

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

JENNIFER M. GRANHOLM, Attorney
General of the State of Michigan, the
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, and
THE CITY OF WHITEHALL,

Plaintiffs,

v

GENESCO, INC,

Defendant.

Case No. 02-41447CE

Honorable

**THIS CASE ASSIGNED TO
JUDGE TIMOTHY G. HICKS**

2002 FEB 20 AM 11:35

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111 Lyon Street, N.W.
Grand Rapids, MI 49503
(248) 752-2000

CONSENT JUDGMENT

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

The Defendant is Genesco, Inc.

This Consent Judgment requires: payment by the Defendant of Sediment Response Activity Costs at the Whitehall Leather Company facility located at 900 Lake Street in Whitehall, Michigan. The Defendant agrees 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.

The entry of this Consent Judgment by the Defendant is neither an admission nor denial 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.

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, 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 and MCL 324.3115. This Court also has personal jurisdiction over the Defendant with respect to enforcing the terms of this Consent Judgment. The Defendant waives all objections and defenses that it may have with respect to jurisdiction of the Court or to venue.

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.

II. PARTIES BOUND

2.1 This Consent Judgment shall apply to and be binding upon Plaintiffs and the Defendant and their successors. No change or changes in the ownership or corporate status or other legal status of the Defendant, including, but not limited to, any transfer of assets or of real

or personal property, shall in any way alter the Defendant's responsibilities under this Consent Judgment. The Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility that the Defendant owns and shall also provide a copy of this Consent Judgment to any subsequent transferees of Defendant prior to the transfer of any ownership rights. The Defendant shall comply with the requirements of § 20116 of NREPA, MCL 324.20116.

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

III. STATEMENT OF PURPOSE

In entering into this Consent Judgment, the mutual agreement of the Plaintiffs and the Defendant is as follows:

(a) Defendant shall pay Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000) to the MDEQ, as described in Section VII (Payment of Costs), in order to contribute to the cost of the removal of Contaminated Sediments by the MDEQ. In this regard, the MDEQ intends to implement a remedy consistent with the Preliminary Design Report of November 15, 2001, which is contained in Attachment A, in order to remove contaminated sediments in the 2002 construction season contingent upon receipt of adequate funds and applicable permits. To the extent necessary, the MDEQ will expend the \$3.1 million that have been appropriated or otherwise allocated for the removal of Contaminated Sediments. In the event that the \$3.35 million and the \$3.1 million are together insufficient to complete the removal of Contaminated Sediments, as set forth in the Preliminary Design Report (Attachment A), the MDEQ will use its best efforts to obtain additional funds to complete the project. In the

event that financial or permitting contingencies prevent the MDEQ from completing the removal of Contaminated Sediments in the 2002 construction season, it is the intent of the MDEQ to remove the Contaminated Sediments in the 2003 construction season. Within a reasonable time after the completion of Sediment Response Activity, the MDEQ shall restore the Property to the same condition as existed prior to the commencement of Sediment Response Activity.

(b) Defendant shall pay past response activity costs that the MDEQ has incurred up to October 25, 2001, in connection with the Upland Portion of the Facility.

(c) To minimize litigation and resolve pending claims against the parties:

(1) As of the effective date of this Consent Judgment, all of Plaintiff City's claims against Defendant in Muskegon County Circuit Court Case No. 99-39445-CE ("Muskegon Case") are dismissed. As applied to the lake, aquatic life, and sediments, the Plaintiff City of Whitehall's claims are dismissed with prejudice. As applied to the Upland Portion of the Facility Plaintiff City of Whitehall's claims are dismissed with prejudice as to any past costs, but without prejudice with respect to other claims.

(2) Defendant's counter claims in the Muskegon case against Plaintiff City and Plaintiff MDEQ are dismissed. All of Defendant's claims against Plaintiff MDEQ are dismissed with prejudice. Defendant's claims against the Plaintiff City are dismissed with prejudice as applied to the lake, aquatic life and sediments, but without prejudice as applied to the Upland Portions of the Facility.

(3) Within 30 days of the effective date of this Consent Judgment, Defendant shall request dismissal of Court of Appeals Case No. 227466, with prejudice.

IV. DEFINITIONS

4.1 “Consent Judgment” means this Consent Judgment and any attachment hereto, including any future modifications.

4.2 “Contaminated Sediments” means the estimated extent of sediment and Tannery Waste Materials present on the Effective Date of this Consent Judgment to be dredged from the Tannery Bay, as depicted in Attachment A.

4.3 “Day” or “day” means a calendar day, unless otherwise specified in this Consent Judgment.

4.4 “Defendant” means Genesco, Inc.

4.5 “Effective Date” means the date that the Court enters this Consent Judgment. All dates for the performance of obligations under this Consent Judgment shall be calculated from the Effective Date.

4.6 “Facility” means the Property as described in Attachment B and any area, place or property where a hazardous substance, which originated at and is emanating or has emanated from the Property and is present at concentrations that exceed the requirements of § 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17).

4.7 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities and those authorized persons or entities acting on its behalf.

4.8 “Part 201” means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq*, and the Administrative Rules promulgated thereunder.

4.9 “Party” means the Plaintiffs or the Defendant.

4.10 “Plaintiffs” means Jennifer M. Granholm, Attorney General of the State of Michigan, the Michigan Department of Environmental Quality, the City of Whitehall, their successor entities and those authorized persons or entities acting on their behalf.

4.11 “Property” means the approximately 25 acres of land located in the Southwest ¼ of Section 28 and Northwest ¼ of Section 33, T12N, R17W, City of Whitehall, Muskegon County, Michigan, along the southeast shore of White Lake, as described in the legal description provided in Attachment B.

4.12 “Sediment Response Activity” means the activities associated with the dredging, treatment, transportation and disposal of Contaminated Sediments.

4.13 “Sediment Response Activity Costs” means all costs of any kind associated with any Sediment Response Activity or any other response activity arising out of the release of Tannery Waste Materials or hazardous substances to areas other than the Upland Portion of the Facility prior to the effective date of this Consent Judgment.

4.14 “State” and “State of Michigan” mean the Michigan Department of Attorney General (MDAG) and the Michigan Department of Environmental Quality and any authorized representatives acting on their behalf.

4.15 “SWQD” means the Surface Water Quality Division of the MDEQ and its successor entities.

4.16 “Tannery Waste Materials” means hair, hides, leather scraps, metallic and wooden debris and any other waste materials that are not a hazardous substance as defined in NREPA Part 201.

4.17 “Upland Portion of the Facility” means the Property identified in Attachment B and any area, place or property, including any sediments, soils, groundwater, wastes, debris, rip-

rap and other materials located landward of the Tannery Bay shoreline, where a hazardous substance, which originated at and emanates from the Property, has come to be located and is present at concentrations that exceed the requirements of § 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17). For the purpose of this definition, the Tannery Bay shoreline shall not be higher than 580.0 feet above sea level.

