

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

THE MICHIGAN DEPARTMENT  
OF ENVIRONMENTAL QUALITY,

Plaintiff,

v

WATEROUS COMPANY, a  
Minnesota corporation,

Defendant.

Case No. 03-1755 CE

Honorable THOMAS L. BROWN

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Jonathan C. Pierce (P47339)  
Attorney for Plaintiff  
Assistant Attorney General  
Environment, Natural Resources  
and Agriculture Division  
525 West Allegan, 5th Floor, South Tower  
Lansing, MI 48913  
(517) 373-7540

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There is no other pending or resolved civil action arising out  
of the same transaction or occurrence alleged in this complaint.

**COMPLAINT**

The Michigan Department of Environmental Quality (MDEQ), by its attorney, Assistant  
Attorney General Jonathan C. Pierce, brings this Complaint and allege as follows:

1. This is a civil action brought under the Natural Resources and Environmental  
Protection Act (NREPA), Part 31, "Water Resources Protection," MCL 324.3101 *et seq*, and Part  
201, "Environmental Remediation," MCL 3124.20101 *et seq*, and common law, seeking  
injunctive relief to require the Defendant, Waterous Company, to implement response activities

at the former Traverse City Iron Works Facility in Traverse City, Michigan to achieve and maintain compliance with NREPA Parts 31 and 201. Plaintiff also seeks to recover the State's past response activity costs and a declaratory judgment regarding Waterous's liability for future response activity costs, under NREPA Parts 31 and 201. Plaintiffs also ask this Court to order Waterous to abate the public common law nuisance caused by discharging contaminants to groundwater and surface water.

2. This Court has personal jurisdiction in this matter under MCL 600.711, and subject matter jurisdiction under MCL 324.3115(1) and MCL 324.20137(5).

3. Venue is proper in this Court under the Revised Judicature Act, MCL 600.1631, MCL 324.3115(1), and MCL 324.20137(3).

#### **PARTIES**

4. Plaintiff Michigan Department of Environmental Quality is a principal department within the State of Michigan's Executive Branch. Under Executive Order 1995-18, statutory authority, powers, duties and functions previously vested in the Michigan Department of Natural Resources under NREPA's Part 5, MCL 324.501 *et seq*, were transferred to the MDEQ.

5. Defendant Waterous Company is a Minnesota corporation qualified to do business in Michigan, with its principal office at 125 Hardman Avenue, South Saint Paul, Minnesota.

### COMMON ALLEGATIONS

6. Waterous owned the former Traverse City Iron Works property located at 129 Lake Street, Traverse City, Michigan, adjacent to the Boardman River.
7. From 1871 to 1981, Waterous's predecessor, Traverse City Iron Works and other businesses performed numerous manufacturing activities, including but not limited to foundry operations, machinery production, water works equipment manufacturing, hoist equipment manufacturing, and painting. Traverse City Iron Works acquired six parcels at various times from 1909 to 1969. Attachment 1 provides legal descriptions and summarizes the ownership history of each parcel.
8. Traverse City Iron Works merged with Waterous on February 6, 1978, with Waterous as the surviving corporation. A copy of the merger and reorganization agreement is attached as Attachment 2.
9. Original foundry operations occurred on an earthen floor until 1953. According to former Traverse City Iron Works employees, metal shavings and core mold foundry sands were regularly dumped on the Facility into the 1960's. During the foundry's operation, an estimated 80,000 cubic yards of mold sand and slag were deposited onsite along and into the Boardman River.
10. Since 1997, the Facility has been the focus of brownfield redevelopment projects by the City of Traverse City and the Grand Traverse County Brownfield Redevelopment Authority. In June 1997, the MDEQ awarded the City of Traverse City a Site Reclamation

Project grant under NREPA Part 195. Response activities funded under the Site Reclamation

Project grant included remedial investigations and interim response activities.

11. Hazardous substances detected in soils and groundwater at the Facility are typically associated with foundry wastes. Remedial investigations have shown widespread metals contamination in the foundry sand.

12. The hazardous substances in the table below were detected at the Facility:

**Traverse City Ironworks**    **All concentrations are in Parts Per Billion PPB**

<b><u>Groundwater</u></b>		
	<b><u>Concentration</u></b>	<b><u>Criteria</u></b>
Cadmium	2.6	0.32 (GSI)
Copper	110	13 (GSI)
Lead	20	4 (DW) 17 (GSI)
Benzo(b)Fluoranthene	5	2 (DW) 0.31 (GSI)
Naphthalene	200	13 (GSI) (In temporary well TW-1)

<b><u>Sediment</u></b>		
	<b><u>Concentration</u></b>	<b><u>Criteria</u></b>
Arsenic	28,000	5,900 (EPA Screening value)
Cadmium	1,610	596 (EPA)
Chromium	290,000	26,000 (EPA)
Copper	14,000,000	16000 (EPA)
Lead	590,000	31,000 (EPA)
Mercury	1,700	174 (EPA)
Silver	36,000	500 (EPA)
Zinc	2,100,000	120,000 (EPA)

Several PNAs exceed the EPA screening criteria

	<b><u>Soil</u></b>	<b><u>Criteria</u></b>
	<b><u>Concentration</u></b>	
Arsenic	7,700,000	7,600 Direct Contact (1998 MDEQ Composite sample)
Chromium	70,000	3,300 Surface Water Protection
Copper	3,620,000	77,000 Surface Water Protection
Lead	6,800,000	400,000 Direct Contact
Zinc	463,000	170,000 Surface Water Protection
Dibenzo(a,h)-Anthracene	2,360	2,000 Direct Contact

13. The MDEQ's Remediation and Redevelopment Division<sup>1</sup>, in conjunction with the the MDEQ's Water Division,<sup>2</sup> has evaluated data collected from the river and have concluded that additional investigation is needed to more fully assess how foundry sand and metals detected in sediments at the Facility have impacted the Boardman River and groundwater.

14. Interim response activities performed using grant funds included: removing former building foundations; removing and disposing some of the foundry wastes offsite; installing sheet piling along the river's edge and constructing a concrete block seawall between the river and the top of the river bank; removing and disposing 4 underground storage tanks, their contents, and associated contaminated soils, and; removing and disposing contaminated soils from an earthen sump in a former boiler building.

