

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In the Matter of:**

**New Hudson Corporation**

**MDEQ Reference No. AOC-RRD-03-002**

**South Milford Road Residential Wells Site  
New Hudson Corporation Facility**

**New Hudson, Oakland County**

Proceeding under Sections 20119 and 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

---

**ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY**

## INDEX

	<u>Page No.</u>
I. JURISDICTION .....	2
II. DENIAL OF LIABILITY .....	2
III. PARTIES BOUND .....	2
IV. STATEMENT OF PURPOSE .....	3
V. DEFINITIONS .....	4
VI. FINDINGS OF FACT AND DETERMINATIONS .....	6
VII. COMPLIANCE WITH STATE AND FEDERAL LAWS .....	10
VIII. PERFORMANCE OF RESPONSE ACTIVITIES .....	10
IX. ACCESS .....	26
X. SAMPLING AND ANALYSIS .....	29
XI. EMERGENCY RESPONSE .....	30
XII. DELAYS IN PERFORMANCE, VIOLATIONS AND <i>FORCE MAJEURE</i> .....	31
XIII. RECORD RETENTION/ACCESS TO INFORMATION .....	35
XIV. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES .....	36
XV. SUBMISSIONS AND APPROVALS .....	40
XVI. REIMBURSEMENT OF COSTS .....	43
XVII. STIPULATED PENALTIES .....	44
XVIII. DISPUTE RESOLUTION .....	47
XIX. INDEMNIFICATION AND INSURANCE .....	50
XX. COVENANTS NOT TO SUE BY THE STATE .....	52
XXI. RESERVATION OF RIGHTS BY THE STATE .....	54
XXII. COVENANT NOT TO SUE BY NHC .....	56
XXIII. CONTRIBUTION PROTECTION .....	57
XXIV. MODIFICATIONS .....	57
XXV. VOIDANCE OF THE CNTS .....	58
XXVI. SEPARATE DOCUMENTS .....	58
XXVII. SEVERABILITY .....	59
ATTACHMENT A – Environmental Escrow Agreement	
ATTACHMENT B – Property Descriptions	
ATTACHMENT C – Cost Summary Sheet	
ATTACHMENT D – Interim Response Activity Plan, Including 12/19/1997 MDEQ Approval Letter	
ATTACHMENT E – Groundwater Monitoring Letter Report Format	
ATTACHMENT F – Soil Verification of Remediation Letter Report Format	

**ADMINISTRATIVE ORDER BY  
CONSENT FOR RESPONSE ACTIVITY**

**I. JURISDICTION**

This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Michael A. Cox, Attorney General for the State of Michigan, and the New Hudson Corporation ("NHC"), pursuant to the authority vested in the MDEQ and the Department of Attorney General by §§ 20119 and 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20101 *et seq.* This Order concerns the performance by NHC of certain response activities at the NHC Facility, Oakland County, Michigan.

**II. DENIAL OF LIABILITY**

The execution of this Order by NHC is neither an admission nor denial of liability with respect to any issue dealt with in this Order, nor an admission or denial of any factual allegations or legal determinations stated or implied herein.

**III. PARTIES BOUND**

3.1 This Order shall apply to and be binding upon NHC and the State and their successors and assigns. Any change in ownership or corporate or legal status of NHC, including, but not limited to, any transfer of assets or real or personal property shall in no way alter NHC's responsibilities under this Order.

3.2 NHC shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants, which are retained to conduct any portion of the response activities

to be performed pursuant to this Order, within three (3) days of the effective date of such retention.

3.3 Notwithstanding the terms of any contract that NHC may enter with respect to the performance of response activities pursuant to this Order, NHC is responsible for compliance with the terms of this Order and shall ensure that its contractors, subcontractors, laboratories and consultants perform all response activities in conformance with the terms and conditions of this Order.

3.4 The signatories to this Order certify that they are authorized to execute this Order and to bind legally the parties they represent.

#### **IV. STATEMENT OF PURPOSE**

In entering into this Order, it is the mutual intent of the Parties to: (a) maximize the use of funds in the environmental escrow to best protect the public health, safety, welfare and the environment, acknowledging that the following tasks, including a Part 201-compliant closure, may not be achieved; (b) conduct a remedial investigation to determine the nature, extent and impact of hazardous substances and any threat to the public health, safety, welfare or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate response activity or remedial action for the Facility; (c) perform interim response activities pursuant to §§ 20114(1)(h)(i) through (v); (d) develop and submit to the MDEQ approvable response activity plans that comply with Part 201; (e) perform MDEQ-approved response activities in accordance with their approved implementation schedules; (f) reimburse the State for Past and Future Response Activity Costs as described in Section XVI (Reimbursement of Costs); and (g) minimize litigation.

## **V. DEFINITIONS**

5.1 "Day" or "day" means a calendar day, unless otherwise specified in this Order.

5.2 "Effective Date" means the latter of the dates that the Remediation and Redevelopment Division Chief signs this Order or that the Environmental Escrow is funded. All dates for the performance of obligations under this Order shall be calculated from the Effective Date.

5.3 "Environmental Escrow Agreement" or "EEA" means the agreement establishing the Environmental Escrow funded by NHC for the performance of response activities under this Order (Attachment A).

5.4 "Facility" means any area of the Property defined in paragraph 5.12 and identified in Attachment B, where a hazardous substance, in concentrations that exceed the requirements of § 20120a(1)(a) or (17), MCL 324.20120a(1)(a) or (17), of NREPA or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of NREPA, has been released, deposited, disposed of or otherwise comes to be located; and any other area, place or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property.

5.5 "Future Response Activity Costs" means costs incurred by the State to oversee, enforce, monitor and document compliance with this Order and to perform response activities required by this Order, including, but not limited to, costs incurred to: monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare cost reimbursement

documentation; and perform response activities pursuant to Section XI (Emergency Response) and paragraph 8.15 (MDEQ's Performance of Response Activities).

5.6 "IRDC" means an Interim Response Designed to meet the Criteria provided for under §§ 20120a(1)(a) to (j) or (2) for one or more environmental media in all or a portion of the Facility that satisfies the applicable requirements of Part 201, including, but not limited to, §§ 20118, 20120a, 20120b and 20120d and R 299.5526 of the Part 201 Administrative Rules.

5.7 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf. Environmental functions formerly assigned to the Michigan Department of Natural Resources ("MDNR") were transferred to the MDEQ by Executive Order 1995-18, effective October 1, 1995.

5.8 "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.

5.9 "Party" means either NHC or the State. "Parties" means NHC and the State.

5.10 "Past Response Activity Costs" means those costs that the State incurred and paid prior to and during the dates set forth in the attached Cost Summary Sheet (Attachment C).

5.11 "NHC" means New Hudson Corporation and its successors.

5.12 "Property" means the property located at 57077 Pontiac Trail and the adjacent parcel to the west, New Hudson, Michigan, and described in the legal descriptions provided in Attachment B.

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

5.14 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

5.15 "State" or "State of Michigan" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

5.16 "Submissions" means all plans, reports, schedules and other submittals that NHC is required to submit to the State pursuant to this Order. "Submissions" do not include the notifications set forth in Section XII (Delays in Performance, Violations and *Force Majeure*).

5.17 "Work Plan" means the work plan for each of the following: the Interim Response Activities, the Remedial Investigation, the Interim Response Designed to Meet Criteria, the Remedial Action Plan and Interim and Final Well Abandonment, which are required by Section VIII (Performance of Response Activities) of this Order.

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

## **VI. FINDINGS OF FACT AND DETERMINATIONS**

The State makes the following Findings of Fact and Determinations:

6.1 The South Milford Road Residential Wells site is comprised of the NHC Facility and the former New Hudson Manufacturing Company ("NHMC") facility (currently occupied by Lyon Mechanical).

6.2 NHC is the current operator of the Property that was the source of a release. NHC has operated a machine shop at this location since approximately 1967. In July 1993, MDNR

staff discovered that multiple residential wells in the South Milford Road area of New Hudson were contaminated with trichloroethene ("TCE"), 1,1,1-trichloroethane ("TCA") and 1,2-dichloroethane ("DCA") at concentrations above health-based drinking water criteria. Upon the discovery of the contaminated residential wells, the former Michigan Department of Public Health<sup>1</sup> began a program to provide bottled water to the affected residents in 1993. A remedial investigation conducted by the MDNR in 1994 revealed that both soils and groundwater in the vicinity of the contaminated wells were contaminated with TCE, TCA and DCA at concentrations above Part 201 residential criteria and that the NHC and the NHMC properties were the sources of this contamination. This investigation also indicated that the contaminant plume may be discharging to the New Hudson Drain, which is located approximately 1,700 feet south of the Property.

