

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WEYERHAEUSER COMPANY)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 1:03-CV-01079-KAJ
)	
PLAINWELL INC., ET AL.,)	
)	
Defendants.)	
)	

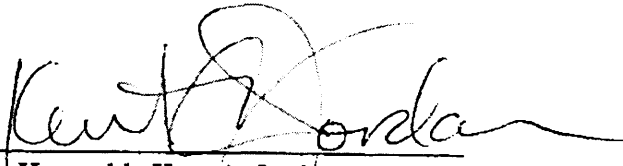
ORDER APPROVING SETTLEMENT AGREEMENT

NOW, upon consideration of the United States' Unopposed Motion to Enter Environmental Settlement Agreement and Memorandum in Support Thereof (the "Motion") which was filed with this Court on April 12, 2005 (Docket No. 18); it appearing to the Court that all parties in this action have consented to entry of an order approving the Environmental Settlement Agreement (which agreement can be found at Docket No. 19); that the relevant public comment period has expired; that comments on the agreement were submitted and subsequently withdrawn by Weyerhaeuser Company; and that the Environmental Settlement Agreement is fair, reasonable and in the public interest as embodied in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq.; and for the reasons set forth in the Motion,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Environmental Settlement Agreement that is the subject of the Motion is hereby approved by this Court.

Date: May 18, 2005



The Honorable Kent A. Jordan
United States District Judge

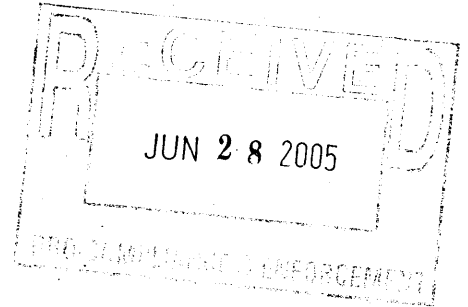
Dan Beemon

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
PLAINWELL INC.,)
)
and)
)
PLAINWELL HOLDING COMPANY,)
)
Debtors.)
)

Chapter 11

Case No. 00-4350 (JWV)
(Jointly Administered)



SETTLEMENT AGREEMENT

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APPENDICES

1. Appendix A:

Map of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site

2. Appendix B: Draft Restrictive Covenant

3. Appendix C: Description of 12th Street Landfill OU #4

4. Appendix D: Map of 12th Street Landfill OU #4

RECITALS

WHEREAS on November 21, 2000, Plainwell Inc. and Plainwell Holding Company ("Debtors") filed for protection under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, in the United States Bankruptcy Court for the District of Delaware;

WHEREAS on or about May 17, 2001, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI"), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA") filed a Proof of Claim ("POC") against the Debtors for past and future response costs and natural resource damages at the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan;

WHEREAS the United States' POC states that past and future response costs at the Plainwell Inc. facility and the area downstream of the facility are estimated to be between \$50 million and \$1.4 billion and that natural resource damages, including the reasonable costs of assessing the existence and extent of such damages, are estimated to be between \$88.7 million and \$225 million;

WHEREAS on or about May 17, 2001, the Michigan Department of Environmental Quality ("MDEQ") filed a Proof of Claim against Plainwell, Inc. and Plainwell Holding Company for past and future response costs and natural resource damages at the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan;

WHEREAS MDEQ's Proof of Claim states that past and future response costs at the Plainwell Inc. facility and the area downstream of the facility are estimated to be between \$44 million and \$1.83 billion and that natural resource damages, including the reasonable costs of assessing the existence and extent of such damages, are estimated to be between \$88.7 million and \$225.4 million;

WHEREAS, in 1970, Colonial Heights Packaging Inc. (formerly Philip Morris Industrial Incorporated, formerly, and then known as, Milprint, Inc.) purchased Plainwell Inc. (formerly Plainwell Paper Company, formerly Simpson Plainwell Paper Company Inc., formerly, and then known as, Plainwell Paper Co., Inc.) from Weyerhaeuser Company with financing from Philip Morris USA Inc. (formerly, and then known as, Philip Morris Incorporated);

WHEREAS, in 1985, Chesapeake Corporation purchased Plainwell Inc. (then known as Plainwell Paper Co., Inc.) from Colonial Heights Packaging Inc. (then known as Philip Morris Industrial Incorporated);

WHEREAS, in 1987, Simpson Paper Company purchased Plainwell Inc. (then known as Plainwell Paper Co., Inc.) from Chesapeake Corporation;

WHEREAS, in 1997, Plainwell Holding Company purchased Plainwell Inc. (then known as Simpson Plainwell Paper Company Inc.) from Simpson Paper Company;

WHEREAS the United States and State of Michigan (collectively, the "Governmental Parties") contend that Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for response actions and/or response costs, and natural resource damages, including the reasonable cost of assessing such damages and the injury, destruction, or loss of natural resources resulting from releases with respect to the Site;

WHEREAS the Governmental Parties contend that Colonial Heights Packaging Inc., Philip Morris USA Inc., Chesapeake Corporation, and Simpson Paper Company are liable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, for response actions and/or response costs, and natural resource damages, including the reasonable cost of assessing such damages and the injury, destruction, or loss of natural resources resulting from releases with respect to the Site;

WHEREAS the Parties hereto, without admission of liability by any Party, desire to settle, compromise and resolve the claims and contentions of the Governmental Parties as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration herein acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the Parties hereto, subject to public notice and comment and approval by the Bankruptcy Court, as follows:

1. Definitions

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions will apply:

"12th Street Landfill OU #4" shall mean Operable Unit 4 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, as described in Appendix C and generally shown on the map included in Appendix D.

"12th Street Landfill Property" shall mean the real property owned by Plainwell Inc. comprising a portion of the 12th St. Landfill OU #4, as generally shown on the survey attached as Exhibit 2 to the restrictive covenant required by Paragraph 3.b(1)(c)(iv) of this Agreement.

"Agreement" shall mean this Settlement Agreement and all appendices attached hereto.

In the event of conflict between this Agreement and any appendix, this Agreement shall control.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

"Covered Natural Resource Damages" means any and all natural resource damages that are alleged to have resulted, that could have resulted, or that will result from Existing Contamination at the Site. Covered Natural Resource Damages include, but are not limited to, the damages for injury to, destruction of, or loss of natural resources, including the reasonable costs incurred by DOI, NOAA and the State of assessing such injury, destruction, or loss resulting from Existing Contamination.

"Covered Response Costs" means any and all costs incurred or that will be incurred in performing response actions with respect to Existing Contamination at the Site.

"Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

"Effective Date" means the date on which this Agreement is approved by the Bankruptcy Court.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Existing Contamination" means any Hazardous Substances existing at the Site, which originated from or are present at the Plainwell Inc. Mill Property or 12th Street Landfill OU #4, as listed, identified, or contained in records, reports, data, or information (hereinafter, collectively referred to as "records") relating to the Site that were in the possession of EPA, DOI, NOAA or the State of Michigan as of the date of lodging of this Agreement.

