the terms hereof.

VIII. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

IX. DISSOLUTION

In the event Pittsfield Products dissolves or otherwise ceases to conduct business all of its rights in the Environmental Escrow shall vest in the State alone, and upon termination of the Environmental Escrow in accordance with Subsection 2.5, any unexpended portion of the Escrow Amount shall be disbursed to the "State of Michigan, Environmental Response Fund" and delivered to:

Cashier's Office
Administrative Services Division
Michigan Department of Environmental Quality
P.O. Box 30028
Lansing, Michigan 48909

X. APPLICABLE LAW

This Agreement shall be construed in accordance with and governed by the internal laws of the State of Michigan.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the day and year first above written.

ESCROW AGENT
Edwards, Koshiw, Melton & Company, P.C.

By: Brian H. Melton
Brian H. Melton
Its: Vice President

STATE OF MICHIGAN

By: Sharon H. Whitmer
Sharon H. Whitmer, Assistant Attorney General
Its: Counsel

Pittsfield Products, Inc.

By: Theodore Fosdick
Theodore Fosdick
Its: President

EXHIBIT A
Qualified Settlement Fund Escrow of
Pittsfield Products, Inc.

Fees of escrow agent, Edwards, Koshiw, Melton & Company, P.C.

Rates for professionals performing services for escrow agent:

Partner Rate - \$122

Senior Accountant Rate - \$48

Clerical Rate - \$40

Table 1

IMPLEMENTATION SCHEDULE

PERFORMANCE	SCHEDULES	REFERENCES
Submission of RRI	January 2, 1996	Section 5.3
Submission of Work Plan for Additional Investigation (if necessary)	30 days after MDEQ Determination	Sections 5.3
Implement Work Plan for Additional Investigation (if necessary)	30 days after approval of Work Plan	Section 5.4
Submission of Findings of Additional Investigation (if necessary)	30 days after completion of additional investigation	Section 5.5
Submission of DRAFT FFS	75 days after approval of FINAL RRI	Section 5.6
Submission of FINAL FFS	45 days after approval of DRAFT FFS	Section 5.8
Submission of DRAFT RAP	90 days after approval of FINAL FFS	Section 5.7
Submission of FINAL RAP	45 days after approval of DRAFT RAP	Section 5.8
Implementation/Start up the FINAL RAP	30 days after approval of FINAL RAP and receipt of necessary approvals and/or permits	Section 5.9

LIEN RELEASE

L. 2098 P. 901

First Party: STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
P.O. Box 30426
Lansing, MI 48909

10-15-96

Second Party: Pittsfield Products, Inc.
461 N. Dexter
Pinckney, Michigan 48169

NOTICE OF RELEASE OF CLAIM OF INTEREST IN REAL PROPERTY

Site No.: 470013
District: Shiawassee

I hereby certify that the liability for cost and damages asserted under Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq., for which the assessment listed below were issued, has been resolved.

Property located at 461 North Dexter Street and the area commonly called Loy Bond Park, which is immediately west of 461 North Dexter described as: Property No. 14-23-304-009, Lots 1,2,3,6,7 and 8 of Block 4, Range 3; and Property No. 14-23-304-001, Lots 1,2,3,4,5,6,7, and 8 of Block 4 Range 4. J.W. Hinchey's addition to the Village of Pinckney, as duly laid out and recorded.

Date of Notice of Lien 12/18/95 Assessment No. 12-95-470013-43 Amount of Assessment \$1,000,000

Recorded in Liber 1995, Page 294, Filing Date 01/04/96.

Place of Filing Livingston County Register of Deeds.

The lien for such costs and damages, notice of which was recorded on the date set forth above, is hereby released.

STATE OF MICHIGAN,
DEPARTMENT OF ENVIRONMENTAL QUALITY

Jane M. Permoda
Witness Jane M. Permoda

Alan J. Howard
Alan J. Howard, Chief
Environmental Response Division

Sandra J. Smith
Witness Sandra J. Smith

Linda Sherron Daniel
Notary Public Ingham County, Michigan

STATE OF MICHIGAN
COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this 1st day of October, 19 96
My Commission expires 5-20-97.

LINDA SHERRON DANIEL, NOTARY PUBLIC
INGHAM COUNTY, STATE OF MICHIGAN
MY COMMISSION EXPIRES 5-20-97

Prepared by: Jacqueline Barnett, Cost Recovery Specialist
DEQ-Environmental Response Division
P.O. Box 30426, Lansing, Michigan 48909-7926

LIEN PLACEMENT

First Party: STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
PO Box 30426
Lansing, Michigan 48909

Prepared by:
Jacqueline Barnett
DEQ-Env. Response Div.
P.O. Box 30426
Lansing, MI 48909

Second Party: Pittsfield Products, Inc.
461 N. Dexter
Pinckney, Michigan 48169

JAN 4 12 02 PM '96
NANCY HAVILLAND
REGISTER OF DEEDS
LIVINGSTON COUNTY, MI
48843

RECEIVED

NOTICE OF CLAIM OF INTEREST IN REAL PROPERTY

Site No. 470013
District: Shiawassee

Notice is hereby given that the State of Michigan claims an interest in the following property pursuant to Section 20138(2) of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 et seq., and provided by an Environmental Escrow Agreement created pursuant to Consent Decree, #94-77806-CE, entered in the Ingham County Circuit Court, against property situated in the Village of Pinckney, Livingston County, State of Michigan described as follows:

Property located at 461 North Dexter Street and the area commonly called Loy Bond Park, which is immediately west of 461 North Dexter described as: Property No. 14-23-304-009, Lots 1,2,3,6,7 and 8 of Block 4, Range 3; and Property No. 14-23-304-001, Lots 1,2,3,4,5,6,7, and 8 of Block 4 Range 4. J.W. Hinchey's addition to the Village of Pinckney, as duly laid out and recorded.

Document Date	Assessment Number	Amount
12/18/95	12-95-470013-43	\$1,000,000

Therefore, pursuant to Part 201 of NREPA, and the Consent Decree, the amount of reimbursement is a lawful claim against the real property, in favor of the State of Michigan, Department of Environmental Quality, Environmental Response Division, upon the above-described property situated in Livingston County, State of Michigan. The lien claimed hereunder has priority over all other liens or encumbrances that are or have been recorded upon the property.

STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

Nancy McDowell
Witness Nancy McDowell

Alan J. Howard
Alan J. Howard, Chief Environmental Response Division

Joan Capel
Witness Joan Capel

Linda Sherron Daniel
Notary Public Ingham County, Michigan

STATE OF MICHIGAN
COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this
My Commission expires 5-20-97

19th day of December 1995

LINDA SHERRON DANIEL, NOTARY PUBLIC
INGHAM COUNTY, STATE OF MICHIGAN
MY COMMISSION EXPIRES 5 20 97