STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

EDWARD BIELAT, *et al*,
Plaintiffs,

v

SOUTH MACOMB DISPOSAL AUTHORITY, *et al*,
Defendant.

File No. 84-612-AA
Consolidated With 85-3476-AA

Honorable Michael D. Schwartz

JENNIFER M. GRANHOLM, Attorney General of the State of Michigan, *ex rel* Michigan Department of Environmental Quality,
Plaintiff,

v

SOUTH MACOMB DISPOSAL AUTHORITY, *et al*,
Defendants.

File No. 85-3838-CZ

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CONSENT DECREE

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INTRODUCTION

The Plaintiffs are Jennifer M. Granholm, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality ("MDEQ").

The Defendants are the South Macomb Disposal Authority ("SMDA") and the Cities of Center Line, Eastpointe, Roseville, St. Clair Shores, and Warren (jointly "Member Cities").

This Consent Decree ("Decree") requires the performance of the attached Remedial Action Plan ("RAP") at the SMDA Landfills 9 and 9a located near Card Road and 24 Mile Road, in Macomb Township, Michigan (hereafter "Facility"). Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Decree or (b) any terms or conditions set forth herein.

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

NOW, THEREFORE, before the taking of testimony after providing public notice of this settlement in the MDEQ Calendar and having provided all interested parties with an opportunity to be heard, 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 324.1701 and MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses they may have with respect to jurisdiction of the Court or to venue in this circuit.

1.2 The Court, having provided all interested parties with an opportunity to be heard and having considered all submissions, determines that the terms and conditions of this Decree are fair, reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan, and are consistent with the purposes of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20101 *et seq*.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Decree. The Court specifically retains jurisdiction to enter any order necessary to compel any Party to comply with its obligations under this Decree.

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon Plaintiffs and Defendants and their successors and assigns. No change or changes in the ownership or corporate status or other legal status of the Defendants, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendants' responsibilities under this Decree. SMDA shall provide the MDEQ with written notice prior to the transfer of is ownership of part or all of the Facility in Macomb Township, Macomb County, Michigan, and shall also provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of Section 20116 of Part 201 of the NREPA.

2.2 Defendants shall provide a copy of this Decree to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any portion of the response activities performed pursuant to this Decree within three (3) calendar days of the effective date of such retention or from entry of this Decree, whichever is later.

2.3 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of response activities pursuant to this Decree, Defendants are responsible for compliance with the terms of this Decree and shall ensure that such contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Decree.

2.4 Defendants are liable for the performance of the activities specified in this Decree and for any penalties that may arise from violations of this Decree. The signatories to this Decree certify that they are authorized to execute this Decree and legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

3.1 In entering into the Decree, the mutual objectives of Plaintiffs and Defendants are to: (a) resolve each Defendant's liability for response activities at the Facility by Defendants implementing the attached RAP; (b) comply with Sections 20118, 20120a, and 20120b of the NREPA; (c) reimburse Plaintiffs for past and future response costs as described in Section XVII (Reimbursement of Costs); and (d) minimize litigation.

3.2 The attached RAP contains the remedial measures of SMDA's choice at the Facility. The remedial measures contained in the RAP shall meet the requirements of the performance standards and requirements of the MDEQ-approved Performance Monitoring Plan ("PMP"). The PMP and the remedial measures are both elements of the attached RAP. Defendants and the Plaintiffs further agree that in the event that the RAP, including the PMP, do not achieve the standards of Sections 20118, 20120a, and 20120b of the NREPA, Defendants shall fund and implement such additional remedial measures as are necessary.

3.3 The Parties agree that the circuit court may take any lawful action necessary to enforce the terms of this Consent Decree.

IV. DEFINITIONS

4.1 "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 the MDEQ, shall be incorporated into and become an enforceable part of this Consent Decree.

4.2 "Defendants" means the SMDA and the Member Cities.

4.3 "ERD" means the Environmental Response Division of the MDEQ and its successor entities.

4.4 "Facility" means the Property as defined in Paragraph 4.12 and any area, place, or property where a hazardous substance, which originated at the Property and is present at concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the 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 comes to be located.

4.5 "Member Cities" means the Cities of Center Line, Eastpointe, Roseville, St. Clair Shores, and Warren.

4.6 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf. The governmental functions of the MDEQ were formerly part of the Michigan Department of Natural Resources ("MDNR").

4.7 "Oversight Costs" mean only those costs that are related to the State's oversight, enforcement, monitoring, and documentation of compliance with this Decree and any State costs

that may be incurred to perform response activities that Defendants are obligated to perform pursuant to this Decree but fail to perform in a satisfactory manner. Such Oversight Costs associated with this Decree may include, but are not limited to, costs incurred to: monitor response activities required by this Decree at the Facility; observe and comment on field activities required by this Decree; review and comment on Submissions; collect and evaluate samples to document Defendants' performance of their obligations under this Decree; purchase equipment and supplies to perform monitoring activities pursuant to Section IX (Creation of Danger) and Paragraph 5.1; attend and participate in meetings; prepare cost reimbursement documentation; and enforce, monitor, and document compliance with this Decree.

4.8 "Parties" mean the Plaintiffs and Defendants.

4.9 "Past Response Activity Costs" mean those costs incurred and paid by Plaintiffs prior to March 1, 2001.

4.10 "Performance Monitoring Plan" or "PMP" means the portion of the RAP that outlines the performance standards, monitoring requirements, and contingencies. The PMP requires compliance with Sections 18, 20a, and 20b of Part 201 of the NREPA.

4.11 "Plaintiffs" mean Jennifer M. Granholm, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on their behalf.

4.12 "Property" means the property of Landfills 9 and 9A located south of 24 Mile Road, west of Card Road, and north of the McBride Drain and legally described in Appendix A, except as modified by written agreement between SMDA and the MDEQ.

4.13 The term "Remedial Action Plan" or "RAP" means the Remedial Action Plan for the SMDA Landfills 9 and 9a prepared by Petro Environmental Technologies ("Petro") and submitted pursuant to Sections 18, 20a, and 20b of Part 201 of NREPA to MDEQ and attached

to this Decree as Appendix B. The RAP shall also include any MDEQ-approved modifications to the RAP. The elements that comprise the RAP include, but are not limited to, the remedial measures and the PMP. The RAP is attached to this Decree as Appendix B.

4.14 The term "remedial measures" means the design and construction elements of the RAP. The remedial measures include, but are not limited to, the groundwater/leachate collection, extraction, treatment and disposal system; the landfill cover; and the gas venting/collection system.

4.15 "SMDA" means the South Macomb Disposal Authority formed by the City of Center Line, City of Eastpointe, City of Roseville, City of St. Clair Shores, and City of Warren.

4.16 The terms "State" and "State of Michigan" mean the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

4.17 All other terms used in this Decree, which are defined in Part 3 of the NREPA, MCL 324.301 *et seq*, Part 201 of the NREPA, MCL 324.20101 *et seq*, and the Part 201 Rules, shall have the same meaning in the Decree as in Parts 3 and 201 of the NREPA and the Part 201 Rules. In the event of any conflict the definitions of Part 3 and Part 201 shall prevail.

V. IMPLEMENTATION OF RESPONSE ACTIVITIES

5.1 This Decree requires Defendants to implement response activities to meet the objectives described in this Paragraph and the RAP, including the PMP. Defendants shall implement the response activities more fully described in the attached RAP, including the PMP, and this Decree at the Facility in accordance with the schedule therein. The objectives of these response activities are to comply with Part 201 of the NREPA, specifically Sections 20118, 20a, and 20b and to protect human health, safety, and welfare, and the environment through: (a)