15. The MDEQ has spent \$1,633,903.65 in public funds at the Facility, and continues to incur response activity costs. A cost summary is provided in Attachment 3.

16. In a letter dated December 30, 2002 (Attachment 4), the MDEQ notified Waterous that it was liable for contamination at the Facility and responsible for the release of hazardous substances that exceeded the residential cleanup requirements of NREPA Section 20120a(1)(a) and (17), MCL 324.20120a(1)(a) and MCL 324.20120a(17). In that letter, the MDEQ demanded response activity cost reimbursement and requested Waterous to undertake necessary response activities.

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<sup>1</sup> Formerly the Environmental Response Division

<sup>2</sup> Formerly the Surface Water Quality Division

COUNT I – PART 31

17. Paragraphs 1 through 16 are incorporated by reference.

18. NREPA's Section 3109, MCL 324.3109 prohibits the direct or indirect discharge of any substance into the waters of this State, that is or may be injurious to any of the following:

- (a) To the public health, safety, or welfare.
- (b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
- (c) To the value of utility or riparian lands.
- (d) To livestock, wild animals, birds, fish, aquatic life, or plants or to the growth, propagation, or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.

19. NREPA's Section 3112, MCL 324.3112, prohibits the discharge of any waste or waste effluent into the waters of the State without a permit. The groundwater at the Facility as well as the Boardman River are "waters of the State". As set forth above, Waterous has caused numerous discharges to the waters of the State that are or may become injurious. Furthermore, these discharges to the waters of the State were unpermitted.

20. NREPA Section 3115(1), MCL 324.3115(1), provides that the State may commence a civil action for appropriate relief, including a permanent or temporary injunction, for violations of Part 31's provisions or its rules.

COUNT II – PART 201

21. Paragraphs 1 through 20 are incorporated by reference.

22. The substances described above that have been detected in the soils, groundwater, and river sentiments are "hazardous substances" under NREPA Section 20101(1)(t), MCL 324.20101(1)(t). Hazardous substances that Waterous's predecessor, Traverse City Iron Works, released as set forth above are a "release" or "threat of release" as defined in NREPA Section 20101(1)(bb) and 20101(1)(o), MCL 324.20101(1)(bb) and MCL 324.20101(1)(o).

23. These hazardous substances have been released into the environment in excess of the concentrations that satisfy the requirements of Part 201's Section 20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under NREPA Part 213, and constitute a "Facility" as defined by Part 201's Section 20101(1)(o), MCL 324.20101(1)(o), including any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the requirements of NREPA Section 20120a(1)(a) or (17) has been released, deposited, disposed of, or otherwise comes to be located.

24. Waterous's predecessor Traverse City Iron Works therefore owned and operated a Facility at the time of disposal of a hazardous substance, and is responsible for an activity causing a release or threat of release of hazardous substances. Waterous is therefore liable under Section 20126(1)(b) of the NREPA, MCL 324.20126(1)(b).

25. NREPA Section 20126a, MCL 324.20126a, provides in part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

\* \* \*

(b) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

\* \* \*

(3) The amounts recoverable in an action shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the accounts recoverable under this section shall be the same rate as specified in section 6013(5) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.613 of the Michigan Compiled Laws.

26. NREPA Section 19508(1)(a), MCL 324.19508(1)(a), provides that funds allocated under NREPA Section 19507(1)(a), MCL 324.19507(1)(a), for Site Reclamation grants shall be used for sites identified under NREPA Part 201, and shall be spent and recovered in the same manner as provided under Part 201.

27. As a result of releases and threatened releases of hazardous substances that Waterous has caused, the State of Michigan has incurred and will continue to incur response activity costs at the Facility. As of November 13, 2002, the State has incurred \$1,633,903.65 in response activity costs.

28. NREPA Section 20137(1), MCL 324.20137(1), provides in part as follows:

(1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to Section 20126a.



(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response costs and damages.

\* \* \*

(k) Any other relief necessary for the enforcement of this part.

### COUNT III – COMMON LAW PUBLIC NUISANCE

29. Paragraphs 1 through 28 are incorporated by reference.

30. A condition or activity that unreasonably interferes with public rights or threatens the public welfare constitutes a public nuisance.

31. As set forth above, Waterous's predecessor, Traverse City Iron Works, has created a public nuisance.

32. The State may bring an action to abate a public nuisance, and this Court has the authority and jurisdiction to compel Waterous to abate the nuisance.

33. Furthermore, under NREPA Section 3109(4), MCL 324.3109(4), a discharge of an injurious substance into the waters of the State is prima facie evidence of a public nuisance, and in addition to Part 31's remedies, may be abated according to law in an action that the State may bring.

**RELIEF REQUESTED**

Plaintiff requests this Court to grant the following relief:

- A. Declare that Traverse City Iron Works' conduct, for which Waterous is responsible through merger, was unlawful and in violation of NREPA Part 31 and Part 201;
- B. Grant an injunction requiring Waterous to undertake the appropriate response activities under Part 31 and Part 201 and their administrative rules;
- C. Order Waterous to pay Plaintiff's response activity costs, including attorney fees, incurred at or in relation to the Facility, plus statutory prejudgment interest;
- D. Order Waterous to pay damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release;
- E. Order Waterous to abate the public nuisance, and;
- F. Grant Plaintiff further relief as the Court finds just and appropriate.

Respectfully submitted,

Michael A. Cox  
Attorney General



Jonathan C. Pierce  
Assistant Attorney General  
Environment, Natural Resources,  
and Agriculture Division  
525 W. Allegan, 5th Floor, South  
Lansing, MI 48913  
(517) 373-7540

Date: October 1, 2003

S: NR/cases/200109087/Waterous/Complaint

## ATTACHMENT A

The legal descriptions for the Property are as follows:

### Parcel A:

That part of Government Lot 2, Section 3, Town 27 North, Range 11 West, bounded on the North by a line parallel to and 30 feet Southerly (measured at right angles) from the centerline of the main track of the C & O Railroad, on the East by the West line of Cass Street, on the South by a line parallel to and 66 feet Northerly (measured at right angles) from the Southerly line of Lake Avenue in Hannah, Lay & Co's First Addition, and on the West by a line described as commencing at the point of intersection of a line parallel with the South line of Lake Avenue in Hannah, Lay & Co's First Addition and distant 66 feet Northerly at right angles therefrom with a line parallel with the West line of Union Street and distant of 66 feet Easterly at right angles therefrom; thence South 68°30' East parallel with the South line of Lake Avenue 171 feet to Point of Beginning of said line; thence North 21°30' East to a point 30 feet Southwesterly of centerline C & O Railroad track and point of ending of said line.

