

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of: Hartley and Hartley Landfill
Kawkawlin, Michigan

ADDENDUM BY CONSENT
FOR PAYMENT OF PAST RESPONSE ACTIVITY COSTS,
FUTURE OVERSIGHT COSTS, AND PERFORMANCE OF RESPONSE ACTIVITIES

Addendum to November 7, 1980 Consent Order for Closure
and the Amendment to the November 7, 1980 Order for Closure
Dated September 25 – 28, 1984

The Parties, by their respective executions of this Addendum, intend to augment and, where necessary, modify the previously entered November 7, 1980 Stipulation and Consent Order for Closure ("Order") and the Amendment to the November 7, 1980 Stipulation and Consent Order for Closure dated September 25-28, 1984 ("Amendment"). The Parties agree that all of the provisions of the Order and the Amendment shall remain in full force and effect, subject to all modifications by this Addendum. The Parties agree that whenever the terms of this Addendum conflict with the provisions of either the Order or the Amendment, the provisions of the Addendum shall govern any conflict. The Parties also agree that under Executive Order No. 1995-18, the Michigan Department of Environmental Quality ("MDEQ") was created and certain environmental functions, roles and duties were transferred to the MDEQ from the Michigan Department of Natural Resources ("MDNR"). The Parties further agree that, for the purposes of this Addendum, the term "Facility" will include the properties identified in the Order and the Amendment as the Kawkawlin Site, the SCA Property, and the State Property, as well as any area, place, or property where a hazardous substance(s) originating at or from these properties has come to be located, in excess of applicable requirements, but not including any hazardous substances that were or are relocated from these properties to any other properties or facilities including but not limited to the Middleground Landfill, located on Middleground Island in Bay City, Michigan.

This Addendum concerns the payment by SCA of State Past Response Activity Costs lawfully incurred and paid by the State in undertaking response activities at the Facility, and State Oversight Costs. This Addendum also establishes a schedule for the implementation of response activities at the Facility including the preparation and submittal of an MDEQ approvable Remedial Action Plan ("RAP"). All response actions will be conducted in

compliance with Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 P.A. 451, as amended ("Part 201").

Thorium waste material regulated by the United States Nuclear Regulatory Commission (NRC) is known to be located at the Facility. The State understands that the NRC may consider the thorium waste management issues at the Facility to be unique and of a nature that may require the NRC to be thoughtful and deliberative in determining the proper course of action for the management of thorium waste material at the Facility. The State recognizes that SCA must comply with all applicable statutes, regulations, and requirements established by the NRC for the proper long-term management of the thorium waste material. Complying with these NRC requirements may result in scheduling changes for the implementation of Part 201 response activities under the authority of this Addendum. Complying with these NRC requirements may also impact the scope of activity the State may undertake pursuant to Paragraph 8.1 of this Addendum.

The entry of this Addendum by SCA is neither an admission of liability with respect to any issue dealt with in this Addendum nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

I. PARTIES BOUND

1.1 This Addendum shall apply to and be binding upon the State and SCA and its successors. No change or changes in the ownership or corporate status of SCA shall in any way alter SCA's responsibilities under this Addendum.

1.2 The signatories to this Addendum certify that they are authorized to execute this Addendum and legally bind the Parties they represent.

II. STATEMENT OF PURPOSE

In entering into the Addendum, the mutual objectives of the Parties are:

(a) to resolve, without litigation, State claims against SCA for recovery of State Past Response Activity Costs and State Oversight Costs lawfully incurred and paid by the State at the Facility.

(b) to complete certain response activities at the Facility in accordance with the MDEQ approved plans and schedule (Attachment A), including approved amendments to the plans and schedule.

III. DEFINITIONS

3.1 "Addendum" means this Addendum and any appendix hereto.

3.2 "Amendment" means the Amendment to the November 7, 1980 Order for Closure dated September 25-28, 1984.

3.3 "Facility" means any area, place, or property where a hazardous substance, originating from the Kawkawlin Site, the SCA Property, and the State Property as defined in this section of the Addendum, in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, has been released, deposited, disposed of, or otherwise has come to be located. Solely for the purpose of this Addendum, the term "Facility" does not include the relocation of any hazardous substance(s) from the Kawkawlin Site, the SCA Property, or the State Property to any other properties or facilities including but not limited to the Middleground Landfill, located on Middleground Island, in Bay City, Michigan.

