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U.S. DISTRICT COURT  
WESTERN DISTRICT MICH.  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JENNIFER M. GRANHOLM, Attorney General  
of the State of Michigan, Public Officer-Successor  
in Interest, ex rel, MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
Plaintiffs,

File No. 5:97-CV-211

v

Honorable Douglas W. Hillman

KOCH CHEMICAL COMPANY,  
a Division of Koch Refining Company, LP,  
a Delaware Limited Partnership,  
Defendant.

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Robert P. Reichel (P31878)  
Assistant Attorney General  
Natural Resources and  
Environmental Quality Division  
Knapp's Office Centre, Suite 530  
300 South Washington Square  
Lansing, MI 48913  
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Attorney for Plaintiffs

Susan M. Franzetti  
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8000 Sears Tower  
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(312) 876-8027  
Attorney for Defendant

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AMENDMENT TO CONSENT DECREE

The Plaintiffs, Jennifer M. Granholm, Attorney General of the State of Michigan, Public Officer-Successor-in-Interest, and the Michigan Department of Environmental Quality ("MDEQ"), and Defendant, Koch Chemical Company ("Koch") (collectively the "Parties"), previously executed a Consent Decree, File No. 5:97-CV-211, which was entered by this Court on November 25, 1997 (the "Consent Decree").

Pursuant to the Consent Decree, Koch is implementing a Remedial Action Plan ("RAP") and Operation and Maintenance Plan ("O&M Plan") for the Muskegon Chemical Company Superfund site, located in the County of Muskegon, Whitehall, Michigan (hereinafter the "Facility").

Subsequent to the entry of the Consent Decree, the County of Muskegon, on October 30, 1999, adopted an amendatory ordinance to the Muskegon County Sanitary Regulations Sections 7.2.2 and 15.0 relating to the issuance or denial of a Water Supply Construction Permit for well installation in certain areas, including, *inter alia*, areas defined by the MDEQ as "Facilities" under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.201 *et seq* (the "Amended Muskegon County Ordinance"). The Amended Muskegon County Ordinance is attached hereto as Attachment A.

The MDEQ has determined that potential exposure to certain hazardous substances in the groundwater at the Facility may be reliably restricted by use of the Amended Muskegon County Ordinance as an institutional control in lieu of a restrictive covenant pursuant to MCL 324.20120b(5).

The MDEQ has approved a modification to the RAP for the Facility that relies upon the Amended Muskegon County Ordinance as an institutional control in lieu of a restrictive covenant pursuant to MCL 324.20120b(5).

NOW, THEREFORE, upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED, and DECREED that the Consent Decree is amended as follows:

1. "Section IV. Definitions" of the Consent Decree is amended to add the following new paragraph 4.8:

4.8 "Amended Muskegon County Ordinance" means the amendatory ordinance to the Muskegon County Sanitary Regulations Sections 7.2.2 and 15.0 relating to the issuance or denial of a Water Supply Construction Permit for well installation in certain areas as adopted by the County of Muskegon on October 30, 1999.

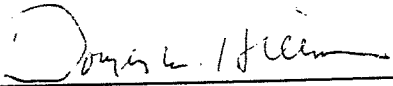
2. "Section V. Implementation" of the Consent Decree is amended to add the following language at the end of existing paragraph 5.4:

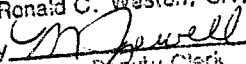
5.4 In the alternative, the Amended Muskegon County Ordinance shall constitute an acceptable alternative institutional control, pursuant to MCL 324.20120b(5), for purposes of reliably restricting exposure to hazardous substances in groundwater identified in the RAP for each parcel of property that contains a part of the Facility in lieu of the filing of the restrictive covenant described in this paragraph 5.4.

3. "Section V. Implementation" of the Consent Decree is amended to add a new paragraph 5.6 as follows:

5.6 Pursuant to MCL 324.20120b(3), and prior to issuance of a Certificate of Completion pursuant to Section XXVI of this Consent Decree (which Certificate will be issued only after the residential cleanup criteria for groundwater specified in Section 20120a(1)(a) *et seq* of NREPA have been met and the need to reliably restrict use of groundwater no longer exists), if either the Amended Muskegon County Ordinance lapses, is not enforced, is found to be unlawful, or is modified in a manner which the MDEQ determines no longer reliably restricts exposure to substances that exceed Part 201 criteria or is not complied with, MDEQ's approval of the RAP is void from the time of the lapse or modification, unless the lapse or modification is corrected to the satisfaction of the MDEQ.

IT IS ORDERED this 11<sup>th</sup> day of December, 2000.

  
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HONORABLE DOUGLAS W. HILLMAN  
United States District Court Judge

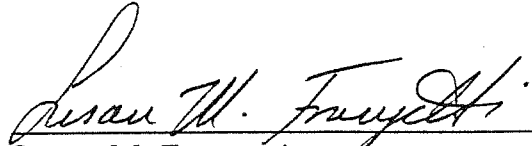
Certified as a True Copy  
Ronald C. Weston, Sr., Clerk  
By   
\_\_\_\_\_  
Deputy Clerk  
U. S. District Court  
Western Dist. of Michigan  
Date 12-12-00

IT IS SO AGREED:



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Attorney for Plaintiffs

Dated: November 29, 2000



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(312) 876-8027  
Attorney for Defendant

Dated: October 19, 2000



Alan J. Howard, Chief  
Environmental Response Division  
Michigan Department of Environmental  
Quality  
Pursuant to authority delegated by the  
Director of the MDEQ

Dated: 11/29/00

9300067/Koch/Amended Consent Decree