

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

JENNIFER M. GRANHOLM,
Attorney General of the
State of Michigan, ex rel, and
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiffs,

v

Case No. _____

UNION CARBIDE CORPORATION,
and CITY OF SAULT STE. MARIE,
MICHIGAN,

Honorable _____

Defendants.

CONSENT JUDGMENT

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

The Defendants are Union Carbide Corporation ("UCC") and the City of Sault Ste. Marie, Michigan ("City" or "Sault Ste. Marie").

The Consent Judgment requires Defendant UCC to finance and perform response activities which, along with response activities to be performed by the City on property currently occupied by a municipal golf course and a rubble pile, as described in Attachments B-C, are intended to constitute a remedial action at the Union Carbide Waste Disposal Site, Sault Ste. Marie, Michigan, as described in Attachment A. These response activities are more specifically described in the UCC Remedial Action Plan ("UCC RAP"), and the City Remedial Action Plan ("City RAP"), which are attached hereto and made a part hereof, as Attachments D-E.

Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Judgment, or (b) any terms or conditions set forth herein.

Defendants' stipulation to the entry of this Consent Judgment is neither an admission of liability with respect to any issue dealt with in this Consent Judgment nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Consent Judgment finds that the response activities set forth herein are necessary to abate releases 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 any testimony, and without this Consent Judgment constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

**I.
JURISDICTION**

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

1.2 The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment and to resolve disputes arising under this Consent Judgment, including those that may be necessary for its construction, execution or implementation, subject to Section XXI.

II. PARTIES BOUND

2.1 This Consent Judgment 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 of Defendants shall in any way alter Defendants' responsibilities or rights under this Consent Judgment. Defendants shall provide the MDEQ with written notice prior to the transfer of ownership or other interest in part or all of the Sault Ste. Marie Property or UCC Property in Sault Ste. Marie, Chippewa County, Michigan, and shall also provide a copy of this Consent Judgment to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of § 20116 of Part 201 of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20116.

2.2 The signatories to this Consent Judgment certify that they are authorized to execute and legally bind the parties they represent.

III.

TERMINATION OF ADMINISTRATIVE ORDER

The Administrative Order for Response Activity directed to Defendant UCC by Plaintiffs' predecessor agency, Michigan Department of Natural Resources, on July 28, 1991, shall terminate when this Consent Judgment becomes effective.

IV.

STATEMENT OF PURPOSE

4.1 In entering into the Consent Judgment, the mutual objectives of Plaintiffs and Defendants are: (a) the implementation, in accordance with MDEQ-approved schedules, by Defendant UCC and Defendant Sault Ste. Marie of their respective site specific criteria-based remedial action plans (RAPs) which utilize exposure controls, long term operation and maintenance (O & M), land and resource use restrictions, financial assurance and permanent markers, as described in the UCC RAP and City RAP, and (b) the reimbursement of Plaintiffs' Past Response Activity Costs and Oversight Costs, as described in Section XXII (Reimbursement of Costs). Defendant UCC shall only be responsible for response activities required in the UCC RAP, subject only to additional response activities or other requirements provided in Sections VII and XIII; and Defendant City shall only be responsible for response activities required in the City RAP, subject only to additional response activities or other requirements provided in Sections VII and XIII.

4.2 The activities conducted under this Consent Judgment are subject to approval by the MDEQ, and Defendants shall provide all appropriate necessary information for the implementation of the remedial actions that is consistent with Part 201 of NREPA, MCL

324.20101 *et seq*; the Part 201 Rules, AACCS R 299.5101 *et seq*; and other applicable or relevant and appropriate federal and state laws and regulations.

V.

DEFINITIONS

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

5.2 "Day" shall mean calendar day.

5.3 "Defendants" means UCC and Sault Ste. Marie.

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

5.5 "Facility" means the UCC Property identified in Attachment A and the Sault Ste. Marie Property identified in Attachments B-C.

5.6 "O & M" means operation and maintenance activities, which upon implementation will ensure the continued effectiveness of the remedial actions at the Facility. O & M activities for Defendant UCC shall include response activities which are required by the following MDEQ-approved plans: (a) Fence Inspection and Maintenance Plan, (b) Vegetative

Cap Inspection and Maintenance Plan, (c) Wildlife Management Plan, (d) Seeps Management Plan, (e) Sentinel Ground Water Monitoring Plan and (f) Resampling of Imported Fill Placed in 1998 (Section G.3.6 of Attachment G, Construction Quality Assurance Plan, to the UCC RAP). O & M activities for Defendant City shall include response activities which are required by the following MDEQ-approved plans: (a) Operation and Maintenance Plan for East Settling Pond/Golf Course, (b) Operation and Maintenance Plan for Rubble Pile/Compost Site and (c) the Seeps Management Plan.

5.7 "Parties" means the Plaintiffs and Defendants.

5.8 "Plaintiffs" mean Jennifer M. Granholm, Attorney General, of the State of Michigan, ex rel, and the Michigan Department of Environmental Quality.

5.9 "Sault Ste. Marie Property" means the property that is located east of Shunk Road and is occupied by a municipal golf course, as more fully described in Attachment B and shown in Attachment J, and the property that is located south of the UCC property waste piles and west of Shunk Road, which is occupied by a rubble pile, as more fully described in Attachment C and shown in Attachment K.

5.10 "UCC Property" means the property that is occupied primarily by waste piles and settling ponds and is located on 41.26 acres of land south of Spruce Street extending easterly from the Seymour Street area to the vicinity of the golf course owned by the City of Sault Ste.

Marie, Chippewa County, Michigan, and described with more particularity in the legal description provided in Attachment A and as shown in Attachment I.

5.11 All other terms used in this Consent Judgment which are defined in Part 201 of NREPA and the Part 201 Rules shall have the same meaning in the Consent Judgment as in Part 201 of NREPA and its rules.

VI. IMPLEMENTATION

6.1 The UCC RAP, as submitted and revised by UCC, and the Sault Ste. Marie RAP, as submitted by Sault Ste. Marie, are approved upon the effective date of this Consent Judgment. UCC shall be solely responsible for performing any work specified as part of the UCC RAP, in accordance with the implementation schedule set forth in the UCC RAP. UCC shall meet the cleanup criteria established under § 20120a(1)(b)-(j) or § 20120a(2) of NREPA, MCL 324.20120a(1)(b)-(j) or MCL 324.20120a(2), and comply with all applicable technical and administrative requirements of §§ 20118, 20120a, 20120b and 20120d of NREPA, MCL 324.20118, 20120a, 20120b, 20120d, and the Part 201 Rules for the Facility. In particular, UCC, during construction, shall maintain any fencing and comply with the applicable provisions of the Seeps Management Plan contained in the UCC RAP. The City shall be solely responsible for performing any work specified as part of the City RAP. The City shall meet the cleanup criteria established under § 20120a(1)(b)-(j) or § 20120a(2) of NREPA, MCL 324.20120a(1)(b)-(j) or MCL 324.20120a(2) and comply with all technical and administrative requirements of §§ 20118, 20120a, 20120b and 20120d of NREPA, MCL 324.20118, .20120a, .20120b, .20120d, and the Part 201 Rules for the Facility. In accordance with this Consent Judgment, Defendants may

submit supplemental work plans for the performance of other investigations, evaluations, response activities, remedial design, remedial action and operation and maintenance to carry out the objectives of their RAPs. The MDEQ shall approve, approve with modifications or disapprove any supplemental work plans in accordance with the procedures specified in Section XVI of this Consent Judgment. Any supplemental work plan shall include a detailed description of the tasks to be conducted during the response activity, including the methodology, specifications, and a schedule for implementation and completion of the response activities and submission of a final report. Defendants shall implement any supplemental work plan upon approval of each plan pursuant to the procedures provided for in this Consent Judgment. As approved, each component of each supplemental work plan, and approved modifications thereto, shall be deemed incorporated into this Consent Judgment and made an enforceable part of this Consent Judgment.