construction and operation of a landfill cover system; (b) a groundwater/leachate extraction system; (c) a groundwater/leachate treatment and disposal system; (d) a landfill gas monitoring/venting system; (e) provision of alternate water; (f) operation and maintenance of the systems; (g) long-term monitoring and provisions for treatment or replacement of residential wells, as necessary; (h) placement of deed restrictions and institutional controls to reliably restrict exposure to substances that exceed Part 201 criteria; (i) ultimately, meet unrestricted residential or background criteria pursuant to Part 201 of the NREPA for all groundwater that migrates beyond the lateral boundaries of the Property through actively capturing, treating, and disposing of all groundwater beyond the Property that exceeds health-based residential or background criteria until such criteria are met; (j) maintenance of leachate capture at the boundary of the Property until residential or background criteria pursuant to Part 201 of the NREPA are reliably achieved; and (k) provision of water softeners or extend water supplies to address exceedances of aesthetic criteria in residential wells. In the event that the criteria and standards specified in this Paragraph and the PMP are not met, Defendants shall submit to the MDEQ for review and approval plans for modified or additional requirements as specified in this Decree. If Defendants cease to perform the response activities required by this Decree, are not performing response activities in accordance with this Decree, or are performing response activities in a manner that may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to Defendants, take over the performance of those response activities. Except as otherwise provided in this Decree, upon receipt of MDEQ notice regarding take over of performance of response activities, Defendants may either: (a) within the thirty (30)-day time period, attempt to cure the deficiencies or nonperformance that lead to MDEQ issuing the notice of intent or (b) dispute the MDEQ's determination pursuant to Section XVI (Dispute Resolution). However, the MDEQ is

not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section IX (Creation of Danger). If the MDEQ finds it necessary to take over the performance of response activities that Defendants are obligated to perform under this Decree, Defendants shall reimburse the State its costs to perform those response activities plus accrued interest. Interest shall begin to accrue on the State's costs at the rate specified in Section 20126a(3) of the NREPA on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph shall be considered to be "Oversight Costs," and SMDA shall provide reimbursement of these costs and any associated interest to the State in accordance with Paragraphs 17.2, 17.3, and 17.4 (Reimbursement of Costs).

5.2 The Member Cities shall provide to SMDA whatever funds are necessary so that SMDA is able fully to carry out SMDA's obligations under this Decree; and to amend the SMDA's Articles of Incorporation, if necessary, so that SMDA is able fully to carry out SMDA's obligation under this Decree.

5.3 Work Plans: In accordance with this Decree, Defendants shall submit any required work plans pursuant to this Decree or the RAP, including the PMP. Each work plan shall include: (a) a detailed description of the specific tasks to be conducted during the implementation of the response activities included in each work plan, including methodology, specifications, and sampling locations; (b) schedules for the implementation and completion of the response activities included in the work plan and submission of a final report; and (c) a description of the nature and amount of waste materials that are expected to be generated during implementation of the work plan and the specific facilities that Defendants propose to use for the off-site transfer, storage, treatment, or disposal of those waste materials. Defendants shall implement each work plan upon MDEQ review and comment or approval, as applicable, of each

plan pursuant to the procedures set forth in this Decree. Upon MDEQ review and comment or approval, as applicable, each component of each work plan and approved modifications thereto shall be deemed incorporated into this Decree and made an enforceable part of this Decree.

5.4 QAPP: By May 31, 2002, Defendants shall submit to the MDEQ a Quality Assurance Project Plan ("QAPP"), 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 Decree. The QAPP shall be developed in accordance with the U.S. EPA's "EPA Guidance for Quality Assurance Project Plans" EPA QA/G-5, EPA-600/R-98-018; the MDEQ QAPP Guidance dated February 1993. The QAPP can be done as a modification or addendum to the QAPP submitted with the Supplemental Plume Delineation Work Plan on July 9, 1999.

5.5 HASP: As a part of the RAP, Defendants shall submit to the MDEQ a Health and Safety Plan ("HASP") developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150, the Occupational Safety and Health Act of 1970, 29 CFR 1910.120, and the Michigan Occupational Safety and Health Act. The HASP is not subject to the MDEQ's approval required in Section XII (Submissions and Approvals) of this Decree.

5.6 Implementation of the RAP: Within thirty (30) days of entry of this Decree, SMDA shall implement the attached RAP in accordance with the approved time schedule in the RAP.

5.7 Deed Restrictions: Within twenty-one (21) days of Defendants' completion of construction of the leachate collection/treatment system, Defendants shall record with the Macomb County Register of Deeds the appropriate deed restriction included herewith as Appendix C. Defendants shall provide a true copy of the recorded restrictive covenant to the MDEQ within ten (10) days of their receipt of a copy from the Register of Deeds.

5.8 Notice of Land-Use Restrictions: Within thirty (30) days of receiving a copy of the filed deed restrictions mentioned in Paragraph 5.7 from the County Register of Deeds, Defendants shall provide notice of the land-use restrictions to the zoning authority of the local unit of government that includes the Facility.

5.9 Abandonment of Wells Not Used for Long-Term Monitoring: Within forty-five (45) days after entry of this Decree, Defendants shall submit a proposed plan and implementation schedule to the MDEQ for the identification and removal or plugging of monitor wells that will not be utilized for long-term monitoring at the Facility. Upon receiving MDEQ approval, Defendants shall properly remove or plug the identified monitor wells in accordance with the approved plan and the specifications set forth in ASTM Standard D-5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned. Defendants shall report to the MDEQ the status of the plugging and abandonment of monitor wells in the Progress Reports to be submitted pursuant to Paragraph 5.13 of this Decree.

5.10 Abandonment of Wells Used for Long-Term Monitoring: Defendants shall, upon completion of long-term monitoring, submit a proposed plan and implementation schedule to the MDEQ for the identification and removal or plugging of all remaining monitor wells at or related to the Facility. Upon receiving MDEQ approval, Defendants shall properly remove or plug the identified monitor wells in accordance with the approved plan and the specifications described in ASTM Standard D-5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned.

Defendants shall report to the MDEQ the status of the plugging and abandonment of monitor wells in the Progress Reports to be submitted pursuant to Paragraph 5.13 of this Decree.

5.11 Modification of RAP:

(a) If the MDEQ determines that a modification to the work specified in the RAP is necessary to meet and maintain the performance standards described in the PMP or to comply with the requirements of Sections 20118, 20120a, and 20120b of Part 201 of the NREPA and its administrative rules, and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 *et seq* ("CERCLA"), and the National Contingency Plan, the MDEQ may require that such modification be incorporated into the RAP. Alternatively, if the necessary modifications are extensive, the MDEQ may require Defendants to submit a proposed plan to the MDEQ for review and approval, subject to Section XII (Submissions and Approvals) of this Decree. However, such modifications may only be required pursuant to this Paragraph to the extent that those modifications are consistent with the objectives outlined in Paragraph 5.1.

(b) If Defendants object to any modification determined by the MDEQ to be necessary pursuant to this Section, they may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The RAP shall be modified in accordance with the final resolution of the dispute.

(c) Defendants shall implement any work required by any modification incorporated into the RAP in accordance with this Section.

(d) Nothing in this Section shall be construed to limit the MDEQ's authority to require performance of further response activities as otherwise provided in this Decree.

(e) It is anticipated that the PMP contained in the RAP may need to be modified, based on additional investigations (including the Supplemental Plume Delineation Work Plan, potable well inventory, hydraulic monitoring, etc.), as well as initial system operational data.

Any revisions to the monitoring and analysis PMP contained in the RAP will result in a similar level of cost and effort as currently proposed in the RAP (Appendix B), provided no new information becomes available that significantly changes MDEQ's or Defendants' current understanding of the Facility conditions and/or the adequacy of the RAP.

(f) Alternate Remedial Action:

(1) If, at any time after startup of the groundwater/leachate collection system, Defendants conclude that contaminated groundwater in one or more areas is not likely to be captured by the existing system or, if after completion of the Dewatering Phase, there are certain areas of the plume where the monitoring does not conclusively show hydraulic control or chemical containment, Defendants may propose to the MDEQ an alternate remedial action which may include natural attenuation pursuant to Paragraph 5.11 of this Decree, the requirements of Part 201 of NREPA, and the RAP.

(2) The burden shall be on Defendants to demonstrate to the MDEQ's satisfaction that Defendants have: clearly delineated the extent of the area subject to natural attenuation; adequately demonstrated that chemical containment has been achieved in the area(s); and demonstrated that the collection system is preventing any continued loading of contaminated leachate to the aquifer(s) in the area(s) to be addressed by natural attenuation.

(3) In the event that Defendants submit such a proposal, the proposal shall include adequate deed restrictions or institutional controls and fully comply with a "limited" or "site-specific" category cleanup pursuant to Part 201 of NREPA, including Sections 20118, 20120a, and 20120b, and, if applicable, Section 20d.

(4) Unless and until the MDEQ approves of such a proposal, Defendants shall fully comply with all notifications and responses contained in this Decree and in the attached RAP.

(5) The MDEQ may require collection and submittal of additional data to complete review and approval of a proposed alternative remedial action.