3.4 "Kawkawlin Site" is the property described in Attachment B-1 to this Addendum.

3.5 "MDEQ" means the Michigan Department of Environmental Quality.

3.6 "Order" means the November 7, 1980 Stipulation and Consent Order for Closure.

3.7 "Parties" means the State and SCA.

3.8 "Remedial Action Plan" or "RAP" means a plan for the Facility that satisfies the requirements of Part 201 of the NREPA including, but not limited to, Section 20118, 20120a, 20120b, and 20120d, and the Part 201 Administrative Rules.

3.9 "Response activity costs lawfully incurred and paid by the State" shall mean costs that have been disbursed or paid out by the State in taking or conducting response activity, including enforcement costs, but shall not mean (1) outstanding costs that are due or owed by the State that have not been disbursed or paid out by the State, or (2) costs incurred by the State pursuant to Section 20101(1)(bb)(iii).

3.10 "SCA" means, for the purposes of this Addendum only, CWM Chemical Services LLC and Waste Management of New Jersey, Inc., these being the successor corporations of the former SCA Chemical Services, Inc., at the time of entry of the Addendum.

3.11 "SCA Property" is the property described in Attachment B-2 to this Addendum.

3.12 "State" means the Attorney General of the State of Michigan, ex rel, and the Michigan Department of Environmental Quality. For the purpose of this Addendum the definition of State does not include the Michigan Department of Natural Resources.

3.13 "State Oversight Costs" mean costs associated with the performance of response activities at the Facility related to the State's oversight, enforcement, monitoring and documentation of compliance with the Addendum. State Oversight Costs related to the Facility may include, but are not limited to, costs incurred to: monitor response activities; observe and comment on field activities; review and comment on Submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; perform response activities pursuant to Section VI of this Addendum; attend and participate in meetings; prepare cost reimbursement documentation; and enforce and monitor Section V (Payment of Costs); provided such activities and tasks relate to the Facility.

3.14 "State Past Response Activity Costs" shall mean those costs lawfully incurred by the State at the Facility from May 24, 1994 to January 8, 2000.

3.15 "State Property" is the property described in Attachment B-1 of the Amendment.

3.16 For the work to be performed under this Addendum, the terms used in this Addendum which are defined in Part 201 of NREPA, MCL 324.20101 et seq., and/or the Part 201 rules, 1990 AACCS 299.5101 et seq., shall have the same meaning in the Addendum as in Part 201 and its rules.

IV. DISPUTE RESOLUTION

4.1 Unless otherwise expressly provided for in this Addendum, including but not limited to Paragraph 4.2, the dispute resolution procedures of this Section shall be the mandatory initial mechanism to resolve disputes arising under or with respect to this Addendum, the Order, and the Amendment, except to Paragraph 6.5. Engagement of a dispute resolution among the Parties shall not be cause for SCA to delay the performance of any response activity required under this Addendum.

4.2 SCA does not waive any statutory right it may have to resort to a court of competent jurisdiction to resolve issues arising in the Order, the Amendment, or this Addendum.

4.3 The State shall maintain an administrative record of any disputes that are initiated pursuant to this Section. The administrative record shall include the information SCA provides to the State under Paragraphs 5.1, 5.2, 5.3, 6.1, 6.2, 6.4, 6.6, 7.1, 7.3, 7.5, 8.2, 13.1 and Attachment A, including any MDEQ approved amendments. SCA shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(5).

4.4 Any dispute that arises under this Addendum with respect to MDEQ's disapproval, modification, or other decision concerning the requirements of Sections V, VI, VII, or XIII shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the Parties. A dispute shall be considered to have arisen on the date

that a Party to this Order receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which the Party bases its position. The period of negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by mutual written agreement of the Parties. If the Parties do not reach an agreement within twenty (20) days, or within the agreed upon time period, the ERD District Supervisor will thereafter provide a written ERD Statement of Decision to SCA. In the absence of initiation of formal dispute resolution by SCA under Paragraph 4.5, the MDEQ's position as set forth in the ERD Statement of Decision shall be binding on the Parties.