### Parcel B:

Lots 38, 39 and the West 32 feet of Lot 40, Block 5, Hannah, Lay & Co's First Addition to Traverse City, Michigan

### Parcel C:

The East 36 feet of Lot 41 and the West 35 feet of Lot 42, Block 5, Hannah, Lay & Co's First Addition to Traverse City, Michigan.

### Parcel D:

Part of Government Lots 2 and 3, Section 3, Town 27 North, Range 11 West: To locate the place of beginning, commencing at the intersection of the center lines of Cass Street and Lake Avenue; thence, on and along the center line of Cass Street, North 00° 03' 30" West, a distance of 212.24 feet to a point; thence North 89° 56' 30" East a distance of 33.00 feet to a point, which point is the place of beginning, said point being in the East line of Cass Street and also being distant 8.50 feet Northerly from, measured at right angles to, the center line of an existing side track of The Chesapeake and Ohio Railway Company, as now surveyed; thence Easterly, parallel with and distant 8.50 feet Northerly from, measured at right angles to, the center line of said side track, a distance of 445.00 feet along the following three courses: (1) a curve to the right (radius 2,035.36 feet, chord bearing South 69° 57' 30" East, chord length 202.40 feet) a distance of 202.49 feet to a point; (2) a curve to the right (radius 2,112.42 feet, chord bearing South 65° 45' East, chord length 100.15 feet) a distance of 100.16 feet to a point; (3) South 65° 23' 30" East a distance of 142.35 feet to a point; thence North 24° 36' 30" East a distance of 60.57 feet to a point in the Southerly dock line of the Boardman River (dock line established Nov. 21, 1955, Sec. 11.052, Traverse City Code

of Ordinance); thence, on and along said dock line, North 59° 34' West a distance of 78.67 feet to a point; thence North 21° 10' West a distance of 49.90 feet to a point; thence North 68° 40' West a distance of 329.00 feet to a point; thence North 15° 59' West a distance of 103.5 feet to a point; thence North 43° 11' West a distance of 21.30 feet to a point in the East line of Cass Street; thence, on and along said East street line, South 00° 03' 30" East a distance of 206.62 feet to the Place of Beginning.

Parcel E:

Part of Government Lot 2, Section 3, Township 27 North, Range 11 West; to locate the place of beginning, commence at the intersection of the center lines of Cass Street and Lake Avenue, thence, on and along the center line of Cass Street, North 00° 03' 30" West a distance of 227.10 feet to a point, thence South 89° 56' 30" West a distance of 33.00 feet to a point, which point is the place of beginning, said point being in the West line of Cass Street and also being distant of 8.50 feet Northerly from, measured at right angles to, the center line of an existing side track of the Chesapeake and Ohio Railway Company, as now surveyed, thence, parallel with and distant 8.50 feet Northerly from, measured at right angles to, the center line of said side track, North 79° 05' 30" West a distance of 111.64 feet to a point; thence, parallel with and distant 16.50 feet Northerly from, measured at right angles to, the center line of the Chesapeake and Ohio Railway Company's main track North 70° 25' 30" West a distance of 162.19 feet to a point; thence North 19° 34' 30" East a distance of 33.50 feet to a point; thence South 70° 25' 30" East a distance of 266.61 feet to a point in the West line of Cass Street; thence, on and along said West street line, South 00° 03' 30" East a distance of 17.71 feet to the place of beginning. Also including that property lying North of the above described parcel, West of the West right of way line of Cass Street, South of the thread of the Boardman River, and East of a line extended Northerly from the Northwest corner of the above described parcel, said line being parallel to and 251.11 feet from the West right of way line of Cass Street.

Parcel H:

Part of Government Lot 2, Section 3, Township 27 North, Range 11 West, described as follows: Bounded on the North by the Boardman River, Bounded on the East by the West line of Parcel E, Bounded on the South by a line 150 feet East and West, measured along the North line of the Former Railroad Right of Way and on the West by a line North 21° 50' East to Point of Beginning.

Situated in CITY OF TRAVERSE CITY, COUNTY OF GRAND TRAVERSE, STATE OF MICHIGAN.

## ATTACHMENT B

### Parcel A

The Former Traverse City Iron Works (TCIW) acquired a portion of this parcel from two families on January 16, 1909, and acquired additional property that, together with the first, makes up Parcel A from the Pere Marquette Railway Company on December 18, 1929.

This property was held by TCIW until July 15, 1980, shortly after it merged with the Waterous Company (Waterous). Waterous entered into a Memorandum of Land Contract with TCI Associates (a Michigan Co-Partnership) on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

### Parcel B

The TCIW acquired a portion of this parcel from William A. Royce, Jr., and Charlene Royce on July 30, 1969, and acquired additional property that, together with the first, makes up Parcel B from William A. Royce, Jr. (acting as a trustee), on August 1, 1969.

This property was held by TCIW until July 15, 1980, shortly after it merged with Waterous. Waterous entered into a Memorandum of Land Contract with TCI Associates on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

### Parcel C

The TCIW acquired a portion of this parcel from William A. Royce, Jr., and Charlene Royce on July 30, 1969, and acquired additional property that, together with the first, makes up Parcel C from Irish Enterprises, Inc., on June 24, 1969.

This property was held by TCIW until July 15, 1980, shortly after it merged with Waterous. Waterous entered into a Memorandum of Land Contract with TCI Associates on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

### Parcel D

The TCIW acquired this parcel from the Chesapeake and Ohio Railway Company on January 8, 1965.

This property was held by TCIW until July 15, 1980, shortly after it merged with Waterous. Waterous entered into a Memorandum of Land Contract with TCI Associates on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

Parcel E

The TCIW acquired a portion of this parcel from the Chesapeake and Ohio Railway Company on January 8, 1965, and acquired additional property that, together with the first, makes up Parcel E from the Consumers Power Company on September 22, 1966.