4.18 Unless otherwise stated herein, all terms used in this document, which are defined in Part 3 of NREPA, MCL 324.301, Part 201 of NREPA, MCL 324.20101, *et seq*, or the Part 201 Rules, 1990 AACRS R 299.5101, *et seq*, shall have the same meaning in this document as in Parts 3 and 201 of NREPA and the Part 201 Administrative Rules.

V. ACCESS

5.1 Upon the Effective Date of this Consent Judgment and to the extent access to the Facility and the associated property is owned or controlled by the Defendant, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials and providing reasonable notice to the Defendant, shall have access at all reasonable times to the Facility and the associated property for the purpose of conducting any activity for which access is required to perform sediment response activities at the Facility, or to otherwise fulfill any responsibility under federal or State law with respect to the Facility, including, but not limited to:

- (a) Performing dredging of Contaminated Sediments in Tannery Bay.
- (b) Treating Contaminated Sediments at the Facility prior to off-site disposal.
- (c) Transporting wastewater from the sediment dewatering operation via the Facility forcemain, contingent upon local approvals.

(d) Monitoring response activities or any other activities taking place pursuant to this Consent Judgment at the Facility;

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

(f) Conducting investigations relating to contamination at or near the Facility;

(g) Obtaining samples;

(h) Assessing the need for or planning or conducting response activities at or near the Facility;

(i) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a response activity;

(j) Inspecting and copying non-privileged records, operating logs, contracts or other documents;

(k) Communicating with the Defendant's Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Consent Judgment;

(l) Determining whether the Facility or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Judgment; and

(m) Assuring the protection of public health, safety and welfare and the environment.

5.2 Any lease, purchase, contract or other agreement entered into by the Defendant, 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 any other person undertaking the response activities and their authorized representatives, the access provided under this Section V (Access).

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

VI. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

6.1 Each Party shall designate one or more Project Coordinators. Whenever communications between the Parties are needed, such communications shall be directed to the Project Coordinators at the addresses listed below. 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.

A. As to MDEQ:

(1) For all matters pertaining to this Consent Judgment, except those specified in paragraphs A (2), (3) and (4) below:

Mr. Roger Jones, Project Coordinator
Surface Water Quality Division
Michigan Department of Environmental Quality
525 West Allegan Street
2nd Floor, South Tower, Constitution Hall
Lansing, Michigan 48933
Telephone: 517-373-4704
FAX: 517-373-9958

This Project Coordinator will have primary responsibility for overseeing the Sediment Response Activities at the Facility and the other requirements specified in this Consent Judgment for the MDEQ.

(2) For all matters specified in this Consent Judgment that are to be directed to the SWQD Division Chief:

Chief, Surface Water Quality Division
Michigan Department of Environmental Quality
525 West Allegan Street
2nd Floor, South Tower, Constitution Hall
Lansing, Michigan 48933
Telephone: 517-335-4176
FAX: 517-335-0889

A copy of all correspondence that is sent to the SWQD Division Chief shall also be provided to the MDEQ Project Coordinator designated in paragraph 6.1A(1), and to the SWQD Chief of Enforcement at the address indicated below:

Chief, Enforcement Unit
Surface Water Quality Division
Michigan Department of Environmental Quality
525 West Allegan Street
2nd Floor, South Tower, Constitution Hall
Lansing, Michigan 48933
Telephone: 517-335-4101
FAX: 517-373-2040

A copy of all correspondence that is sent to the Chief of the Enforcement Unit shall also be provided to the MDEQ Project Coordinator designated in paragraph 6.1A(1).

(3) For all payments pursuant to Section VII (Payment of Costs)

Revenue Control Unit
Michigan Department of Environmental Quality
525 West Allegan Street
5th Floor, South Tower, Constitution Hall
Post Office Box 30657
Lansing, Michigan 48933

The payment of \$3.35 million made pursuant to paragraph 7.2 of this Consent Judgment must reference the Whitehall Leather (Tannery Bay) Facility, the Court Case No. _____, and the SWQD Account Number SWQ3073. The payment of \$159,779 made pursuant to paragraph 7.4 of this Consent Judgment must reference the Whitehall Leather (Tannery Bay) Facility, the Court Case No. _____, and the SWQD Account Number SWQ 3073.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in paragraph 6.1A(1), and the Compliance and Enforcement Section Chief designated in paragraph 6.1A(2).

B. As to the Department of Attorney General:

Assistant Attorney General in Charge
Natural Resources and Environmental Quality Division
Department of Attorney General
525 West Allegan Street
5th Floor, South Tower, Constitution Hall
Lansing, Michigan 48933
Telephone: 517-373-7540
FAX: 517-335-6668

C. As to Defendant:

Roger Sisson
Secretary and General Counsel
Genesco, Inc.
Suite 140, Genesco Park,
P.O. Box 731
Nashville, TN 37202-0731
Telephone: 615-367-8444
FAX: 615-367-7073

Michael L. Robinson
WARNER, NORCROSS & JUDD, LLP
900 Fifth Third Center
Grand Rapids, MI 49503
Telephone: 616-952-2000
FAX: 616-459-5107

6.2 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.

VII. PAYMENT OF COSTS

7.1 No later than thirty (30) days after the Effective Date of this Consent Judgment, the Defendant shall pay the MDEQ three million three hundred fifty thousand dollars (\$3,350,000) to resolve all state claims for Sediment Response Activity Costs. Payment shall be made pursuant to the provisions of paragraph 7.2 of this Consent Judgment.

7.2 Payments made pursuant to paragraph 7.1 of this Consent Judgment shall be by certified check, made payable to the “ State of Michigan – Surface Water Quality Division”. The Whitehall Leather (Tannery Bay) Facility, the Court Case No., and the Surface Water Quality Division Account Number SWQ 3073 shall be identified on the check. Costs recovered pursuant to paragraph 7.1 shall be deposited in the Environmental Response Fund, in accordance with the provisions of § 20108(3) of NREPA, and specifically used by the MDEQ for Sediment Response Activity.

7.3 No later than thirty (30) days of the Effective Date of this Consent Judgment, the Defendant shall pay the MDEQ one hundred fifty nine thousand, seven hundred, seventy-nine dollars (\$159,779) to resolve all claims for past response activity costs incurred by the MDEQ up to October 25, 2001, in connection with the Upland Portion of the Facility.

7.4 Payments made pursuant to paragraph 7.3 of this Consent Judgment shall be by certified check, made payable to the “ State of Michigan –Environmental Response Division”. The Whitehall Leather (Tannery Bay) Facility, the Court Case No., and the Surface Water Quality Division Account Number SWQ 3073 shall be identified on the check. Costs recovered pursuant to paragraph 7.3 shall be deposited in the Environmental Response Fund, in accordance with the provisions of § 20108(3) of NREPA.

7.5 All payments shall be sent by first class mail to the Revenue Control Unit at the address listed in paragraph 6.1A(4) of Section VI (Project Coordinators and Communications/Notices). A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ's Project Coordinator at the address listed in paragraph 6.1A(1), the Chief of the Compliance and Enforcement Section at the address listed in paragraph 6.1A(2), and the Assistant Attorney General in Charge at the address listed in paragraph 6.1B.