(6) Any disputes concerning the proposed alternative remedial action shall be resolved in accordance with Section XVI (Dispute Resolution).

5.12 Sentinel Wells/Provision of Drinking Water: At any time after execution of this Decree, if Defendants become aware of information that shows that groundwater from any residential well being used for household use purposes within the boundary made by connecting the outer most "sentinel wells" (as defined in Paragraph 6.5(c) below) exceeds Part 201 residential health-based criteria in effect as of July 9, 1999 or background (as determined pursuant to Paragraph 5.14(a)) whichever is higher, Defendants shall within ten (10) days provide the residence with drinking water meeting all Part 201 of the NREPA criteria. Defendants may test any such well periodically to determine whether the condition of exceeding the higher of such residential criteria or background persists.

(a) The quantity of water provided to the residence(s) shall be sufficient to meet all potable water needs.

(b) Defendants will connect the residence(s) to the municipal water supply if the condition appears to be persistent or long term, and if such municipal water is reasonably available. If not, Defendants shall, pursuant to a plan approved by MDEQ, arrange to supply the affected residence(s) a permanent alternative water supply of acceptable quantity and quality.

(c) Defendants will not be required to take action if it is demonstrated to the MDEQ's satisfaction that the detected contamination is not attributable to a release from the Property.

5.13 Progress Reports: Defendants shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to

the implementation of this Decree. The reports shall be submitted monthly during construction activities and quarterly after the startup of the leachate collection system. These progress reports shall include: (a) a description of the activities that have been taken toward achieving compliance with this Decree during the previous month/quarter; (b) a description of data collection and other activities scheduled for the next month/quarter; (c) all results of sampling and tests and other data received by Defendants, their employees, or authorized representatives during the previous month/quarter relating to the response activities performed pursuant to this Decree; (d) a description of the nature and amount of waste materials that were generated and the name of the facilities that were used for the off-site transfer, storage, treatment, or disposal of those waste materials; and (e) any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Decree. The progress report shall be submitted in a format and the information in the progress report presented in a manner which is acceptable to the MDEQ. The first monthly report shall be submitted to the MDEQ within thirty (30) days following the effective date of this Decree and monthly thereafter until the issuance of the Certification of Performance of Required Response Activities as provided in Section XXIII (Certifications). The Parties to this Decree may request, based on the phase of work being conducted at the Facility or other relevant circumstances, an adjustment to the schedule for submittal of progress reports, provided that such modification of the schedule is agreed to in writing by both Project Coordinators.

5.14 Exceedance of Aesthetic Criteria in Groundwater: The following shall apply with respect to any Part 201 aesthetic criteria exceedance that exists in the groundwater within one (1) mile of the boundaries of the Property legally described and shown in Appendix A:

(a) The MDEQ approved background levels, determined using data collected by Defendants and approved by the MDEQ, may be used in place of the residential health-based standard or the aesthetic standard.

(b) By the effective date of this Decree, Defendants shall obtain samples from, at a minimum, the residential wells identified in the MDEQ telefax to Daniel Duffy of Petro Environmental dated January 17, 2002, to determine whether the groundwater in any residential well that is located within one (1) mile of a boundary of the Property being used for household use exceeds the higher of:

(1) The aesthetic criteria for manganese, iron, chloride, diethyl ether, barium, arsenic, general chemistry, and other parameters designated by MDEQ; or

(2) The background for any such parameter as determined pursuant to the provisions set forth above.

Defendants shall use reasonable efforts to obtain access to the wells in question but shall not be obligated to pay compensation or seek access through judicial processes.

(c) Response to Exceedance:

(1) If an exceedance of aesthetic criteria exists at any such residence and the residence in question is not part of a subdivision, within forty-five (45) days of the above determination, Defendants shall offer the owner of the residence the choice of: installation of a water softener at Defendants' expense, or payment to the owner of the residence the equivalent of the cost of a water softener to be used towards hooking up to municipal water, if municipal water is available.

(2) If the residence is part of a subdivision and if Macomb Township has adopted and is enforcing the ordinance described in Paragraph 5.14(d) below, then Defendants shall have no further obligation to address aesthetic exceedance of Part 201 criteria in

groundwater at that residence. The ordinance must be enforced in order to remain a valid institutional control pursuant to Part 201 of the NREPA.

(3) If, however, Macomb Township has not adopted such an ordinance or the residence is for some reason not subject to such ordinance, then Defendants shall make the offer described above in Paragraph 5.14(c)(1) regardless of whether the residence is part of a subdivision.

(4) Defendants will not be required to take action if it is demonstrated to the MDEQ's satisfaction that the detected contamination is not attributable to the Facility. Any dispute will be resolved in accordance with Section XVI (Dispute Resolution).

(d) Water Ordinance: Defendants may request Macomb Township to adopt and enforce a township ordinance that reliably restricts exposure to substances which exceed Part 201 criteria and is acceptable to the MDEQ, pursuant to which, any subdivision that exists or is established within one (1) mile of the boundaries of the Property must hook all existing and future residences within the subdivision to municipal water.

5.15 Collection and Pumping System/Capture of Contaminant Plumes:

(a) Startup: Defendants shall startup the groundwater/leachate collection pumping system, as outlined in the RAP, by September 7, 2002, unless a longer time is agreed to by Defendants and MDEQ.

(b) Obligation: Defendants shall "capture" the contaminant plumes emanating beyond the boundaries of the Property by demonstrating both hydraulic control and chemical containment of the entire contaminant plume that exceeds the Part 201 residential health-based drinking water standards or background, whichever is higher. Defendants also have the obligation to ensure that the exceedances of the aesthetic criteria are properly addressed.

Hydraulic control and chemical containment shall be maintained in accordance with Paragraph 5.15(g), the RAP, and this Decree.

(1) "Hydraulic control":

A. Hydraulic control extends to the point where the hydraulic gradients are toward the Property or toward a component of the extraction system (i.e., the divide between inward and outward gradients).

B. Hydraulic control shall be demonstrated through the use of groundwater contour maps and profiles showing the horizontal and vertical direction of groundwater flow and horizontal and vertical hydraulic gradients.

(2) "Chemical containment":

A. Chemical containment is defined as the stabilization and/or reduction of the horizontal and vertical extent of the contaminant plume that extends beyond the boundaries of the Property, which exceeds the higher of Part 201 residential health-based drinking water criteria as contained in the January 29, 1999, update of the Part 201 Generic Cleanup Criteria Tables of the August 31, 1998 MDEQ Environmental Response Division Operational Memorandum No. 18 as amended by the October 2, 1998 Update or background as determined pursuant to Paragraph 5.14(a).

B. Chemical containment will be considered to exist if the chemical concentrations of the groundwater in the sentinel wells remain below the higher of Part 201 residential health-based drinking water criteria or background and if the chemical concentrations in all of the monitoring wells do not change in a way that indicates that the plume is expanding.

(3) "Dewatering" is defined as the process of achieving a zone of hydraulic control expanding away from the individual collection components of the groundwater/leachate collection system and toward the required zone of capture (i.e., Part 201 residential health-based

plume or background) and decreasing water elevations in the zone of capture toward achieving a steady state Dewatered condition within the boundaries of the Property.

(4) "Dewatering Phase" is defined to comprise the time until achievement of steady state conditions or four (4) years of operation from startup, whichever is sooner.

(5) "Completion of Dewatering" is defined as the attainment of long-term equilibrium conditions where water levels are drawn down such that the maximum extent of hydraulic control of the extraction system is achieved.

(6) "Health-Based Plume" is defined as the plume of contaminated groundwater that exceeds the Part 201 health-based drinking water criteria or background, whichever is higher.

(c) Within thirty (30) days after conclusion of the ninety (90)-day startup period of the groundwater/leachate collection system and during the Dewatering Phase (i.e., prior to steady state conditions), Defendants shall demonstrate to the MDEQ in a written report that Dewatering is occurring and that no conditions requiring notification to the MDEQ pursuant to Paragraph 5.17 are occurring.

(d) Performance Standard/Capture Within Four Years: Defendants shall achieve capture, as defined in Paragraph 5.15 (b) and consistent with Paragraph 5.15 (e), of the Health-Based Plume beyond the boundaries of the Property within four (4) years of the startup of the groundwater/leachate collection pumping system.