"Governmental Parties" shall mean the United States and the State of Michigan.

"Hazardous Substance" shall mean any substance defined as such under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or under Part 201 of NREPA, MCL § 324.20101, or any hazardous waste within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5);

"Interest," for failure to comply with this Agreement, shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1st of each year, in accordance with 42 U.S.C.

§ 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1st of each year.

"MDEQ" shall mean the Michigan Department of Environmental Quality, and any successor departments, agencies and instrumentalities.

"NOAA" shall mean the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments, agencies or instrumentalities of the United States.

"Non-Debtor Plainwell Parties" shall mean Colonial Heights Packaging Inc., Philip Morris USA Inc., Chesapeake Corporation, Simpson Paper Company, and their successors and assigns.

"NRDAR Fund" shall mean the U.S. Department of the Interior's Natural Resource Damage Assessment and Restoration Fund.

"Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

"Part 201 of NREPA" shall mean the Michigan Natural Resources and Environmental Protection Act, 1994 Mich. Pub. Acts 451, MCL §§ 324.20101-42.

"Parties" shall mean the United States, the State of Michigan, Colonial Heights Packaging Inc., Philip Morris USA Inc., Chesapeake Corporation, Simpson Paper Company, Plainwell Holding Company, and Plainwell Inc.

"Plainwell Inc. Mill Property" shall mean the property located at or near 200 Allegan Street in Plainwell, Michigan, as generally shown in Appendix A.

"Plainwell Parties" shall mean (i) Colonial Heights Packaging Inc., Philip Morris USA Inc., Chesapeake Corporation, Simpson Paper Company, and their successors and assigns; and (ii) Plainwell Holding Company and Plainwell Inc.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* (also known

as the Resource Conservation and Recovery Act).

"Site" shall mean the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, encompassing approximately 80 miles of the Kalamazoo River (from Morrow Lake Dam to Lake Michigan); a 3 mile segment of Portage Creek (from Cork Street above the Bryant Mill Pond to its confluence with the Kalamazoo River); the adjacent floodplains and wetlands; five paper residual disposal areas (including the 12th Street Landfill); and six paper mill properties (including the Plainwell Inc. Mill Property), located in Kalamazoo and Allegan Counties, Michigan, and generally shown on the map attached as Appendix A.

"State" and "State of Michigan" shall mean the Michigan Department of Environmental Quality, and all other departments, agencies and instrumentalities of the State of Michigan.

"Trustees" shall mean (i) the Director of the Michigan Department of Environmental Quality, (ii) the Attorney General of the State of Michigan, (iii) the Secretary of the United States Department of the Interior, acting through its representative, the Fish and Wildlife Service, and (iv) the Secretary of the United States Department of Commerce, acting through its designee, the National Oceanic and Atmospheric Administration.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

2. Jurisdiction. The Court has jurisdiction over the subject matter herein pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

3. Consideration

a. Payment of Response Costs and Natural Resource Damages. Within fifteen (15) business days after this Agreement has been lodged, the Non-Debtor Plainwell Parties will deposit \$7,150,000 into an escrow account bearing interest at a commercially reasonable rate, in a federally-chartered bank (the "Escrow Account"). If the Agreement is disapproved by the Court, and the time for an appeal of that decision has run or if the Court's denial of entry is upheld on appeal, or if the United States or the State withdraws or withholds its consent to the Agreement pursuant to Paragraph 12, the monies placed in escrow, together with accrued interest thereon, will be returned to the Non-Debtor Plainwell Parties. If the Agreement is approved by the Court with the consent of the United States and the State, the Non-Debtor Plainwell Parties will, within thirty (30) days thereof:

(1) Pay to EPA \$6,246,278 plus the interest accrued on that amount for Covered Response Costs. Payment will be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the USAO File Number, EPA Site/Spill ID Number 059B, DOJ Case Number 90-11-2-1306, and *In re Plainwell Inc. and Plainwell Holding Company*, 00-04350 (JWV). Payment

will be made in accordance with instructions provided to the Non-Debtor Plainwell Parties by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware following lodging of the Agreement. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

(a) The total amount paid to EPA pursuant to this Paragraph will be deposited in the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance past and future response actions at or in connection with the Site. Any funds remaining in the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site Special Account upon the completion of response actions at the Site may be transferred by EPA into the EPA Hazardous Substance Superfund.

(b) At the time of payment, the Non-Debtor Plainwell Parties will send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer.

(2) Pay to the Natural Resource Damage Assessment and Restoration ("NRDAR") Fund \$890,975 plus the interest accrued on that amount for Covered Natural Resource Damages. Payment will be made by FedWire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current EFT procedures, referencing *In re Plainwell Inc. and Plainwell Holding Company*, 00-04350 (JWV), and DOJ Case Number 90-11-2-1306. Payment will be made in accordance with instructions provided to the Non-Debtor Plainwell Parties by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware following lodging of the Agreement. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

(a) Exactly \$7,615 of the monies paid to the NRDAR Fund pursuant to this Paragraph will be used to reimburse DOI for past assessment costs.

(b) Any payment made pursuant to this Paragraph, above the amount of \$7,615, is a joint payment for the benefit of DOI, NOAA, and the State for Covered Natural Resource Damages and will be used by the Trustees only to assess injury to, destruction of, or loss of natural resources resulting from releases of Hazardous Substances at the Site, and to restore, replace, or acquire the equivalent of natural resources injured at or near the Site.

(c) At the time of payment, the Non-Debtor Plainwell Parties will send notice that payment has been made to the United States, DOI, NOAA and the State.

(3) Pay to the State a sum of \$12,747 plus interest, which represents \$3,722 plus interest for past response costs and \$9,025 plus interest for past costs associated with assessing the injury to, destruction of, or loss of natural resources at the Site. Payment will be made in the form of a certified check(s) or cashier's check(s), and be payable to the "State of

Michigan - Environmental Response Fund." Payment will be sent to Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, 525 West Allegan, Lansing, MI 48909. To ensure proper credit, the check must reference the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund site, *In re Plainwell Inc. and Plainwell Holding Company*, 00-04350 (JWV), and the Remediation and Redevelopment Division Account Number RRD2174.

b. Access and Institutional Controls

(1) If any of the Plainwell Parties owns or controls any part of the Site, or any other property where access and/or land/water use restrictions are needed to implement response activities at the Site, that Plainwell Party owning or controlling the property shall:

(a) Commencing at the time of lodging of this Agreement, provide the United States, the State, and their representatives with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

(i) monitoring, investigation, removal, remedial or other activities at the Site;

(ii) verifying any data or information submitted to the United States or State;

(iii) conducting investigations relating to contamination at or near the Site;

(iv) obtaining samples;

(v) assessing the need for, planning, or implementing additional response actions, natural resource damages assessment or restoration activities at or near the Site;

(vi) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Plainwell Parties or their agents, consistent with Paragraph 3.c (Access to Information); and