4.5 If SCA and the MDEQ cannot informally resolve a dispute under Paragraph 4.4 or if the dispute involves a RAP, SCA may initiate formal dispute resolution by submitting a written request for review of the disputed issues (Request for Review) to the ERD Division Chief. SCA must file the Request for Review with the ERD Division Chief and the MDEQ Project Coordinator within twenty (20) days of SCA's receipt of the ERD Statement of Decision issued pursuant to Paragraph 4.4. SCA's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which SCA bases its position. Within twenty (20) days of the ERD Division Chief's receipt of SCA's Request for Review, the ERD Division Chief will provide a written Final ERD Statement of Decision to SCA, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting his/her position; and all supporting documentation relied upon by the ERD Division Chief in making his/her decision. The time period for the ERD Division Chief's review of the Request for Review may be extended by mutual written agreement of the Parties. The Final ERD Statement of Decision shall be binding on the Parties, subject to Paragraphs 4.2 and 4.6.

4.6 If SCA seeks to challenge any decision or notice issued by the MDEQ or the State under this Order, including any decision or notice regarding matters covered by Paragraphs 4.3, 4.4, and 4.5, SCA shall send a written Notice of Dispute to both the ERD Division Chief and the Assistant Attorney General assigned to this matter within twenty (20) days of receipt of the decision or notice by the MDEQ or the State. The Notice of Dispute shall include the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which SCA bases its position.

The Parties shall have twenty one (21) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If an agreement is not reached within the twenty one (21) day period, the State will thereafter issue a written State Statement of Decision to SCA within sixty (60) days, which shall be binding on the Parties subject to Paragraph 4.2.

4.7 If SCA does not comply with the MDEQ decision under Paragraph 4.4, 4.5, or 4.6, and SCA does not timely pursue further dispute resolution provided in this Addendum, the Department of Attorney General, on behalf of the MDEQ, may take such civil enforcement actions against SCA as authorized by law. In such an event, the MDEQ retains the right to perform the necessary response activities and to recover the costs from SCA. SCA reserves the right to argue that it may seek judicial review of the MDEQ decision.

4.8 Notwithstanding this Section, SCA shall pay to the MDEQ that portion of a demand for reimbursement of costs that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section V (Payment of Costs), as appropriate.

4.9 Section 20137(4) of the NREPA, shall govern whether any action or decision of the MDEQ or the Attorney General shall constitute a final agency action give rise to any rights of judicial review. Nothing in this Addendum shall expand or reduce SCA's ability to obtain pre-enforcement review of this Addendum.

V. PAYMENTS OF COSTS

5.1 Within thirty (30) days of the Effective Date of this Addendum, SCA shall pay the MDEQ the sum of \$325,000 to resolve all claims by the State against SCA for State Past Response Activity Costs. Payment is to be made by check payable to the "State of Michigan – Environmental Response Fund" and sent to:

Revenue Control Unit
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor South Tower
525 West Allegan Street
Lansing, Michigan 48933

To ensure proper credit, the payments made pursuant to this Addendum must reference the Hartley & Hartley Landfill name and ERD Account Number (ERD-2080).

5.2 SCA shall also pay response activity costs lawfully incurred by the State but not accounted for in Paragraph 5.1, between January 8, 2000 and the date of entry of this Addendum. These response activity costs will include staff costs in negotiating and preparing settlement documents with SCA, overseeing response activities at the Facility prior to execution of this Addendum, and contractor costs. However, these response activity costs will not include staff or contractor costs for developing MDEQ policies or standard model language. These response activity costs shall be documented and included in the first demand for oversight costs as set forth in Paragraph 5.3. SCA shall reimburse the MDEQ within sixty (60) days after receipt of the first written demand of oversight costs lawfully incurred and paid by the State.

5.3 SCA shall reimburse the State for all State Oversight Costs for matters covered in this Addendum. As soon as possible after each anniversary of the effective date of this Addendum the MDEQ will provide SCA with a written demand of oversight costs lawfully incurred by the State from the previous billing date. Any such demand will set forth with reasonable specificity the nature of the costs incurred. SCA shall reimburse the MDEQ within sixty (60) days after receipt of the written demand of lawfully incurred State Oversight Costs.

5.4 In the event that SCA fails to reimburse the State as provided in Paragraphs 5.1, 5.2 and 5.3 within the time frames set forth in this Addendum, SCA shall pay the MDEQ interest on those unreimbursed costs at the rate provided in Section 20126a(3) of NREPA.

5.5 SCA shall 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 the MDEQ. Providing these documents to SCA may result in the MDEQ incurring additional oversight costs that will be included in the annual demand of oversight costs. In any challenge by SCA to a demand for recovery of costs by the MDEQ, SCA shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(1)(a) of NREPA.