7.6 If the Defendant fails to make full payment to the MDEQ for Sediment Response Activity Costs as specified in paragraphs 7.1 or 7.3, interest shall begin to accrue on the unpaid balance at the rate specified in § 20126a(3) of NREPA on the day after payment was due until the date upon which the Defendant makes full payment of those costs and the accrued interest to the MDEQ.

VIII. INDEMNIFICATION AND INSURANCE

8.1 This Consent Judgment shall not be construed to be an indemnity by the State for the benefit of the Defendant or any other person.

8.2 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 that is entered into by or on behalf of the Defendant.

8.3 Prior to the performance of Sediment Response Activity and for the duration of the performance of Sediment Response Activity, the MDEQ's contractors, representatives or agents shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00), combined single limit, which names Defendant as an additional insured party. Prior to the performance of Sediment Response Activity, the MDEQ shall provide

Defendant with certificates evidencing said insurance and Defendant's status as an additional insured party.

IX COVENANTS NOT TO SUE BY PLAINTIFFS

9.1 In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Judgment, and except as specifically provided for in this Section and Section X (Reservation of Rights by Plaintiffs), the State of Michigan pursuant to Part 201 and/or the authority of the Attorney General hereby covenants not to sue or to take further administrative action against the Defendant for:

(a) Releases or the migration of hazardous substances and Tannery Waste Materials to the non-upland portion of the Facility that occurred prior to the Effective Date of this Consent Judgment.

(b) Payment of Sediment Response Activity Costs and natural resource damages by the Defendant.

(c) Venting of groundwater containing ammonia that exceeds applicable criteria that occurs prior to the completion of Sediment Response Activity, provided however that such venting of ammonia-contaminated groundwater does not exacerbate the Contaminated Sediments or pose a threat to the public health, safety, welfare or environment.

(d) Payment for past response activity costs incurred by the MDEQ up to October 25, 2001, in connection with the Upland Portion of the Facility.

9.2 The covenants not to sue under this Consent Judgment shall take effect upon the MDEQ's receipt of the payment that will be made by Defendant under Section VII.

9.3 The covenants not to sue extend only to the Defendant and any transferees, successors or assignees of the Defendant that held no interest in the property or were not involved in the Defendant's operations at the Facility prior to the effective date of this Consent Judgment.

X. RESERVATION OF RIGHTS BY PLAINTIFFS

10.1 The covenants not to sue apply only to those matters specified in paragraph 9.1. These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in paragraph 9.1 until such time as these covenants become effective as set forth in paragraph 9.2. The MDEQ and the Attorney General reserve the right to bring an action against the Defendant under federal and state laws for any matters for which the Defendant has not received a covenant not to sue as set forth in Section IX (Covenants Not to Sue by Plaintiffs). 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 the Defendant with respect to all other matters, including, but not limited to, the following:

- (a) Payments that Defendant has not made under Section VII of this Consent Judgment;
- (b) 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;
- (c) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances present on the Upland Portion of the Facility, as of the effective date of this Consent Judgment or shipped by Defendant away from the Facility at any time.

(d) criminal acts;

(e) the release or threatened release of hazardous substances from the Upland Portion of the Facility or for violations of federal or state law that occur during or after the performance of response activities required by this Consent Judgment for which the Defendant has liability, subject to paragraph 9.1.

10.2 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 the Defendant to comply with NREPA, subject to the provisions of Section IX.

10.3 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.

10.4 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 enforcement authorities and rights under Part 201 of NREPA and any other applicable statute or regulation, subject to the provisions of Section IX.

10.5 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 the Defendant's noncompliance with any such term, condition or requirement of this Consent Judgment; or

(b) Estop or limit the authority of the 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.

10.7 Except as provided in paragraph 9.1(a) and 9.1(b), nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to

§§ 20119 and 20132(8) of 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 the Upland Portion of the Facility or migrating from the upland portion of the facility after the effective date of this Consent Judgment.

XI. COVENANT NOT TO SUE BY DEFENDANTS

11.1 Defendant hereby covenants not to sue or to take any civil, judicial or administrative action against the State, its agencies or their authorized representatives for any claims or causes of action against the State that arise from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to § 20119(5) of NREPA or any other provision of law. For purposes of this Consent Judgment, third-party actions arising from Sediment Response Activity performed by the MDEQ and its contractors, or actions regarding the use or restoration of Defendant's Property, shall not be construed as arising from this Consent Judgment.

11.2 After the Effective Date of this Consent Judgment, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs or other appropriate relief relating to matters reserved by Plaintiffs in Section X, the Defendant agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion or claim-splitting or that are based upon a defense that contends any claims raised by the MDEQ or the Attorney General in such a proceeding were or should have been brought in this case.

XII. CONTRIBUTION PROTECTION

Pursuant to § 20129(5) of NREPA and § 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC 9613(f)(2), and to the extent provided in Section IX (Covenants Not to Sue by Plaintiffs), the Defendant shall not be liable for claims for contribution for the matters set forth in paragraph 9.1 of this Consent Judgment, to the extent allowable by law. Entry of this Consent Judgment does not discharge the liability of any other person that may be liable under § 20126 of NREPA or CERCLA, 42 USC 9607 and 9613. Pursuant to § 20129(9) of NREPA, any action by the Defendant for contribution from any person that is not a Party to this Consent Judgment shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to NREPA or other applicable federal or state law.

XIII. MODIFICATIONS

13.1 This Consent Judgment may only be modified according to the terms of this Section.

13.2 Modification of any other provision of this Consent Judgment shall, upon written agreement among the Defendant's Project Coordinator, the SWQD Division Chief and the Michigan Department of Attorney General, be entered with the Court.

XIV. SEPARATE DOCUMENTS

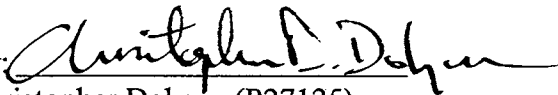
This Consent Judgment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Consent Judgment may be executed in duplicate original form.

IT IS SO AGREED AND ORDERED BY:

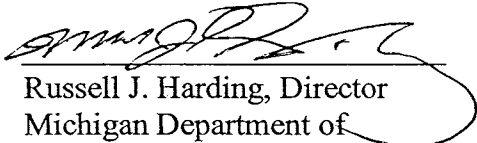
JENNIFER M. GRANHOLM

Attorney General
Attorney for Plaintiffs

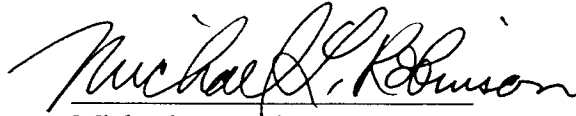
By:



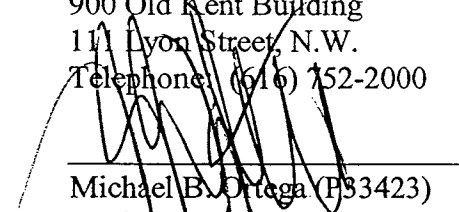
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Russell J. Harding, Director
Michigan Department of
Environmental Quality

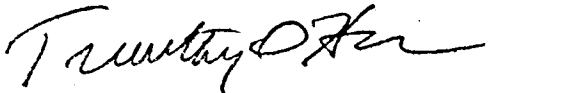


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111 Lyon Street, N.W.
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Michael B. Ortega (P33423)
Patricia R. Mason (P38125)
Attorneys for City of Whitehall
Reed Stover P.C.
151 S. Rose Street, Suite 800
Kalamazoo, MI 49007

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 20 day of Feb., 2002.