On January 22, 1971, TCIW quit claim-deeded the parcel to the City of Traverse City (City). On February 24, 1982, the City quit claim-deeded the property to Waterous.

Waterous entered into a Memorandum of Land Contract with TCI Associates on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

Parcel H

The TCIW acquired this parcel from the Consumers Power Company on September 22, 1966.

This property was held by TCIW until July 15, 1980, shortly after it merged with Waterous. Waterous entered into a Memorandum of Land Contract with TCI Associates on February 24, 1982, and eventually deeded the property to TCI Associates on November 20, 1986.

PLAN AND AGREEMENT OF MERGER

of

V-47, 429

TRAVERSE CITY IRON WORKS  
(a Michigan corporation)

AND

WATEROUS COMPANY

PLAN AND AGREEMENT OF MERGER, dated as of the 21<sup>st</sup> day of January, 1978, by and between WATEROUS COMPANY (hereinafter sometimes referred to as "WATEROUS" and sometimes as the "Surviving Corporation"), a Minnesota corporation qualified to do business in Michigan whose principal office is in South St. Paul, Minnesota, and its Board of Directors, and TRAVERSE CITY IRON WORKS (hereinafter sometimes referred to as "TRAVERSE CITY"), a Michigan corporation whose principal office is in Traverse City, Michigan, and its Board of Directors (said two corporations being hereinafter sometimes collectively referred to as the "Constituent Corporations").

WITNESSETH:

WHEREAS, TRAVERSE CITY has an authorized capital consisting of 15,000 shares of Common Stock having a par value of \$100.00 per share (and being the only class of shares, which shares are entitled to vote), of which 13,650 shares are issued and outstanding, which number of shares is not subject to change before the Effective Date of the Merger without prior Board approval; and

WHEREAS, WATEROUS has an authorized capital consisting of 7,500 shares of Class A Voting Common Stock (\$10.00 par value) of which 6,410 are issued and outstanding; 7,500 Class B Non-Voting Common Stock (\$10.00 par value) of which 6,410 are issued and outstanding, 40,000 shares of Class C Non-Voting Common Stock (\$10.00 par value) of which 32,050 are issued and outstanding; and 2,000 shares of First Series 6% Preferred Stock (\$100.00 par value) of which none are issued and outstanding, all of which issued and outstanding shares are owned by American Hoist & Derrick Company (hereinafter referred to as "HOIST") and which number of shares is not subject to change before the Effective Date of the Merger without prior Board approval; and

WHEREAS, the respective Boards of Directors of the Constituent Corporations deem it advisable and to the general benefit and advantage of the Constituent Corporations and their respective stockholders that TRAVERSE CITY be merged into WATEROUS, with WATEROUS to be the Surviving Corporation, under and pursuant to the terms and conditions hereinafter set forth and in accordance with the laws of the State of Michigan and the State of Minnesota.

135968

Business Corporations Act. Consummation of the merger contemplated hereby shall be effected by the filing of a Certificate of Merger with the Secretary of State of the State of Michigan and the filing of the Plan and Agreement of Merger with the Secretary of State of Minnesota in accordance with the provisions of Michigan and Minnesota Business Corporations Acts. The Effective Date of the Merger shall be the later of the date on which a certificate of merger is issued by the Secretary of State of the State of Minnesota and the Certificate of Merger becomes effective under the Michigan Business Corporation Act. (the "Effective Date of the Merger").

## ARTICLE 2

### ARTICLES OF INCORPORATION: BY-LAWS: BOARD OF DIRECTORS: OFFICERS

2.1 Articles of Incorporation. Upon the Effective Date of the Merger, the articles of incorporation of WATEROUS will be unchanged, and the articles of incorporation of WATEROUS shall be the articles of incorporation of the Surviving Corporation and may be further amended as provided by law. From and after the Effective Date of the Merger said articles of incorporation as so amended, and as the same may be amended from time to time as provided by law, separate and apart from this Agreement, shall be, and may be separately certified as, the articles of incorporation of the Surviving Corporation.

2.2 By-Laws. The by-laws of WATEROUS as in effect on the Effective Date of the Merger shall be the by-laws of the Surviving Corporation until the same shall thereafter be altered, amended or repealed in accordance with law, the articles of incorporation of the Surviving Corporation or said by-laws.

2.3 Board of Directors; Officers. The directors and officers of WATEROUS on the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been elected and are qualified. If on the Effective Date of the Merger a vacancy shall exist in the Board of Directors or in any of the offices of the Surviving Corporation, such vacancy may thereafter be filled in the manner provided by the articles of incorporation or by-laws of the Surviving Corporation and as permitted by law.

## ARTICLE 3

### CONVERSION OF SHARES

3.1 The manner and basis of converting the shares of each Constituent Corporation into shares of the Surviving Corporation and into a combination of cash and shares of HOIST shall be as follows:

(a) The outstanding shares of WATEROUS at the Effective Date of the Merger shall be unchanged;



cash for any fractional interests. Until so surrendered for exchange, each such stock certificate representing common stock of TRAVERSE CITY shall be deemed for all corporate purposes to evidence the ownership of the number of whole shares of the Stock which the holder thereof would be entitled to receive upon its surrender to the Surviving Corporation. However, no dividends declared after the Effective Date of the Merger shall be paid to any holder of a certificate or certificates for TRAVERSE CITY Common Stock unless and until he surrenders such certificate or certificates for exchange.

If, subsequent to the date hereof and prior to the Effective Date of the Merger HOIST should

- (i) declare any dividend payable in shares of Stock, or
- (ii) split or combine or reclassify its outstanding shares of Stock,

appropriate and proportionate adjustments will be made in the number of a share of Stock into which each share of TRAVERSE CITY common stock is to be converted pursuant to Section 3.1 hereof.