(e) At Completion of the Dewatering Phase, Defendants shall demonstrate, in accordance with the PMP in the approved RAP, to the MDEQ through a written report, that:

(1) Capture, including hydraulic control and chemical containment, of the Health-Based Plume beyond the boundaries of the Property has been achieved;

(2) The collection trenches and/or wells are and will continue to be effective in eliminating the continued loss of leachate to the aquifer beyond the boundaries of the Property. This demonstration may provide extra confidence in the overall system, and allow for reductions in monitoring of the aquifer and support any proposals involving natural attenuation or other alternative remedial action proposals; and

(3) Capture, including hydraulic control and chemical containment, of the Health-Based Plume will be maintained until such time as concentrations in groundwater beyond the boundaries of the Property restricted by Defendants are below the higher of Part 201 residential health-based drinking water criteria or background.

(f) Failure to Achieve Capture: If capture is not achieved within four (4) years of the startup of the leachate/groundwater collection system, or by the completion of the Dewatering Phase, as defined in Paragraph 5.15(b)(4), Defendants will:

(1) Immediately increase pumping and leachate collection rates, as practical, until a corrective action plan is implemented.

(2) Submit to the MDEQ a corrective action plan, including an amendment to the RAP within ten (10) days of the end of the four (4) years or within ten (10) weeks of Completion of the Dewatering Phase whichever occurs first. The corrective action plan should include an evaluation of additional groundwater extraction wells and leachate collection trenches, as necessary, to obtain capture.

(3) The corrective actions will be implemented within six (6) months of identifying the condition, unless a longer time is agreed to by Defendants and MDEQ.

(4) Disputes: Any disputes concerning the proposed corrective action plan or the amendments to the RAP shall be resolved in accordance with Section XVI (Dispute Resolution).

(g) Once capture of the Health-Based Plume has been achieved, as described in Paragraphs 5.15(b), (c), (d), and (e), Defendants shall operate and maintain the pumping system such that capture, including hydraulic control and chemical containment, of the Health-Based Plume beyond the boundaries of the Property is maintained, the contaminant plume has been drawn back to the boundary of the Property, and the concentrations of contaminants in groundwater at all points beyond the boundary of the Property are reliably below Part 201 residential health-based drinking water criteria or background, whichever is higher. Pumping to maintain capture/containment at the boundaries of the Property will need to be maintained in perpetuity or until it is demonstrated to MDEQ's satisfaction that the concentrations of hazardous substances in all leachate/groundwater within the Property meets all applicable standards or is at or below background, whichever is higher.

5.16 Periodic Review: The leachate/groundwater extraction and monitoring systems, as described in this Section V of the Decree, will be reviewed by Defendants periodically during and following the ninety (90)-day startup phase of the systems to determine if the locations and performance of the extraction and monitoring systems are adequate. Monthly reviews will be conducted by Defendants during the startup phase, and reported to MDEQ in the monthly progress reports pursuant to Paragraph 5.13. Thereafter reviews will be conducted by Defendants on an annual basis and will be reported to the MDEQ in the annual monitoring report, that is submitted annually within thirty (30) days of the anniversary of the effective date of this Decree, until one (1) year after equilibrium conditions are attained.

5.17 Leachate/Groundwater Elevation Conditions Requiring Notification to MDEQ and Response.

(a) Startup Period: The general trends in leachate/groundwater elevations will be observed and documented during the initial ninety (90)-day startup period in appropriate wells,

piezometers, and drains. The response mechanisms described below will not apply during the first ninety (90) days because it is not expected that hydraulic control or chemical containment will be attained.

(b) Monthly Startup Summaries: Defendants will provide MDEQ with monthly summaries of the Dewatering Phase during the initial ninety (90)-day period. These summaries shall be submitted within fifteen (15) days after the end of the month being reported.

(c) Review of Initial Data: An initial review of the hydraulic monitoring data will be completed by Defendants within three (3) weeks of each monitoring event performed after the first ninety (90) days.

(d) Notification Triggers: Based on the initial review by Defendants, the following leachate/groundwater elevation conditions require action by Defendants and notification to MDEQ:

(1) During the Dewatering Phase, the leachate/groundwater elevations (corrected for climatic effects as necessary) indicate that the zone of hydraulic control is not increasing away from the individual collection components when comparing at least two (2) consecutive monitoring intervals; or

(2) After the Dewatering Phase (i.e., when steady state conditions are achieved), the leachate/groundwater elevations (corrected for climatic effects as necessary) do not demonstrate hydraulic control of the delineated extent of groundwater contamination above the higher of health-based standards or background.

(e) Required Actions: The following actions will be taken by Defendants if any of the above conditions occur:

(1) Defendants will notify the MDEQ within one (1) week of evaluating the data collected during the monitoring event for which the above condition occurs.

(2) If the trends or fluctuations in leachate/groundwater elevations cannot be explained by climatic conditions or hydrogeologic effects observed in wells outside the area to be Dewatered, the leachate/groundwater levels in the area of concern will be remeasured by Defendants within two (2) weeks of the above notification.

A. The MDEQ will be notified of the results within one (1) week of the follow-up monitoring event.

B. If the elevations have declined, measurement of leachate groundwater elevations by Defendants will continue at biweekly intervals for one (1) month during the monthly monitoring phase and at six (6) week intervals for one (1) quarter during the quarterly monitoring phase.

(3) If the hydraulic monitoring does not demonstrate to MDEQ that Dewatering, pursuant to Paragraph 5.15 (b), is occurring at a rate that will result in capture within four (4) years of startup of the leachate/groundwater collection system, Defendants will correct the situation by increasing the pumping or leachate collection rates in the affected area within two (2) weeks of the time water levels were remeasured. Documentation of the results of these actions will be forwarded to MDEQ within eight (8) weeks of the increase in pumping or leachate collection rates.

(4) If increased pumping or leachate collection is not practical or does not cause the water elevation to decline, Defendants will submit a corrective action plan to the MDEQ within ten (10) weeks of identifying the situation. Construction of the corrective actions will be implemented by Defendants within six (6) months of identifying the condition. Defendants may petition the MDEQ to request an extension if major modifications to the system are required.

(5) As used in this Decree, the concept that increased pumping and/or collection "is not practical" shall mean that the method of collection, treatment or disposal of leachate and groundwater which Defendants are using at the time cannot handle the increased volume of liquids.

5.18 Chemical Monitoring Conditions Requiring Notification to MDEQ and Required Response:

(a) Conditions Requiring Action: The occurrence, at any time, of the following leachate/groundwater quality conditions require action by Defendants and notification to MDEQ:

(1) The chemical concentration in any of the sentinel monitoring wells increases above the Part 201 residential health-based drinking water criteria or background as established pursuant to Paragraph 5.14(a), whichever is higher; or

(2) The chemical concentration in any of the monitoring wells increases in a way that indicates that the plume may be expanding.

(b) Required Actions During Dewatering Phase: The following actions will be taken by Defendants if any of the above chemical monitoring conditions occur during the Dewatering Phase:

(1) Defendants will notify the MDEQ of the condition within one (1) week of evaluating the results. Evaluation of the results must occur within two (2) weeks of receipt of the results;

(2) The well will be resampled within three (3) weeks of the above notification;

(3) If the chemical concentration in the follow-up sample is below the Part 201 residential health-based criteria or background, whichever is higher, and does not indicate

the plume may be expanding, the monitoring well will continue to be sampled during the regularly scheduled water quality monitoring events as required by the PMP; and

(4) If the chemical concentration in the follow-up sample from a sentinel well exceeds the Part 201 residential health-based criteria or background, whichever is higher, a new sentinel well will be installed by Defendants downgradient of the impacted sentinel well to monitor the expansion of the plume. Any such wells shall be installed within three (3) months of receipt of the results unless an extension of this time frame is agreed to by the MDEQ.

A. The limits of the plume will be monitored and revised during the Dewatering Phase to provide a basis to evaluate the effects of the remedial action on the plume when steady-state conditions have been attained.

B. The new location(s) will be proposed by Defendants to the MDEQ in writing and be subject to review and approval by the MDEQ.

(c) Required Actions After Dewatering Phase: The following actions will be taken by Defendants if any of the above chemical monitoring conditions occur after the Dewatering Phase (i.e., steady-state conditions):

(1) Defendants will notify the MDEQ of the condition within one (1) week of evaluating the results. Evaluation of the results must occur within two (2) weeks of receipt of the results.

(2) The well will be resampled within three (3) weeks the above notification.

(3) If the chemical concentration in the follow-up sample meets the Part 201 residential health-based criteria or background, whichever is higher, the monitoring well will continue to be sampled during the scheduled water quality monitoring events as required by the PMP.