(vii) determining whether the Site 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 Agreement;

(b) Commencing at the time of lodging of this Agreement, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of past or future remedial measures or natural resource restoration to be implemented at the Site; and

(c) Within 30 days of lodging of this Agreement, submit to EPA and MDEQ for review and approval:

(i) a current title commitment or other evidence of title acceptable to EPA and MDEQ for the 12th Street Landfill Property. The title commitment or other evidence of title will demonstrate that Plainwell Inc. holds title to the 12th Street Landfill Property free and clear of all prior liens and encumbrances (except as approved by EPA and MDEQ);

(ii) a current survey of the 12th Street Landfill Property, conducted by a licensed surveyor in the State of Michigan, that identifies and clearly delineates and graphically depicts the spatial extent of the real property;

(iii) if requested by EPA or the State, an executed consent of any holder of an of easement at the 12th Street Landfill Property as identified in the title commitment required by subparagraph 3.b(1)(c)(i), pursuant to which the easement holder agrees and consents to the recording of the land and resource use restrictions specified in the restrictive covenant; and

(iv) an executed restrictive covenant for the 12th Street Landfill Property, running with the land, that is enforceable under the laws of the State of Michigan, in substantially the form attached hereto as Appendix B. The restrictive covenant for the 12th Street Landfill Property shall: a) establish land and resource use restrictions that EPA, in consultation with MDEQ, determines are necessary to implement, to ensure non-interference with, or to ensure the protectiveness of the remedial measures to be performed at the 12th St. Landfill OU #4; b) grant a right of access for the purpose of overseeing and conducting response activities at the 12th St. Landfill OU #4; and c) grant the right to enforce the land or resource use restrictions. The restrictive covenant shall grant access rights to MDEQ, EPA as a third-party beneficiary, and the designated representatives of EPA and MDEQ. The restrictive covenant shall grant the right to enforce the land or resource use restrictions to MDEQ and the United States, on behalf of EPA, as a third-party beneficiary.

(2) Within 30 days after receipt of the (i) current evidence of title; (ii) current survey; (iii) consent of easement holders; and (iv) executed restrictive covenant required by subparagraph 3.b(1)(c)(iv), above, EPA and MDEQ shall review each submission and, if necessary, seek revision of any such submission. Within 10 days after receipt of all properly revised submissions or, if no revisions are required, within 30 days after receipt of all

submissions, EPA and MDEQ shall approve the restrictive covenant, and shall instruct Plainwell Inc. to file the restrictive covenant, including all exhibits, with the Allegan County Register of Deeds for recording. Within 30 days of the recording of the restrictive covenant, Plainwell Inc. or its designee shall provide EPA and MDEQ with a certified copy of the original recorded restrictive covenant showing the clerk's recording stamps. Failure by EPA or MDEQ to meet deadlines in this paragraph shall not excuse the Plainwell Parties from meeting their obligations under this Agreement.

(3) If EPA determines that land or water use restrictions under state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at any part of the Site owned or controlled by the Plainwell Parties, the Plainwell Parties shall assist EPA and the State in securing such governmental controls.

(4) Notwithstanding any provision of this Agreement, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land and/or water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, Part 201 of NREPA, and any other applicable statute or regulation.

c. Access to Information

(1) Upon request, a Plainwell Party shall provide to EPA and the State, within thirty (30) days, copies of all records within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

(2) Confidential Business Information and Privileged Documents

(a) A Plainwell Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified a Plainwell Party that the records it submitted are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to the Plainwell Party.

(b) A Plainwell Party may assert that certain records or portions of certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or State law. If a Plainwell Party asserts such a privilege in lieu of providing records, it will provide EPA with the following: (i) the title of the record; (ii) the date of the record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the record; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the record; and (vi) the

privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged information only. Each Plainwell Party will retain all records that it claims to be privileged until the Governmental Parties have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Plainwell Party's favor. If a dispute is resolved in favor of the Plainwell Party, such party may destroy the records at issue. If a dispute is resolved in favor of the Governmental Parties, the Plainwell Party shall provide to the Governmental Parties copies of the records within five (5) calendar days. No records created or generated pursuant to the requirements of this or any other settlement with the Governmental Parties will be withheld on the grounds that they are privileged.

(3) No claim of confidentiality will be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

d. Retention of Records

(1) Until 10 years after the entry of this Agreement, each Non-Debtor Plainwell Party will preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions or the natural resource damage assessment taken at the Site or the liability of any person for natural resource damages, response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary. Within 180 days of the entry of this Agreement, the Debtors will transfer all such records now in their possession or control to one of the Non-Debtor Plainwell Parties.

(2) After the conclusion of the 10 year document retention period in the preceding paragraph, each Non-Debtor Plainwell Party will notify the Governmental Parties by certified mail (return receipt requested) at least 90 days prior to the destruction of any records, and upon request, a Non-Debtor Plainwell Party will deliver any such records to either EPA, DOI, NOAA, DOJ or the State, as directed by EPA. A Non-Debtor Plainwell Party may assert that certain records or portions of certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or State law. If a Non-Debtor Plainwell Party asserts such a privilege, it will provide EPA, DOI, NOAA, DOJ, and the State with the following: (i) the title of the record; (ii) the date of the record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the record; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the record; and (vi) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to the Governmental Parties in redacted form to mask the privileged information only. Each Non-Debtor Plainwell Party will retain all records that it claims to be privileged until the Governmental Parties have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Non-Debtor Plainwell Party's favor. If a dispute is resolved in favor of the Non-Debtor Plainwell Party, such party may destroy the records at issue. If a dispute is resolved in favor of the Governmental Parties, the Non-Debtor Plainwell Party shall provide to the Governmental Parties copies of the records

within five (5) calendar days. No records created or generated pursuant to the requirements of this or any other agreement with the Governmental Parties will be withheld on the grounds that they are privileged.

(3) Each Plainwell Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

4. Covenants Not to Sue

a. Covenant Not to Sue by United States. In consideration of the promises and payments made by the Plainwell Parties under the terms of this Agreement, and except as specifically provided in Paragraph 5 (Reservation of Rights), the United States covenants not to sue or to take administrative action against the Plainwell Parties for Covered Response Costs or Covered Natural Resource Damages pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), Section 7003 of RCRA, 42 U.S.C. § 6973, and Part 201 of NREPA, MCL §§ 324.20101-42. This covenant not to sue shall take effect upon receipt by the Governmental Parties of all payments required by Paragraph 3.a (Consideration) and any amounts due under Paragraph 7.a - b(1) (Failure to Comply with Agreement), and upon the execution and recording of a restrictive covenant in favor of the Governmental Parties in accordance with Paragraphs 3.b(1)(c)(iv) and 3.b(2). This covenant not to sue is being provided to the Plainwell Parties under extraordinary circumstances and is conditioned upon the satisfactory performance by the Plainwell Parties of their obligations under this Agreement. This covenant not to sue extends only to the Plainwell Parties and does not extend to any other person.