6.2 All response activities conducted at the Facility must be conducted in accordance with this Consent Judgment and RAPs; MDEQ-approved supplemental work plans; Part 201 of NREPA; the Part 201 Rules and other applicable laws and regulations.

6.3 Within twenty-one (21) days of the MDEQ issuing an Approval of Performance of Response Activities to Defendant UCC for the construction of the cap pursuant to the requirements of paragraph 6.9 and the UCC RAP, Defendant UCC shall file with the Chippewa County Register of Deeds the restrictive covenant, which is included herewith as Attachment F. A true copy of the recorded restrictive covenant shall be provided to the MDEQ within twenty-one (21) days of receipt of a copy from the Register of Deeds.

6.4 Within twenty-one (21) days of the date of entry of this Consent Judgment, Defendant Sault Ste. Marie shall file with the Chippewa County Register of Deeds the restrictive covenant, which is included herewith as Attachment G, for the municipal golf course property. Within twenty-one (21) days of the MDEQ issuing an Approval of Performance of Response Activities to Defendant Sault Ste. Marie for the construction of the rubble pile cap pursuant to the requirements of paragraph 6.10 and the City RAP, Defendant Sault Ste. Marie shall file with the Chippewa County Register of Deeds the restrictive covenant, which is included herewith as Attachment H, for the rubble pile property. True copies of the recorded restrictive covenants shall be provided to the MDEQ within twenty-one (21) days of receipt of each copy from the Register of Deeds.

6.5 Defendant UCC, when subject to O & M requirements, shall provide an annual report within sixty (60) days of each anniversary of this Consent Judgment to the MDEQ project coordinator describing any O & M activities that have been undertaken by that Defendant for the prior year. Defendant City, when subject to O & M requirements, shall provide an annual report within sixty (60) days of each anniversary of this Consent Judgment to the MDEQ project coordinator describing any O & M activities that have been undertaken by that Defendant for the prior year. The Defendants' reports shall describe any changes or modifications to their O & M Plans that should be implemented in order to assure their continued effectiveness and integrity. The parties agree that an alternative frequency for submitting reports can be proposed by any Defendant at any time, subject to MDEQ approval.

6.6 Each Defendant shall perform the following activities within thirty (30) days after the effective date of this Consent Judgment:

- (a) Provide notice to each easement holder of record on that Defendant's portion of the Facility.
- (b) Provide a copy of the MDEQ-approved restrictive covenant to each easement holder of record on that Defendant's portion of the Facility, regardless if recorded.

6.7 Defendant UCC has properly removed a number of monitor wells with MDEQ acknowledgment dated April 25, 1997. Upon completion of the necessary sampling detailed in the Sentinel Ground Water Monitoring Plan of the UCC RAP, UCC shall give notice and obtain approval of the MDEQ or its successor to properly remove or plug any remaining sentinel well and/or monitor well at or related to the Facility pursuant to the well abandonment procedures 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).

6.8 The Parties acknowledge and agree that this Consent Judgment does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed in accordance herein will result in the achievement of the remedial criteria as established by law.

6.9 MDEQ Approval of Defendant UCC's Performance of Response Activities

(a) Defendant UCC may apply to the MDEQ for an "Approval of Performance of Response Activities" when Defendant UCC has satisfactorily performed the response activities required by the MDEQ-approved UCC RAP for completing the construction of the cap, including the establishment of a vegetative cover over the entire cap, and any MDEQ-approved modifications to the UCC RAP, with the exception of the performance of any long term requirements of the UCC RAP that are needed to assure the effectiveness and integrity of the remedial action. For the purposes of this Consent Judgment, long term requirements of the UCC RAP that are needed to assure the effectiveness and integrity of a remedial action include the following: ensuring that any land and resource use restrictions are maintained and enforced; performing O & M, including monitoring and well plugging activities; establishing and maintaining financial assurance following the completion of the construction of the cap and the installation and maintenance of permanent markers. When Defendant UCC has met the criteria stated in this paragraph, Defendant UCC shall send a request for Approval of Performance of Response Activities and a draft Performance Report (collectively "UCC Request for Approval of Performance of Response Activities" submission) to the MDEQ. The draft Performance Report shall summarize all response activities conducted pursuant to the MDEQ-approved work plans and shall include or reference any supporting documentation. The MDEQ shall have ninety (90) days after receipt of UCC's request and draft Performance Report to approve or disapprove UCC's request. If UCC's request is disapproved, UCC shall have the right to invoke dispute resolution in Section XXI of this Consent Judgment or to revise and resubmit its request and draft Performance Report.

(b) After receipt of the Request for Approval of Performance of Response Activities submission, if the MDEQ determines that Defendant UCC has met the criteria specified in paragraph 6.9(a), the ERD Division Chief will so notify Defendant UCC. Upon Defendant UCC's delivery of a final Performance Report in accordance with Section XVI (Submissions and Approvals), the ERD Division Chief will issue an Approval of Performance of Response Activities (Approval of Performance). The MDEQ's issuance of an Approval of Performance does not relieve Defendant UCC of its obligations to continue to comply with this Consent Judgment or to conduct response activities, including the long term requirements as described in paragraph 6.9(a).

6.10 MDEQ Approval of Defendant Sault Ste. Marie's Performance of Response Activities

(a) Defendant Sault Ste. Marie may apply to the MDEQ for an "Approval of Performance of Response Activities" when Defendant Sault Ste. Marie has satisfactorily performed the response activities required by the MDEQ-approved City RAP and any MDEQ-approved modifications to the City RAP, with the exception of the performance of any long term requirements of the City RAP that are needed to assure the effectiveness and integrity of the remedial action. For the purposes of this Consent Judgment, long term requirements of the City RAP that are needed to assure the effectiveness and integrity of the remedial action include the following: ensuring that any land and resource use restrictions are maintained and enforced; performing O & M; and the installation and maintenance of permanent markers. When Defendant Sault Ste. Marie has met the criteria stated in this paragraph, Defendant Sault Ste. Marie shall send a request for Approval of Performance of Response Activities and a draft

Performance Report (collectively "City Request for Approval of Performance of Response Activities" submission) to the MDEQ. The draft Performance Report shall summarize all response activities conducted pursuant to the MDEQ-approved work plans and shall include or reference any supporting documentation.