(4) If the chemical concentration in the follow-up sample does not meet the Part 201 residential health-based criteria or is above background, whichever is higher,

A. Defendants will within one (1) week of this determination notify the MDEQ of the corrective actions that will be taken.

B. Defendants shall, within two (2) weeks of this determination, increase pumping or leachate collection rates in the affected area if necessary to correct the situation.

C. The well will be resampled within eight (8) weeks of increasing the pumping or leachate collection rates.

D. The documentation of the results of these actions will be forwarded to MDEQ within one (1) week of evaluating the analytical results of this last resample.

(5) If increased pumping or leachate collection rates is not practical or does not cause the water quality to improve and/or if Defendants are unable to demonstrate hydraulic capture, Defendants will submit a corrective action plan to the MDEQ for review and approval within twelve (12) weeks of identifying the situation or within twelve (12) weeks of notification from MDEQ that such a situation exists,

A. The corrective actions will be implemented by Defendants within six (6) months of identifying the condition.

B. Defendants may petition the MDEQ to request an extension if major modifications to the system are required or weather conditions do not permit timely construction.

5.19 Corrective Action Plan:

(a) Defendants shall submit a corrective action plan to MDEQ under the following circumstances:

(1) Pursuant to Paragraph 5.15(f).

(2) Pursuant to Paragraph 5.17(e)(4).

(3) Pursuant to Paragraph 5.18(c)(5).

(4) If, any time after four years from startup of extraction system, the MDEQ notifies Defendants that it has determined that the response activities implemented by Defendants have failed to achieve or maintain compliance with the performance objectives specified in Paragraph 5.1, including Part 201.

(b) Unless otherwise specified in this Decree, the Corrective Action Plan shall be submitted to MDEQ within sixty (60) days after the condition listed in Paragraph 5.19(a). Any corrective action plan shall include a schedule for implementation of the plan.

(c) Either party may invoke Dispute Resolution pursuant to Section XVI regarding a corrective action plan required to be submitted including the adequacy of the submittal.

(d) Defendants shall implement the corrective action plan in accordance with its terms or, if dispute resolution is invoked, in accordance with the resolution of the dispute.

VI. SAMPLING AND ANALYSIS

6.1 All sampling and analysis conducted to implement this Decree shall follow the methodologies prescribed by the Part 201 of the NREPA Rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits, and analytical methods available at the time of the sampling and analysis. Performance monitoring sampling shall be in accordance with the attached PMP, as modified pursuant to this agreement.

6.2 Defendants, or their consultants or subcontractors, shall provide the MDEQ ten (10) days notice prior to any sampling activity undertaken pursuant to this Decree to allow the Environmental Response Division's ("ERD") Project Coordinator, or his or her authorized

representative, to take split or duplicate samples or to observe the sampling procedures. In circumstances where ten (10) days notice is not possible, Defendants, or their consultants or subcontractors, 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, Defendants may forego the ten (10)-day notification period.

6.3 Defendants shall provide the MDEQ with the data and analytical results of all environmental sampling, treatment system sampling, storage tank system tightness tests, aquifer pump tests, and other data and analysis generated in the performance or monitoring of any requirement under this Decree, Parts 201, 211, or 213 of the NREPA, or other relevant authorities. Said data and analysis shall be included in Progress Reports as set forth in Paragraph 5.13 (Progress Reports). Water-level data and chemical data shall be submitted in an electronic format acceptable to MDEQ.

6.4 Defendants shall assure that the MDEQ and its authorized representatives are allowed access, for the purpose of quality assurance monitoring, to any laboratory that is used by Defendants in implementing this Decree.

6.5 Monitoring wells:

(a) Network: The aquifer monitoring summaries in the PMP identify a preliminary monitoring well network for Aquifers 1, 2, and 3 which has been currently agreed to by Defendants and MDEQ based on the attached remedial design of the remedial action and current understanding of the conditions at the Facility.

(b) Sampling: Groundwater samples will be obtained and analyzed, and water levels measured in each type of well in accordance with the PMP.

(c) Sentinel wells: Sentinel wells are wells outside the perimeter of the contaminant plume, as established in the PMP, that exceeds Part 201 generic residential health-based criteria.

(d) Water Level Monitoring:

(1) Defendants will install up to six (6) transducers in wells to be selected by MDEQ within forty-five (45) days of the date the MDEQ notifies Defendants of the wells selected. After placement of the transducers, if the MDEQ agrees, SMDA may start the system even if the full six (6) months have not elapsed since placement of the transducers.

(2) Defendants will monitor the water levels in the six (6) wells on an ongoing basis at no less than daily intervals during implementation of the PMP or until MDEQ agrees that such monitoring can be reduced or stopped on one or more such wells.

(e) Performance Standard Regarding East Side of the Property: After completion of Dewatering, the monitoring system must be able to demonstrate to the MDEQ's satisfaction that the leachate collection system is pulling contaminants off the bottom of Aquifer 2 on the east side of the Property, where this is required to control the off-site migration of leachate.

(1) To demonstrate this condition, additional piezometers must be installed as part of the remedial action in a line perpendicular to the leachate collection trench on the east side of the Property.

A. The number and location of these additional wells or piezometer clusters shall be sufficient to demonstrate capture of the contaminated groundwater.

B. Existing monitoring wells may be used where appropriate.

C. Defendants shall augment the PMP to include any such wells upon MDEQ approval.

(2) The measured static water elevations, when mapped in cross section, must show decreasing head levels from the base of the aquifer to the collection trench as in the diagram in Appendix B of the PMP. The profile set forth in Appendix B of the PMP and the associated contours will only need to be demonstrated initially by Defendants after completion of dewatering. The intent of Appendix B is to provide an example of how Defendants shall graphically present capture on the east side of Site 9. Upon demonstration of capture in that area, Defendants may thereafter present flow and gradients in tabular form. Tabular form presentation pursuant to Paragraph 5.17 is acceptable with respect to flow and gradients in all other areas throughout the monitoring period.

(3) If the measured static water elevations, when mapped in cross section, do not show decreasing head levels from the base of the aquifer to the collection trench, this shall be considered a groundwater elevation condition requiring notification and response actions as outlined in Paragraph 5.17.

(4) Any modifications to the performance monitoring network contained in the PMP will be subject to MDEQ review and approval. The MDEQ may also require changes to the PMP if site conditions warrant such changes.

VII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

7.1 Each party shall designate a Project Coordinator.

The MDEQ's Project Coordinator is David Kline.

Defendants' Project Coordinator is Mark Mather.

7.2 Whenever notices are required to be given or Progress Reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the

other Party under this Decree, or whenever other communications between the Parties is needed, such communications shall be directed to the Project Coordinators at the below listed addresses. All documents required to be submitted to the MDEQ pursuant to this Decree shall reference the Facility name and the case number of the Decree. 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 the MDEQ:

A. For Record Retention Cost Recovery and financial matters pursuant to Sections XI (Record Retention/Access to Information) and XVII (Reimbursement of Costs):

Patricia A. McKay
Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: 517-373-7818
Telefax: 517-373-2637

(Via courier)
525 West Allegan Street, Fourth Floor South
Lansing, MI 48933

B. For all payments (including stipulated penalties) pertaining to this Decree:

Revenue Control Unit
Michigan Department of Environmental Quality
525 West Allegan Street, Fifth Floor South
P.O. Box 30657
Lansing, MI 48909-8157

To ensure proper credit, all payments made pursuant to this Decree must reference the SMDA Landfills 9 and 9a and the Court Case No. 85-3838-CZ.

C. For all other matters pertaining to this Decree:

David Kline, Project Coordinator
Environmental Response Division
Superfund Section
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-373-8354
Telefax: 517-335-4887

As to Defendants:

Mark Mather
Petro Environmental Technologies
7851 Palace Drive
Cincinnati OH 45249
Telephone: 513 489-6789
Telefax: 513-489-7208

7.2 Defendants' Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Decree.

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

VIII. ACCESS

8.1 Upon reasonable notice to Defendants, upon the effective date of this Decree and to the extent access to the Facility is owned, controlled by, or available to any of the Defendants, the MDEQ, its authorized employees and representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Decree, for the purpose of conducting any activity authorized by this Decree or to otherwise fulfill any responsibility

under federal or state law with respect to environmental conditions at the Facility, including, but not limited to:

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

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

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

(d) Obtaining samples;

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

(f) Assessing compliance with requirements for the implementation of monitoring, operation and 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; or

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

8.2 To the extent that the Facility, or any other area where response activities are to be performed by Defendants under this Decree, is owned or controlled by persons other than any of the Defendants, Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Each access agreement shall be embodied in a written document and Defendants 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 or taking judicial action pursuant to Section 20135a of the NREPA or other applicable law

to secure such access. If, after using their best efforts, Defendants are unable to obtain access within forty-five (45) days of the entry of this Decree, Defendants shall promptly notify the MDEQ.