6.3 Groundwater contamination exceeding Part 201 Drinking Water Criteria and soil contamination exceeding Part 201 Drinking Water Criteria and Soil Volatilization to Indoor Air Inhalation Criteria have resulted from operations at the NHC. Groundwater contamination is migrating off the Property and may be discharging into the New Hudson Drain, in violation of the Part 201 Groundwater-Surface Water Interface ("GSI") Protection Criteria, and has the potential to contaminate additional drinking water wells.

6.4 The NHC Facility is a "facility" as that term is defined in § 20101(l)(o) of NREPA.

6.5 TCE, TCA and DCA are present at the Facility and are "hazardous substance(s)" as that term is defined in § 20101(1)(t) of NREPA.

---

<sup>1</sup> These functions of the former Michigan Department of Public Health are now administered by the Water Division, MDEQ.

6.6 The presence of hazardous substances in soils and groundwater constitutes a "release or threatened release" within the meaning of §§ 20101(1)(bb) and 20101(1)(ii) of NREPA.

6.7 Investigations conducted by NHC between 1995 and 1997 showed concentrations of TCE and TCA in the groundwater that exceeded Part 201 Drinking Water Criteria by two orders of magnitude and one order of magnitude, respectively. Chlorinated volatile organic compounds exceeded GSI Criteria at levels that were within an order of magnitude of the criteria. Soil samples showed concentrations of TCE that exceeded Drinking Water Protection Criteria by two orders of magnitude and GSI Protection and Soil Volatilization to Indoor Air Inhalation Criteria by one order of magnitude. Drinking Water Protection Criteria were also exceeded for several chlorinated VOCs at levels within one order of magnitude. The release or threatened release of hazardous substances at or from the Facility poses an imminent and substantial endangerment to the public health, safety, welfare or the environment within the meaning of § 20119 of NREPA.

6.8 According to records obtained by staff of the MDEQ from the Michigan Department of Consumer and Industry Services, NHC is incorporated in the State of Michigan and is the current operator of the Property that was the source of the release. NHC is a "person" as that term is defined in § 301(g) of Part 3 of NREPA.

6.9 NHC is liable for contamination at the Facility pursuant to § 20126 of the NREPA. NHC was an operator of the Facility at the time of disposal of hazardous substances at the Facility. NHC has operated a machine shop at this location since approximately 1967. An RRD staff review of the MDEQ's Waste and Hazardous Materials Division Part 111 Hazardous Waste files verified that NHC had formerly used TCE and TCA, which were released at the

NHC Property. Therefore, NHC is responsible for an activity causing a release or threat of release at the Facility pursuant to § 20126(1)(b) of NREPA.

6.10 By letter dated June 21, 1995, and again on May 16, 2002, the MDEQ notified NHC of its status as a person that may be liable ("potentially responsible party" or "potentially liable party") for the Facility.

6.11 In order to protect public health, safety, welfare and the environment and to abate the danger or threat caused by the release or threat of release of hazardous substances at the Facility, it is necessary and appropriate that response activities be performed at the Facility. Sections VIII (Performance of Response Activities) and XI (Emergency Response) of this Order specify the response activities that must be performed at the Facility.

6.12 This Order is entered pursuant to § 20132(7), which provides that the State may consider an ability to pay when reaching a settlement, and as a result, the scope of response activities performed by NHC may be limited if the Environmental Escrow established under this Order is depleted.

On the basis of these Findings of Fact, the MDEQ and the Attorney General have determined that entry of this Order will expedite the performance of effective response activities, that NHC will properly perform the response activities required by this Order, and that the entry of this Order is in the public interest and will minimize litigation.

**BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND THE ATTORNEY GENERAL HEREBY ORDER AND NHC HEREBY AGREES TO PERFORM THE RESPONSE ACTIVITIES AND PAY STATE-INCURRED RESPONSE ACTIVITY COSTS AS SPECIFIED IN THIS ORDER.**

**VII. COMPLIANCE WITH STATE AND FEDERAL LAWS**

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules and regulations, including, but not limited to, Part 201, the Part 201 Administrative Rules and laws relating to occupational safety and health. Other agencies may also be called upon to review the conduct of response activities under this Order.

**VIII. PERFORMANCE OF RESPONSE ACTIVITIES**

**8.1 Establishment of Environmental Escrow**

NHC shall fund an Environmental Escrow in accordance with this Order and the Environmental Escrow Agreement ("EEA") (Attachment A). The EEA attached hereto and made an enforceable part of this Order, will secure the performance of response activities, including the performance of the Remedial Investigation ("RI"), Interim Response Activities ("IRA") and Interim Response Designed to Meet Criteria ("IRDC") or a Remedial Action Plan ("RAP"), to the extent the Environmental Escrow is funded.

(a) Within ten (10) days of the effective date of this Order, NHC shall submit three (3) originally signed duplicate originals of the EEA in Attachment A to the MDEQ for signature. The EEA submitted to the MDEQ shall be signed by both NHC and the Escrow Agent. Upon receipt of the EEA, the MDEQ shall sign the EEA and send a fully executed EEA to NHC and to the Escrow Agent.

(b) NHC shall fund the Environmental Escrow within ten (10) days after it receives a fully executed copy of the EEA. NHC shall make an initial deposit of \$600,000 and annual deposits, beginning on the first anniversary date of the effective date of this Order, in the amount of \$50,000 per year for ten (10) consecutive years (totaling \$1,100,000) as described in the EEA.

(c) NHC may accelerate payments into the Environmental Escrow, and if NHC does, such payments will be credited towards NHC's next obligation.

(d) If NHC dissolves or otherwise ceases to conduct business and fails to make annual payments to the EEA or fails to implement all activities required under this Order, all rights under this Order regarding the Environmental Escrow shall immediately and automatically vest in the MDEQ.

## 8.2 Performance Objectives

NHC shall, to the extent funds are available in the escrow, perform response activities to comply with the requirements of Part 201 and to meet the performance objectives outlined in this Order at the Facility as follows:

(a) NHC shall perform only MDEQ-approved response activities. The MDEQ's objective is to approve response activities that maximize the use of available funds to protect the public health, safety, welfare and the environment. The MDEQ shall consider the benefits of attaining a Part 201 compliant closure (e.g., RAP), or partial closure (e.g., IRDC), with the benefits of conducting response activities that are protective of the public health, safety welfare and the environment but might not result in a Part 201 closure.

(b) NHC shall continue to implement the IRA described in the MDEQ-approved Interim Response Activity Plan (Approved IRAP) (Attachment D). The performance

objective of the IRAP is to control the two sources of groundwater contamination at the property, as described in the Approved IRAP (Attachment D).

(c) NHC shall perform a RI that complies with R 299.5528 of the Part 201 Administrative Rules. The performance objectives of the RI are to define the nature and extent of the release or threat of release at the Facility in order to evaluate the relevant exposure pathways in accordance with Part 201 and to support the development of a new IRAP, an IRDC or a RAP.

(d) If, based on the RI results, MDEQ staff conclude that additional IRA are necessary, NHC shall perform additional IRA. The performance objectives of these additional IRA are to protect the public health, safety, welfare and the environment and work towards achieving and maintaining compliance with the applicable cleanup criteria in § 20120a(1)(b)-(j) of NREPA.

(e) If funds remain in the Environmental Escrow and the MDEQ determines that pursuing an IRDC or a RAP will best achieve the performance objectives of this Order, the MDEQ will direct NHC to submit either an MDEQ-approvable IRDC or an MDEQ-approvable RAP. NHC shall perform the IRA in an MDEQ-approved IRDC or the remedial action as approved in an MDEQ-approved RAP, whichever is pursued. The performance objectives of the IRDC and RAP are to:

(i) Assure the effectiveness and integrity of the response activities or remedial action as approved in the MDEQ-approved IRDC or RAP;

(ii) Meet the cleanup criteria established under § 20120a(1)(b)-(j) or 20120a(2) of NREPA and, to the extent applicable, comply with all applicable technical and administrative requirements of §§ 20118, 20120a, 20120b and 20120d of NREPA and the Part

201 Administrative Rules for the Facility, or meet the criteria provided for under § 20120a(1)(f)-(j) or (2) for one or more environmental media in all or a portion of the Facility that satisfies the requirements of Part 201, including, but not limited to, §§ 20118, 20120a, 20120b and 20120d and R 299.5526 of the Part 201 Administrative Rules; and

(iii) Allow for the continued use of the Facility consistent with local zoning requirements.