b. Covenant Not to Sue by the State. In consideration of the promises and payments made by the Plainwell Parties under the terms of this Agreement, and except as specifically provided in Paragraph 5 (Reservation of Rights), the State covenants not to sue or to take administrative action against the Plainwell Parties for Covered Response Costs or Covered Natural Resource Damages pursuant to Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, Section 7002 of RCRA, 42 U.S.C. § 6972, and Part 201 of NREPA, MCL §§ 324.20101-42. This covenant not to sue shall take effect upon receipt by the Governmental Parties of all payments required by Paragraph 3.a (Consideration) and any amounts due under Paragraph 7.a - b(1) (Failure to Comply with Agreement), and upon the execution and recording of a restrictive covenant in favor of the Governmental Parties in accordance with Paragraphs 3.b(1)(c)(iv) and 3.b(2). This covenant not to sue is being provided to the Plainwell Parties under extraordinary circumstances and is conditioned upon the satisfactory performance by the Plainwell Parties of their obligations under this Agreement. This covenant not to sue extends only to the Plainwell Parties and does not extend to any other person.

c. Covenant Not to Sue by the Plainwell Parties

(1) The Plainwell Parties covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site or this Agreement, including but not limited to:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(b) any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of NREPA, MCL § 324.20119(5);

(c) any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

(d) any claim against the United States pursuant to Sections 106(b)(2), 107 and 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607 and 9613, relating to the Site;

(e) any claim pursuant to Sections 20126 and 20129 of NREPA, MCL §§ 324.20126 and 324.20129, relating to the Site;

(f) any claim pursuant to Section 7002 of RCRA, 42 U.S.C. § 6972, relating to the Site; or

(g) any claim against the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

(2) Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

(3) The Plainwell Parties agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including any claim for contribution, against any person where the person's liability to the Plainwell Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Hazardous Substances at the Site, or having accepted for transport for disposal or treatment of Hazardous Substances at the Site, if the materials contributed by such person to the Site containing Hazardous Substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA

has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Plainwell Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Plainwell Party.

5. Reservation of Rights

a. Reservation of Rights by United States. The United States reserves, and this Agreement is without prejudice to, all rights against the Plainwell Parties with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 4. Notwithstanding any other provision of this Agreement, the United States reserves all rights against the Plainwell Parties with respect to:

(1) liability for failure of the Plainwell Parties to meet a requirement of this Agreement;

(2) liability of the Non-Debtor Plainwell Parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Part 201 of NREPA, MCL §§ 324.20101-42, based on: (i) conditions with respect to the Site, unknown to the United States as of the date of lodging of this Agreement, that result in a release or a threat of release of Hazardous Substances at the Site ("Unknown Response Conditions"); or (ii) information received by the United States after the date of lodging of this Agreement which indicates that there was a release or threat of release of Hazardous Substances at the Site that was unknown to the United States as of the date of lodging of this Agreement ("New Response Information");

(3) claims against the Non-Debtor Plainwell Parties for recovery of natural resource damages, based on: (i) conditions with respect to the Site, unknown to the United States as of the date of lodging of this Agreement, that result in releases of Hazardous Substances that contribute to injury to, destruction of, or loss of natural resources ("Unknown NRD Conditions"); or (ii) information received by the United States after the date of lodging of this Agreement which indicates that there is injury to, destruction of, or loss of natural resources at the Site unknown to the United States as of the date of lodging of this Agreement ("New NRD Information");

(4) liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Part 201 of NREPA, MCL §§ 324.20101-42, that arises from an actual or threatened release of Hazardous Substances where the Hazardous Substances originated from any portion of the Site other than the Plainwell Inc. Mill Property or the 12th Street Landfill OU#4;

(5) liability, arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

(6) liability, based upon Plainwell Holding Company's and the Non-Debtor Plainwell Parties' ownership or operation of the Site, or upon their transportation, treatment, storage,

or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, arising after signature of this Agreement by the Plainwell Parties; and

(7) criminal liability.

For purposes of this Paragraph, the information and conditions known to the United States shall include any information, data, or conditions listed, identified, or contained in records relating to the Site that were in the possession of EPA, DOI, NOAA, or the State as of the date of lodging of this Agreement. Unknown Response Conditions or New Response Information shall not include increases in costs of response actions related to Existing Contamination. Unknown NRD Conditions or New NRD Information shall not include: (i) an increase in the United States' assessment of the magnitude of a known injury to, destruction of, or loss of natural resources at the Site; or (ii) injury to, destruction of, or loss of natural resources at the Site arising from the re-exposure, resuspension, or migration of Existing Contamination.

b. Reservation of Rights by the State. The State reserves, and this Agreement is without prejudice to, all rights against the Plainwell Parties with respect to all matters not expressly included within the Covenant Not to Sue by the State in Paragraph 4. Notwithstanding any other provision of this Agreement, the State reserves all rights against the Plainwell Parties with respect to:

(1) liability for failure of the Plainwell Parties to meet a requirement of this Agreement;

(2) liability of the Non-Debtor Plainwell Parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Part 201 of NREPA, MCL §§ 324.20101-42, based on: (i) conditions with respect to the Site, unknown to the State as of the date of lodging of this Agreement, that result in a release or a threat of release of Hazardous Substances at the Site ("Unknown Response Conditions"); or (ii) information received by the State after the date of lodging of this Agreement which indicates that there was a release or threat of release of Hazardous Substances at the Site that was unknown to the State as of the date of lodging of this Agreement ("New Response Information");

(3) claims against the Non-Debtor Plainwell Parties for recovery of natural resource damages, based on: (i) conditions with respect to the Site, unknown to the State as of the date of lodging of this Agreement, that result in releases of Hazardous Substances that contribute to injury to, destruction of, or loss of natural resources ("Unknown NRD Conditions"), or (ii) information received by the State after the date of lodging of this Agreement which indicates that there is injury to, destruction of, or loss of natural resources at the Site unknown to the State as of the date of lodging of this Agreement ("New NRD Information");

(4) liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Part

201 of NREPA, MCL §§ 324.20101-42, that arises from an actual or threatened release of Hazardous Substances where the Hazardous Substances originated from any portion of the Site other than the Plainwell Inc. Mill Property or the 12th Street Landfill OU#4;

(5) liability, arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

(6) liability, based upon Plainwell Holding Company's and the Non-Debtor Plainwell Parties' ownership or operation of the Site, or upon their transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a Hazardous Substance or a solid waste at or in connection with the Site, arising after signature of this Agreement by the Plainwell Parties; and

(7) criminal liability.