5.6 Cost recovered pursuant to this Addendum shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

VI. IMPLEMENTATION OF RESPONSE ACTIVITIES

6.1 SCA shall complete response activities at the Facility in accordance with the MDEQ approved plans and schedule (Attachment A), including any approved amendments to the plans and schedule..

6.2 In the event that the MDEQ determines that additional response activity is necessary and consistent with the Order, the Amendment, or this Addendum, the MDEQ will provide written notice of such additional response activity to SCA. SCA may also propose additional response activities, including interim response activities, which shall be subject to approval by the MDEQ. SCA shall complete any additional response activities determined to be necessary by the MDEQ, or otherwise agreed to by the Parties, in accordance with the standards, specifications, and schedules approved by the MDEQ.

6.3 Upon obtaining information concerning the occurrence or nonoccurrence of any event during the performance of response activities conducted in accordance with this Addendum 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, SCA shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat or endangerment, including the immediate notification the MDEQ. In such an event, any action undertaken by SCA shall be in accordance with all applicable health and safety laws and regulations.

6.4 Within ten (10) days of notifying the MDEQ of an occurrence under 6.3, SCA shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release, threat, or endangerment caused or threatened by the incident and to prevent recurrence of such an incident.

6.5 Regardless of whether SCA notifies the MDEQ under this subsection, if response activities undertaken under this Decree cause a release or threat of release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare, or to the environment, the MDEQ may:

- (a) require SCA 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 SCA to undertake any such activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; and/or

(c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment.

6.6 In the event that the MDEQ undertakes any action pursuant to this Section to abate such a release, threat or endangerment, SCA shall reimburse the State for all response activity costs lawfully incurred by the State. Payment of such costs shall be made in the manner provided in Section V (Payment of Costs).

VII. SUBMISSIONS AND APPROVALS

7.1 All plans, reports, documents, schedules and submittals (collectively "Submissions") required by this Addendum shall be delivered to the MDEQ in accordance with the approved schedule (Attachment A), including any MDEQ approved amendments. Prior to receipt of MDEQ approval, any report submitted to the 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 the Michigan Department of Environmental Quality ("MDEQ"). The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

7.2 Within ninety (90) days of receipt of any Submission for the performance of response activities, other than a RAP, that is required to be submitted for approval pursuant to this Addendum, the MDEQ will in writing:

(a) approve the Submission;

(b) disapprove the Submission, notifying SCA of deficiencies; or

- (c) approve the Submission with modifications.

Upon receipt of a notice of approval, or approval with modification, from the MDEQ, SCA shall proceed to take any action required by the Submission as approved or as modified and shall submit a new cover page and the modified pages of the plan marked "Final".

7.3 Notice of any disapproval will specify the reason(s) for the disapproval. Upon receipt of a notice of disapproval from the MDEQ, SCA shall, within forty-five (45) days thereafter, correct the deficiencies and resubmit the Submission for approval, unless the notice of disapproval specifies a longer time period. The time frame for the required resubmission may be extended by the MDEQ. Notwithstanding a notice of disapproval, SCA shall proceed to take any response activities not directly related to, or impacted by, the deficient portion of the Submission. If upon resubmission the Submission is not approved, the MDEQ shall so advise SCA and SCA shall be deemed to be in violation of this Addendum.

7.4 Upon receipt of any RAP or request for approval of a RAP, within six (6) months the Environmental Response Division Chief will in writing:

- (a) approve the RAP, or
- (b) deny approval of the RAP, and provide SCA the modifications necessary to obtain approval. The MDEQ may not add additional items to this statement after it has been issued.

Upon receipt of a notice of approval from the MDEQ, SCA shall submit a new cover page marked "Final."

7.5 Within forty-five (45) days of receipt of a denial of approval of a RAP, SCA shall correct the deficiencies identified in the written reasons for denial, and resubmit the RAP for approval. The time frame for resubmission may be extended by the MDEQ. If upon resubmission the RAP is not approved, the MDEQ shall so advise SCA and will consider SCA to have failed to complete the submittal in a timely manner or failed to have provided a RAP of acceptable quality.

7.6 Failure of the MDEQ to act within the specified time period shall result in

the request described in Paragraph 7.4 being considered approved. The time frame for decision may be extended by the mutual consent of SCA and the MDEQ.