(b) After receipt of the Request for Approval of Performance of Response Activities submission, if the MDEQ determines that Defendant Sault Ste. Marie has met the criteria specified in paragraph 6.10(a), the ERD Division Chief will so notify Defendant Sault Ste. Marie. Upon Defendant Sault Ste. Marie's delivery of a final Performance Report in accordance with Section XVI (Submissions and Approvals), the ERD Division Chief will issue an Approval of Performance of Response Activities (Approval of Performance). The MDEQ's issuance of an Approval of Performance does not relieve Defendant Sault Ste. Marie of its obligations to continue to comply with this Consent Judgment or to conduct response activities, including the long term requirements as described in paragraph 6.10(a).

6.11 (a) During the performance of each Defendant's RAP, pursuant to § 20120a(1)(f)-(j) or (2) of NREPA, MCL 324.20120a(1)(f)-(j) or (2), if the provisions for any of the elements specified in § 20120b(3)(a)-(e) of NREPA, MCL 324.20120b(3)(a)-(e), lapse or are not complied with as provided for in this Consent Judgment or that RAP, the MDEQ's approval of that RAP is void from the time of the lapse or noncompliance, until the lapse or noncompliance is corrected to the satisfaction of the MDEQ in accordance with paragraph 6.11(b). With respect to land or resource use restrictions, a lapse of or noncompliance with this Consent Judgment or a Defendant's RAP includes the following: (i) a court of competent jurisdiction determines that a land or resource use restriction is unlawful; (ii) a land or resource

use restriction is not filed or enacted in accordance with the approved RAP or this Consent Judgment; (iii) a land or resource use restriction is violated or not enforced by the controlling entity; or (iv) a land or resource use restriction expires, is modified or revoked without MDEQ approval.

(b) Within thirty (30) days of a Defendant becoming aware of a lapse or noncompliance under paragraph 6.11(a), that Defendant shall provide to the MDEQ a written notification of such lapse or noncompliance. The notification shall include a description of the nature of the lapse or noncompliance, an evaluation of the impact or potential impact of the lapse or noncompliance on the effectiveness and integrity of the RAP and one of the following:

- (i) If a Defendant has corrected the lapse or noncompliance, a written demonstration of how and when the lapse or noncompliance was corrected;
- (ii) If a Defendant has not yet corrected the lapse or noncompliance, a work plan and time schedule for addressing the lapse or noncompliance; or
- (iii) If a Defendant believes it will not be able to correct the lapse or noncompliance, an action plan and time schedule outlining the response activities that Defendant will take to comply with the cleanup criteria of Part 201 of NREPA and to assure that the Facility does not pose a threat to public health, safety, welfare or the environment.

The action plan and time schedule identified in paragraph 6.11(b)(iii) shall include provisions for the development of any response activity work plans and associated time schedules that are necessary to assure protection of public health, safety, welfare and the environment, including work plans for interim response activities, a remedial investigation to provide additional information to support the selection and approval of an alternate remedial action plan and an approvable alternate remedial action plan that meets the performance

objectives specified in paragraph 6.1. A Defendant shall develop those response activity work plans pursuant to the requirements specified in this Consent Judgment and shall submit those plans in accordance with the schedule established in the MDEQ-approved action plan. Any plans submitted pursuant to this Section will be reviewed and approved by the MDEQ in accordance with the procedures set forth in Section XVI (Submissions and Approvals). Upon receipt of MDEQ approval, a Defendant shall perform the response activities in accordance with the MDEQ-approved work plans.

(c) If a Defendant does not comply with the requirements of paragraph 6.11(b), stipulated penalties as specified in paragraph 23.1 shall begin to accrue the day after the lapse or noncompliance occurred and continue to accrue until the lapse or noncompliance is corrected to the satisfaction of the MDEQ.

6.12 After the fifth anniversary of the issuance of the Approval of Performance of Response Activities by the MDEQ, Defendant UCC and the MDEQ shall evaluate the following for purposes of determining and modifying, if necessary, future operation and maintenance and monitoring requirements as part of the UCC RAP:

(a) Groundwater monitoring results, which are obtained as part of the Sentinel Groundwater Monitoring Plan of the UCC RAP.

(b) Metals and pH results from sampling of backfill material used as part of the interim remedial measure, which are obtained as part of Attachment G to the UCC RAP.

VII.

ADDITIONAL RESPONSE ACTIVITY

7.1 As used in this Section, “Additional Response Activity” shall mean all activities not specifically set forth in the approved work plans for the RAPs that the MDEQ determines are necessary to meet the performance and cleanup standards described in this Consent Judgment, the Part 201 of NREPA Rules, Part 201 and all applicable state and federal requirements. These activities may include modifications to the components of the RAPs and to the type and cost of materials, equipment, facilities, services and supplies used to implement the RAPs. Defendant UCC shall only be responsible for those additional response activities required for, or attributable to, the UCC property that do not fundamentally change the overall remedial approach of *in situ* containment which is outlined in the approved site-specific, criteria-based UCC RAP. Defendant City shall only be responsible for those additional response activities required for, or attributable to, the Sault Ste. Marie Property that do not fundamentally change the overall remedial approach of *in situ* containment of hazardous substances, which is outlined in the approved site-specific, criteria based city RAP. Additional response activities shall be necessary, as set forth below, to address any releases emanating from the UCC property, regardless of time of discovery, of hazardous substances above concentrations that exceed the requirements of § 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17), including any subsequent discovery of groundwater contamination at or emanating from the UCC property in excess of the concentrations that exceed the requirements of § 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17). For purposes of this Consent Judgment, the performance of response activities to address such subsequent discovery of groundwater contamination shall not be construed as a fundamental change to the overall remedial approach, as described in the approved site-specific, criteria-based RAPs. If releases emanate from any Defendant’s property

that exceed the requirements of § 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17), that Defendant shall: (a) undertake additional response activities that remove the hazardous substances from any offsite property, (b) recognize the offsite property as part of the Facility and implement appropriate additional response activities, or (c) undertake such other actions for the purpose of demonstrating compliance with § 20120a and 20120b for that offsite property.

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

7.3 Unless the MDEQ agrees to extend the time period, or any Defendant objects to the requested Additional Response Activity and invokes the Dispute Resolution provisions in Section XXI, within sixty (60) days of receipt of notice from the MDEQ that Additional Response Activities are necessary, or from the date on which the parties otherwise agree that Additional Response Activities are necessary, any Defendant requested to perform an Additional Response Activity shall submit a plan for the Additional Response Activities to the MDEQ for approval. The plan shall be developed in conformance with the requirements of this Consent Judgment. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Consent Judgment. Any Defendant requested to perform an Additional Response Activity

shall implement the plan for Additional Response Activities in accordance with the schedule contained therein.

7.4 If any Defendant ceases to perform the response activities required by this Consent Judgment; is not performing response activities in accordance with the Consent Judgment and such failure to perform such response activities may cause imminent and substantial endangerment to human health or the environment; or is performing response activities in a manner that may cause imminent and substantial endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to that Defendant, take over the performance of those response activities. 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 XII (Creation of Danger). If the MDEQ finds that it is necessary to take over the performance of response activities that any Defendant is obligated to perform under this Consent Judgment, that Defendant 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 § 20126a(3) of NREPA on the day that 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 Defendants shall provide reimbursement of these costs to the State in accordance with paragraphs 14.3, 14.5, and 14.6 (Reimbursement of Costs).