Honorable



November 15, 2001

File
RECEIVED
SWQD - GLE

NOV 15 2001

Mr. Roger Jones
Michigan Department of Environmental Quality
Surface Water Quality Division
Knapp's Centre
P.O. Box 30273
Lansing, MI 48909-7773

RE: Preliminary Design
Remedial Design and Construction Oversight
White Lake – Tannery Bay Project
Whitehall, Michigan
DLZ No.: 0041-5600-37

Dear Mr. Jones:

DLZ Michigan, Inc. is submitted three (3) copies of the Preliminary Design for the White Lake – Tannery Bay Project, for your review. According to the Estimated Schedule, the Preliminary Design Meeting is tentatively scheduled for December 3, 2001. The purpose of this meeting will be to discuss any comments resulting from the MDEQ's review of the Preliminary Design and to discuss items to be presented at the Whitehall Public Meeting scheduled for December 12, 2001. DLZ will be in contact with the MDEQ to schedule a firm Preliminary Design Meeting time, date, and location.

If you have any questions or need additional copies of this document, please contact Ms. Alisa Shyu or the undersigned.

Very truly yours,

DLZ MICHIGAN, INC.

Garth R. Colvin *for*
Project Manager

Enclosures

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K.Y./jce

**PRELIMINARY DESIGN
REMEDIAL DESIGN AND CONSTRUCTION OVERSIGHT**

**WHITE LAKE – TANNERY BAY
WHITEHALL, MICHIGAN
SITE ID NO.: 61000365**

*copy to:
J. Gubkin, AG
Genesco via AG
M. Tuchman, epa
Whitchall/CS. Huebke
T. Bordiniski
W. Creal
S. Roushke 1-11-01
**

Prepared for:

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
SURFACE WATER QUALITY DIVISION
KNAPP'S CENTRE
300 S. WASHINGTON AVE.
P.O. BOX 30273
LANSING, MI 48909-7773**

Prepared by:

**DLZ MICHIGAN, INC.
1425 KEYSTONE AVE.
LANSING, MI 48911**

**LOE Contract No.: 2001
DLZ Project No.: 0041-5600-37**



**ENGINEERS • ARCHITECTS • SCIENTISTS
PLANNERS • SURVEYORS**

NOVEMBER 2001

**PRELIMINARY DESIGN
REMEDIAL DESIGN AND CONSTRUCTION OVERSIGHT
WHITE LAKE – TANNERY BAY
WHITEHALL, MICHIGAN
SITE ID NO.: 61000365**

**Prepared for:
Michigan Department of Environmental Quality
Surface Water Quality Division
Knapp's Centre
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**LOE Contract No.: 2001
DLZ Project No.: 0041-5600-37**

NOVEMBER 2001

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1.0 INTRODUCTION

In accordance with the *Work Plan for Remedial Design and Construction Oversight, October 2001*, DLZ Michigan, Inc. has prepared this Preliminary Design Report. DLZ has been assigned as the consultant for the White Lake – Tannery Bay project, under the Michigan Department of Environmental Quality's (MDEQ's) Level of Effort Contract (ERD #2001).

1.1 Objective

This report presents preliminary design assumptions and parameters, permit requirements, technical specifications outline, sediment remediation verification approach, and estimated project schedule for the sediment removal action for Tannery Bay. The objective of this report is to present the primary elements associated with the removal action in a preliminary format. Specific data and design information is forthcoming. Review comments and public input resulting from the preliminary design will be incorporated into the intermediate and final designs. The objective of this project is to remove Tannery Bay sediment impacted by tannery wastes through mechanical dredging with exsitu stabilization/solidification on Genesco, Inc.'s property. This remedial action was selected by the MDEQ, based on the *Draft Concept Design Documentation Report for Sediment Remediation, July 2000*, prepared by DLZ for the U.S. Army Corps of Engineers (USACE).

1.2 Site History and Background

The project location is Tannery Bay, near the southeast shoreline of White Lake. The former Whitehall Leather Company (WLC) property at 900 Lake Street, City of Whitehall, Muskegon County, Michigan (Figure 1-1) is adjacent to the bay. WLC was owned by Genesco, Inc., who is the Responsible Party for this site. The former WLC is located in the SW 1/4 of Section 28 and NW 1/4 of Section 33, T12N, R17W. The former WLC property consists of a tannery building, a parking lot south of the building, a former wastewater lagoon area southeast of the building, former sludge disposal area in the southern portion of the property, and a former solid waste disposal area in the northern portion of the property. Both the southern and northern portions of the former WLC property contain potential wetland areas. The former WLC property is bordered by Svensson Park to the south, lakefront recreation areas to the north, general industry and residential areas to the east, and White Lake to the west. Tannery Bay is bordered by the former wastewater lagoon area to the east and the former sludge disposal area (southern portion of the property) to the south (Figure 1-2).

Tanning operations have taken place at the site since 1866. Prior to the mid-1940's, it is suspected that the primary tanning agent used was tannic acid from tree bark. During this time, wastewater from the tannery is believed to have been discharged directly to White Lake without treatment.

The former WLC began operation at the site in 1944. At that time, WLC began using chromic sulfate for tanning. From about 1940 to 1976, wastewater was discharged to six staged lagoons that were constructed on the property, then to White Lake. During this period, WLC also placed

bails of tanned leather scraps into Tannery Bay for fill and as a means to control erosion. The lagoons were dredged occasionally, and the dredged material was dried in the area of the current parking lot, then disposed of in the southern portion of the property. WLC ceased use of the lagoons in 1976, at which time WLC began discharging water to the Muskegon County Wastewater Management system. Three of the six lagoons were completely filled and two were partially filled. One inactive lagoon remains on site. In 1996, Genesco, Inc. constructed a riprap wall to prevent soil erosion from the southern portion of the property into White Lake. To address volatile organic compounds in the groundwater, Genesco, Inc. installed an air sparge remediation system, which began operation in May 1999.

Various investigations concerning groundwater, soil, and sediment have been conducted in the vicinity of the former WLC property. Investigations have been performed by the Michigan Department of Natural Resources, the Michigan Water Resource Commission, the United States Environmental Protection Agency, the National Oceanic and Atmospheric Administration, Horizon Environmental (on behalf of Genesco, Inc.), the MDEQ, and the USACE. Most recently, DLZ prepared the *Draft Concept Design Documentation Report (CDDR) for Sediment Remediation, July 2000*, for the USACE. The CDDR presented options and remedial alternatives for the remediation of sediment impacted by tannery wastes. The remedial alternatives presented were primarily based on the results of USACE's 1999 sediment sampling and sediment survey.