3.3 For purposes of the exchange under Section 3.1(b) hereof, TRAVERSE CITY shall prepare financial statements as of November 30, 1977, including a balance sheet, a statement of earnings for the eleven months ended November 30, 1977, a statement of stockholders' equity, a statement of changes in financial position for the eleven months ended November 30, 1977, and related notes to such financial statements (which financial statements are herein sometimes referred to as the "1977 Financial Statements of TRAVERSE CITY"). Such financial statements shall be prepared in accordance with generally accepted accounting principles and the method used to value the inventory as of November 30, 1977, shall be consistent with that used in preparing the financial statements as of December 31, 1976. Further, the following adjustments shall be deducted from the net asset value of TRAVERSE CITY:

(a) Inventory Obsolescence. The TRAVERSE CITY inventory shall be adjusted to recognize and provide for product obsolescence based on customer demand and engineering redesign. An adjustment of a 100% reserve against inventory quantities in excess of a 5 year supply (with determination of usage predicted on future requirements rather than past history) shall be deducted from the net asset value of TRAVERSE CITY; and

(b) Pension Liability Adjustment. A determination shall be made of the unfunded vested pension benefits liabilities of TRAVERSE CITY as a percentage (rounded to the nearest 1/100 percent) of November 30, 1977 net worth and to the extent that the percentage for TRAVERSE CITY is greater than the equivalent percentage for HOIST as of November 30, 1977, the amount of the excess (calculated as the percentage for TRAVERSE CITY, less the percentage for HOIST multiplied times the amount of November 30, 1977 net worth of TRAVERSE CITY) shall be deducted from the net asset value of TRAVERSE CITY.

V-47,435

A majority of the Directors of TRAVERSE CITY IRON WORKS

[CORPORATE SEAL]

Attest:

Lovisa Porter  
Secretary, Lovisa Porter.  
Traverse City Iron Works

William A. Royce

Raymond L. Sutton

John Royce

Charline Royce

Lovisa Porter  
Lovisa Porter

Adoption by Stockholders of TRAVERSE CITY IRON WORKS

V-47, 437

I, \_\_\_\_\_, Secretary of TRAVERSE CITY IRON WORKS, a Michigan corporation, hereby certify as such Secretary that the foregoing Plan and Agreement of Merger was duly adopted by a majority of the Board of Directors of said corporation, was submitted for consideration by the stockholders pursuant to the provisions of the Michigan Business Corporation Act, that the Plan and Agreement of Merger was considered by the holders of all of the outstanding shares of Common Stock of said corporation entitled to vote thereon and by vote taken the Plan and Agreement of Merger was duly adopted in writing by the holders of all of the outstanding Common Stock of said corporation, being all of the voting power of said corporation, on \_\_\_\_\_, 1978.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

[CORPORATE SEAL]

\_\_\_\_\_  
Secretary, Traverse City Iron Works

Adoption by Shareholders of WATEROUS COMPANY

I, Edward O. Pagel, Secretary of WATEROUS COMPANY, a Minnesota corporation, hereby certify as such Secretary that the foregoing Plan and Agreement of Merger was duly adopted by the Board of Directors, was submitted to the shareholders of said corporation in accordance with the provisions of the Minnesota Business Corporation Act and that said Agreement of Merger was considered by the holders of all of the outstanding shares of stock of said Corporation entitled to vote thereon (including all outstanding Class A Voting Common Stock, including all outstanding Class A Voting Common Stock, all outstanding Class B Non-Voting Common Stock, and all outstanding Class C Non-Voting Common Stock, there being no shares of First Series 6% Preferred Stock outstanding) and by vote taken the Plan and Agreement of Merger was duly adopted in writing by the holders of all of

Dated this 2<sup>nd</sup> day of February, 1978.

[CORPORATE SEAL]

Edward O. Pagel  
Secretary, Waterous Company

Execution by WATEROUS COMPANY

Signed on behalf of WATEROUS COMPANY this 2<sup>nd</sup> day of February, 1978.

[SEAL]

Robert J. Fox  
President Chairman  
Edward O. Pagel  
Secretary

V-47, 439

STATE OF MINNESOTA

DEPARTMENT OF STATE

I hereby certify that the within  
instrument was filed for record in this  
office on the 6 day of Feb  
A. D. 19 28 at 12.30 o'clock P M.,  
and was duly recorded in Book V-47  
of Incorporations, on page 428

*Joan Anderson Browne*

*Jo*

Secretary of State

United States of America




To All To Whom These Presents Shall Come Greeting:

Whereas, an Agreement of Merger by and between Waterous Company, a Minnesota Corporation, and Traverse City Iron Works, a Michigan Corporation, and the directors thereof, duly signed, certified and acknowledged under oath, has been filed for record in this office on the 6th day of February, 1978, at 12:30 o'clock P.M., for the merger of said Michigan corporation into said Minnesota corporation, which corporation will continue as the surviving corporation, pursuant to the provisions of Sections 301.41 to 301.45, Minnesota Statutes.

Now, therefore, I, Joan Anderson Grove, Secretary of the State of Minnesota, by virtue of the powers and duties vested in me by law, do hereby certify that said above named corporations are legally merged and made an existing corporation under the name of Waterous Company, effective this date, with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

WITNESS my official signature  
hereunto subscribed and the  
Great Seal of the State of  
Minnesota hereunto affixed this  
6th day of February, 1978, A.D.

  
*Joan Anderson Grove*  
Secretary of State

THIRD: The terms and conditions of the proposed merger, including the manner and basis of converting the shares of each constituent corporation into shares, bonds or other securities of the surviving corporation, or into cash or other consideration are as follows:

(a) The outstanding shares of Waterous Company ("Waterous") at the Effective date of the Merger shall be unchanged;

(b) Each share of the Common Stock of Traverse City Iron Works ("Traverse City") issued and outstanding shall be exchanged for shares of \$1.00 par value Common Stock (hereinafter referred to as the "Stock") of American Hoist & Derrick Company, a Delaware corporation and the holder of all of the issued and outstanding shares of Waterous ("Hoist"), and cash, the same to be distributed in extinguishment of and in substitution for the outstanding Common Stock of Traverse City, on the following basis:

(i) 2,172 of the 13,650 outstanding shares of Common Stock of Traverse City shall be redeemed for cash supplied by Hoist (and thereupon retired) on the basis of the November 30, 1977 Adjusted Net Book Value per share of Traverse City which the parties agree is \$315.0183. Such 2,172 shares are issued in the names of the following stockholders in the amounts indicated:

Name	Shares of Traverse City
Guinevere A. Sutton	2,082
Jessie A. Royce	60
Lovisa A. Porter	30
	<u>2,172</u>

(ii) The remaining 11,478 of the 13,650 outstanding shares of Traverse City shall be exchanged for 150,000 shares of Common Stock of Hoist plus cash supplied by Hoist in the amount of \$47,280.00, such cash and shares of Hoist to be distributed pro rata to the holders of said 11,478 shares of Traverse City. No fractional shares or scrip will be issued in respect of fractional interests in the Stock. If any holder of Traverse City Common Stock on the Effective Date of the Merger owns such total number of shares of Traverse City Common Stock which would entitle such holder of Traverse City Common Stock to a fraction of a share of the Hoist Stock, then such stockholder shall be entitled to cash in lieu of such fractional shares, determined on the basis of \$23.79 per share, rounded up to the nearest whole cent.