7.7 Any Submission, and any attachments to the Submission, required by this Addendum are, upon approval by the MDEQ, incorporated into this Addendum and made enforceable pursuant to the terms of this Addendum.

7.8 A finding of approval or approval with modifications shall not be construed to mean that the MDEQ concurs with all conclusions, methods, or statements in the Submissions or warrants that the Submission comports with law.

7.9 No informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission or writing submitted by SCA shall be construed as relieving SCA of their obligation to obtain such formal approval as may be required by this Addendum.

7.10 Nothing in this Section VII shall in any way limit the parties' rights and obligations to invoke dispute resolution as provided in Section IV.

VIII. ACCESS TO THE SCA PROPERTY AND THE KAWKAWLIN SITE

8.1 Upon reasonable notice to SCA, upon the effective date of this Addendum the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the SCA Property, the Kawkawlin Site, and any property at the Facility to which access is required for the implementation of this Addendum, to the extent access to the property is owned or controlled by SCA, for the purpose of conducting any activity authorized by this Addendum or to otherwise fulfill any responsibility under federal or State law with respect to environmental conditions at and related to the Facility, including, but not limited to:

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

- (b) Verifying any data or information submitted to the MDEQ;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning or implementing response activities at or near the Facility;
- (f) Assessing compliance with requirements for the implementation of monitoring, operation and maintenance, or 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; or
- (h) Communicating with SCA's Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Addendum.

8.2 To the extent that response activities to be performed by SCA must occur on property or other areas that are controlled by persons other than SCA, SCA shall use its best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants. SCA shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, reasonable compensation to the owner. If after using its best efforts SCA is unable to obtain access, SCA shall notify the MDEQ within forty-five (45) days of a person's refusal to authorize access.

8.3 Any lease, purchase, contract or other agreement entered into by SCA, which transfers to another person a right of control over the SCA Property, or a portion of the SCA Property, shall contain a provision preserving for the MDEQ or its authorized representative undertaking the response activities the access provided under this Section.

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

8.5 Notwithstanding the provisions in this Section, Paragraph 17 of the Amendment is not altered in any manner by the terms contained herein.

IX. COVENANT NOT TO SUE BY THE STATE

9.1 In consideration of the Order and the Amendment, and the actions that will be performed and the payments that will be made by SCA under the terms of this Addendum and Attachment A of this Addendum, and except as specifically provided in this Section or Section XI (Reservation of Rights By State), the State covenants not to sue or to take administrative action against SCA for claims arising from:

- (a) Performance of the MDEQ approved response activities performed by SCA under the Addendum;
- (b) Reimbursement of State Past Response Activity Costs as set forth in Paragraph 5.1 of this Addendum; and
- (c) Payment of State Oversight Costs as set forth in Paragraphs 5.2 and 5.3 of this Addendum.

9.2 With respect to liability for State Past Response Activity Costs as set forth in Paragraph 5.1 of this Addendum costs, and the payment of State Oversight Costs incurred by the State as set forth in Paragraphs 5.2 and 5.3 of this Addendum, and the reimbursement of those costs by SCA pursuant to Paragraphs 5.1, 5.2 and 5.3 of this Addendum, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Section V.

9.3 With respect to SCA's liability for response activities performed under this Addendum, the covenant not to sue shall take effect upon issuance by the MDEQ of the Approval of Performance of Response Activities pursuant to Section XIII (Approval of Performance of Response Activities).

X. COVENANT NOT TO SUE BY SCA

10.1 Except as otherwise provided herein, SCA hereby covenants not to sue and agrees not to assert any claim or cause of action against the State with respect to the Facility or response activities relating to the Facility arising from this Addendum, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of the NREPA, MCL 324.20119(5) or any other provision of law. SCA retains the right to bring suit to enforce the provision of this Addendum of any person not party to this agreement.

10.2 In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, SCA agrees 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 State in the subsequent proceeding were or should have been brought in this case. None of the legal rights and defenses referenced in this Addendum is waived against the MDNR, the owner of the State Property.

XI. RESERVATION OF RIGHTS BY THE STATE

11.1 The State reserves, and this Addendum is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against SCA with respect to all matters other than those specified in Paragraph 9.1, including, but not limited to, the following:

(a) the performance of any other response activities that are required to address environmental contamination at the Facility;

(b) response activity costs other than those referred to in Section V (Payments of Costs);

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

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

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

(f) criminal acts; and

(g) the release or threatened release of hazardous substances or violations of federal or state law that occur during or after implementation of the response activities required by this Addendum.