8.3 In accordance with this Order, NHC shall assure that all Work Plans for conducting response activities are designed to achieve the performance objectives identified in paragraph 8.2(b)-(e). NHC shall develop each Work Plan and perform the response activities contained in each Work Plan in accordance with the requirements of Part 201 and this Order. The Work Plans shall contain budgets and schedules for the implementation of response activities and define the goals and objectives that are to be achieved by the implementation of the response activities set forth in the Work Plans. Upon MDEQ approval, each component of each Work Plan and any approved modifications shall be deemed incorporated into this Order and made an enforceable part of this Order. If there is a conflict between the requirements of this Order and any MDEQ-approved Work Plan, the requirements of this Order shall prevail.

#### 8.4 Quality Assurance Project Plan ("QAPP")

Sampling and analytical activities shall be developed and performed in accordance with the United States Environmental Protection Agency's ("USEPA" or "EPA") "EPQ Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." NHC shall utilize recommended

sampling methods and analytical methods and analytical detection levels specified in "Operational Memo No. 6, Analytical Method Detection Level Guidance for Environmental Contamination Response Activities under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Revision 6, January 2001)." NHC shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria (S3TM) to determine the number of samples collected for the purposes of verifying the cleanup. NHC shall comply with the above documents or documents that supercede or amend these documents and may utilize other methods demonstrated by the NHC to be appropriate, as approved by the MDEQ.

#### 8.5 Health and Safety Plan ("HASP")

Within sixty (60) days of the Effective Date of this Order, NHC shall submit to the MDEQ a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150, the Occupational Safety and Health Act of 1970, 29 CFR 1910.120 and the Michigan Occupational Safety and Health Act. The HASP is not subject to the MDEQ's approval under Section XV (Submissions and Approvals) of this Order. Any costs associated with the preparation of the HASP shall not be eligible to be paid from the Environmental Escrow.

#### 8.6 Source Area Interim Response Activities

Within ten (10) days of the Effective Date of this Order, NHC shall submit to the MDEQ for review and approval a post system shut down groundwater monitoring and verification of soil remediation work plan to evaluate the operation of the air sparge/soil vapor extraction system. The work plan shall include a schedule for the groundwater monitoring, soil verification sampling and reporting. The soil verification samples shall be collected and analyzed in

accordance with the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria.

(a) Within thirty (30) days of receiving the MDEQ's approval of the work plan for post system shut down groundwater monitoring, NHC shall have collected groundwater samples for the first groundwater sampling event of the post system shut down monitoring schedule. The laboratory results for the first groundwater sampling event shall be provided to the MDEQ within sixty (60) days of the MDEQ's approval of the work plan for post system shut down groundwater monitoring. The laboratory results for subsequent groundwater sampling events shall be provided to the MDEQ within thirty (30) days of the collection of the samples. Sample results shall be provided to the MDEQ within thirty (30) days of the collection of the samples. Sample results shall be provided to the MDEQ in a letter report format similar to the quarterly reports previously submitted for the facility. An outline for the minimum requirements of the groundwater monitoring letter report format is provided in Attachment E.

(b) Within thirty (30) days of receiving the MDEQ's approval of the work plan for soil verification sampling, NHC shall have collected the soil verification samples. The laboratory results shall be provided to the MDEQ within sixty (60) days of the MDEQ's approval for the collection of the soil verifications samples in a letter report format. An outline for the minimum requirements of the soil verification sampling letter report format is provided in Attachment F.

#### 8.7 Remedial Investigation

(a) Within sixty (60) days of the Effective Date of this Order, NHC shall submit to the MDEQ for review and approval a Work Plan for conducting a RI that complies with R 299.5528 of the Part 201 Administrative Rules and which shall be of sufficient scope to

support the selection of additional IRAs, an IRDC or a RAP. The Work Plan shall provide for the following:

- (i) A detailed description of the specific work tasks that will be conducted pursuant to the Work Plan and a description of how these work tasks will meet the performance objectives described in paragraphs 8.2(c)-(d). The factors specified in the Part 201 Administrative Rules shall be considered in the development of the Work Plan.
- (ii) A description of the history and nature of operations at the Facility and a summary of any existing information regarding the physical characteristics of the site.
- (iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.
- (iv) A plan for obtaining access to any properties not owned or controlled by NHC that is needed to perform the response activities contained in the Work Plan.
- (v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities that NHC proposes to use for the off-site transfer, storage, treatment or disposal of those waste materials.

(b) Within thirty (30) days of receiving the MDEQ's approval of the RI Work Plan, NHC shall begin the performance of the response activities contained in the plan and submit progress reports and an RI Report in accordance with the approved implementation schedule.

#### 8.8 Interim Response Activities

(a) If based on MDEQ review of the RI, MDEQ staff concludes that there is the need for IRA in addition to those in the Approved IRAP, NHC shall conduct the additional

IRA. If additional IRA are necessary, within sixty (60) days of the MDEQ request for additional IRA, NHC shall submit to the MDEQ for review and approval a Work Plan for additional IRA.

The Work Plan shall provide for the following:

(i) A detailed description of the specific work tasks that will be conducted pursuant to the Work Plan and a description of how these work tasks will meet the performance objectives described in paragraph 8.2(d). The factors specified in the Part 201 Administrative Rules shall be considered in the development of the Work Plan.

(ii) A description of how the proposed additional IRA will be consistent with the IRDC or RAP that is anticipated to be selected for the Facility.

(iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.

(iv) A plan for obtaining access to any properties not owned or controlled by NHC that is needed to perform the response activities contained in the Work Plan.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities that NHC proposes to use for the off-site transfer, storage, treatment or disposal of those waste materials.

(b) Within thirty (30) days of receiving the MDEQ's approval of the additional IRA Work Plan, NHC shall perform the response activities contained in the plan and submit progress reports and a final report in accordance with the approved implementation schedule.

## 8.9 Interim Response Designed to meet Criteria or Remedial Action Plan

(a) If funds remain in the Environmental Escrow following NHC's completion of the RI report and IRA report (if additional IRA are conducted), MDEQ staff will weigh the potential benefits to the public health, safety, welfare and the environment of having NHC perform an IRDC or RAP to the benefits of reimbursing the State's Past Costs. If MDEQ staff concludes that funding an IRDC or a RAP is feasible and that the benefits exceed those of reimbursing the State's Past Costs, within ninety (90) days of the MDEQ request for an IRDC or RAP, NHC shall submit to the MDEQ for review and approval an approvable IRDC or RAP. If MDEQ staff concludes that performance of an IRDC or RAP is not feasible or in the best interest of the State, the funds remaining in the Environmental Escrow shall be paid to the State as Past Costs as provided for in paragraph 16.1 (Reimbursement of Costs) and paragraph 2.7 (Disposition of Environmental Escrow) of the EEA.

If an IRDC or RAP is required, the IRDC or RAP shall provide for the following:

- (i) All technical and administrative components required by §§ 20118, 20120a, 20120b and 20120d of NREPA and the Part 201 Administrative Rules.
- (ii) A detailed description of the specific work tasks to be conducted pursuant to the IRDC or RAP Work Plan, a description of how these work tasks will meet the performance objectives described in paragraph 8.2(e) and a description and supporting documentation of how the results of the RI or other response activities that have been performed at the Facility support the selection of the interim response in the IRDC or the remedial action contained in the RAP.
- (iii) Implementation schedules for conducting the response activities and for submission of progress reports and a final report.

(iv) A plan for obtaining access to any properties not owned or controlled by NHC that is needed to perform the response activities contained in the IRDC or RAP. If NHC proposes to perform an IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(b)-(j) or (2) of NREPA and that IRDC or RAP provides for land and resource use restrictions, monitoring, operation and maintenance or permanent markers, as prescribed by §§ 20120b(3)(a)-(d) of NREPA, the IRDC or RAP shall include documentation from property owners or local units of government that the necessary access to these properties has been or will be obtained and that any proposed land or resource use restrictions can or will be placed or enacted.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities NHC proposes to use for the off-site transfer, storage, treatment or disposal of those waste materials.