For purposes of this Paragraph, the information and conditions known to the State shall include any information, data, or conditions listed, identified, or contained in records relating to the Site that were in the possession of EPA, DOI, NOAA or the State as of the date of lodging of this Agreement. Unknown Response Conditions or New Response Information shall not include increases in costs of response actions related to Existing Contamination. Unknown NRD Conditions or New NRD Information shall not include: (i) an increase in the State's assessment of the magnitude of a known injury to, destruction of, or loss of natural resources at the Site; or (ii) injury to, destruction of, or loss of natural resources at the Site arising from the re-exposure, resuspension, or migration of Existing Contamination.

c. Debtors reserve the right to object to contribution claims under 11 U.S.C. § 502(e), which provides for the disallowance of contingent contribution and reimbursement claims in Bankruptcy matters.

6. Effect of Agreement and Contribution Protection

a. This Agreement shall be binding upon the Parties and their respective successors and assigns. Any change in ownership or corporate status of a Party including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Party's responsibilities under this Agreement.

b. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. Except as provided in Paragraph 4, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

c. The Parties agree, and by approving this Agreement this Court finds, that the Plainwell Parties are entitled, as of the date of entry of this Agreement, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 20129(5) of NREPA, MCL § 324.20129(5), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all Covered Response Costs incurred by the United States, the State, or any other person; any response actions that have been taken by, or that will be taken by, any person with respect to Existing Contamination; and all Covered Natural Resource Damages. Notwithstanding the foregoing, the "matters addressed" in this Agreement do not include any response costs, response actions, or natural resource damages for which the United States or the State has reserved its rights under this Agreement, in the event that the United States or the State assert rights against the Plainwell Parties coming within the scope of such reservations.

d. Each Plainwell Party agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA, DOI, NOAA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Plainwell Party also agrees that, with respect to any suit or claim for contribution brought against it after the date of lodging of this Agreement for matters related to this Agreement, it will notify EPA, DOI, NOAA, DOJ, and the State in writing within 10 days of service of the complaint or claim upon it. In addition, each Plainwell Party will notify EPA, DOI, NOAA, DOJ and the State within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

e. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, the Plainwell Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by the United States and the State.

7. Failure to Comply with Agreement

a. Interest on Late Payments. If the Non-Debtor Plainwell Parties fail to make any payment required under Paragraph 3 (Consideration), by the required due dates, the Non-Debtor Plainwell Parties will pay Interest on the unpaid balance. Interest will continue to accrue on the unpaid balance through the date of payment.

b. Stipulated Penalty

(1) For payment obligations. In addition to the Interest required to be paid under this Paragraph, if any amounts due under Paragraph 3 (Consideration) are not paid by the required date, the Non-Debtor Plainwell Parties will be in violation of this Agreement and will pay,

as a stipulated penalty, \$7,500 per day that such payment is late. Stipulated penalties for overdue payments are due and payable within 30 days of the date of the demand for payment of the penalties by any Governmental Party. Such penalties will accrue regardless of whether the Governmental Parties have notified the Non-Debtor Plainwell Parties of the violation or made a demand for payment, but need only be paid upon demand. Stipulated penalties will begin to accrue on the day after payment is due and will continue to accrue through the date of payment.

(a) Exactly one-half of all stipulated penalties for overdue payments for Covered Natural Resource Damages shall be paid to the U.S. Treasury.

(b) Exactly one-half of all stipulated penalties for overdue payments for Covered Natural Resource Damages shall be paid to the State.

(2) For obligations other than payment. If a Plainwell Party fails to comply with any of its obligations set forth in subparagraphs 3.c (Access to Information) or 3.d (Retention of Records), such Plainwell Party shall be in violation of this Agreement and shall pay to the EPA Hazardous Substance Superfund, as a stipulated penalty, \$1000 per violation per day of such noncompliance. Penalties begin to accrue on the day the deliverable or performance is due and extend through the period of correction. Payment shall be due within 60 days of receipt of a demand letter from any Governmental Party. For violations not based on timeliness, stipulated penalties shall not begin to accrue until the relevant Plainwell Party receives written notice from a Governmental Party of the failure to perform in accordance with the requirements of this Agreement.

(3) Stipulated penalties payable to the EPA Hazardous Substance Superfund will be made by FedWire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the Civil Action Number and DOJ Case Number 90-11-2-1306. Payment will be made in accordance with instructions provided to the Non-Debtor Plainwell Parties by the Financial Litigation unit of the United States Attorney's Office for the District of Delaware following lodging of the Agreement. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time will be credited on the next business day. The Non-Debtor Plainwell Parties will send notice to the Governmental Parties that payment has been made.

(4) Stipulated penalties payable to the U.S. Treasury will be made by FedWire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current EFT procedures, referencing *In re Plainwell Inc. and Plainwell Holding Company*, 00-04350 (JWV) and DOJ Case Number 90-11-2-1306. Payment will be made in accordance with instructions provided to the Non-Debtor Plainwell Parties by the Financial Litigation unit of the U.S. Attorney's Office for the District of Delaware following lodging of the Agreement. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The Non-Debtor Plainwell Parties will send notice to the Governmental Parties that payment has been made.

(5) Stipulated penalties payable to the State will be made payable to the State of Michigan - Environmental Response Fund. Payment will be made in the form of a certified check(s) or cashier's check(s) and be sent to Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, 525 West Allegan, Lansing, MI 48909. To ensure proper credit, the check must reference the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund site, *In re: Plainwell Inc. and Plainwell Holding Company*, 00-04350 (JWV), and Remediation and Redevelopment Division Account Number RRD2174.

(6) Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

c. If the United States or the State brings an action to enforce this Agreement, the Non-Debtor Plainwell Parties will reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time.

d. Payments made under this Section will be in addition to any other remedies or sanctions available to the Governmental Parties by virtue of the Plainwell Parties' failure to comply with the requirements of this Agreement.

e. The obligations of the Non-Debtor Plainwell Parties to pay amounts owed the United States and the State under this Agreement are joint and several. In the event of the failure of any one or more of the Non-Debtor Plainwell Parties to make the payments required under this Agreement, the remaining Non-Debtor Plainwell Parties will be responsible for such payments.

f. Notwithstanding any other provision of this Section:

(1) The United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties due the United States pursuant to this Agreement;

(2) The State may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties due the State pursuant to this Agreement; and

(3) Payment of stipulated penalties will not excuse the Non-Debtor Plainwell Parties from payment as required under Paragraph 3 or from performance of any other requirements of this Agreement.

8. Notices and Submissions

a. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein will constitute complete satisfaction of any written notice requirement of the Agreement with respect to the United States, EPA, DOI,

NOAA, DOJ, and the State, and the Plainwell Parties, respectively.