VIII.

FINANCIAL ASSURANCE MECHANISM

8.1 Subject to the provisions of this Section, UCC shall provide, in perpetuity, a financial assurance mechanism ("FAM") to assure UCC's ability to pay for monitoring, operation and maintenance, oversight and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action.

8.2 Defendant UCC and the MDEQ have agreed that the annual cost to ensure the effectiveness and integrity of the UCC RAP, for the current year, is approximately \$20,000. This amount reflects the estimated costs for implementation of the O & M plan as set forth in the UCC RAP and for oversight, and other costs necessary to assure the effectiveness and integrity of the UCC RAP. The parties have agreed that Defendant UCC has met the MDEQ's requirements for a de minimis financial test as described in paragraph 8.6 and that Defendant UCC may use the de minimis financial test as its FAM to satisfy its financial obligations for Defendant UCC's current fiscal year (FY).

8.3 Within ninety (90) days of the end of Defendant UCC's next fiscal year and of the end of each succeeding fiscal year, Defendant UCC shall submit to the MDEQ its Annual Report on Form 10-K or the annual report on Form 10-5 of UCC's parent in order to demonstrate to the satisfaction of the MDEQ that Defendant UCC can continue to satisfy the requirements of the de minimis financial test as defined in paragraph 8.6. If Defendant UCC or the MDEQ determine that Defendant UCC can no longer satisfy the requirements of the de minimis financial test, Defendant UCC must submit a proposal to the MDEQ for an alternate FAM to satisfy its financial obligations with respect to this Consent Judgment within one hundred and twenty (120)

days. Any alternate FAM established pursuant to this Consent Judgment shall be secured in an amount that reflects the estimated costs for implementation of the O&M plan, as set forth in the RAP, and for oversight, monitoring and other costs necessary to assure the effectiveness and integrity of the remedial action for the next thirty (30) year period. The alternate FAM shall be written and executed in accordance with the forms and procedures prescribed by the MDEQ and shall be in place within thirty (30) days of receipt of approval by the MDEQ. Submittals provided to the MDEQ pursuant to this paragraph shall be reviewed and approved or disapproved in accordance with the procedure set forth in Section XVI (Submissions and Approvals) of this Consent Judgment. If it is determined that an alternate FAM must be established, final approval of the alternate FAM must be obtained from the ERD Division Chief of the MDEQ.

8.4 In the event that an alternate FAM must be secured, the parties shall modify this Consent Judgment as set forth in Section XIX (Modifications). Modification of the FAM contained in this Consent Judgment shall include, but is not limited to, the type of FAM and amount of funds to be secured by the alternate FAM and any time schedules needed to implement the FAM.

8.5 Within ninety (90) days after each succeeding five (5) year anniversary date of the issuance of UCC's Approval of Performance of Response Activities by the MDEQ, Defendant UCC shall submit not only the information required in paragraph 8.3 to the MDEQ but also the following information: (a) an updated cost estimate for implementing: (i) the O&M Plan, (ii) any other necessary response activities and (iii) oversight, monitoring and other costs for the next

thirty (30) year period, including documentation of the actual costs for those activities for the previous five (5) year period, and, if necessary, (b) a plan for other additional response activities needed to assure the effectiveness and integrity of the remedial action as set forth in the RAP. The submittal shall include a certification that the data are true and correct and be signed by an officer representing Defendant UCC. Submittals provided to the MDEQ pursuant to this paragraph shall be reviewed and approved and/or disapproved in accordance with the procedure set forth in Section XVI (Submission and Approvals).

8.6 The MDEQ's determination that Defendant UCC has satisfied the requirements of the de minimis financial test is based on the following facts:

(a) According to the Annual Report on Form 10-K for the year ended December 31, 1999, Defendant UCC has total assets of \$7,597,000,000.

(b) Defendant UCC has an annual financial obligation for response activities at the Facility of \$20,000 until completion of sentinel groundwater monitoring at which the UCC estimates that the annual financial obligation for response activities at the Facility will be \$15,000.

(c) The ratio of total assets to annual financial obligation is approximately: 400,000:1.

As long as this ratio of total assets to annual costs at the Facility does not substantially decrease (to below 10,000:1), the MDEQ shall consider Defendant UCC to have satisfied the requirements of MDEQ's de minimis financial test.

8.7 Defendant UCC shall be relieved of any financial assurance obligation altogether if it demonstrates that the projected amount of financial assurance for thirty (30) years is less than \$75,000 or that the annual cost for assuring the effectiveness and integrity of the remedial action is less than \$2,500, unless Plaintiffs determine at any time that this demonstration is materially inaccurate or that Defendant UCC's financial condition has substantially worsened. Defendant UCC, upon notice of Plaintiffs' determination that a new FAM is needed, shall promptly submit an additional FAM in an amount acceptable to Plaintiffs and in accordance with the financial assurance forms and procedures prescribed by the MDEQ, subject to MDEQ approval.

IX.

ENGAGEMENT OF A CONTRACTOR

Defendant UCC shall provide a copy of this Consent Judgment to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the response activities performed pursuant to this Consent Judgment, no later than fourteen (14) days after the effective date of this Consent Judgment or after the date of such retention. Notwithstanding the terms of any contract, Defendant UCC is responsible for compliance with this Consent Judgment and for ensuring that its contractors, subcontractors, laboratories and consultants perform all work in conformance with the terms and conditions of this Consent Judgment.

X.

SAMPLING AND ANALYSIS

10.1 All sampling and analysis conducted to implement this Consent Judgment shall follow the methodologies prescribed by the Part 201 of NREPA Rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits and analytical methods.

10.2 Defendant UCC, or its consultants or subcontractors, shall provide the MDEQ with at least fourteen (14) days notice prior to any sampling activity undertaken pursuant to this Consent Judgment to allow the ERD Project Coordinator, or his/her authorized representative, to take split or duplicate samples and/or to observe the sampling procedures. In circumstances where fourteen (14) days notice is not possible, Defendant UCC, or its 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, Defendant UCC may forego the fourteen (14) - day notification period.

10.3 Defendant UCC shall provide the MDEQ with the results of all chemical analytical sampling data generated in the performance or monitoring of any requirement under this Consent Judgment, Part 201 of NREPA or other relevant authorities. Said results shall be included in progress reports as set forth in Section XVII.

10.4 Defendant UCC shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory utilized by Defendant UCC in implementing this Consent Judgment for quality assurance monitoring.

10.5 Defendant City shall comply with the same sampling and analysis requirements, if the City is required to undertake any sampling under this Consent Judgment.

XI.

PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

11.1 Defendant UCC's Project Coordinator shall be L. Scott Magelssen. Defendant Sault Ste. Marie's Project Coordinator shall be James Atkins. The MDEQ's Project Coordinator is Scott Schaefer. Whenever notice is required to be given or a communication, report, sampling data, analysis of data or other technical submission is required to be forwarded by one party to the other party under this Consent Judgment, such communication shall be directed to the Project Coordinators at the below listed addresses. If any party changes its designated Project Coordinator, the name, address, telephone number and e-mail address of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

A. For Record Retention pursuant to Section XV and Financial/Escrow matters pursuant to Section VIII:

Patricia McKay
Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: 517-373-4029
FAX: 517-373-2637
(Via courier)
300 South Washington Square
Lansing, MI 48933

For all payments pertaining to this Consent Judgment:

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
300 South Washington Square, Suite 459
Lansing, MI 48909-8157

To ensure proper credit, all payments made pursuant to this Consent Judgment must reference Union Carbide Disposal Site, Sault Ste. Marie, Case No. _____ and ERD Account No. ERD 2149.

B. For all other matters pertaining to this Consent Judgment:

Scott Schaefer
Project Coordinator
Environmental Response Division
Newberry Field Office
Michigan Department of Environmental Quality
5100 State Highway M-123
Newberry, MI 49868
Telephone: 906-293-5131
FAX: 906-293-8728
E-mail: schafes@state.mi.us

As to Defendant UCC:

L. Scott Magelssen
Leader
Union Carbide Corporation
a Subsidiary of
The Dow Chemical Company
39 Old Ridgebury Road
Danbury, CT 06811
Telephone: 203-794-5272
FAX: 203-794-5275
E-mail: magelsls@dow.com

As to Defendant Sault Ste. Marie:

James Atkins
Engineering Department
City of Sault Ste. Marie
325 Court Street
Sault Ste. Marie, Michigan 49783
Telephone: 906-632-9953
FAX: 906-635-5606
E-mail: cityclerk@sault.com

11.2 Defendant UCC's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Consent Judgment for UCC.

11.3 Defendant Sault Ste. Marie's Project Coordinator shall have primary responsibility for overseeing implementation of the response activities and other requirements specified in this Consent Judgment for Sault Ste. Marie.

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

XII. ACCESS

12.1 To the extent access to the Facility is owned, controlled by or available to Defendant UCC or Defendant Sault Ste. Marie from the effective date of this Consent Judgment, the MDEQ, its authorized employees and representatives, upon presentation of proper credentials, shall have access at all reasonable times to the Facility for the implementation of the

response activities under the Consent Judgment, or otherwise fulfilling any responsibility under federal or state law with respect to the environmental conditions at the Facility, including, but not limited to:

- (a) Monitoring the response activities or any other activities taking place under this Consent Judgment at the Facility;
- (b) Verifying any data or information submitted to MDEQ;
- (c) Conducting investigations relating to contamination at the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning and implementing response actions at the Facility;
- (f) Assessing compliance with requirements for the implementation of monitoring, operation, maintenance and other measures necessary to assure the effectiveness and integrity of a remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts or other documents required to assess compliance with this Consent Judgment; and
- (h) Interviewing employees, contractors, agents or representatives of Defendants.

12.2 To the extent that the Facility, or any other area where response activities are to be performed by any Defendant under this Consent Judgment, is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for the parties and their authorized employees and representatives. 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 subsection. For purposes of this subsection, "best

efforts" includes, but is not limited to, reasonable compensation to the owner to secure such access and taking judicial action to secure such access. If judicial action is required to obtain access, Defendants shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after Defendants' receipt of MDEQ approval of the work plan for which such access is needed. If Defendants have not been able to obtain access within sixty (60) days of filing judicial action, Defendants shall promptly notify the MDEQ of the status of its efforts to obtain access and if and how any delay in obtaining access may affect the performance of response activities for which the access is needed. If, after using best efforts, any Defendant is unable to obtain access, Plaintiffs may assist that Defendant in obtaining access. If Plaintiffs assist any Defendant in obtaining access, that Defendant shall, within thirty (30) days of receipt of a written request from Plaintiffs, reimburse the Plaintiffs for all costs lawfully incurred by the Plaintiffs in obtaining access in the manner provided in paragraph 22.5. Any delay in obtaining access shall not be an excuse for delay in the performance of response activities.

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

12.4 All parties granted access to the Facility pursuant to this Consent Judgment shall comply with all applicable health and safety laws and regulations.

XIII.
CREATION OF DANGER

13.1 Upon obtaining information concerning the occurrence of any event during the performance of response activities conducted pursuant to this Consent Judgment that causes a release or threat of a release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, welfare or the environment, a Defendant shall immediately undertake all appropriate action 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 unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by that Defendant shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan. The Defendant shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent the recurrence of such an incident. Regardless of whether a Defendant notifies the MDEQ under this paragraph, if response activities undertaken under this Consent Judgment cause or threaten a release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare or the environment, the MDEQ may: (a) require that Defendant 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 that Defendant to undertake any such response activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; or (c) undertake any response activities that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDEQ undertakes any response activities to abate such a release, threat or endangerment, that

Defendant shall reimburse the State for all costs incurred by the State that are lawfully incurred. Payment of such costs shall be made in the manner provided in paragraph 22.5. A Defendant's obligation to perform in response to an imminent and substantial danger or to pay MDEQ costs under this paragraph shall apply unless and until that Defendant is relieved of this obligation through dispute resolution under Section XXI.

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

XIV.

COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Consent Judgment 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 NREPA, the Part 201 Rules, laws relating to occupational safety and health and other state and federal environmental laws. Other agencies may also be called upon to review the conduct of response activities under this Consent Judgment. Further, each Defendant must designate, in a report to the MDEQ, any facilities that the Defendants proposes to use for the off-site transfer, storage, treatment or disposal of any waste materials.

XV.

RECORD RETENTION/ACCESS TO INFORMATION

15.1 Except as otherwise provided, Defendants and their representatives, consultants and contractors shall preserve and retain all records, sampling or test results, charts, O & M inspection checklists and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant to any requirement of this Consent Judgment. Five years after the MDEQ's issuance of an Approval of Performance and Response Activities for each Defendant and at five-year intervals thereafter, that Defendant and its successors and assigns shall provide ninety (90) days notice to the MDEQ prior to the destruction of any documents then existing and, upon request, each Defendant and/or its successors and assigns shall make all documents available to the MDEQ for copying. Each Defendant's request shall be accompanied by a copy of this Consent Judgment, without the appendices, and sent to the address specified in paragraph 11.1. If the MDEQ fails to respond within ninety (90) days of a Defendant's notice, the Defendant may proceed with destruction of the documents then eligible for destruction.

15.2 Each Defendant shall, upon request, provide to the MDEQ all documents and information within its possession or control or that of its employees, contractors, agents or authorized representatives relating to the response activities at the Facility or to the implementation of this Consent Judgment, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence or other documents or information related to the response activities. Each Defendant shall also, upon request, make available to the MDEQ, upon reasonable notice, each Defendant's employees,

contractors, agents or representatives with knowledge of relevant facts concerning the performance of the response activities.