(b) Within thirty (30) days of receiving the MDEQ's approval of the IRDC or RAP, NHC shall commence performance of the IRDC or RAP and submit progress reports in accordance with the MDEQ-approved IRDC or RAP. All technical and administrative requirements submitted to the MDEQ, which in combination constitute the MDEQ-approved IRDC or RAP, shall become incorporated into this Order and become an enforceable part of this Order. The technical and administrative components of an MDEQ-approved IRDC or RAP may include, but are not limited to, the following:

(i) Notices of Approved Environmental Remediation ("NAERs")

If NHC chooses to perform an IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(b)-(e) of NREPA, NHC shall record any NAERs required by § 20120b(2) and the IRDC or RAP with the Oakland County Register of Deeds within twenty-one (21) days after MDEQ approval of the IRDC or RAP or within twenty-one (21) days after completion of construction of the IRDC or remedial action provided for in the RAP, as appropriate to the circumstances. The form, content and schedule for filing the NAER must be approved by the MDEQ. NHC shall provide a true copy of the recorded NAER and the liber and page to the MDEQ within twenty-one (21) days of NHC's receipt of a copy from the Register of Deeds.

(ii) Restrictive Covenants

If NHC chooses to perform an IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(f)-(j) or (2) of NREPA and that IRDC or RAP provides for the placement of restrictive covenants, NHC shall record or cause to be recorded the appropriate restrictive covenants required by the IRDC or RAP with the Oakland County Register of Deeds within twenty-one (21) days after MDEQ approval of the IRDC or RAP or within twenty-one (21) days after completion of construction of the IRDC or remedial action provided for in the RAP, as appropriate to the circumstances. The form, content and schedule for filing the restrictive covenant must be approved by the MDEQ. NHC shall provide a true copy of the recorded restrictive covenant and the liber and page to the MDEQ within ten (10) days of NHC's receipt of a copy from the Register of Deeds.

(iii) Institutional Controls

If NHC chooses to perform an IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(f)-(j) or (2) of NREPA and that IRDC or RAP provides for the enactment of institutional controls, NHC shall arrange for the placement of institutional controls in accordance with the implementation schedule in the MDEQ-approved IRDC or RAP. NHC shall provide a true copy of documentation that such institutional controls have been enacted to the MDEQ within twenty-one (21) days of enactment.

(iv) Land Use Restrictions

If NHC chooses to perform an IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(b)-(j) or (2) of NREPA and that IRDC or RAP provides for land use restrictions, within thirty (30) days of the MDEQ's approval of the IRDC or RAP, NHC shall provide notice of the land use restrictions to the zoning authority of the local unit of government within which the Facility is located.

(v) Financial Assurance Mechanisms ("FAMs")

If NHC chooses to perform a IRDC or RAP that relies on the cleanup criteria established under §§ 20120a(1)(f)-(j) or (2) of the NREPA and a FAM is a necessary component of that IRDC or RAP, NHC shall establish and maintain financial assurance that will assure NHC's ability to pay for monitoring, operation and maintenance, oversight and other costs (collectively referred to as "O&M Costs") that are determined by the MDEQ to be necessary to assure the effectiveness and integrity of the IRDC or remedial action as set forth in an MDEQ-approved RAP. The parties agree that the Environmental Escrow may serve as the FAM in the event that it is deemed to be a necessary component of an IRDC or RAP.

(c) If NHC's MDEQ-approved IRDC or RAP relies on the cleanup criteria established under §§ 20120a(1)(b)-(j) of NREPA, NHC shall notify the MDEQ within ten (10) days of its completion of construction of the IRDC or remedial action that is set forth in the RAP.

#### 8.10 Public Notice and Public Meeting Requirements under § 20120d of NREPA

If the MDEQ, after consultation with NHC, determines that there is significant public interest in the results of a RI, or proposed IRDC or RAP required by this Order, if NHC proposes an IRDC or RAP pursuant to §§ 20120a(1)(f)-(j) or (2) of NREPA or if § 20118(5) or (6) of the NREPA applies to the proposed IRDC or RAP, the MDEQ will make those reports or plans available for public comment. When the MDEQ determines that the RI Report, or proposed IRDC or RAP is acceptable for public review, a public notice regarding the availability of those reports or plans will be published and those reports or plans shall be made available for review and comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDEQ. If the MDEQ determines, after consultation with NHC, that there is significant public interest or the MDEQ receives a request for a public meeting, the MDEQ will hold such public meeting in accordance with §§ 20120d(1) and (3) of NREPA. Following the public review and comment period or a public meeting, the MDEQ may refer the RI Report, or proposed IRDC or RAP back to NHC for revision to address public comments and the MDEQ's comments. The MDEQ will prepare the final responsiveness summary document that explains the reasons for the selection or approval of an IRDC or RAP in accordance with the provisions of §§ 20120d(5) and (6) of NREPA. Upon the MDEQ's request, NHC shall provide information to the MDEQ for the final responsiveness summary document, or NHC shall prepare portions of the draft responsiveness summary document.

#### 8.11 Interim Well Abandonment Work Plan

Within thirty (30) days of a request from the MDEQ, NHC shall submit to the MDEQ for review and approval an Interim Well Abandonment Work Plan for the proper plugging and abandonment of any monitor wells that will not be used for long-term monitoring at the Facility. The Interim Well Abandonment Work Plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receipt of MDEQ approval of the Interim Well Abandonment Work Plan, NHC shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications set forth in the ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes and Other Devices for Environmental Activities), or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the Interim Well Abandonment Work Plan, NHC shall submit an Interim Well Abandonment Report to the MDEQ.

#### 8.12 Final Well Abandonment

Upon completion of the monitoring activities as set forth in an MDEQ-approved IRDC or RAP, including operation and maintenance and long-term monitoring, NHC shall submit to the MDEQ for review and approval a Work Plan for the final identification, plugging and abandonment of all remaining monitor wells at or related to the Facility (Final Well Abandonment Work Plan). The Final Well Abandonment Work Plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receiving MDEQ approval of the Final Well Abandonment Work Plan, NHC shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning

Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes and Other Devices for Environmental Activities), or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the Final Well Abandonment Work Plan, NHC shall submit a Final Well Abandonment Report to the MDEQ.

#### 8.13 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a response activity Work Plan is necessary to meet and maintain the applicable performance objectives specified in paragraph 8.2 or to meet any other requirement of this Order, the MDEQ may require that such modification be incorporated into a response activity Work Plan previously approved by the MDEQ under this Order. If extensive modifications are necessary, the MDEQ may require NHC to develop and submit a new draft Work Plan. NHC may request that the MDEQ consider a modification to a response activity Work Plan by submitting such request for modification along with the proposed change in the response activity Work Plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by NHC must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Any Work Plan modifications or any new Work Plans shall be developed in accordance with the applicable requirements of this Section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XV (Submissions and Approvals).

(b) Upon MDEQ approval, NHC shall perform the response activities specified in a modified response activity work plan or a new Work Plan in accordance with the MDEQ-approved implementation schedules.

#### 8.14 Progress Reports

(a) NHC shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Order. These progress reports shall include the following:

- (i) A description of the activities that have been taken toward achieving compliance with this Order during the previous reporting period;
- (ii) All results of sampling and tests and other data received by NHC, its employees or authorized representatives during the previous reporting period relating to the response activities performed pursuant to this Order;
- (iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how NHC proposes to resolve those issues;
- (iv) A description of the nature and amount of waste materials that were generated and the name and location of the facilities that were used for the off-site transfer, storage, treatment or disposal of those waste materials;
- (v) A description of data collection and other activities scheduled for the next reporting period; and
- (vi) Any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Order.

(b) The first progress report shall be submitted to the MDEQ within ninety (90) days following the Effective Date of this Order. Thereafter, progress reports shall be submitted quarterly until otherwise specified in the MDEQ-approved Work Plans. Pursuant to

paragraph 8.13, either the MDEQ may modify or NHC may modify a schedule for the submittal of progress reports contained in an MDEQ-approved Work Plan.

#### 8.15 MDEQ's Performance of Response Activities

If NHC ceases to perform the response activities required by this Order, is not performing response activities in accordance with this Order or is performing response activities in a manner that may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to NHC, 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 XI (Emergency Response). If the MDEQ finds it necessary to take over the performance of response activities that NHC is obligated to perform under this Order, all rights under this Order regarding the Environmental Escrow shall immediately and automatically vest in the MDEQ.