As to the United States:

DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-1306)
P.O. Box 7611
Washington, D.C. 20044-7611

EPA:

William E. Muno
Director, Waste Management Division
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Eileen L. Furey
Associate Regional Counsel
Region 5, United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

EPA Regional Financial Management Office
Anthony Audia, Chief
Program Accounting and Analysis Section
United States Environmental Protection Agency
Region 5
Mail Code: ML-10C
77 W. Jackson Blvd.
Chicago, IL 60604

DOI:

Regional Director
U.S. Fish and Wildlife Service
Bishop Henry Whipple Federal Building
1 Federal Drive
Fort Shelling, MN 55111

Mary Lynn Taylor, Attorney Advisor
United States Department of the Interior
Office of the Solicitor
Three Parkway Center, Suite 385
Pittsburgh, Pennsylvania 15220

United States Department of the Interior
Natural Resource Damages Assessment and Restoration Program
Att: Restoration Fund Manager
1849 C St. NW, Mail Stop 4449
Washington, D.C. 20240

NOAA:
Marguerite Matera
Attorney
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
One Blackburn Drive
Gloucester, MA 01930

Todd Goeks
Coastal Resource Coordinator, Region 5
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
SR-6J
77 West Jackson Blvd.
Chicago, IL 60604

As to the State of Michigan
Neil Gordon
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
Michigan Department of Attorney General
P.O. Box 30217
Lansing, MI 48909

Brian Monroe
Chief, Enforcement and Cost Recovery Unit
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926

As to the Plainwell Parties:

Kathy Robb, Esq.
Hunton & Williams
200 Park Avenue
New York, NY 10166

Pamela Barker, Esq.
Godfrey & Kahn
780 North Water Street
Milwaukee, Wisconsin 53202

9. Retention of Jurisdiction. The Court shall retain jurisdiction over the subject matter of this Agreement and the parties hereto throughout the performance of the terms and provisions of this Agreement. During that time, the parties may apply to the Court for further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Agreement or to effectuate or enforce compliance with its terms.

10. Integration of Appendices. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the matters addressed herein. The Parties acknowledge that there are no representations, agreements or understandings relating to the agreement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement: "Appendix A" is the map of the Site; "Appendix B" is the draft Restrictive Covenant; "Appendix C" is a description of the 12th Street Landfill OU #4; and "Appendix D" is a map generally depicting the 12th Street Landfill OU #4. This Agreement may not be amended except by a writing signed by all parties to this Agreement.

11. Proofs of Claim. The Proofs of Claim filed by the United States in this matter on behalf of EPA, DOI, and NOAA, and by MDEQ are withdrawn with prejudice and expunged upon payment of response costs and natural resource damages pursuant to Paragraph 3.a and any required payment pursuant to Paragraph 7 (Failure to Comply with Agreement).

12. Lodging and Opportunity for Public Comment

a. This Agreement shall be lodged with the Court for a period not less than thirty days for public notice and comment. After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the Court will be requested by motion of the United States to approve the Agreement. The United States and the State each reserves the right to withdraw or withhold its consent to this Agreement if the comments regarding the Agreement disclose facts or considerations which indicate that the Agreement is not in the public interest.

b. This Agreement shall be subject to approval of the Court under Bankruptcy Rule 9019.

c. The Debtors shall not propose any Plan of Reorganization or take any other action in the Chapter 11 Cases that is inconsistent with the terms and provisions of this Agreement. The United States, on behalf of EPA, DOI, and NOAA, and the State will not oppose any term or provision of a Plan of Reorganization filed by the Debtors that is addressed by this Agreement. The Parties reserve all other rights and defenses they may have with respect to any Plan of Reorganization filed by the Debtors.

13. Signatories

a. Each undersigned representative of the Parties to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

b. Each Plainwell Party hereby agrees not to oppose entry of this Agreement by this Court or to challenge any provision of this Agreement, unless the United States or the State has notified the Plainwell Parties in writing that it no longer supports entry of the Agreement.

14. Severability. In the event that provisions of this Agreement shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.

15. Counterparts. This Agreement may be delivered by courier, mail, facsimile or telecopy. It may be executed in counterparts, each of which shall be deemed to be an original, and all of such counterparts taken together shall be deemed to constitute one and the same agreement.

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR THE UNITED STATES OF AMERICA:

Date: 10.29.03

By: Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 11/5/03

By: Renita Ford
RENITA Y. FORD
Trial Attorney
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 9/16/03

By: William E. Muno
WILLIAM E. MUNO
Director
Superfund Division
United States Environmental Protection
Agency
Region 5

Date: 9/10/03

By: Eileen L. Furey
EILEEN L. FUREY
Associate Regional Counsel
United States Environmental Protection
Agency
Region 5
Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR THE STATE OF MICHIGAN:

MICHAEL A. COX
Attorney General

Date: September 15, 2003 By:



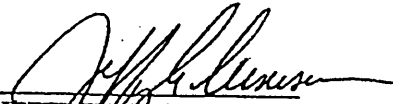
NEIL D. GORDON
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR PLAINWELL INC.

Date: AUGUST 31, 2003

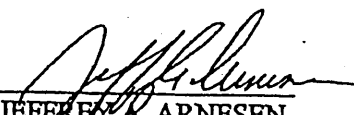
By:


JEFFREY A. ARNESEN
Senior Vice President and Chief
Financial Officer

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR PLAINWELL HOLDING COMPANY

Date: August 31, 2005

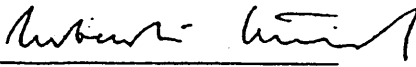
By: 
JEFFREY A. ARNESEN
Secretary

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR COLONIAL HEIGHTS PACKAGING INC.

Date: Sept 8, 2003

By:

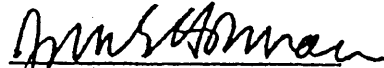

CONSTANTIN SCHOELKOPF
Treasurer and Assistant Secretary

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR PHILIP MORRIS USA INC.

Date: 09.09.03

By:



JOHN E. HOLLERAN
Senior Vice President
of Compliance and Brand Integrity

THE UNDERSIGNED PARTY enters into this Agreement with regard to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Allegan Counties, Michigan:

FOR SIMPSON PAPER COMPANY

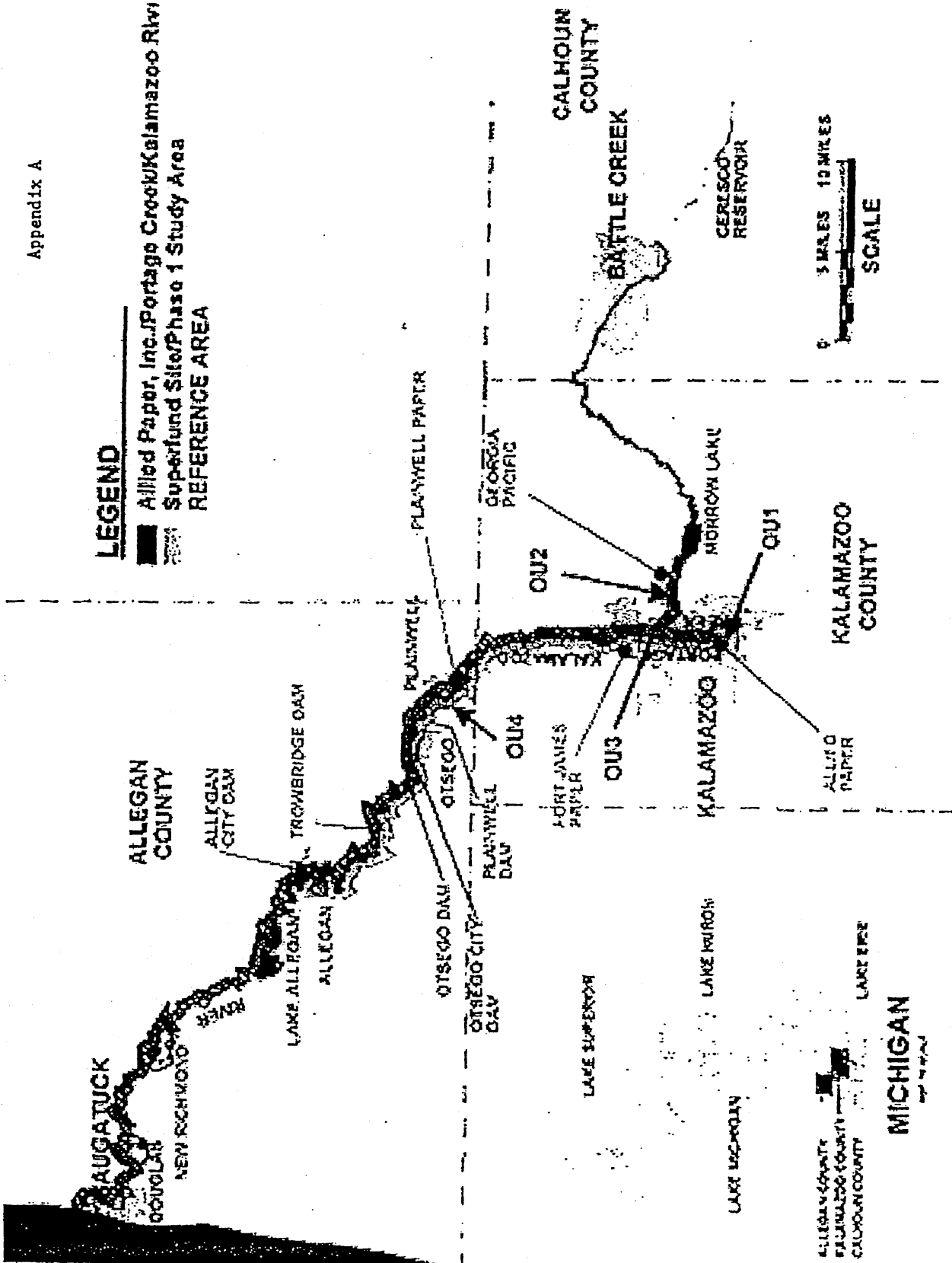
Date: September 2, 2003

By:

Joseph R. Breed
JOSEPH R. BREED
Vice President
and General Counsel

LEGEND

- Allied Paper, Inc. Portage Creek/Kalamazoo Rivi
- ▨ Superfund Site/Phase 1 Study Area
- REFERENCE AREA



DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No.:
U.S. EPA Site No.

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Allegan County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at [insert address of property] and legally described in Exhibit 1 attached hereto ("Property").

The Property is associated with the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (the "Site"). The Site was placed on the National Priorities List on August 30, 1990, and is a facility, as that term is defined in Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq. ("NREPA"). The Property comprises a portion of the 12th Street Operable Unit #4 of the Site for which on-going remedial actions are being conducted in accordance with the Record of Decision ("ROD") issued by the Michigan Department of Environmental Quality ("MDEQ") and concurred with by the United States Environmental Protection Agency ("USEPA") on September 28, 2001 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq., ("CERCLA"). Information pertaining to the environmental conditions at the Property and the remedial actions to be undertaken at the Property is on file with the USEPA and the Michigan Department of Environmental Quality ("MDEQ"), Remediation and Redevelopment Division.

This Restrictive Covenant has been recorded to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of Property is consistent with the exposure assumptions and control measures required pursuant to the ROD; and 3) to prevent damage or disturbance of any element of the remedial action constructed on the Property. The restrictions contained in this Restrictive Covenant are based upon information available to the USEPA and MDEQ at the time the ROD was issued. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under CERCLA and the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the ROD; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

Property Identification Number: [insert the Property's tax ID number or other identifier]

Exhibit 2 provides a survey of the Property that is subject to the land use or resource use restrictions specified herein.

Summary of Remedial Actions

The Property was historically used as a landfill for wastes and residuals associated with the manufacturing and recycling of paper. Response activities to be undertaken at the Property as part of the remedial action required under the ROD to assure the protection of public health, safety and welfare, and the environment and ensure the integrity of the remedy include, but are not necessarily limited to: the construction of a landfill cap and containment systems to contain paper residuals and soils and sediments contaminated with polychlorinated biphenyls ("PCBs") and prevent the erosion of PCB contaminated materials into the Kalamazoo River; construction and maintenance of a fence; construction, operation and maintenance of groundwater monitoring system; and establishment of the land use and resource use restrictions contained herein.

Definitions

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

"Owner" means, at any given time, the then current title holder of the Property or any portion thereof.

"Owners Subsequent to Plainwell" means, at any given time, the then current title holder of the Property or any portion thereof, except for Plainwell Inc.

"Plainwell" shall mean Plainwell Inc., the owner of the Property as of the date of the execution of this Restrictive Covenant, and the Owner for as long as Plainwell Inc. is a current title holder of the Property or any portion thereof.

"USEPA" shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules ("Part 201 Rules"), 1990 AACR 299.5101 et seq., shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of filing of this Restrictive Covenant.

NOW THEREFORE,

Pursuant to the ROD and the Order of the United States Bankruptcy Court, District of Delaware, Case No. 00-4350 (JMV), dated [Insert date], Plainwell Inc., as Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

Declaration of Land Use or Resource Use Restrictions

1. The Owner shall prohibit all uses of the Property that are not compatible with the Property's zoned industrial land use designation, the limited industrial land use category under Section 20120a(1)(i) of the NREPA or other use that is consistent with the assumptions and basis for the cleanup criteria developed pursuant to Section 20120a(1)(i) of the NREPA. Cleanup criteria for land use-based response activities are located in the Government Documents Section of the State of Michigan Library.

2. The Owner shall prohibit use of the Property or portions thereof, for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation;
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) Any purpose involving residential occupancy on a 24-hour basis.
- (f) Any other use that would disturb or penetrate the landfill cover or erosion control system as set forth in the ROD.

3. Owners Subsequent to Plainwell shall prohibit activities, and Plainwell shall not perform any activities, on the Property that may result in exposures above levels established in the ROD. These prohibited activities include:

- (a) Any excavation, drilling or any other penetration of the landfill cover and erosion control systems required by the ROD, including the vegetated soil cover, fill layer and geomembrane cap, except as necessitated by compliance with the O&M plan or other work plan approved or modified by U.S. EPA with MDEQ concurrence;
- (b) Any construction of buildings on the Property unless plans are submitted to and approved by the MDEQ and U.S. EPA. Any new construction must satisfy the indoor air inhalation criteria of Part 201.
- (c) Any activities that may disturb the landfill cap unless plans are submitted to and approved by the MDEQ and U.S. EPA. All subsurface excavation within the Property must be conducted in accordance with a health and safety plan that complies with the Occupational Safety and Health Act of 1970, 20 CFR 1910.120, and the Michigan Occupational Safety and Health Act.