11.2 The State reserves the right to take action against SCA if it discovers that any material information provided by SCA was false or misleading.

11.3 The State expressly reserves all rights and defenses pursuant to any available legal authority that they may have to enforce this Addendum against SCA.

11.4 Subject to Section IV and Paragraph 6.2 of this Addendum, the MDEQ retains all authority and reserves all rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary, or that SCA failed to perform in accordance with the Addendum and Attachment A of the Addendum, including any MDEQ approved amendments, and to seek to recover response activity costs authorized by law.

11.5 In addition to, and not as a limitation of, any provision of this Addendum, the State retains all of its information gathering, inspection, access and enforcement authorities and rights under Part 201 of the NREPA and any other applicable statute or regulation.

11.6 Failure by the State to timely enforce any term, condition or requirement of this Addendum shall not:

(a) Provide or be construed to provide a defense for SCA's noncompliance with any such term, condition or requirement of this Addendum; or

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

11.7 This Addendum does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed in accordance herein will result in the achievement of the remedial criteria established by law or will be protective of public health, safety, or welfare, or the environment.

11.8 Nothing in this Addendum shall limit the power and authority of the State to take, direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

XII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC (CERCLA) and to the extent provided in Section IX (Covenants Not to Sue by the State), SCA shall not be liable for claims for contribution for actions that will be performed and the payments that will be made under the terms of this Addendum. This Section XII shall be effective upon entry of this Addendum. Entry of the Addendum does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or the CERCLA, 42 USC 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by SCA for contribution from any person not a party to this Addendum shall be subordinate to the rights of the State, if the State files an action for non-reimbursed response costs pursuant to the NREPA or other applicable federal or state law.

XIII. APPROVAL OF PERFORMANCE OF RESPONSE ACTIVITIES

13.1 SCA may apply to the MDEQ for an "Approval of Performance of Response Activities" when SCA has satisfactorily performed all response activities required by Section VI (Implementation of Response Activities), pursuant to this Addendum. When SCA determines that it has completed all the response activities required by this Addendum, it shall submit to the MDEQ a "Request for Approval of Performance of Response Activities" and a draft Performance Report (collectively "Request for Approval of Performance Submission") to the MDEQ. The draft Performance Report shall summarize all response activities performed

under this Addendum and shall include or reference any supporting documentation.

13.2 Upon receipt of the Request for Approval of Performance Submission, the MDEQ will review the Submission. If the MDEQ determines that SCA has submitted sufficient information to demonstrate that it has satisfactorily performed all response activities required by this Addendum, the MDEQ ERD Division Chief will issue an Approval of Performance of Response Activities (Approval of Performance). The MDEQ's issuance of an Approval of Performance does not relieve SCA of its obligations to continue to comply with any other provision of this Addendum.

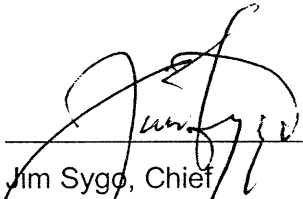
XIV. SEPARATE DOCUMENTS

This Addendum 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.

XV. EFFECTIVE DATE


This Addendum shall be effective upon the date that the last party executes this Addendum. All times for performance of activities under this Addendum shall be calculated from that date.

IT IS SO AGREED AND ORDERED BY:



Jim Sygo, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

11/14/02
Date

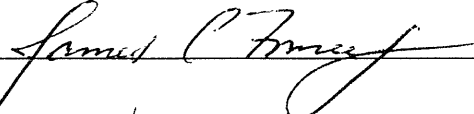


Robert P. Reichel
Gary Finkbeiner
Assistant Attorney General
Natural Resources and Environmental Quality Division

12/2/02
Date

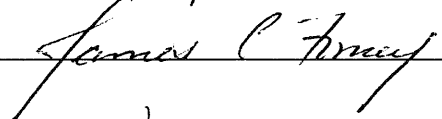
IT IS ALSO AGREED BY:

Waste Management of New Jersey, Inc.
Address: 3170 HERITAGE AVE, SUITE A
OKemos, MI 48864

By: 

Dated: 7 Nov 02

CWM Chemical Services LLC
Address: 3970 HERITAGE AVE, SUITE A
OKemos, MI 48864

By: 

Dated: 7 Nov 02