2.0 DESIGN ASSUMPTIONS AND PARAMETERS

2.1 Design Criteria

The sediment in Tannery Bay consists primarily of black organic silts. The MDEQ defined tannery waste impacted sediment as being burgundy-colored, containing hide and/or hair, having an arsenic concentration greater than 20 ppm, and/or having a chromium concentration greater than 1,000 ppm. The remedial design will be based on USACE's August 1999 boring log information, survey data, and analytical results; information on the selected alternative from DLZ's July 2000 *Whitehall Leather Company Draft Concept Design Documentation Report*; modified dredge volume estimates presented in DLZ's June 18, 2001 and July 27, 2001 letters to the MDEQ; results of Harding ESE's October 2001 vibracore and surficial sampling; and dewatering and stabilization/solidification treatability study to be conducted by Harding ESE, for the MDEQ. The sediments will be disposed of in a sanitary (Type II) landfill, based on May 1999 Toxicity Characteristic Leaching Procedure (TCLP) analysis performed for the MDEQ that indicated the sediments are not hazardous for disposal. The sediments will be treated to increase the solids concentration, through solidification, to meet disposal facility requirements.

A stabilization/solidification pilot test is being conducted under the direction of Harding ESE. Pozzolanic solidification agents that will be tested include lime and fly ash. The total percent solids content of sediment from Tannery Bay and the most effective solidification agent will be determined from pilot test results. Pilot test results are expected in November 2001.

An aerial survey of the former WLC property will be performed in November 2001. This information will be incorporated into the design drawings, particularly for the design of dewatering/staging, treatment, and access channel areas.

Based on a site visit conducted on November 7, 2001, the following design parameters were developed:

- Available areas for onshore site activities are limited primarily to the areas just north and northwest of the plant. However, the site access road and parking area adjacent to the plant are also usable. The former lagoon areas have low bearing (soft) soils, which would pose significant difficulties to construction equipment.
- Electrical service is available.
- Construction traffic flow can be one-way. Trucks can enter from the driveway northeast of the plant and exit southeast of the plant.
- It is preferred that the existing plant's wastewater pump station be used to pump decanted water to the sanitary sewer.
- Stability of the soils on "Hide Island" and the peninsula north of Hide Island is unknown.
- Construction activities will need to avoid the groundwater treatment "sparging area". Underground utilities (i.e. water main and pump station forcemain) are 5' to 8' below grade, which is of adequate depth to prevent structural damage from heavy equipment and proposed activities.
- Construction activities will most likely inhibit use of the loading dock on the northwest area of the plant.
- Sediment unloading will be limited to the WLC property northeast of the dredge area, to avoid the sparging area and former lagoon areas.
- Truck route will either be Route 1 or Route 2 (see Figure 2-1), as determined by the City of Whitehall.
- The site is currently secured by fencing and locked gates.

2.2 Nature and Extent of Contamination

Sediment at the site has been impacted by metals, such as chromium and arsenic, as well as other tannery wastes which have aesthetically impacted the sediments, such as hides, hair, and other tannery products that have tinted sediment a purple/burgundy color. Approximately 206,300 square feet (4.74 acres) of the lake bottom in Tannery Bay have been impacted. The negative aesthetic impact of contamination and waste in the sediment has been the primary concern. The

nature of sediment contamination can be directly correlated to tannery operations that have taken place since 1866.

2.3 Estimated Dredge Volume

Based on design criteria presented in Subsection 2.1, the estimated dredge volume for removal of sediment impacted by tannery waste is approximately 77,900 cubic yards (Figure 2-2). This volume was determined using AutoCAD Land Development Desktop Software. The estimated volume of sediment to be dredged is based on the greatest depth at which impacted sediment was encountered at each soil boring location, including those taken on Hide Island (Table 2-1), and using a 4' horizontal to 1' vertical slope for transitional areas from the dredge depth to the lake bottom or shore surface.

2.4 Process Description

Sediment remediation will include the following components:

- Mechanical dredging with an environmental clamshell bucket
- Site control with a silt curtain
- Barge transport of the dredged material
- Dredged material staging on the WLC property, northeast of the dredging area
- Exsitu pozzolanic solidification
- Disposal of the dredged material to a Type II Landfill
- Disposal of decanted water to the Muskegon County Wastewater Management System via sanitary sewer

Impacted sediment will be removed from Tannery Bay mechanically with an environmental clamshell bucket. To minimize resuspension of sediments, low turbidity procedures will be used for dredging activities. Care will be taken with operating procedures of the bucket, and the bucket may go through a wash cycle before being lowered into the bay. A wash cycle may involve lowering the open bucket into a rinse tank with vibrators activated, which will assist in removing sediment that adhere to the surfaces of the bucket. Movable silt curtains around the area being dredged and at the west edge of the impacted area will be used to prevent cross-contamination to other areas of White Lake.

A 4' horizontal to 1' vertical transitional slope from the dredge depth to the lake bottom or shore surface will be dredged to prevent the formation of drop-offs in Tannery Bay. Clean fill, riprap, and/or other materials may be used near the shoreline, in lieu of dredging a transitional slope, to minimize the impact to existing shoreline.

Dredged material will be transported from Tannery Bay to the Genesco property either directly from the dredge site or by barge. Dredged sediments will be placed on the dewatering/staging pad either directly from the clamshell bucket or from the barge using conventional construction equipment. The dewatering/staging pad will be constructed similar to a landfill cell, including

linings, berms, and drainage to a sump. Decanted water from the dewatering/staging area will be discharged to the Muskegon County Wastewater Management System via sanitary sewer. Although not anticipated, pretreatment and/or sampling of the decanted water may be required by Muskegon County prior to discharge.

The dredged material will be transferred from the dewatering/staging area to a treatment area via conventional construction equipment and/or conveyor. The approximate locations of the dewatering/staging and treatment areas are shown on Figure 2-3. Solidification will be performed at the treatment area to increase the percentage of total solids and bind free liquid. The solidification agent will be selected, based on the stabilization/solidification pilot test results. Mixing of sediment and the selected solidification agent will be performed with a pug mill. The dredge material will be mixed with sufficient solidification agent to pass the paint filter test (USEPA method 9095-SW846), which is normally required by Type II landfills. The treated sediment will be transported to a Type II landfill, by truck, for final disposal. A City of Whitehall designated truck route will be used to prevent disturbance and damage to local roadways.

3.0 PERMIT REQUIREMENTS

In the interest of expediting all phases of work and in accordance with the work plan, DLZ will investigate and begin the necessary arrangements to obtain all permits with a relatively extensive approval process. It is anticipated that local permits and permits commonly obtained for construction will be completed and obtained by the selected Trade Contractor.