### **IX. ACCESS**

9.1 Upon the Effective Date of this Order, NHC shall allow the MDEQ staff and its authorized employees, agents, representatives, contractors and consultants to enter the Facility and associated properties at all reasonable times and upon reasonable notice to the extent access to the Facility and any associated property is owned, controlled by or available to NHC. MDEQ staff and its authorized employees, agents, representatives, contractors and consultants shall be allowed to enter the Facility and associated properties, upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, for the purpose of conducting any activity to which access is required for the implementation of this

Order or to otherwise fulfill any responsibility under federal or State laws with respect to the Facility, including, but not limited to, the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Order at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning or conducting response activities at or near the Facility;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance or other measures necessary to assure the effectiveness and integrity of a remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts or other documents;
- (h) Communicating with NHC's Project Coordinator or other personnel, representatives or consultants for the purpose of assessing compliance with this Order;
- (i) 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 Order; and
- (j) Assuring the protection of public health, safety, welfare and the environment.

9.2 To the extent that the Facility, or any other property where the response activities are to be performed by NHC under this Order, is owned or controlled by persons other than

NHC, NHC shall use its best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants. NHC shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, NHC 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 NHC's receipt of MDEQ approval of the Work Plan for which such access is needed. If NHC has not been able to obtain access within sixty (60) days after filing judicial action, NHC shall promptly notify the MDEQ of the status of its efforts to obtain access and provide an assessment of how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delay in the performance of response activities unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XII (Delays in Performance, Violations, and *Force Majeure*).

9.3 Any lease, purchase, contract or other agreement entered into by NHC, 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 IX (Access) and Section XIII (Record Retention/Access to Information).

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

## **X. SAMPLING AND ANALYSIS**

10.1 All sampling and analysis conducted pursuant to this Order shall be in accordance with the QAPP specified in paragraph 8.4 and MDEQ-approved Work Plans.

10.2 NHC, or its consultants or subcontractors, shall provide the MDEQ's RRD Project Coordinator five (5) days notice by telefax and/or telephone prior to any sampling activity to be conducted pursuant to this Order to allow the RRD Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where five (5) days notice is not possible, NHC, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the RRD Project Coordinator and explain why earlier notification was not possible. If the RRD Project Coordinator concurs with the explanation provided, NHC may forego the five (5)-day notification period for that particular sampling event.

10.3 NHC shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Order, Part 201; Part 211, Underground Storage Tank Regulations; Part 213, Leaking Underground Storage Tanks; or Part 31, Water Resources Protection, of NREPA or other relevant authorities. Said results shall be included in the Progress Reports set forth in paragraph 8.14.

10.4 For the purpose of quality assurance monitoring, NHC shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory that is used by NHC in implementing this Order.

## **XI. EMERGENCY RESPONSE**

11.1 If, in the course of NHC's performance of response activities pursuant to this Order, an act or the occurrence of an event causes a release or threat of release of a hazardous substance at or from the Facility or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, welfare or the environment, NHC shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat of release, exacerbation or endangerment and shall immediately notify the MDEQ's Project Coordinator. In the event of his or her unavailability, NHC shall notify the Pollution Emergency Alerting System ("PEAS") at 1-800-292-4706). In such an event, any actions taken by NHC shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP referenced in paragraph 8.5.

11.2 Within ten (10) days of notifying the MDEQ of such an act or event, NHC shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, exacerbation or endangerment caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether NHC notifies the MDEQ under this Section, if an act or event causes a release, threat of release or exacerbation, or poses or threatens to pose an imminent and substantial endangerment to public health, safety, welfare or the environment, the MDEQ may:

- (a) require NHC to stop response activities at the Facility for such period as may be needed to prevent or abate any such release, threat of release, exacerbation or endangerment;
- (b) require NHC to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, exacerbation or endangerment; or
- (c) undertake any actions that

the MDEQ determines are necessary to prevent or abate such release, threat of release, exacerbation or endangerment. This Section is not subject to the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

## **XII. DELAYS IN PERFORMANCE, VIOLATIONS AND *FORCE MAJEURE***

12.1 NHC shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." NHC shall not be deemed to be in violation of this Order if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to paragraph 12.4(a) or if NHC's position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If NHC otherwise fails to comply with or violates any requirement of this Order and such noncompliance or violation is not attributable to a *Force Majeure* event, NHC shall be subject to the stipulated penalties set forth in Section XVII (Stipulated Penalties).

12.2 For the purposes of this Order, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of NHC, of any person controlled by NHC or of NHC's contractors that delays or prevents the performance of any obligation under this Order despite NHC's "best efforts to fulfill the obligation." In recognition of the ability to pay basis of this Order, if NHC is in compliance with the schedule for deposits as described in the EEA and this Order, and the Environmental Escrow runs out of funds for a period of time, the event will also be considered a *Force Majeure*. The requirement that NHC exercise "best efforts to fulfill the obligation" includes NHC's use of its best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that NHC minimizes any delays in the performance of any

obligation under this Order to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes or failure to obtain a permit or license as a result of NHC's acts or omissions.

12.3 If either (a) an event occurs that causes or may cause a delay in the performance of any obligation under this Order, whether or not such delay is caused by a *Force Majeure* event, or (b) a delay in performance or other violation occurs due to NHC's failure to comply with this Order, NHC shall do the following:

(i) Notify the MDEQ by telephone or telefax within two (2) business days of discovering the event or violation; and

(ii) Within ten (10) days of providing the two (2) business days notice, provide a written notice, action plan and supporting documentation to the MDEQ, which includes the following:

(1) A description of the event, delay in performance or violation and the anticipated length and precise causes of the delay, potential delay or violation;

(2) The specific obligations of this Order that may be or have been affected by the delay in performance or violation;

(3) The measures NHC has taken or proposes to take to avoid, minimize or mitigate the delay in performance or the effect of the delay, or to cure the violation, and an implementation schedule for performing those measures;

(4) If NHC intends to assert a claim of *Force Majeure*, NHC's rationale for attributing a delay or potential delay to a *Force Majeure* event;

(5) Whether NHC is requesting an extension for the performance of any of its obligations under this Order and, if so, the specific obligations for which it is seeking

such an extension, the length of the requested extension and its rationale for needing the extension; and

(6) A statement as to whether, in the opinion of NHC, the event, delay in performance or violation may cause or contribute to an endangerment to public health, safety, welfare or the environment and how the measures taken or to be taken to address the event, delay in performance or violation will avoid, minimize or mitigate such endangerment.

12.4 The State will provide written notification of its approval, approval with modifications or disapproval of NHC written notification under paragraph 12.3 and will notify NHC of one of the following:

(a) If the State agrees with NHC's assertion that a delay or potential delay is attributable to a *Force Majeure* event, the MDEQ's written notification will include the length of the extension, if any, for the performance of specific obligations under this Order that are affected by the *Force Majeure* event and for which NHC is seeking an extension. An extension of the schedule for performance of a specific obligation affected by a *Force Majeure* event shall not extend, by itself, the schedule for performance of any other obligation.

(b) If the State does not agree with NHC's assertion that a delay or anticipated delay has been or will be caused by a *Force Majeure* event, the State will notify NHC of its decision. If NHC disagrees with the State's decision, NHC may initiate the dispute resolution process specified in Section XVIII (Dispute Resolution) of this Order. In any such proceeding, NHC shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay or anticipated delay has been or will be caused by a *Force Majeure* event; (ii) the duration of the delay or of any extension sought by NHC was or will be warranted under the

circumstances; (iii) NHC exercised its best efforts to fulfill the obligation; and (iv) NHC has complied with all the requirements of this Section XII.

(c) If NHC's notification pertains to a delay in performance or other violation that has occurred because of its failure to comply with the requirements of this Order, NHC shall undertake those measures determined to be necessary and appropriate by the MDEQ to address the delay in performance or violation and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment as set forth in Section XVII (Stipulated Penalties). Penalties shall accrue as provided in Section XVII (Stipulated Penalties) regardless of when the MDEQ notifies NHC or when NHC notifies the MDEQ of a violation.

12.5 This Order shall be modified as set forth in Section XXIV (Modifications) to reflect any modifications to the implementation schedule of the applicable response activity Work Plan that are made pursuant to paragraph 12.4(a) or that are made pursuant to the resolution of a dispute between the Parties under Section XVIII (Dispute Resolution).

12.6 NHC's failure to comply with the applicable notice requirements of paragraph 12.3 shall render this Section XII void and of no force and effect with respect to an assertion of *Force Majeure* by NHC; however, the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to NHC of any such waiver.

12.7 NHC's failure to notify the MDEQ as required by paragraph 12.3 constitutes an independent violation of this Order and shall subject NHC to stipulated penalties as set forth in Section XVII (Stipulated Penalties).