FOURTH: (A statement of any amendment to the articles of incorporation of the surviving corporation to be affected by the merger.)

None

FIFTH: (A statement of other provisions with respect to the merger.)

None

Signed this 3rd day of February, 19 78.

TRAVERSE CITY IRON WORKS

(Name of Michigan corporation)

BY

*William A. Royce, Jr.*  
(Signature of Chairman or Vice-Chairman or  
the President or Vice-President)

William A. Royce, Jr. - President

(Type or print name and title)

WATEROUS COMPANY

(Name of foreign corporation)

BY

*Robert P. Fox*  
(Signature)

Robert P. Fox, Chairman

(Type or print name and title)

# SUMMARY REPORT

Site Name TRAVERSE CITY IRON WORKS

County GRAND TRAVERSE

Site ID Number 28000281

Project Number 454892-00 and 484892-67

	454892-00	454892-67
<b>Total for Employee Salaries and Wages</b>		
Period Covered: 5/31/97 through 10/26/02	\$26,536.03	\$9,229.76
Indirect Dollars	\$5,176.78	\$1,954.00
Sub-Total	<u>\$31,712.81</u>	<u>\$11,183.76</u>
<b>Total for Employee Travel Expenses</b>	\$345.98	\$656.29
Period Covered: 5/31/97 through 5/12/2001		
<b>Total for Contractual Expenses</b>		
Period Covered: 11/11/97 through 11/06/01	\$0.00	\$1,582,975.00
<b>Total for Miscellaneous Expenses</b>	\$0.00	
<b>Total for DEQ Laboratory Expenses</b>		
Period Covered: 8/3/98	\$279.81	
<b>Attorney General Expenses</b>		
Period Covered: 8/31/97 through 7/31/02	\$6,750.00	
<b>Total Expenses for Site</b>	<u>\$39,088.60</u>	<u>\$1,594,815.05</u>

**TOTAL COMBINED EXPENSES FOR SITE**

**\$1,633,903.65**

Run Date 11/13/02





JOHN ENGLER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



RUSSELL J. HARDING  
DIRECTOR

December 30, 2002

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Waterous Company  
125 Hardman Avenue South  
South Saint Paul, Minnesota 55075

ATTENTION: Mr. Donald J. Haugen

Dear Waterous Company:

SUBJECT: Demand Letter for the Performance of Response Activities and  
Reimbursement of State of Michigan (state) Costs, Former Traverse City  
Iron Works, Grand Traverse County, Site ID No. 280201

Dept. of Attorney General  
**RECEIVED**

SEP 30 2003

NATURAL RESOURCES  
DIVISION

This Demand Letter serves as the Michigan Department of Environmental Quality's (MDEQ's) formal notification to the Waterous Company (Waterous) of its legal responsibility relating to the release or threatened release of a hazardous substance on or emanating from the Former Traverse City Iron Works (TCIW) property (Property), described in Attachment A, in Grand Traverse County, Michigan. The Property is known to contain concentrations of hazardous substances that exceed the residential cleanup criteria of Section 20120a(1)(a) or (17) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); or the cleanup criteria for unrestricted residential closure under Part 213, Leaking Underground Storage Tanks, of the NREPA. Any area of the Property where a hazardous substance, in concentrations that exceed these requirements or criteria, has been released, deposited or 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, comes to be located as a result of the migration of the hazardous substance from the Property (collectively, the Facility) constitutes a "facility" that is regulated under Part 201 and other state laws and regulations. State law authorizes the MDEQ to use state funds to undertake response activities at a facility that are necessary to protect public health, safety, or welfare, or the environment. The state has spent state funds to perform response activities at the Facility.

This Demand Letter requires Waterous to commit, in the form of a legally binding agreement, to undertake the necessary and appropriate response activities at the

Facility and to reimburse past and future response activity costs incurred by the state for responding to the release or threatened release of a hazardous substance at the Facility. If Waterous fails to resolve the above matters with the state voluntarily, the state will pursue any legal remedies available under state and federal laws.

### SUMMARY OF SITE HISTORY AND RESPONSE ACTIVITIES

The Property consists of multiple parcels. A 50-year title search performed by the Corporate Title and Escrow Company as part of the Site Reclamation Program's (SRP's) grant application process identified eight parcels, referenced as "Parcels A through H." At one point or another, TCIW owned and/or operated on six out of the eight parcels (i.e., Parcels A, B, C, D, E, and H). Attachment B provides the ownership/title history of each of these six parcels.

The TCIW performed numerous manufacturing activities including, but not limited to, foundry, machinery, and painting operations on the Property from 1871 to 1981. The TCIW's original foundry operations were conducted on an earthen floor prior to the installation of a concrete floor in 1953. According to interviews of several former employees of TCIW, metal shavings and core sands were regularly dumped on the Property as part of TCIW's operations up to the 1960s. In addition, Mr. John Royce, a former employee and officer of TCIW, stated that TCIW operated underground storage tanks (USTs) for vehicle fueling, but that the two vehicle-fueling USTs were removed between 1979 and 1981. TCI Associates purchased the Property on February 26, 1982. In 1989, at the request of the City of Traverse City (City), all existing structures were torn down on the Property and two USTs were removed. Northern Rock Holdings, L.L.C. (d.b.a. River's Edge Development) executed an option on the Property with TCI Associates on February 11, 1997, to acquire the Property. The MDEQ has no reason to believe that any operations took place and/or that any work was performed on the Property between 1981 through 1987. The following bulleted items were performed on the Property between 1988 and 1997.