8.3 Any lease, purchase, contract, or other agreement entered into by any of the Defendants, which transfers to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the MDEQ or another person undertaking the response activities and their authorized representatives, the access provided under Sections VIII (Access) and XI (Record Retention/Access to Information).

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

8.5 Defendants shall be responsible for all payments due and owing to Mr. Weiss pursuant to the Court's Orders dated January 21, 1998 and April 9, 1999, or any other property owner to whom the Court may order the payment of compensation, and MDEQ shall be relieved of any responsibility to pay Mr. Weiss or any other property owner to whom the Court may order the payment of compensation for access. Defendants may seek reimbursement of any such costs under the Municipal Landfill Grant Cost Share Program pursuant to Part 201 so long as such program is in existence.

IX. CREATION OF DANGER

If Defendants, during the performance of response activities conducted pursuant to this Decree, become aware of information concerning the occurrence of any event that causes a release or threat of a release of a hazardous substance from the Facility or that poses or threatens to pose an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare, or the environment, Defendants shall immediately undertake all appropriate

actions to prevent, abate, or minimize such release, threat, or endangerment and shall immediately notify the 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 actions taken by Defendants shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the HASP. Within ten (10) days of notifying the MDEQ of such an event, Defendants shall submit a written report setting forth the events that occurred and the measures taken and/or to be taken to mitigate any release, threat, or endangerment caused or threatened by the event and to prevent recurrence of such an event. Regardless of whether Defendants notify the MDEQ under this Section, if response activities undertaken under this Decree cause a release or threat of release or pose or threaten to pose an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare, or the environment, the MDEQ may: (a) require 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 Defendants to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat, or endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat, or endangerment. In the event that the MDEQ undertakes any action to abate such a release, threat, or endangerment, Defendants shall reimburse the Plaintiffs for all response activity costs lawfully incurred by the State. Payment of such costs shall be made in the manner provided in Section XVII (Reimbursement of Costs).

X. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 201 of the NREPA, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the implementation of response activities under this Decree.

XI. RECORD RETENTION/ACCESS TO INFORMATION

11.1 Defendants and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Decree and for a period of ten (10) years after its termination, all records, sampling or test results, charts, and other documents relating to the release or threat of release of hazardous substances and the storage, generation, disposal, treatment, or handling of hazardous substances at the Facility, and any records that are maintained or generated pursuant to any requirement of this Decree. After the ten (10)-year period of document retention, Defendants may seek the MDEQ's written permission to destroy the documents. In the alternative, Defendants may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period of time, or the Defendants may offer to relinquish custody of all documents to the MDEQ. In any event, the Defendants shall obtain the MDEQ's written permission prior to the destruction of any documents. Defendants' request shall be accompanied by a copy of this Decree and sent to the address listed in Section VIII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

11.2 Upon request, Defendants shall provide to the MDEQ all documents and information within their possession, or within the possession or control of their employees,

contractors, agents or representatives, relating to response activities at the Facility or to the implementation of the requirements of this Decree, including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, correspondence, or other documents or information related to the response activities. Defendants shall also, upon request, make available to the MDEQ, upon reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

11.3 Defendants may designate, in accordance with Sections 20117(10) and (11) of the NREPA, information that Defendants believe they are entitled to protect or keep confidential. If no such claim accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to Defendants. Defendants shall not assert a confidentiality or privilege claim for information described in Subsections 20117(11)(a)-(h) of the NREPA. Information or data generated under this Decree shall not be subject to Part 148 of the NREPA.

XII. SUBMISSIONS AND APPROVALS

12.1 All plans, reports, documents, schedules, and submittals (collectively "Submissions") required by this Decree shall comply with applicable laws and the requirements of this Decree and shall be delivered to the MDEQ in accordance with the schedules set forth in this Decree. Prior to receipt of the MDEQ's review and comment or 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 review and comment or final acceptance from the Michigan

Department of Environmental Quality ("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 the MDEQ."

12.2 Upon receipt of any Submission made pursuant to this Decree that requires MDEQ approval, the MDEQ Project Coordinator, or as applicable the Chief of the Environmental Response Division, shall, in writing: (a) approve the Submission; (b) disapprove the Submission and notify Defendants of the deficiencies in the Submission; or (c) approve the Submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, Defendants 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."

12.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 12.2, Defendants shall correct the deficiencies and resubmit the Submission for approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Notwithstanding a notice of disapproval, Defendants shall proceed to take any response activities not directly related to the deficient portion of the Submission. If, upon resubmission, the Submission is not approved, the MDEQ shall so advise Defendants and Defendants shall be deemed to be in violation of this Decree.

12.4 Any Submission and attachments to Submissions required by this Decree, upon review and comment or approval by the MDEQ, are incorporated into this Decree and are enforceable pursuant to the terms of this Decree.

12.5 Any delay in the submittal of a Submission or noncompliance with such Submissions or attachments to this Decree shall subject Defendants to penalties if and to the extent provided in Section XVIII (Stipulated Penalties).

12.6 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 any Submission or warrants that the Submission comports with law.

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

XIII. INDEMNIFICATION AND INSURANCE

13.1 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 Defendants, their officers, employees, agents, or any persons acting on their behalf or under their control in carrying out response activities pursuant to this Decree.

13.2 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract entered into by or on behalf of Defendants in carrying out actions pursuant to this Decree. Neither Defendants nor any contractor shall be considered to be an agent of the State. This Decree shall not be construed to be an indemnity by the State for the benefit of Defendants or any other person.

13.3 Defendants waive any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to Plaintiffs that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any person for the performance of response activities at the Facility, including

claims on account of construction delays. Nothing in this Paragraph shall prevent Defendants from using expenditures made by Defendants' obligations under this Decree as a basis for claims under the Municipal Landfill Cost Share Grant program under MCL 324.2019a.

13.4 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 Defendants and any person for performance of response activities at the Facility, including claims on account of construction delays.

13.5 Prior to commencing response activities pursuant to this Decree, Defendants shall secure, and shall maintain for the duration of this 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 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, 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, and prior to commencement of response activities pursuant to this Decree, Defendants shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, for the duration of this Decree, 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 Defendants in furtherance of this Decree.

XIV. MODIFICATIONS

If this Consent Decree, other than the RAP, except as provided in Section V for additional response activities to meet the objectives or time schedules contained herein, is modified, such modification shall be in writing by signature of the Director's Designee of the MDEQ, the Attorney General, and Defendants' authorized representative after entry by the court. Any Submission or attachment to Submissions required by this Consent Decree, excluding the RAP, may be modified by written agreement between Defendants' designated Project Coordinator or other authorized representative and the MDEQ's Project Coordinator. The RAP may only be modified by written agreement between the Defendants' Project Coordinator and the MDEQ, ERD Division Chief or his or her representative.

XV. DELAYS IN PERFORMANCE

15.1 Defendants shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Defendants' obligations under this Decree in accordance with this Section.

15.2 For the purpose of this Decree, "Force Majeure" means an occurrence arising from causes not foreseeable, beyond the control of, and without the fault of Defendants, including, but not limited to: an Act of God; untimely review of permit applications or Submissions by the MDEQ or other applicable authority; or acts or omissions of third parties that could not have been avoided or overcome by Defendants' due diligence and that delay the performance of an

obligation under this Decree. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Defendants' actions or omissions.

15.3 When circumstances occur that Defendants believe constitute a Force Majeure, Defendants shall notify the MDEQ by telephone or telefax within two (2) business days of discovering the occurrence if that occurrence causes or may cause a delay in Defendants' compliance with any provision in this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days. Such written notice shall describe in detail the anticipated length of delay; the precise cause or causes of the delay; the measures taken and/or to be taken by Defendants to avoid, minimize, or overcome the delay; and the timetable by which those measures shall be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay. Within thirty (30) days of receipt of written notice from Defendants, the Chief of the ERD shall determine whether a Force Majeure condition exists and the MDEQ will notify Defendants whether the MDEQ agrees that the delay was beyond the control of Defendants.