3.1 Part 301, Inland Lakes and Streams Permit (Dredging Permit)

The MDEQ-Land and Water Management Division (LWMD) and the USACE have responsibility for administering the permitting process regulating construction activities on or over bottomlands of inland lakes and streams. Part 404 of the Clean Water Act dictates that the USACE will manage the permit process and be the issuing body that reviews and approves the specific permits. Specific federal regulations pertaining to the USACE's permit program can be located in 33 CFR Parts 320-331 (Regulatory Programs of the USACE).

DLZ understands that Harding ESE is preparing and submitting the Inland Lakes and Streams permit, on behalf of the MDEQ. DLZ anticipates that Harding ESE will provide the necessary support and clarifications to the USACE upon their review and comment. In addition, DLZ understands that another party has previously submitted a permit application and that it must be withdrawn prior to the approval of the application submitted by Harding ESE. Copies of this permit, once received by DLZ, will be included in future drafts of the design.

3.2 Air Permit

DLZ has obtained and reviewed the necessary Air Pollution Control Rules and the Air Use Permit required for the project activities. It is anticipated that it will specifically cover the

dredging activity, the selected sediment solidification process and subsequent off-site disposal. Depending on the selected sediment solidification process, DLZ may be able to show that the process is exempt, if it can be demonstrated that emissions will be limited and meet the specific criteria for permit exemption.

In addition to the Air Use Permit, other non-permitted aspects of the project, such as ambient air monitoring (particulate matter) and fugitive dust control air quality issues, will be identified with specific requirements detailed in the construction specifications. The selected Trade Contractor will be expected to prepare and submit an air monitoring and dust control plan for approval by DLZ and the MDEQ, prior to the start of site activities.

DLZ has contacted Mr. Robert Teoh of the MDEQ-Air Quality Division and Mr. Greg Edwards of the MDEQ-Chemical Process Unit to discuss many of the air permitting process details.

3.3 Muskegon County Wastewater Discharge Permit

DLZ has contacted Mr. Tim Westman and Mr. Gary DeKock at the Muskegon County Wastewater Management System (MCWMS) to discuss the intent of the project and possible scenarios regarding dewatering and wastewater generated at the site. While the MCWMS does not accept groundwater or surface water, Mr. Westman indicated that the wastewater generated from the site work would likely be accepted. Mr. Westman also indicated that a discharge application would need to be submitted and approved prior to the MCWMS accepting wastewater from the site. DLZ has requested a discharge application from the MCWMS, including a schedule of discharge fees, and is awaiting its delivery.

While the necessity for wastewater pretreatment is not expected, the possibility exists that wastewater generated from dredging, dewatering, and solidification efforts may exceed the MCWMS's discharge limits. Decanted water data, which will be made available with Harding ESE's solidification pilot test results, may indicate that pretreatment may be necessary. A copy of the MCWMS discharge limits is included in Appendix A.

3.4 Other Permits

A Soil Erosion and Sedimentation Control Permit is required by the City of Whitehall, which is the Local Enforcing Agent. The Natural Resources and Environmental Protection Act 1994 PA 451 (as amended by 2000 PA 504), Part 91, Soil Erosion and Sedimentation Control (SESC), requires an implementation plan for all earth change activities that occur within 500 feet of a water body. The SESC implementation plan and permit application will be submitted to the City of Whitehall for review. The City of Whitehall will issue an "Authorization to Proceed with Earth Change" (DMB-SESC AUTH, Appendix B) upon approval of the SESC implementation plan and permit application.

DLZ will develop and oversee the implementation of the SESC plan, as required under its LOE contract. This will include the identification of potential SESC problem areas and the inclusion of SESC controls in the design and specifications. Regular and post-rain inspections will be

conducted during the construction phase and an SESC Inspection Report Form (DMB-SESC, Appendix C) will be completed for each inspection, as required.

4.0 SPECIFICATION OUTLINE

Below is a draft outline or typical Table of Contents for a typical construction specifications pertaining to dredging and exsitu stabilization projects. It is noted that this outline represents a preliminary list of sections to be included. Other sections may be included or eliminated based upon the specific requirements and intent of the project.

Division 0 - Bidding and Contract Requirements

Division 1 - General Requirements

- Section 01010 - Summary of Work
- Section 01025 - Measurement and Payment
- Section 01060 - Regulatory Requirements
- Section 01090 - Reference Standards
- Section 01110 - Safety, Health and Emergency Response
- Section 01200 - Project Meetings
- Section 01310 - Progress Schedule
- Section 01340 - Submittals
- Section 01370 - Schedule of Values
- Section 01400 - Quality Control
- Section 01700 - Contract Closeout

Division 2 - Site Work

- Section 02000 - Site Preparation
- Section 02010 - Field Engineering
- Section 02011 - Survey Data
- Section 02020 - Construction Facilities and Temporary Controls
- Section 02030 - Temporary Facilities
- Section 02035 - Protection of the Work and Property
- Section 02040 - Security
- Section 02050 - Roads and Parking Areas
- Section 02080 - Offsite Transportation and Disposal
- Section 02140 - Sediment Dewatering
- Section 02141 - Sediment Stabilization
- Section 02142 - Dewatering Effluent Management
- Section 02482 - Dredging
- Section 02271 - Temporary Erosion and Sedimentation Control
- Section 02501 - Site Restoration