Parties other than the MDEQ have conducted the following soil and groundwater investigations at the Property:

- Hydrogeological Investigation Report, September 1988, ASI Environmental Technologies
- Phase III Hydrogeological Report, September 1990, ASI Environmental Technologies
- Environmental Assessment, June 1993, done by Otwell Mawby, P.C.
- Supplemental Groundwater Investigation Report DRAFT, March 1994, done by Otwell Mawby, P.C.
- Phase I Environmental Assessment, February 1997, done by Westshore Environmental
- Baseline Environmental Assessment, March 7, 1997, done by Otwell Mawby, P.C.

In general, the above studies included: a general Property description with location; an area map; a site vicinity map; photographs; a brief description of the past history of the Property; physical characteristics of the Property, such as local geology, hydrology, and hydrogeology; field investigation approaches; and analytical results for both soil and groundwater.

Core/mold sand, slag, and iron cuttings associated with foundry operations have been deposited around the original foundry buildings, primarily north of a set of railroad tracks and along the Boardman River. It was estimated that approximately 80,000 cubic yards of these foundry wastes were present on the Property and in direct contact with the water table and the river sediments at some locations on the Property.

The investigations identified above have documented that hazardous substances were and may still be present in the soils and river sediments at the Facility in concentrations that exceed the generic residential criteria developed under Part 201. Hazardous substances present in the soils at the Facility in concentrations above the generic residential 20 times drinking water standard; 20 times groundwater surface water interface criteria; and/or the Type A default criteria include, but are not limited to, arsenic, barium, chromium, copper, lead, zinc, Acenaphthylene, Benzo(a) Pyrene, and Phenanthrene. In addition, the investigations have documented that hazardous substances including, but not limited to, cadmium, chromium, copper, lead, zinc, Bis(2-Ethylhexyl) Phthalate, and Benzo(b) Fluoranthene were present in the groundwater at the Facility in concentrations that exceed the Part 201 generic residential criteria.

Historical information provided through personal interviews and Traverse City Fire Department records indicate that as many as four USTs were operated on the Property in association with the storage of vehicle fuel (diesel and gasoline) and other unidentified uses.

The SRP grant funds were awarded in 1997 to the City. Response activities funded through the SRP grant funds include: (1) stabilization of the bank of the Boardman River to prevent the foundry wastes present on the bank from continuing to enter the river; (2) removal and off-site disposal of a limited volume of foundry wastes; (3) removal and off-site disposal of four previously unknown USTs and associated contaminated soils identified during the performance of the SRP grant-funded response activities; (4) removal and off-site disposal of contaminated soils associated with an earthen floor sump located in the basement of the former boiler building; and (5) construction of exposure barriers for foundry wastes contained on site.

#### IDENTIFICATION OF PERSONS WHO ARE LIABLE

Persons who are liable for the Facility pursuant to Section 20126 of the NREPA include persons who arranged for a hazardous substance to be transported to, disposed of, or treated at the Facility; and persons who selected the Facility and transported a hazardous substance to the Facility. Other persons who are liable for the Facility

include owners and operators of the Facility who were responsible for an activity causing a release or threat of release of a hazardous substance at the Facility and owners and operators who owned or operated the Facility on or after June 5, 1995, who did not comply with the requirements of Section 20126(1)(c)(i) or (ii) for performing or disclosing the results of a Baseline Environmental Assessment.

The TCIW's original foundry operations were conducted on an earthen floor prior to the installation of a concrete floor in 1953. According to interviews of several former employees of TCIW, metal shavings and core sands were regularly dumped on the Property as part of TCIW's operations up to the 1960s. The hazardous substances present in the soil and groundwater at the Property are typically associated with foundry wastes. In addition, Mr. John Royce, a former employee and officer of TCIW, stated that TCIW operated USTs for vehicle fueling, but that the USTs were removed between 1979 and 1981. Further, assorted chemicals and petroleum products, other than what was contained in the USTs, were stored and used at various locations on the Property. These products were stored in containers of varying capacity up to 55-gallon drums. Chemicals, oil, solvents, coal, and coke were also used and stored at various locations on the Property.

On February 6, 1978, TCIW merged with Waterous. The "Plan and Agreement for Merger" (Merger Agreement) between TCIW and Waterous obtained by MDEQ staff from the Minnesota Secretary of State states that "The corporate existence of WATEROUS with all its purposes, powers and objects, shall continue unaffected and unimpaired by the merger, and as the Surviving Corporation it shall be governed by the laws of the State of Minnesota and shall succeed to all rights, assets, liabilities and obligations of TRAVERSE CITY [TCIW] in accordance with the Michigan Business Corporation Act." The American Hoist and Derrick Company is the parent corporation of Waterous.

Pursuant to Section 20126a of the NREPA; and Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended, 42 USC Section 9607(a), each person who is liable for a facility is jointly and severally liable for all past and future costs lawfully incurred by the state in performing response activities. Furthermore, pursuant to Section 20129(2) of the NREPA, if two or more persons cause or contribute to an indivisible harm that results in response activity costs or damages for injury to, destruction of, or loss of natural resources, each person is subject to liability for the entire harm, including all costs for response activities lawfully incurred by the state. These persons may also be liable for the Facility under other applicable state and federal laws.

#### DEMAND FOR PAYMENT OF COSTS

Pursuant to Part 195, Environmental Protection Bond Implementation, of the NREPA, the MDEQ awarded an SRP grant to fund the implementation of response activities at the Facility. The total amount of the SRP grant was \$1,582,975 for response activity costs that were incurred and paid by the state. The SRP grant expenditures in addition

to other costs incurred and paid by the state through the dates indicated in the attached "Summary Report" (Attachment C) total \$1,633,903.65. The MDEQ hereby demands payment from Waterous for \$1,633,903.65, plus any costs that the state is continuing to incur, and any accrued interest. Interest shall begin to accrue on the date of Waterous's receipt of this Demand Letter. A copy of the state's cost recovery documentation package is included with this Demand Letter.

Waterous is further advised that any release or threatened release of a hazardous substance at the Facility that results in the direct or indirect discharge of a hazardous substance into the ground or surface waters of the state may also be a violation of Sections 3109(1) and 3112 of Part 31, Water Resources Protection, of the NREPA, as well as other state and federal laws. Pursuant to Section 3115(1) of the NREPA, the state may seek a civil fine of \$25,000 per day for any unpermitted discharge or the direct or indirect discharge of injurious substances to the waters of the state.