15.4 Failure of Defendants to comply with the notice requirements of Paragraph 15.3 shall render this Section XV void and of no force and effect as to the particular incident involved. The MDEQ may, in its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 15.3.

15.5 If the Parties agree that a delay or anticipated delay was beyond the control of Defendants, this may be so stipulated and the Parties to this Decree may petition the Court for an appropriate modification to this Decree. If the Parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVI (Dispute Resolution) of this Decree. Defendants shall have the burden of proving that any delay was beyond the

reasonable control of Defendants and that all the requirements of this Section XV have been met by Defendants.

15.6 An extension of one (1) compliance date based upon a particular occurrence does not necessarily mean that Defendants qualify for an extension of a subsequent compliance date without demonstrating the need for each incremental step or other requirement for which an extension is sought.

XVI. DISPUTE RESOLUTION

16.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree and shall apply to all provisions of this Decree, excluding Section IX (Creation of Danger).

16.2 Any dispute that arises under this Decree shall in the first instance be the subject of informal negotiations between the Parties.

(a) 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.

(b) The period for informal negotiations shall end when the MDEQ's Project Coordinator provides a written statement setting forth its proposed resolution of the dispute to Defendants.

(c) Engagement of dispute resolution among the Parties shall not be cause for Defendants to delay the implementation of any response activity.

16.3 If the Parties fail to resolve a dispute by informal negotiations, then the Chief of ERD will make the final determination of the dispute.

16.4 The Chief of ERD's determination will be final and will not be subject to any administrative, judicial, or other form of review.

16.5 The initiation of this dispute resolution process shall not of itself extend or postpone any obligation of Defendants under this Decree. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Decree. In the event, and to the extent, that Defendants do not prevail on the disputed issue, stipulated penalties and any applicable interest to the extent provided for in Section XVIII (Stipulated Penalties) shall be paid within ten (10) days in the manner provided in Paragraph 17.5 of this Decree. Defendants shall not be assessed stipulated penalties for disputes resolved in its favor.

16.6 Notwithstanding this Section, Defendants shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Sections XVII (Reimbursement of Costs) and XVIII (Stipulated Penalties), as appropriate.

XVII. REIMBURSEMENT OF COSTS

17.1 On February 28, 2001, Defendants submitted one million dollars ($1,000,000) in payment of Past Response Activity Costs for the Facility through February 28, 2001.

17.2 Defendants shall reimburse the Plaintiffs for all Oversight Costs incurred by the Plaintiffs in overseeing response activities of Defendants for matters covered in this Decree. As soon as possible after each anniversary of the effective date of this Decree, pursuant to Sections 20119(4) and 20137(1) of the NREPA, MCL 324.20119(4) and MCL 324.20137(1), the MDEQ will provide Defendants with a written demand for payment of Oversight Costs that have been lawfully incurred by Plaintiffs. Any such demand will set forth with reasonable specificity the

nature of the costs incurred. Annual billing of Oversight Costs shall not exceed one hundred fifty thousand dollars ($150,000) per year or an aggregate basis during the period up until the proposed remedy is constructed and operating at a level consistent with the intended design as delineated in the RAP. Thereafter the Oversight billing will not exceed an aggregate of fifty thousand dollars ($50,000) annually. The State may carry forward unreimbursed response activity costs into the subsequent billing period if the annual costs exceed the invoice limit. These limitations on the annual billing do not apply to reimbursement of costs pursuant to the provisions of Paragraph 5.1 and Section IX (Creation of Danger).

17.3 Defendants 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. Provision of these documents to Defendants by the MDEQ may result in the MDEQ incurring additional oversight costs that will be included in the annual demand for payment of Oversight Costs. Except as provided by Section XVI (Dispute Resolution), Defendants shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ. 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 the NREPA. In any challenge by Defendants to a demand for recovery of costs by the MDEQ, Defendants shall have the burden of establishing that the costs were not lawfully incurred in accordance with Section 20126a(1)(a) of NREPA.

17.4 All payments made pursuant to this Decree 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 VII (Project Coordinators and Communications/Notices). The SMDA Landfills 9 and 9a and the Case No. 85-3838-CZ shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ's Project Coordinator and the

Assistant Attorney General in Charge, Department of Attorney General, Natural Resources Division, 5th Floor South, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48933. Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

XVIII. STIPULATED PENALTIES

18.1 Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 18.2 and 18.3 for failure to comply with the requirements of this Decree, unless excused under Section XV (Delays in Performance). "Failure to Comply" by Defendants shall include failure to deliver Submissions and notifications, failure to complete response activities in accordance with MDEQ-approved plans and this Decree, and failure to pay costs and penalties in accordance with all applicable requirements of law and this Decree within the specified implementation schedules established by and approved under this Decree.

18.2 The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of Subparagraphs 5.6 as designated by an asterisk within the attached schedule Attachment 7 of the RAP, 5.12, 5.15(a), 5.15(f), 5.15(g), 5.17, and 5.19.

Penalty Per Violation Per Day	Period of Noncompliance
$ 750	1st through 14th day
$1,500	15th through 30th day
$3,750	31st day and beyond

18.3 The following stipulated penalties shall accrue, per violation, per day, for failure to comply with the requirements of Subparagraphs 5.7, 5.9, 5.10, 5.11, 12.3, 17.2, 17.3, and 18.5.

Penalty Per Violation Per Day	Period of Noncompliance
$ 187	1st through 14th day
$ 375	15th through 30th day
$1,125	31st day and beyond

18.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

18.5 Except as provided in Section XIV (Dispute Resolution), Defendants shall pay stipulated penalties owed to the State no later than thirty (30) days after Defendants' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 17.4 Section XVII (Reimbursement of Costs). Interest shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period at the rate provided for in Section 20126a(3) of NREPA on the day after payment was due until the date upon which Defendants make full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Decree.

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

18.7 If Defendants fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Defendants violate this Decree. For any failure or refusal of Defendants to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law

including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, and sanctions for contempt of court, provided that the stipulated penalties set forth above for a specific violation shall be credited against any such civil penalties for that violation.

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

XIX. COVENANTS NOT TO SUE BY PLAINTIFFS

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

(a) Performance of response activities by Defendants under the Decree which occur prior to the issuance of the Certification of Capture of the Contaminant Plume pursuant to Section XXIII;

(b) Performance of response activities by Defendants under the Decree on the day of and after the issuance of the Certification of Capture of the Contaminant Plume pursuant to Section XXIII;

(c) Reimbursement of Past Response Activity Costs incurred by the State through February 28, 2001;

(d) Reimbursement of Oversight Costs incurred by the State and paid by Defendants as set forth in Paragraphs 17.2 and 17.3 of this Decree; and

(e) Performance of response activities related to the release at the Facility, other than those response activities specifically required by this Decree, subject to the reservations stated in Paragraph 19.4 (Post-Certification of Completion of Performance of Required Response Activities) and Section XX.

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

(a) With respect to liability for the performance of the response activities required to be performed under this Decree, that are performed prior to the issuance of the Certification of Capture of the Contaminant Plume, the covenant not to sue shall take effect upon issuance by the MDEQ of the Certification of Capture of the Contaminant Plume.

(b) With respect to liability for the performance of the response activities required to be performed under this Decree, that are performed on the day of and after the issuance of the Certification of Capture of the Contaminant Plume, the covenant not to sue shall take effect upon issuance by the MDEQ of the Certification of Performance of Required Response Activities.

(c) With respect to liability for Facility Past Response Activity Costs incurred by the State, the covenant not to sue shall take effect upon entry of this Decree.

(d) With respect to Oversight, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those Oversight Costs.

(e) With respect to Defendants' liability for the performance of response activities related to the release at the Facility, other than those response activities specifically required by this Decree, the covenant not to sue shall take effect upon the MDEQ's issuance of the Certification of Completion of Remedial Action pursuant to Section XXII (Certification of Completion of Performance of Required Response Activities).

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

19.4 The State's Reservations Concerning Post-Certification of Completion of Remedial Action:

(a) In addition to, and not as a limitation of, any other provision of this Decree, the State reserves, and this Decree is without prejudice to, the right to institute proceedings in this action or a new action or to issue an administrative order to seek to compel Defendants to perform further response activities at the Facility or to reimburse the State for additional response activity costs if, after issuance of the Certification of Completion of Remedial Action, conditions at the Facility, previously unknown to the MDEQ, are discovered, or information is received, in whole or in part, 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.