15.3 Each Defendant may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information requested under this Consent Judgment. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDEQ, it may be made available to the public by the MDEQ without further notice to that Defendant. Analytical data shall not be claimed as confidential or privileged by any Defendant. Information or data generated under this Consent Judgment shall not be subject to Part 148 of NREPA.

XVI.

SUBMISSIONS AND APPROVALS

16.1 All submissions, except for the UCC Request for Approval of Performance of Response Activities submission and the City Request for Approval of Performance of Response Activities submission shall be subject to the provisions of this Section.

16.2 All plans, reports, documents, schedules and submissions ("Submissions") required by this Consent Judgment shall be delivered to the MDEQ in accordance with the schedule set forth in this Consent Judgment. Prior to receipt of MDEQ approval, any report submitted to the MDEQ for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the Michigan Department of

Environmental Quality ("MDEQ"). This document was prepared pursuant to a Court Order. The opinions, findings and conclusions expressed are those of the authors and not those of MDEQ."

16.3 Upon receipt of any Submission other than a RAP or FAM document relating to the response activities that is required to be submitted for approval pursuant to this Consent Judgment, the MDEQ Project Coordinator will, in writing: a) approve the Submission; b) disapprove the Submission, notifying the submitting Defendant of deficiencies; or c) approve the Submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, the submitting Defendant 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."

16.4 Notice of any disapproval will specify the reasons for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDEQ, the submitting Defendant shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the Submission for approval. Notwithstanding a notice of disapproval, the submitting Defendant 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 the submitting Defendant, and the submitting Defendant may be deemed to be in violation of this Consent Judgment.

XVII.
PROGRESS REPORTS

Defendants shall provide to the MDEQ written semi-annual progress reports relating to response activities that shall: (a) describe the activities that have been taken toward achieving compliance with this Consent Judgment during the previous period; (b) describe data collection and activities scheduled for the next period; and (c) include all results of sampling and tests and other data received and analyzed by Defendants, their employees or authorized representatives during the previous period relating to the response activities performed pursuant to this Consent Judgment. Each Defendant shall submit the first progress report(s) to the MDEQ within one hundred eighty (180) days following the entry date of this Consent Judgment by the Court and thereafter until issuance by MDEQ of that Defendant's Approval of Performance of Response Activities, as provided in paragraphs 6.9 and 6.10, unless a different frequency is agreed to by the MDEQ.

XVIII.
INDEMNIFICATION AND INSURANCE

18.1 Defendant UCC 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 Defendant UCC, its officers, employees, agents and any persons acting on its behalf or under its control in carrying out response activities pursuant to this Consent Judgment. Neither the State of Michigan nor its departments, agencies, officials, agents, employees, contractors and representatives shall be held out as a party to any contract entered into by or on behalf of Defendant UCC in carrying out activities pursuant to this Consent Judgment. Neither Defendant UCC nor any contractor shall be considered an agent of the State.

18.2 Defendants waive any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees and representatives for damages, reimbursement or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement or arrangement between Defendants and any person for performance of response activities at the Facility or any other property where response activities are performed under this Consent Judgment, including claims on account of construction delays.

18.3 Defendant UCC 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 Defendant UCC and any person for performance of UCC response activities at the Facility or any other property where response activities are performed under this Consent Judgment, including claims on account of construction delays.

18.4 Prior to mobilization for cap construction activities on or near the Facility, Defendant UCC shall secure, and shall maintain until construction of the cap is complete, comprehensive general liability insurance with limits of Two Million dollars (\$2,000,000.00), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If Defendant UCC demonstrates 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, Defendant UCC needs 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, Defendant UCC 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 Consent Judgment, Defendant UCC 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 Defendant UCC in furtherance of this Consent Judgment. Prior to mobilization for cap construction under this Consent Judgment, Defendant UCC shall provide to the MDEQ satisfactory proof of such insurance.

XIX.

MODIFICATIONS/INCORPORATION BY REFERENCE

19.1 If this Consent Judgment, other than work plans for the UCC RAP or City RAP or time schedules contained herein, is modified, such modification shall be in writing by signature of the Attorney General and Defendants' attorneys or other authorized representatives after entry by the Court. Amendments to the RAPs must be made by the ERD Division Chief. Amendments to time schedules contained in this Consent Judgment shall be made in writing by the MDEQ Project Coordinator.

19.2 The RAPs, as approved and as they may be amended, and time schedules contained therein are incorporated into this Consent Judgment and are an enforceable part thereof. Any plans, specifications and schedules required by this Consent Judgment are, upon

approval by the MDEQ, incorporated into this Consent Judgment and made enforceable parts thereof. Any delay or noncompliance with such Submissions or attachments to a Submission may be considered a delay or noncompliance with the requirements of this Consent Judgment and may subject that Defendant to penalties pursuant to Section XXIII.

XX.

DELAYS IN PERFORMANCE

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

20.2 For the purpose of this Consent Judgment, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of and without the fault of any Defendant, such as: an Act of God; untimely review of permit applications or Submissions by the MDEQ or other applicable authority; and acts or omissions of third parties with which Defendant has no contractual relationships or is otherwise not responsible for, that could not have been avoided or overcome by that Defendant's due diligence and that delay the performance of an obligation under this Consent Judgment. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes or failure to obtain a permit or license as a result of that Defendant's actions or omissions.

20.3 When circumstances occur that any Defendant believes constitute a Force Majeure, the Defendant shall notify the MDEQ by telephone or telefax of the circumstances within five (5) days after it first becomes aware of such circumstances. Within fifteen (15) days after any Defendant first becomes aware of such circumstances that Defendant shall supply the MDEQ, in writing: an explanation of the causes(s) of any actual or expected delay; the obligations of this Consent Judgment affected by the delay; the anticipated duration of the delay; the measures taken and to be taken by that Defendant to avoid, minimize or overcome the delay and the timetable for implementation of such measures. The Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

20.4 In the event any Defendant complies with this Section and the MDEQ concurs that an event causing a delay is a Force Majeure, the MDEQ shall not deem that Defendant to be out of compliance with this Consent Judgment as to any obligation directly affected by the Force Majeure. The MDEQ shall communicate its concurrence to that Defendant and shall identify which obligations are directly affected by the Force Majeure. Such a MDEQ determination does not excuse or limit that Defendant's obligations under this Consent Judgment which are not identified by the MDEQ as being directly affected by the Force Majeure.

20.5 Any Defendant's failure to comply with the verbal and written notice provisions of this Section shall constitute a waiver of Defendant's right to assert a claim of Force Majeure with respect to the circumstances in question, and the MDEQ may, accordingly, deem that Defendant to be in noncompliance with this Consent Judgment. Similarly, if the MDEQ determines that an event is not a Force Majeure, the MDEQ may deem that Defendant to be in

noncompliance with this Consent Judgment if Defendant does not timely perform the obligation or any other obligation imposed upon that Defendant by this Consent Judgment. Any dispute regarding events claimed as Force Majeure or any Defendant's noncompliance with this Section shall be negotiated in good faith by the parties and, lacking resolution, shall be subject to Dispute Resolution, as provided for in Section XXI.

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

XXI.