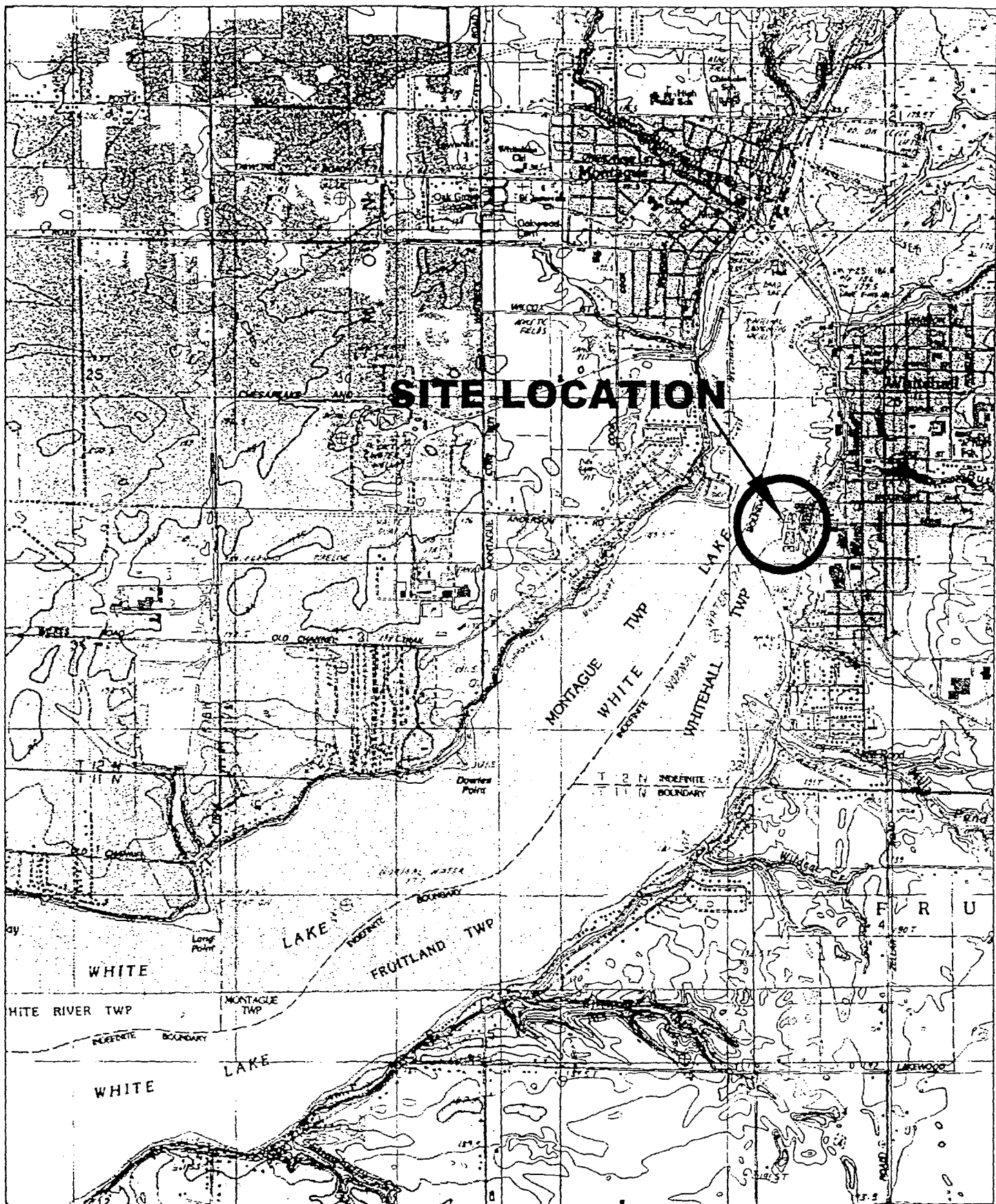
5.0 SEDIMENT REMEDIATION VERIFICATION

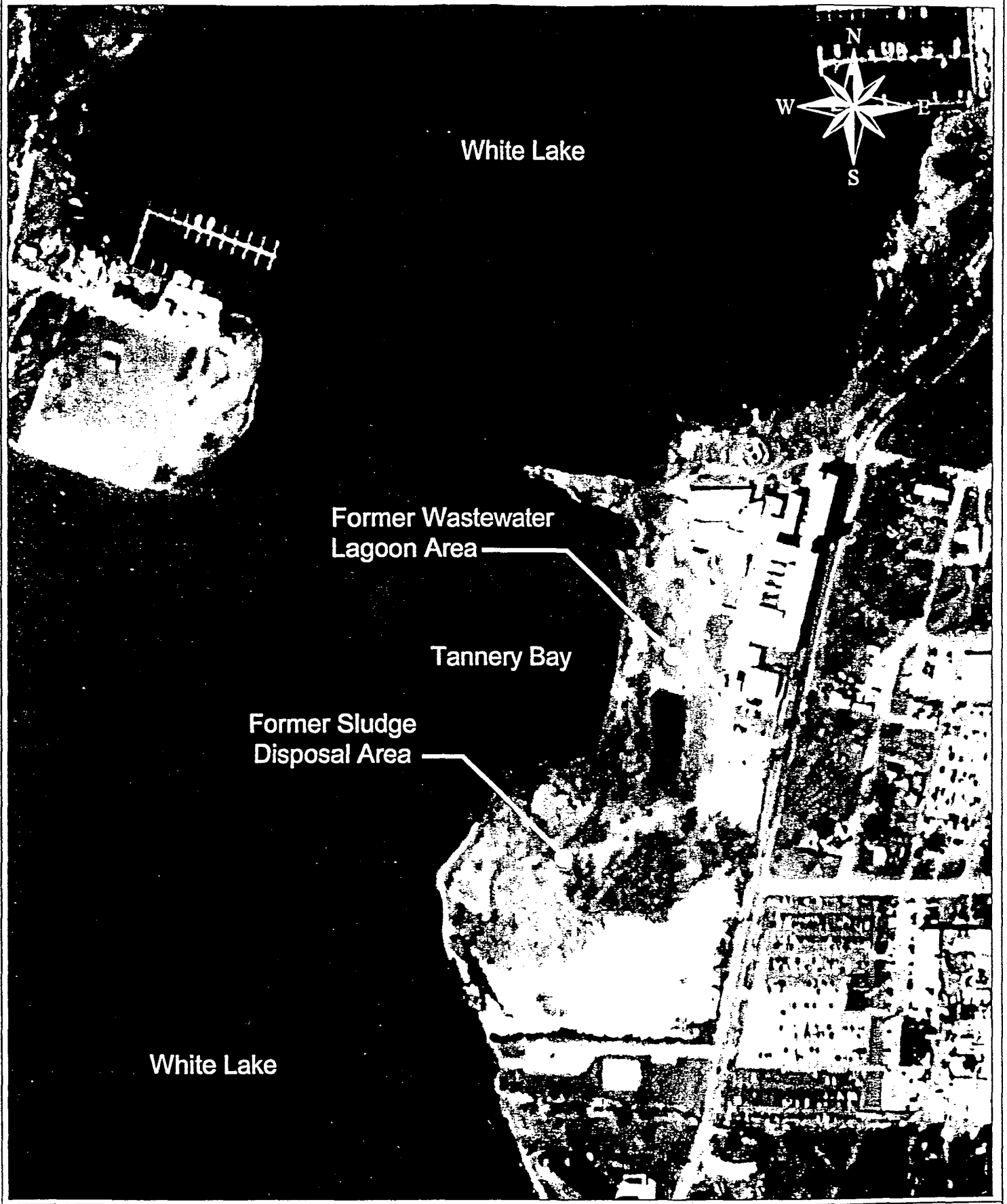
Verification sampling of surficial sediment will be performed using a Ponar, or similar, grab sampler. Ponar samplers are typically constructed of stainless steel and zinc-plated arms and weights. The top of the sampler is covered with a stainless steel screen with neoprene rubber flaps, which allow water flow for controlled sampling and minimal sample interference. Side plates prevent lateral sample loss. For sampling, the Ponar sampler is lowered to the sample location with rope or cable. A spring-loaded pin on the sampler releases once the sampler reaches the lake bottom and tension on the line is relieved. The sampler closes as it is retrieved. To collect the sample, the Ponar sampler is opened over a clean stainless steel pan. The sediment is mixed until visually homogenous, then collected into an appropriate container. The samples will be stored on ice for transport to an approved laboratory.