### **XIII. RECORD RETENTION/ACCESS TO INFORMATION**

13.1 NHC and its representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of ten (10) years after completion of operation and maintenance and long-term monitoring at the Facility, all records, sampling or test results, charts and other documents relating to the release or threatened release of hazardous substances and the storage, generation, disposal, treatment or handling of hazardous substances at the Facility and any records that are maintained or generated pursuant to any requirement of this Order. However, if NHC chooses to perform an IRDC or a RAP that relies on the cleanup criteria established under §§ 20120a(1)(f)-(j) or (2) of NREPA and that IRDC or RAP provides for land or resource use restrictions, NHC shall retain any records pertaining to those land or resource use restrictions until the MDEQ determines that land and resource use restrictions are no longer needed. After the ten (10)-year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, NHC may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, NHC may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period or NHC may offer to relinquish custody of all documents to the MDEQ. In any event, NHC shall obtain the MDEQ's written permission prior to the destruction of any documents. NHC's request shall be accompanied by a copy of this Order and sent to the address listed in Section XIV (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

13.2 Upon request, NHC shall provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees,

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

13.3 If NHC submits to the MDEQ documents or information that NHC believes it is entitled to protection as provided for in §§ 20117(10) and (11) of NREPA, NHC may designate in that submittal the documents or information to which it believes it is entitled such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to NHC. Information described in §§ 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by NHC. Information or data generated under this Order shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of NREPA, MCL 324.14801 *et seq.*

#### **XIV. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES**

14.1 Each Party shall designate one or more Project Coordinators. Whenever notices are required to be given or Progress Reports, information on the collection and analysis of samples, sampling data, Work Plan submittals, approvals or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Order, or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Coordinator at the address 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 Order, except those specified in paragraphs 14.1A(2), (3) and (4) below:

David LaBrecque, Project Coordinator  
Remediation and Redevelopment Division  
Southeast Michigan District Office  
Michigan Department of Environmental Quality  
38980 West Seven Mile Road  
Livonia, Michigan 48152-1006  
Telephone: 734-953-1422  
FAX: 734-953-1544

This Project Coordinator will have primary responsibility for overseeing the performance of response activities at the Facility and other requirements specified in this Order for the MDEQ. A copy of all Submissions that are submitted to this Project Coordinator shall also be provided to: Oladipo Oyinsan, District Supervisor, at the same address as indicated above.

(2) For all matters specified in this Order that are to be directed to the RRD Division Chief:

Chief, Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Telephone: 517-335-1104  
FAX: 517-373-2637

(Via courier)  
525 West Allegan Street  
4th Floor South, Constitution Hall  
Lansing, Michigan 48913

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the MDEQ Project Coordinator designated in paragraph 14.1A(1).

(3) For Record Retention pursuant to Section XIII (Record Retention/Access to Information), and questions concerning financial matters pursuant to Section VIII (Performance of Response Activities), Section XVI (Reimbursement of Costs), and Section XVII (Stipulated Penalties):

Chief, Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Telephone: 517-373-7818  
FAX: 517-373-2637

(Via courier)  
525 West Allegan Street  
4th Floor South, Constitution Hall  
Lansing, Michigan 48913

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the MDEQ Project Coordinator designated in paragraph 14.1A(1).

(4) For all payments pursuant to Section XVII (Stipulated Penalties):

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
P.O. Box 30657  
Lansing, Michigan 48909-8157

(Via courier)  
525 West Allegan Street  
5th Floor South, Constitution Hall  
Lansing, Michigan 48913

To ensure proper credit, all payments made pursuant to this Order must reference the South Milford Road Site (New Hudson Corporation Facility), the MDEQ Reference No. AOC-RRD-03-002.

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 14.1A(1), the Chief of the Compliance and Enforcement Section designated in paragraph 14.1A(3) and the Assistant Attorney General in Charge designated in paragraph 14.1B.

B. As to the Department of Attorney General:

Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Department of Attorney General  
525 West Allegan Street  
5th Floor South, Constitution Hall  
Lansing, Michigan 48933  
Telephone: 517-373-7540  
FAX: 517-373-1610

C. As to NHC:

Project Coordinator: Keith Gadway  
Quantum Environmental  
4111 Jackson Avenue  
Ann Arbor, Michigan 48103  
Telephone No. (734) 930-2600  
FAX: (734) 930-2798

NHC Representative: Van Sandstrom  
New Hudson Corporation  
57077 Pontiac Trail  
P.O. Box R  
New Hudson, Michigan 48165  
Telephone No. (248) 437-1701  
FAX: (248) 437-0420

14.2 NHC's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Order for NHC.

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

## **XV. SUBMISSIONS AND APPROVALS**

15.1 All Submissions required by this Order shall comply with all applicable laws and regulations and the requirements of this Order and shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. All Submissions delivered to the MDEQ pursuant to this Order shall include a reference to the South Milford Road Site (New Hudson Corporation Facility) and MDEQ Reference No. AOC-RRD-03-002. Any Submission delivered to the MDEQ for approval also shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: *"Disclaimer: This document is a DRAFT document that has not received final approval from the Michigan Department of Environmental Quality ("MDEQ"). This document was prepared pursuant to a governmental administrative order. The opinions, findings and conclusions expressed are those of the authors and not those of the MDEQ."*

15.2 With the exception of the submittal of a RAP, after receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Order, the MDEQ District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify NHC of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with

modifications from the MDEQ, NHC shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Final."

15.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to paragraph 15.2(c), NHC shall correct the deficiencies and resubmit the Submission for MDEQ review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, NHC shall proceed to take the actions and perform response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period for NHC to resubmit the Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review the resubmitted Submission in accordance with the procedure set forth in paragraph 15.2. If the MDEQ disapproves a resubmitted Submission, the MDEQ will so advise NHC and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until NHC delivers an approvable Submission.

15.4 Within six (6) months of receipt of a RAP, the RRD Division Chief will make a decision regarding the RAP and will in writing: (a) approve the RAP; (b) reject the RAP as insufficient if the RAP lacks any information necessary or required by the MDEQ to make a decision regarding RAP approval; or (c) deny approval of the RAP. If the MDEQ denies approval of the RAP, it will provide NHC with a complete and specific statement of the conditions or requirements necessary to obtain approval to which the MDEQ may not add additional items after it has been issued. If the MDEQ fails to approve, reject or deny approval of the RAP within six (6) months from the date of receipt of the RAP, the RAP shall be

considered approved. The time period for a decision regarding the submitted RAP may be extended by the mutual consent of the Parties. Upon receipt of a notice of approval from the MDEQ, NHC shall proceed to take the actions and perform the response activities required by the MDEQ-approved RAP and submit a new cover page marked "Final."

15.5 Within sixty (60) days of receipt of a rejection or denial of approval of a RAP from the MDEQ pursuant to paragraph 15.4(b) or (c), NHC shall resubmit the RAP for MDEQ review and approval. The time period for resubmission may be extended by the MDEQ. If the MDEQ does not approve the RAP upon resubmission, the MDEQ will so advise NHC. Any stipulated penalties applicable to the delivery of the RAP shall accrue during the sixty (60)-day period or other time period for NHC to submit another RAP, but shall not be payable unless the resubmitted RAP also is rejected or approval is denied. The MDEQ will review the resubmitted RAP in accordance with the procedure stated in paragraph 15.4. If the MDEQ rejects or denies a resubmitted RAP, the MDEQ will so advise NHC and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original RAP Submission and continue to accrue until NHC delivers an approvable RAP.

15.6 If the initial submittal of any Submission, including a RAP, contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by NHC to deliver an acceptable Submission that complies with Part 201 and this Order, the MDEQ will notify NHC of such and will deem NHC to be in violation of this Order. Stipulated penalties as set forth in Section XVII (Stipulated Penalties) shall begin to accrue on the day after the Submission was due until an approvable Submission is submitted to the MDEQ. Any other delay in the delivery of a Submission, noncompliance with a Submission or attachment to this Order or failure to cure a deficiency of a Submission in accordance with paragraphs 15.3 or 15.5,

shall subject NHC to penalties pursuant to Section XVII (Stipulated Penalties) or other remedies available to the State pursuant to this Order.

15.7 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Order shall be considered part of this Order and are enforceable pursuant to the terms of this Order. If there is a conflict between the requirements of this Order and any Submission or an attachment to a Submission, the requirements of this Order shall prevail.

15.8 An approval or approval with modifications shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods or statements in any Submission or warrants that the Submission comports with law.

15.9 Informal advice, guidance, suggestions or comments by the MDEQ regarding any Submission provided by NHC shall not be construed as relieving NHC of its obligation to obtain such formal approval as may be required by this Order.