DISPUTE RESOLUTION

21.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Plaintiffs and any Defendant arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment, subject to the limitations in Section XIII (Creation of Danger). Any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations between the affected parties. The period of negotiations shall not exceed twenty (20) days from the date of written notice by any party that a dispute has arisen, but it may be extended by an agreement of the parties. Notice of any dispute shall be given to all parties. The MDEQ has the right to invoke dispute resolution and require the participation of both Defendants in dispute resolution even if one or both of the

Defendants did not request dispute resolution of the disputed matter. The period for informal negotiations shall end when MDEQ provides a written statement setting forth its proposed resolution of the dispute to that Defendant.

21.2 If the affected parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the MDEQ unless, within twenty (20) days after receipt of MDEQ's proposed resolution, a Defendant files a motion for resolution of dispute with this Court setting forth the matter in dispute, the efforts made by the affected parties to resolve it, the relief requested and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Judgment.

21.3 The filing of a motion for resolution of dispute asking the Court to resolve a dispute shall not of itself extend or postpone any obligation of that Defendant under this Consent Judgment, provided that payment of a demand from MDEQ for reimbursement of costs or stipulated penalties with respect to the disputed matter, with any applicable interest, shall be stayed during the pendency of the dispute resolution. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Judgment. In the event, and to the extent, that a Defendant does not prevail on the disputed issue, stipulated penalties and any applicable interest shall be paid within thirty (30) days of a final decision on the dispute in the manner provided in paragraph 22.5.

21.4 Notwithstanding this section, a Defendant shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a dispute resolution in accordance with and in the manner provided in Sections XXII and XXIII, as appropriate.

21.5 In proceedings on any dispute relating to the selection, extent or adequacy of any aspect of the work, a Defendant shall have the burden of demonstrating on the administrative record that the position of MDEQ is arbitrary and capricious or not in accordance with law. In proceedings on any dispute, a Defendant shall bear the burden of persuasion on factual issues. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to all disputes under this Consent Judgment. A Defendant has the right to request that the administrative record be supplemented with other materials.

XXII.

REIMBURSEMENT OF COSTS

22.1 For the purposes of this Consent Judgment, the term "Past Response Activity Costs" shall mean those costs incurred and paid by the Plaintiffs prior to the effective date of the Consent Judgment. For purposes of this Consent Judgment, the term "Oversight Costs" includes, but is not limited to, costs to monitor UCC response activities at the Facility; observe and comment on UCC field activities; review and comment on UCC submissions; collect and evaluate UCC samples; attend and participate in UCC meetings; prepare cost reimbursement documentation for UCC; performance of UCC response activities in accordance with paragraph 7.4; and enforce, monitor and document UCC compliance with this Consent Judgment.

22.2 Within sixty (60) days from the effective date of this Consent Judgment, Defendant UCC shall pay the MDEQ \$ 197,075.00 for Past Response Activity Costs incurred by the State prior to March 30, 2000, relating to matters covered in this Consent Judgment, which are set forth in the attached Summary Report (Attachment L). Defendant UCC also shall pay the Past Response Activity Costs that the State has incurred between April 1, 2000 and the effective date of this Consent Judgment, but that are not accounted for in the attached Summary Report (Attachment L). Said costs shall be documented and included in the first demand for Oversight Costs set forth in paragraph 22.3.

22.3 Defendant UCC shall reimburse the Plaintiffs for UCC's share of all future Oversight Costs, including those Past Response Activities incurred after April 1, 2000, incurred by the Plaintiffs in overseeing the UCC response activities at the Facility for matters covered in this Consent Judgment. As soon as possible after each anniversary of the effective date of this Consent Judgment, pursuant to §§ 20119(4) and 20137(1) of NREPA, MCL 324.20119(4) and 324.20137(1), the MDEQ will provide Defendant UCC with a written demand of Oversight Costs lawfully incurred by the Plaintiffs. Any such demand will set forth with reasonable specificity the nature of the costs incurred. Annual Oversight Costs to be reimbursed shall only include those UCC related costs incurred since the date of the last invoice and paid by the State and shall not include any City related costs after the City's RAP is approved.

22.4 Defendant UCC shall also have the right to request a full and complete accounting of all demands made hereunder, including time sheets, travel vouchers, contracts, invoices and payment vouchers, as may be available to the MDEQ. Provision of these documents by the

MDEQ may result in the MDEQ incurring additional oversight costs which will be included in the annual demand of oversight costs. Except as provided by Section XXI, Defendant UCC shall reimburse the MDEQ for such costs within sixty (60) days of receipt of a written demand from the MDEQ. In any challenge by Defendant UCC to a demand for recovery of costs by the MDEQ, Defendant UCC shall have the burden of establishing that the costs were not lawfully incurred, in accordance with § 20126a(2)(a) of NREPA, MCL 324.20126a(2)(a).

22.5 All payments made pursuant to this Consent Judgment 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 XI. The Union Carbide Disposal Site and the Court File No. and the ERD Account Number ERD 2149 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, Knapps Centre, Suite 315, 300 South Washington Square, Lansing, Michigan 48913. Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of § 20108(3) of NREPA, MCL 324.20108(3).

22.6 If Defendant UCC fails to make full payment to the MDEQ for its share of Past Response Activity Costs or Oversight Costs as specified in paragraphs 22.2 and 22.3, interest shall begin to accrue on the unpaid balance at the rate specified in § 20126a(3) of NREPA, MCL 324.20126a(3), on the day after payment was due until the date upon which Defendant UCC makes full payment of those costs and the accrued interest to the MDEQ.

XXIII.

STIPULATED PENALTIES

23.1 Except as provided by Sections XX and XXI, if a Defendant fails or refuses to comply with a term or condition applicable to that Defendant in Sections VI, VII, VIII, IX, XVIII, and XXII, that Defendant shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

Period of Delay	Penalty Per Violation Per Day
5th through 15th Day	\$ 250
16th through 30th Day	\$ 500
Beyond 30 Days	\$1,000

23.2 Except as provided in Section XX and XXI and paragraph 23.1, if a Defendant fails or refuses to comply with any other term or condition of this Consent Judgment applicable to that Defendant, that Defendant shall pay the MDEQ stipulated penalties of \$250 a day for each and every failure or refusal to comply.

23.3 Until the termination of the Consent Judgment, each Defendant shall notify the MDEQ, in writing, of any violation of this Consent Judgment applicable to that Defendant, no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this paragraph constitutes an independent violation of this Consent Judgment.

23.4 Except as provided in Sections XX and XXI, penalties shall begin to accrue on the day after performance was due, or other failure or refusal to comply occurred, and shall

continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment.

23.5 Except as provided in Sections XX and XXI, stipulated penalties owed to the MDEQ shall be paid no later than thirty (30) days after receiving a written demand from the MDEQ. Payment shall be made in the manner provided in paragraph 22.5. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in § 20126(4) of NREPA, MCL 324.20126(4). Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes an independent violation of the terms and conditions of this Consent Judgment.

23.6 Liability for or payment of stipulated penalties is not the MDEQ's exclusive remedy in the event a Defendant violates this Consent Judgment. MDEQ reserves the right to pursue any other remedy or remedies that it is entitled to under this Consent Judgment or any applicable law for any failure or refusal of a Defendant to comply with the requirements of this Consent Judgment, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXIV.