(b) For purposes of Paragraph 19.4(a), the conditions known to and the information previously received by the MDEQ shall include only those conditions and that information set forth in the administrative record supporting response activities in the attached RAP, including the PMP as of May 23, 2001.

XX RESERVATION OF RIGHTS BY THE STATE

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1. These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in Paragraph 19.1 until such time as these covenants become effective as set forth in Paragraph 19.2. The MDEQ and the Attorney General reserve the right to bring an action against Defendants under federal and state laws for any matters for which Defendants have not received a covenant not to sue as set forth in Section XIX (Covenants Not to Sue by Plaintiffs). The State reserves, and this Decree is without prejudice to, all rights to take administrative action

or to file a new action pursuant to any applicable authority against Defendants with respect to all other matters, including, but not limited to, the following:

(a) The performance of response activities that are required to achieve and maintain the performance objectives specified in Paragraph 5.1;

(b) Past and Future Response Activity Costs which Defendants have not paid;

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

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

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

(f) Criminal acts;

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

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

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

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

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

20.5 In addition to, and not as a limitation of any provision of, this Decree, the MDEQ and the Attorney General retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 of the NREPA and any other applicable statute or regulation.

20.6 If Defendants fail to correct a lapse or violation of its implementation of a response activity work plan or of the schedule for such implementation within thirty (30) days of written notification of such lapse or violation from the MDEQ, the MDEQ, at its option, may perform the response activities that Defendants have failed to perform. Except as otherwise provided in this Decree, upon receipt of MDEQ notice regarding take over of performance of response activities, Defendants may either: (a) within the thirty (30)-day time period, attempt to cure the deficiencies or nonperformance that lead to MDEQ issuing the notice of intent or (b) dispute the MDEQ's determination pursuant to Section XVI (Dispute Resolution). However, the MDEQ is not required to provide thirty (30) days notice prior to undertaking response activities if those activities are determined to be necessary pursuant to Section IX (Creation of Danger) of this Decree. Defendants shall reimburse the State for costs the State incurs to perform those response activities within thirty (30) days of Defendants' receipt of a cost summary report.

20.7 Failure by the MDEQ or the Attorney General to timely enforce any term, condition, or requirement of this Decree shall not:

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

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

20.8 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Defendants in accordance with the MDEQ-approved work plans required by this Decree will result in the achievement of the performance objectives stated in Paragraph 5.1 or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

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

XXI. COVENANT NOT TO SUE BY DEFENDANT

21.1 Defendants hereby covenant not to sue or take any civil, judicial, or administrative action against the State of Michigan, its agencies, or its authorized representatives for any claim or cause of action against Plaintiffs with respect to the Facility arising from this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

21.2 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, 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 that are 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 XIX (Covenants Not to Sue by Plaintiffs).

XXII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC 9601 *et seq*, and to the extent provided in Section XIX (Covenant Not to Sue by Plaintiffs), Defendants shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA and/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 Defendants for contribution from any person not a party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable federal or state law.

XXIII. CERTIFICATIONS

23.1 When Defendants determine that they have completed Capture of the contaminant plume, Defendants shall submit to the MDEQ a draft Notification of Capture of the Contaminant Plume and a draft Capture Report. The draft Capture Report shall summarize all response

activities performed under this Decree up to the time of Capture of the contaminant plume. The draft Capture Report shall include or reference any supporting documentation.

23.2 Upon receipt of the draft Notification of Capture of the Contaminant Plume, the MDEQ will review the draft Notification of Capture of the Contaminant Plume, the draft Capture Report, any supporting documentation and the response activities that were performed pursuant to this Decree. Within ninety (90) days of receipt of the draft Notification of Capture of the Contaminant Plume, the MDEQ will determine whether Defendants have satisfactorily Captured the contaminant plume and completed all other requirements of this Decree to date, including, but not limited to, completing the response activities associated with the construction of the remedial action required by this Decree, paying any and all cost reimbursement and stipulated penalties owed to the MDEQ, putting into place all deed restrictions and institutional controls, and complying with all other terms and conditions of this Decree. If the MDEQ determines that all requirements have been satisfied, the MDEQ, ERD Division Chief will so notify Defendants, and upon receipt of a final Capture Report in accordance with Section XIII (Submissions and Approvals), shall issue a Certification of Capture of the Contaminant Plume.

23.3 When Defendants determine that they have completed all elements of the response activities required by this Decree, including long-term monitoring, land-use and resource use restrictions, operation and maintenance, so that no land-use or resource use restrictions are necessary and the Facility is no longer a facility pursuant to Part 201 of the NREPA, Defendants shall submit to the MDEQ a draft Notification of Performance of Required Response Activities and a draft Final Report. The draft Final Report shall summarize all response activities performed under this Decree. The draft Final Report shall include or reference any supporting documentation.

23.4 Upon receipt of the draft Notification of Completion of Performance of Required Response Activities, the MDEQ will review the draft Notification of Completion, the draft Final Report, any supporting documentation and the response activities that were performed pursuant to this Decree. Within ninety (90) days of receipt of the draft Notification of Completion, the MDEQ will determine whether Defendant have satisfactorily completed all requirements of this Decree, including, but not limited to, completing the response activities required by this Decree, proper plugging and abandonment of monitor wells in accordance with the MDEQ-approved plan, paying any and all cost reimbursement and stipulated penalties owed to the MDEQ, and complying with all other terms and conditions of this Decree. If the MDEQ determines that all requirements have been satisfied, the MDEQ, ERD Division Chief will so notify Defendants, and upon receipt of a final Final Report in accordance with Section XII (Submissions and Approvals), shall issue a Certification of Performance of Required Response Activities to the Defendants.

XXIV. TERMINATION

Upon completion of all response activities required under this Decree in connection with the Facility and issuance of a Certification of Performance of Required Response Activities in accordance with Section XXIII (Certifications), Defendants' obligations as set forth in this Decree shall automatically terminate, except for the requirements of Paragraph 11.1 regarding record retention.

XXV. SEPARATE DOCUMENTS

This 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. This Decree may be executed in duplicate original form.

XXVI. EFFECTIVE DATE

This Decree shall be effective upon the date that the Court enters this Decree. All dates for the performance of obligations under this Decree shall be calculated from the effective date. For purposes of this Decree, the term "day" shall mean calendar day unless otherwise noted herein.

XXVII. PUBLIC INFORMATION

Subject to the availability of sufficient appropriated funds for that purpose, the MDEQ will, at least annually for a period of five (5) years after entry of this Consent Decree, and thereafter as warranted, prepare and make available to the public, including residents living near the Facility who request notice from MDEQ, as well as the governments of Macomb Township and Macomb County, written information updates summarizing the status of the remedial measures implemented pursuant to this Consent Decree. Such information updates will include the name(s), telephone number(s), and mail and electronic address(es) of MDEQ contact person(s) through whom additional information and data may be obtained. The costs incurred by MDEQ in preparing and distributing such information updates shall constitute "Oversight Costs" as defined in Paragraph 4.7 for which Defendants shall reimburse Plaintiffs as provided in Paragraph 17.2 of this Consent Decree.

XXVIII. FINAL JUDGMENT

Pursuant to MCR 2.602(A)(3), this Consent Decree resolves the last pending claim between the State Plaintiffs and Defendants in *Jennifer M. Granholm, et al v South Macomb Disposal Authority, et al*, Case No. 85-3838-CZ, and closes that case, but it is not a final disposition of *Bielat, et al v South Macomb Disposal Authority*, Case Nos. 84-612-AA and

85-3476-AA, in which certain unresolved claims by Parties other than State Plaintiffs remain pending.

IT IS SO AGREED BY:

Jennifer M. Granholm
Attorney General
Attorney for Plaintiffs

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Assistant Attorney General in Charge

By: Robert P. Reichel

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Attorney for Defendants SMDA
and Member Cities

IT IS SO ORDERED, ADJUDGED, AND DECREED THIS 26th day of June, 2002.

MICHAEL D. SCHWARTZ
CIRCUIT JUDGE

HONORABLE MICHAEL D. SCHWARTZ
Circuit Court Judge

JUN 26 2002
A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
Court Clerk

ATTEST: A TRUE COPY

Deputy Court Clerk

1996002032/SMDA Bielat/Consent Decree