Sediment remediation verification will be performed by the contractor in conjunction with dredging activities, and in accordance with specifications and the Sediment Verification Sampling Plan. It is anticipated that the area to be dredged will be divided into sections, and that dredging will be conducted section by section. Once dredging has been completed in a section, verification sampling will be conducted in that section to ensure that the targeted impacted sediment has been removed. Samples will be screened for the presence of hide, hair, and/or burgundy discoloration and will be submitted to an approved laboratory for arsenic and chromium analysis. Upon completion of verification sampling activities and receipt of analytical results, the contractor will prepare and submit a verification sampling report.

6.0 ESTIMATED PROJECT SCHEDULE

The anticipated project schedule is provided in Table 7-1. This schedule was prepared in conjunction with Harding ESE, to include additional sediments sampling in Tannery Bay, dredging permit application submittal, and the dewatering and solidification treatability study.

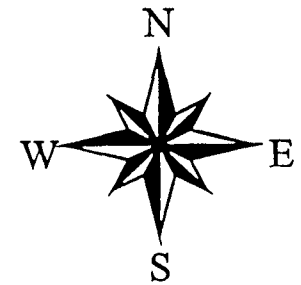
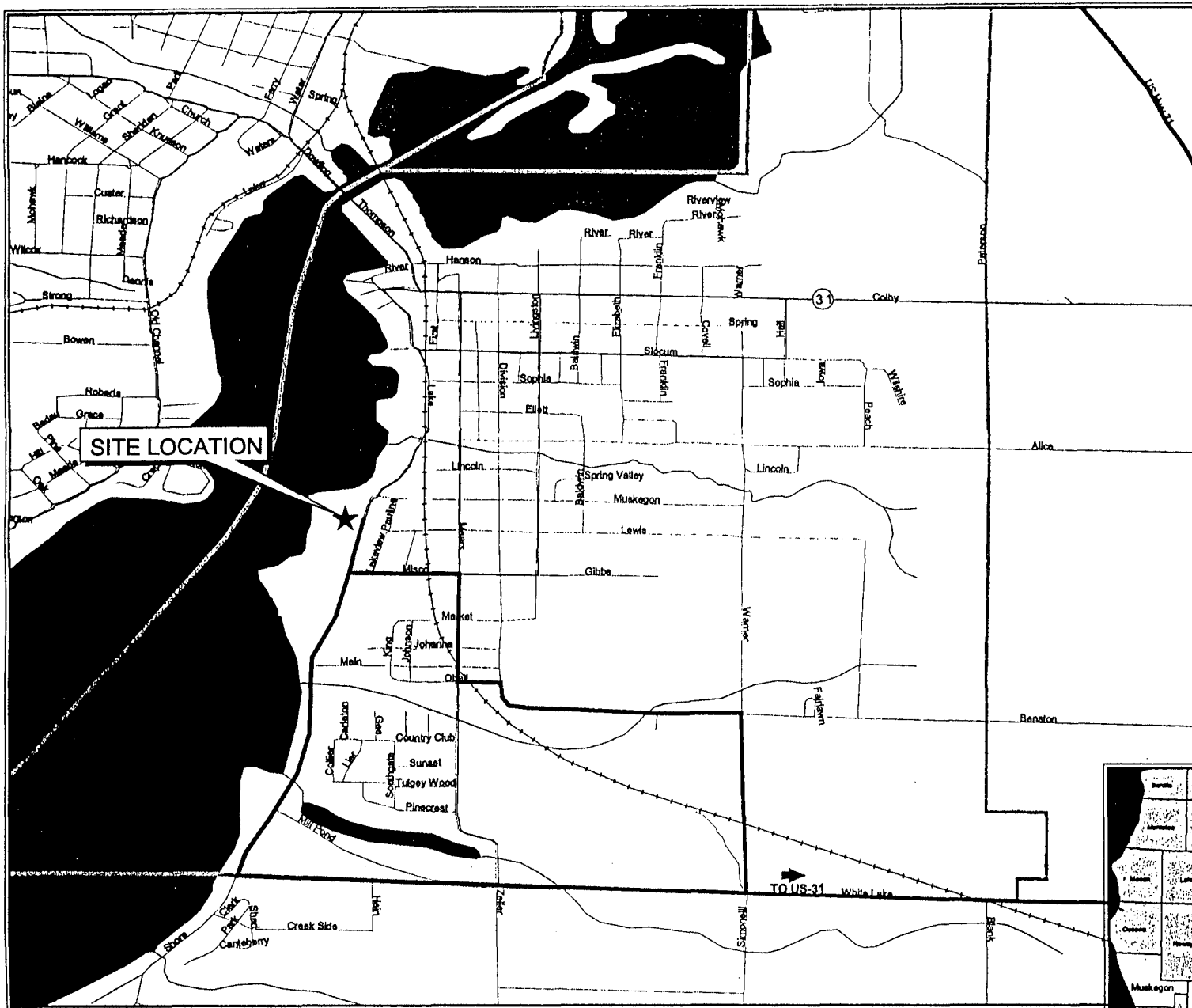




WHITE LAKE - TANNERY BAY
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY
SURFACE WATER QUALITY DIVISION

TANNERY BAY - SITE MAP

SCALE: NTS
FIGURE 1-2



Legend

- Truck Route 1
- Truck Route 2

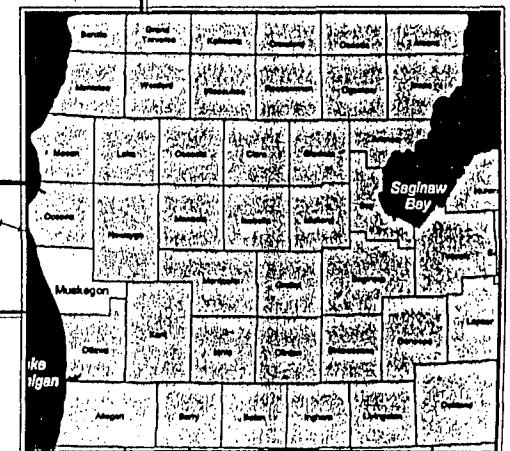
Truck Routes

White Lake - Tannery Bay
Whitehall, Michigan

Figure 2-1



0 0.2 0.4 0.6 0.8 Miles



ATTACHMENT B

(LEGAL DESCRIPTION)

All those certain parcels of land being in the City of Whitehall, County of Muskegon, and State of Michigan and described as follows:

(1) That part of Government Lot 1, except the South 200 feet thereof, lying West of the centerline of Lake Street or Lake Shore Road, so-called, with all riparian rights, docks and wharf installations, Section 33, Town 12 North, Range 17 West.

(2) Lot 20 of Block 29 of the Village of Mears (now City of Whitehall); also that part of Government Lot 3 lying West of the centerline of Lake Street or Lake Shore Road, so-called, and South of the South line of Lot 20 of Block 29, together with all riparian rights, docks and wharf installations, Section 28, Town 12 North, Range 17 West.

(3) That part of Government Lot 4 lying West of the centerline of Lake Street or Lake Shore Road, so-called, with all riparian rights, docks and wharf installations, Section 28, Town 12 North, Range 17 West.