## **XVI. REIMBURSEMENT OF COSTS**

16.1 Any funds remaining in the Environmental Escrow established under this Order following the determination by MDEQ that the performance objective identified in paragraph 8.2(a) of Section VIII (Performance of Response Activities) has been achieved shall be paid to the State as Past Costs. If the Environmental Escrow is completely depleted by payments for the performance of response activities, NHC will not have to make any payments to the State for its Past Costs.

16.2 All payments made pursuant to this Order shall be by check, made payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in paragraph 14.1A(4) of Section XIV (Project Coordinators and Communications/Notices). The South Milford Road Residential Wells site,

New Hudson Corporation Facility, the MDEQ Reference No. AOC-RRD-03-002 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the Chief of the Compliance and Enforcement Section, RRD, at the address listed in paragraph 14.1A(3), the MDEQ Project Coordinator at the address listed in paragraph 14.1A(1) and to the Assistant Attorney General in Charge at the address listed in paragraph 14.1B. Costs recovered pursuant to this Section, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties) shall be deposited into the Environmental Response Fund in accordance with the provisions of § 20108(3) of NREPA.

#### **XVII. STIPULATED PENALTIES**

17.1 NHC shall be liable for stipulated penalties in the amounts set forth in paragraphs 17.2, 17.3 and 17.4 for failure to comply with the requirements of this Order, unless excused under Section XII (Delays in Performance, Violations, and *Force Majeure*). "Failure to Comply" by NHC shall include failure to deliver Submissions and notifications, failure to perform response activities in accordance with MDEQ-approved plans and this Order and failure to pay costs and penalties in accordance with all applicable requirements of law and this Order within the specified implementation schedules established by or approved under this Order.

17.2 The following stipulated penalties shall accrue per violation per day for the following compliance milestones:

- (a) Submittal of the EEA as required in paragraph 8.1(a).
- (b) Deposits into the EEA by NHC according to paragraph 8.1(b).
- (c) Collection of groundwater samples and reporting of sample results, as specified in paragraph 8.6.

(d) Collection of soil verification samples and the reporting of sample results, as specified in paragraph 8.6.

(e) Receipt by the MDEQ of the RI Work Plan required in paragraph 8.7(a).

(f) Compliance with the MDEQ-approved implementation schedule in the RI as required in paragraph 8.7(b).

(g) Receipt by the MDEQ of a Work Plan for IRA as required in paragraph 8.8(a), if the MDEQ determines that additional IRA are necessary.

(h) Compliance with the MDEQ-approved Work Plan for conducting additional IRA as required pursuant to paragraph 8.8(b).

(i) Receipt by the MDEQ of the IRDC or RAP required in paragraph 8.9(a), if an IRDC or RAP is required.

(j) Compliance with the MDEQ-approved IRDC or RAP as required in paragraph 8.9(b), if an IRDC or RAP is required.

**Penalty Per Violation Per Day**

**Period of Noncompliance**

\$ 500

1st through 14th day

\$1,000

5th through 30th day

\$1,500

31st day and beyond

17.3 The following stipulated penalties shall accrue, per violation, per day for failure to submit timely or adequate plans or reports pursuant to paragraphs 8.5 and 8.14(b):

**Penalty Per Violation Per Day**

**Period of Noncompliance**

\$150

1st through 14th day

\$250

15th through 30th day

\$500

31st day and beyond

17.4 Except as provided in paragraphs 17.2 and 17.3 and Section XII (Delays in Performance, Violations, and *Force Majeure*) and Section XVIII (Dispute Resolution), if NHC fails or refuses to comply with any other term or condition of this Order, NHC shall pay the MDEQ stipulated penalties of \$150 per day for each and every failure or refusal to comply.

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

17.6 Except as provided in Section XVIII (Dispute Resolution), NHC shall pay stipulated penalties owed to the State no later than thirty (30) days after receiving a written demand from the State. Payment shall be made in the manner set forth in paragraph 16.2, Section XVI (Reimbursement of Costs). Interest shall begin to accrue on the unpaid balance at the end of the thirty (30)- day period at the rate provided for in § 20126a(3) of NREPA on the day after payment was due until the date upon which NHC makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

17.7 The payment of penalties shall not alter in any way NHC's obligation to perform the response activities required by this Order.

17.8 If NHC fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if NHC violates this Order. For any failure or refusal of NHC to comply with the requirements of this Order, the State also reserves the right to

pursue any other remedies to which it is entitled under this Order or any applicable law including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to § 20119(4) of NREPA in the amount of three (3) times the costs incurred by the State as a result of NHC's violation of or failure to comply with this Order, and sanctions for contempt of court.

17.9 Under no circumstances shall stipulated penalties be paid from the Environmental Escrow.

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

### **XVIII. DISPUTE RESOLUTION**

18.1 Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order, except for Section XI (Emergency Response), which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations of NHC that have not been disputed in accordance with this Section. Engagement of a dispute resolution among the Parties shall not be cause for NHC to delay the performance of any response activity required under this Order.

18.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information NHC provides to the State under paragraphs 18.3-18.5 and any documents the MDEQ and State rely on to make the decisions set forth in paragraphs 18.3-18.5.

18.3 Any dispute that arises under this Order with respect to the MDEQ's disapproval, modification or other decision concerning the requirements of paragraphs 8.1 - 8.8 and 8.10 - 8.15 of Section VIII (Performance of Response Activities), Section X (Sampling and Analysis) or Section XV (Submissions and Approvals) shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the Parties. A dispute shall be considered to have arisen on the date that a Party to this Order receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting its position; and all supporting documentation upon which the Party bases its position. The period of negotiations shall not exceed ten (10) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within ten (10) days, the RRD District Supervisor will thereafter provide a written RRD Statement of Decision to NHC. In the absence of initiation of formal dispute resolution by NHC under paragraph 18.4, the MDEQ's position as set forth in the RRD Statement of Decision shall be binding on the Parties.

18.4 If NHC and the MDEQ cannot resolve a dispute under paragraph 18.3 or if the dispute involves a MDEQ-approved IRDC or RAP, NHC may initiate formal dispute resolution by submitting a written request for review of the disputed issues (Request for Review) to the RRD Division Chief. NHC must file the Request for Review with the RRD Division Chief and the MDEQ Project Coordinator within ten (10) days of NHC's receipt of the RRD Statement of Decision issued pursuant to paragraph 18.3. NHC's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting its position; and all supporting documentation upon which NHC bases its position. Within

twenty (20) days of the RRD Division Chief's receipt of NHC's Request for Review, the RRD Division Chief will provide a written Final RRD Statement of Decision to NHC, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting his/her position; and all supporting documentation relied upon by the RRD Division Chief in making his/her decision. The twenty (20)-day time period for the RRD Division Chief's review of the Request for Review may be extended by written agreement between the Parties. The Final RRD Statement of Decision shall be binding on the Parties.

18.5 If NHC seeks to challenge any decision or notice issued by the MDEQ or the State under this Order, except for any decision or notice regarding matters covered by Section XI (Emergency Response) and paragraph 18.2 or 18.3, NHC shall send a written Notice of Dispute to both the RRD Division Chief and the Assistant Attorney General assigned to this matter within ten (10) days of receipt of the decision or notice by the MDEQ or the State. The Notice of Dispute shall include all relevant facts that provide the basis for the dispute; any factual data, analysis or opinion supporting its position; and all supporting documentation upon which NHC bases its position. The Parties shall have fourteen (14) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If the Parties do not reach an agreement on any dispute within the fourteen (14)-day period, the State will thereafter issue, in writing, the State's Statement of Decision to NHC, which shall be binding on the Parties.

18.6 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order, but payment shall be stayed pending resolution of the dispute. If, within fourteen (14) days after the MDEQ's issuance of the RRD or Final RRD Statement of Decision

under paragraph 18.3 or 18.4, respectively, or after the issuance of the State's Statement of Decision under paragraph 18.5, NHC does not comply with these decisions, the MDEQ may demand payment of stipulated penalties, and NHC shall pay stipulated penalties as set forth in paragraph 17.6 of Section XVII (Stipulated Penalties). NHC shall not be assessed stipulated penalties for disputes that are resolved in its favor. The Department of Attorney General, on behalf of the MDEQ, may take civil-enforcement action against NHC to seek the assessment of civil penalties or damages pursuant to §§ 20119(4) and 20137(1) of NREPA or other statutory and equitable authorities.

18.7 Notwithstanding this Section and in accordance with Sections XVI (Reimbursement of Costs) and XVII (Stipulated Penalties), as appropriate, NHC shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an on-going dispute resolution proceeding.