### **REQUEST FOR RESPONSE ACTIVITIES**

This Demand Letter also serves as the MDEQ's written request that Waterous perform response activities at the Facility to assure the protection of public health, safety, and welfare, and the environment. If Waterous does not agree to perform the necessary and appropriate response activities at the Facility, the state may perform these response activities and Waterous will be legally liable to the state for the reimbursement of any costs, including any accrued interest that the state incurs to perform these response activities.

Therefore, the MDEQ requests that Waterous perform the following according to the Part 201 Administrative Rules (Part 201 Rules):

- (a) Immediately identify and eliminate any existing or potential threat of any direct contact hazards. (Rule 505(1)(b))
- (b) Identify, characterize, and provide a plan for the removal, treatment, or disposal of contaminated soils and/or river sediments consistent with the requirements of the Part 201 Rules. (Rule 505(1)(d))
- (c) Provide a work plan for and undertake a remedial investigation, including a determination of the nature and extent of the release at the Facility. (Rule 505(1)(e) and Rule 511)
- (d) Provide a work plan for and undertake a feasibility study to explore the alternatives for remediating the Facility, if necessary. (Rule 513)
- (e) Develop and submit to the MDEQ for approval a remedial action plan (RAP) that, when implemented, will achieve the cleanup criteria specified in Part 201 and the Part 5 Rules. (Rules 505(1)(g) and Rule 515)

- (f) Implement an approved RAP in accordance with a schedule approved by the MDEQ pursuant to Part 201. (Rule 505(1)(h))
- (g) Take any other response activity determined by the MDEQ to be technically sound and necessary to protect the public health, safety, or welfare, or the environment. (Rule 505(1)(f))

Within 45 days of the date of Waterous's receipt of this letter, please provide a letter to Mr. Bradley J. Ermisch, Remediation and Redevelopment Division (RRD) Enforcement Case Manager, at the address indicated below, that expresses Waterous's written commitment to perform the response activities set forth in this letter at the Facility. Please include with that letter a general description of the response activities that Waterous has taken or will take at the Facility to comply with Part 201 of the NREPA; and Part 5, Response Activities, of the Part 201 Rules. The MDEQ recommends that Waterous proceed expeditiously with the development of the above-referenced plans and seek the necessary access to any properties associated with the Facility for the implementation of these plans, regardless of the progress of any anticipated negotiations between Waterous and the state to enter into a voluntary legal agreement. Waterous should not use any such negotiations as a reason to delay the timely preparation, submittal, and implementation of work plans for the performance of response activities at the Facility.

#### **TIMING AND FORM OF RESPONSE TO THIS DEMAND LETTER**

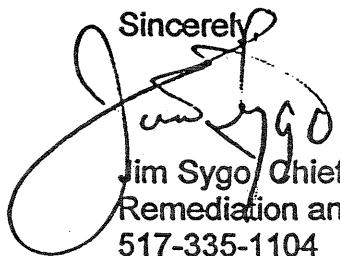
A meeting has been scheduled for February 10, 2003, at 1:00 p.m., EST, for Waterous or its representative to meet with staff of the MDEQ, RRD, to discuss this Demand Letter. The meeting will be held in the John McCauley Conference Room, located on the 4<sup>th</sup> Floor, South Tower, of Constitution Hall, 525 West Allegan Street, Lansing, Michigan. No later than ten days prior to the above-scheduled meeting date, please confirm Waterous's intent to attend this meeting by writing to Mr. Bradley J. Ermisch, RRD Enforcement Case Manager, Compliance and Enforcement Section, RRD, MDEQ, P.O. Box 30426, Lansing, Michigan 48909-7926; or by telephoning him at 517-373-0269.

If Waterous voluntarily decides to resolve its liability as described in this Demand Letter, Waterous must enter into an Administrative Order by Consent (AOC) with the state in which Waterous agrees to perform response activities and reimburse the state its past and future response activity costs. Attached is a copy of the model AOC document that the MDEQ would require Waterous to enter to settle this matter. If Waterous intends to dispute any of the costs contained in the cost recovery documentation package or other claims made by the state in this Demand Letter, Waterous is required to provide within 30 days a detailed list of the specific disputed items and the basis for each dispute. If Waterous agrees at the meeting to engage in good faith negotiations with the state to pursue resolution of this matter, the MDEQ will provide a 90-day period beyond the date of that meeting to negotiate a resolution. Resolution must include entry of an AOC with the state that provides for the settlement of the issues outlined in this Demand Letter.

If we are unable to resolve this matter in accordance with the schedule outlined above, the state will take appropriate action to secure the performance of response activities at the Facility and to recover all state-incurred response activity costs, any accrued interest, and appropriate civil fines. Such action may include a lawsuit pursuant to Sections 20137 and 3115 of the NREPA.

If a representative of Waterous wishes to review the MDEQ's files regarding the Facility, please write to Mr. John Vanderhoof, Cadillac District Office, RRD, MDEQ, 120 West Chapin Street, Cadillac, Michigan 49601-2158; or telephone him at 231-775-3960. If Waterous has questions regarding this Demand Letter, please contact Mr. Ermisch, or you may contact me.

A courtesy copy of this Demand Letter is being sent to the local unit of government in which the Facility is located and to the current owners of the Property.

Sincerely  
  
Jim Sygo, Chief  
Remediation and Redevelopment Division  
517-335-1104

#### Attachments

cc: Mr. Richard I. Lewis, City of Traverse City  
Mr. Charles T. Harris, Counsel for Bank One of Michigan  
Ms. Beth Bigelow, Northern Rock Holdings, L.L.C.  
Mr. Robert L. Afflen, Robert Afflen Enterprises, Inc.  
Ms. Kim L. Hagerty, Hagerty, L.L.C.  
Mr. A. Michael Leffler, Michigan Department of Attorney General  
Mr. Jonathan Pierce, Michigan Department of Attorney General  
Mr. Arthur R. Nash Jr., Deputy Director, MDEQ  
Ms. Patricia A. McKay, MDEQ  
Mr. Philip L. Schrantz, MDEQ  
Mr. John Alford, MDEQ  
Mr. Brian Maturen, MDEQ  
Mr. John Vanderhoof, MDEQ  
Mr. Bradley J. Ermisch, MDEQ