COVENANT NOT TO SUE BY PLAINTIFFS

24.1 In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of the Consent Judgment, and except as specifically

provided in this Section, Plaintiffs covenant not to sue or to take administrative action against Defendants for:

- (a) Response activities performed by Defendants as set forth in the approved RAPs under this Consent Judgment;
- (b) Reimbursement of Past Costs incurred by the State and paid by Defendant UCC as set forth in paragraph 22.1 of this Consent Judgment; and
- (c) Payment of Oversight Costs incurred by the State as set forth in paragraph 22.3 of this Consent Judgment.

24.2 The covenants not to sue shall take effect under this Consent Judgment as follows:

- (a) With respect to any Defendant's liability for its performance of response activities pursuant to each Defendant's RAP under this Consent Judgment, the covenant not to sue shall take effect upon issuance by the MDEQ of the respective Approval of Performance of Response Activities to each Defendant pursuant to Section VI (Implementation).
- (b) With respect to Defendant UCC's liability for Past Response Activity Costs and Oversight Costs incurred by the State, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

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

XXV.

RESERVATION OF RIGHTS BY PLAINTIFFS

25.1 The covenants not to sue apply only to those matters specified in paragraph 24.1. However, the covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in paragraph 24.1 until such time as the covenants become effective as set forth in paragraph 24.2. 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 XXIV. The State reserves, and this Consent Judgment 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) response activities that Defendants have not satisfactorily performed or for which Defendants have not received a covenant not to sue;
- (b) response activity costs that Defendant UCC has not paid or for which Defendant UCC has not received a covenant not to sue;
- (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; and

(g) any matters for which the State is owed indemnification by Defendant UCC under Section XVIII (Indemnification and Insurance) of this Consent Judgment.

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

25.3 Except as provided in paragraph 24.1, or for any matter previously resolved in a Defendant's favor under Section XXI (Dispute Resolution), 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 Consent Judgment or to compel Defendants to comply with NREPA and any other applicable statute or regulation.

25.4 In addition to, and not as a limitation of any other provision of this Consent Judgment, 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.

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

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

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

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

25.7 This Consent Judgment does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed in accordance with this Consent Judgment or Defendants' respective RAPs will result in the achievement of the objectives stated in paragraph 4.1 or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, welfare or the environment.

25.8 Except as provided in paragraph 24.1, or as otherwise previously precluded by Section XXI (Dispute Resolution), nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to § 20132(8) of NREPA, MCL 324.20132(8), to direct or order all appropriate action to protect the public health, safety, 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.

XXVI.

COVENANT NOT TO SUE BY DEFENDANTS

26.1 Defendants hereby covenant not to sue and agree not to assert any claim or cause of action against the State of Michigan with respect to the Facility or response activities relating to the Facility arising from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to § 20119(5) of NREPA, MCL 324.20119(5), or any other provision of law.

26.2 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 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 XXIV.

XXVII.

CONTRIBUTION PROTECTION

Pursuant to § 20129(5) of NREPA, MCL 324.20129(5), §9613(f)(2) of the Comprehensive Environmental Response Compensation & Liability Act, 42 USC 9613(f)(2), and to the extent provided in Section XXIV, Defendants shall not be liable for claims for contribution regarding matters addressed in this Consent Judgment. Entry of the Consent Judgment does not discharge the liability of any other person(s) liable under § 20126 of NREPA,

MCL 324.20126. In any action by a Defendant for contribution from any person not a party to this Consent Judgment, that Defendant's cause of action shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to Part 201 of NREPA or other applicable federal or state law, in accordance with § 20129(9) of NREPA, MCL 324.20129(9).

XXVIII.

CONFLICT WITH RAP

In the event that any inconsistency is found to exist between the provisions of this Consent Judgment and provisions of the UCC RAP or the City RAP that cannot be reconciled, the provisions of the Consent Judgment shall prevail except to the extent that the Parties have agreed to a modification as provided in Section XIX of this Consent Judgment or except as otherwise provided in other sections of the Consent Judgment.

XXIX.

SEPARATE DOCUMENTS

This Consent Judgment 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.

XXX.
EFFECTIVE DATE

This Consent Judgment shall be effective upon the date that the Court enters this Consent Judgment. All times for performance of activities under this Consent Judgment shall be calculated from that date.

IT IS SO AGREED:

JENNIFER M. GRANHOLM
Attorney General

A. Michael Leffler
Assistant Attorney General in Charge

By: Christopher D. Dobyns
Christopher D. Dobyns (P27125)
Assistant Attorney General
Attorney for Plaintiffs
Natural Resources and
Environmental Quality Division
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(517) 335-1488

12/21/01
Date

By: Andrew W. Hogarth
Andrew W. Hogarth
Acting Chief
Environmental Response Division
Michigan Department of
Environmental Quality
Knapps Centre - First Floor
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Lansing, MI 48913
(517) 335-1104

12-20-01
Date

UNION CARBIDE CORPORATION

By: Charles E. Barbieri

Charles E. Barbieri (P31793)
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Carbide Corporation
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313 S. Washington Square
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12/11/01

Date

By: L. Scott Magelssen

L. Scott Magelssen
Remediation Leader
Union Carbide Corporation
a Subsidiary of
The Dow Chemical Company
39 Old Ridgebury Road
Danbury, CT 06811
Telephone: 203-794-5272

December 10, 2001

Date

CITY OF SAULT STE. MARIE

By: 

Steven Cannello (P31502)
Attorney for Defendant City of
Sault Ste. Marie
Moher & Cannello, P.C.
150 Water Street
P.O. Box 538
Sault Ste. Marie, MI 49783-0538
(906) 632-3397

12/8/01
Date

CONSENT JUDGMENT ENTERED IN ACCORDANCE WITH THE FOREGOING

THIS _____ DAY OF _____, 2001.

HONORABLE
Circuit Court Judge

COUNTERSIGNED:

Deputy Court Clerk

S: NR/Cases/199100120/UCC/cj final 12-06-2001

LIST OF ATTACHMENTS

- A: Union Carbide Corporation Property Legal Description
- B: City of Sault Ste. Marie East Settling Pond/Municipal Golf Course Legal Description
- C: City of Sault Ste. Marie Municipal Rubble Pile/Compost Site Legal Description
- D: Union Carbide Corporation Remedial Action Plan
- E: City of Sault Ste. Marie Remedial Action Plan
- F: Union Carbide Corporation Owned Properties Declaration of Restrictive Covenant
- G: City of Sault Ste. Marie East Settling Pond/Municipal Golf Course Declaration of Restrictive Covenant
- H: City of Sault Ste. Marie Municipal Rubble Pile/Compost Site Declaration of Restrictive Covenant
- I: Union Carbide Corporation Property Certificate of Survey
- J: City of Sault Ste. Marie East Settling Pond/Municipal Golf Course Certificate of Survey
- K: City of Sault Ste. Marie Municipal Rubble Pile/Compost Site Certificate of Survey

→ 2 sets for Chuck