18.8 As provided for in § 20137(4) of NREPA, no action or decision of the MDEQ or the Attorney General shall constitute a final agency action giving rise to any rights of judicial review prior to the Attorney General's initiation of judicial action to compel NHC to comply with this Order or to enforce a term, condition or other action required by this Order. Nothing in this Order shall expand NHC's ability to obtain pre-enforcement review of this Order.

## **XIX. INDEMNIFICATION AND INSURANCE**

19.1 The State of Michigan does not assume any liability by entering into this Order. This Order shall not be construed to be an indemnity by the State for the benefit of NHC or any other person.

19.2 NHC shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any

claims or causes of action that arise from, or on account of, acts or omissions of NHC, its officers, employees, agents or any persons acting on its behalf, or under its control, in performing the activities required by this Order.

19.3 NHC shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement or arrangement between NHC and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

19.4 The State shall provide NHC notice of any claim for which the State intends to seek indemnification pursuant to paragraphs 19.2 and 19.3.

19.5 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 NHC for the performance of activities required by this Order. Neither NHC nor any contractor shall be considered an agent of the State.

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

19.7 Prior to commencing any response activities pursuant to this Order and for the duration of this Order, NHC shall secure and maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000), combined single limit, which names the MDEQ,

the Attorney General and the State of Michigan as additional insured parties. If NHC 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, NHC 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, prior to commencement of response activities pursuant to this Order, NHC shall provide the MDEQ Project Coordinator 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 Order, NHC 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 NHC in furtherance of this Order.

## **XX. COVENANTS NOT TO SUE BY THE STATE**

20.1 Based on the determinations made pursuant to § 20132(7) of NREPA regarding NHC's ability to pay, and in consideration of the funding of the Environmental Escrow and the work NHC will perform, the State hereby covenants not to sue or take further administrative action against NHC to compel the performance of response activities and to recover past and future response activity costs related to releases of hazardous substances known at the Facility prior to the effective date of this Order. For the purpose of further defining "known" contamination, the State and New Hudson agree that the hereinbelow described reports present in the RRD files on the effective date of this Order are probative evidence of the nature and extent of "known" contamination for purposes of this Order and shall be admissible as evidence in any

proceeding involving a dispute over the same; provided, however, that nothing shall preclude the offering of additional evidence in any proceeding.

Data Summary Report  
Phase I Site investigation  
New Hudson Corporation  
New Hudson, Michigan  
August 7, 1995  
The Traverse Group

Data Summary Report  
Source Area Investigation  
New Hudson Corporation  
New Hudson, Michigan  
April 17, 1996  
The Traverse Group

Hydrogeologic Investigation  
South Milford Road  
Oakland County, Michigan  
February 1995  
Michigan Department of Natural Resources

20.2 The covenants not to sue shall take effect under this Order as follows:

(a) With respect to NHC's liability for releases of hazardous substances known at the Facility prior to the effective date of this Order, the covenant not to sue shall take effect upon completion of the work approved in the Work Plans to the extent funding to perform the work is available in the Environmental Escrow and upon payment of any stipulated penalties assessed pursuant to this Order.

(b) With respect to NHC's liability for Past Response Activity Costs and Future Response Activity Costs incurred by the State and paid by NHC, the covenants not to sue shall take effect upon the final payment into the Environmental Escrow as required in paragraph 8.1 and the Environmental Escrow.

20.3 The covenants not to sue extend only to NHC and do not extend to any other person.

## **XXI. RESERVATION OF RIGHTS BY THE STATE**

21.1 This covenant not to sue shall not extend to any release or threat of release of hazardous substances at the Facility, nor to any exacerbation of contamination caused by the activities of NHC that occur on or after the effective date of this Order.

21.2 The covenants not to sue apply only to those matters specified in paragraph 20.2. The State reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against NHC with respect to all other matters, including, but not limited to, the following:

(a) Any release or threat of release of hazardous substance at the Facility or exacerbation of contamination caused by the activities of NHC that occur on or after the effective date of this Order;

(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 taken from the Facility;

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

(e) Criminal acts;

(f) Any matters for which the State is owed indemnification under Section XIX (Indemnification and Insurance) of this Order; and

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

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

21.4 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 Order or to compel NHC to comply with NREPA.

21.5 In addition to, and not as a limitation of any other provision of this Order, 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.

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

21.7 Failure by the MDEQ or the Attorney General to enforce any term, condition or requirement of this Order in a timely manner shall not:

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

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

21.8 This Order does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by NHC in accordance with the MDEQ-approved Work Plans, IRDC, or RAP required by this Order will result in the achievement of the performance objectives stated in paragraph 8.2 or the remedial criteria established by law or that those response activities will assure protection of public health, safety, welfare or the environment.

21.9 Except as provided in paragraph 20.1(a), nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to § 20132(8) of NREPA, 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.

## **XXII. COVENANT NOT TO SUE BY NHC**

22.1 NHC 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 Order, 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.

22.2 After the Effective Date of this Order, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs or other appropriate relief relating to the Facility, NHC 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; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenants Not to Sue by the State).

### **XXIII. CONTRIBUTION PROTECTION**

Pursuant to § 20129(5) of NREPA and § 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC 9613(f)(2), and to the extent provided in Section XX (Covenants Not to Sue by the State), NHC shall not be liable for claims for contribution for the matters set forth in paragraph 20.1 of this Order to the extent allowable by law. Entry of this Order does not discharge the liability of any other person that may be liable under § 20126 of NREPA, or §§ 107 and 113 of CERCLA, 42 USC 9607 and 9613. Pursuant to § 20129(9) of NREPA, any action by NHC for contribution from any person that is not a Party to this Order 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.

### **XXIV. MODIFICATIONS**

24.1 This Order may be modified only according to the terms of this Section.

Modification of any Submission required by this Order, excluding a MDEQ-approved IRDC or MDEQ-approved RAP, may be made only upon written notification from the MDEQ's Project Coordinator. A MDEQ-approved IRDC or a MDEQ-approved RAP may be modified only by the RRD Division Chief or his or her authorized representative.

24.2 Modification of any provision of this Order shall be made by written agreement between NHC's Project Coordinator, the RRD Division Chief and the designated representative of the Michigan Department of Attorney General.

## **XXV. VOIDANCE OF THE CNTS**

To establish the dollar amount that NHC is required, through this Order, to pay into the Environmental Escrow, the MDEQ evaluated financial information disclosed by NHC to the MDEQ. The State of Michigan's execution of this Order is based upon the truth, accuracy and material completeness of this information. The State of Michigan and NHC further acknowledge and understand that if it is determined that the financial information provided was materially incomplete or materially inaccurate in this portrayal of NHC's financial condition at the time it was submitted to the MDEQ, the State of Michigan may void its covenants not to sue set forth in Seciton XX. If the State's covenants not to sue are voided for the above reason, NHC shall become responsible for all response activity costs incurred and to be incurred by the State in conducting response activities that address hazardous substances that exceed or exceeded the Part 201 cleanup criteria or § 20120a(1)(a) or (17) of NREPA and that originated at or emanated from the Property and came to be located at the Facility. NHC by signing this Order agrees that all applicable statutes of limitation are tolled until it has complied with the terms of this Order.

## **XXVI. SEPARATE DOCUMENTS**

This Order 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 Order may be executed in duplicate original form.

## **XXVII. SEVERABILITY**

The provisions of this Order shall be severable. If a court of competent jurisdiction declares that any provision of this Order is inconsistent with federal or state law and, therefore, unenforceable, the remaining provisions of this Order shall remain in full force and effect.

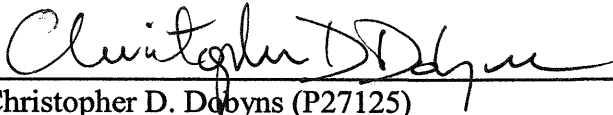
IT IS SO AGREED TO AND ORDERED BY:



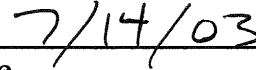
Andrew Hogarth, ~~Acting~~ Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality



Date




Christopher D. Dobyne (P27125)  
Special Assistant Attorney General  
Environment, Natural Resources,  
and Agriculture Division  
Michigan Department of Attorney General



Date

IT IS SO AGREED BY:

  
\_\_\_\_\_  
New Hudson Corporation  
Van Sandstrom, President

*July 1, 2003*  
\_\_\_\_\_  
Date

S: NR/cases/2001012923/New Hudson/Consent Order