4. Owners Subsequent to Plainwell shall prohibit activities, and Plainwell shall not perform any activities, on the Property that may interfere with any element of the ROD, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the remedy.

5. The MDEQ or USEPA may require modifications to the restrictions contained in this Restrictive Covenant as necessary to assure the integrity and effectiveness of the remedial action required under the ROD or assure the protection of the public health, safety, welfare and the environment.

6. Owners Subsequent to Plainwell shall comply with the applicable requirements of Section 20107a of the NREPA and Part 10 of the Part 201 Administrative Rules.

7. Permanent Markers. The Owner shall not remove, cover, obscure, or otherwise alter or interfere with the permanent markers placed at the locations noted in Exhibit 2. Owners Subsequent to Plainwell shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible.

8. Contaminated Soil Management. Owners Subsequent to Plainwell shall manage all soils, media and/or debris located on the Property in accordance with, and Plainwell shall refrain from managing soils, media and/or debris located on the Property in contravention of, the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

9. Access. The Owner shall grant to the MDEQ, USEPA, as a third-party beneficiary, and their designated representatives an irrevocable, permanent and continuing right of access to enter the Property at reasonable times for the purpose of:

- (a) Overseeing and/or implementing the response actions required in the ROD, including but not limited to installation of a landfill cover system that complies with the relevant portions of Part 201 of the NREPA and conducting any necessary inspection and repair of the capped areas;
- (b) Verifying any data or information submitted to USEPA and/or MDEQ and determining and monitoring compliance with the ROD and any implementing Statement of Work;
- (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- (d) Monitoring response actions at the 12th St. Operable Unit and at the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- (e) Conducting periodic reviews of the response action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- (f) Implementing additional or new response actions if USEPA and the MDEQ determine: i) that such actions are necessary to protect public health, safety, welfare, or the environment because either the response action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the response action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

Nothing in this Restrictive Covenant shall limit or otherwise affect USEPA's or MDEQ's right of entry and access or authorities to take response activities pursuant to CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, Part 201 of the NREPA and the successor statutory provisions, or state or federal law.

10. Transfer of Interest. The Owner shall provide notice to the USEPA and MDEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner unless the Owner complies with the applicable provisions of Section 20116 of the NREPA. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest. The Owner shall include in any instrument conveying any interest in the Property or portion thereof, including but, not limited to, deeds, leases, and mortgages a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A
DECLARATION OF RESTRICTIVE COVENANT, DATED _____, 200_, AND
RECORDED WITH THE ALLEGAN COUNTY REGISTER OF DEEDS, LIBER ____,
PAGE ____.

11. Notices. Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, MDEQ Reference Number [insert reference number] and U.S. EPA Site No. [insert site number] and shall be served either personally or sent via first class mail, postage prepaid, as follows:

For USEPA: Mr. Timothy Prendiville,
Remedial Project Manager
U.S. EPA
77 West Jackson Blvd. SR-6J
Chicago, Illinois 60604

Eileen L. Furey
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd. C-14J
Chicago, IL 60604

For MDEQ: Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909-7973

12. Term and Enforcement of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant may only be modified or rescinded with the written approval of the USEPA and MDEQ.

The State of Michigan, through the MDEQ, the Owner, and the United States on behalf of USEPA, as a third party beneficiary, may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

13. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

14. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner and all other holders of a legal interest whose interest is materially affected by this Restrictive Covenant (as documented and attached hereto as Exhibit [_]), and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

15. Nothing in this Restrictive Covenant affects Plainwell's obligations, if any, under Part 201 of the NREPA, CERCLA, or other State or federal laws, subject to the terms and limitations of the Environmental Settlement Agreement, dated as of July __, 2003, as may be amended from time to time, among: (a) the United States of America, on behalf of the United States Environmental Protection Agency, the United States Department of the Interior, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and including all departments, agencies and instrumentalities of the United States; (b) the State of Michigan, on behalf of Michael A. Cox, Attorney General for the State of Michigan, the Michigan Department of Environmental Quality, and all other departments, agencies and instrumentalities of the State of Michigan; (c) Colonial Heights Packaging, Inc.; (d) Philip Morris USA, Inc.; (e) Chesapeake Corporation; (f) Simpson Paper Company; (g) Plainwell Holding Company; and (h) Plainwell Inc., the final version of which, after publication in the Federal Register for the thirty-day public comment period specified by 42 U.S.C. § 9622(i), will be filed with the United States Bankruptcy Court for the District of Delaware.

IN WITNESS WHEREOF, [Insert name of Owner] has caused this Restrictive Covenant to be executed on this _____ day of _____, 200__.

[insert name of Owner]

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF MICHIGAN
COUNTY OF ALLEGAN

The foregoing instrument was executed before me this [date].

Notary Public

[Print or type name]
[Commissioned in] County, [State]

My Commission Expires: _____

EXHIBIT 1

LEGAL DECRIPTION OF PROPERTY

[NOTE: In addition to the legal description, Exhibit 1 shall also include the parcel identification number(s) of the Property.]

EXHIBIT 2

SURVEY OF THE PROPERTY

[NOTE: All surveys must be conducted by licensed surveyor in the State of Michigan and shall identify and clearly delineate and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the response activity, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.]

**EXHIBIT 3
CONSENT OF EASEMENT HOLDERS**

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

[Insert additional signature blocks if multiple easement holders]

[Insert Easement Holder's Name]

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

STATE OF MICHIGAN ***[insert state]***
COUNTY OF ***[insert name of county]***

The foregoing instrument was executed before me this ***[date]***.

Notary Public
[Print or type name]
[Commissioned in] County, ***[State]***

.My Commission Expires:

Appendix C

12th Street Landfill OU #4

The 12th Street Landfill OU#4 is located in the middle of Section 24, Township 1N, Range 12W, approximately 1.5 miles northwest of the City of Plainwell in Allegan County, Michigan, and 0.5 miles northeast of the Highway M-89 and 12th Street intersection. The 12th Street Landfill is approximately 6.5 acres, and is bordered to the east by the former powerhouse discharge channel of the Plainwell Dam on the Kalamazoo River, to the north and northwest by wetlands, to the southeast by woodlands, and to the west by a gravel mining operation. The 12th Street Landfill OU#4 includes the 12th Street Landfill; groundwater contamination and leachate generated by the 12th Street Landfill; the woodland immediately south/southeast of the 12th Street Landfill; wetlands that border the landfill to the north and northwest; a portion of the gravel operation property that borders the 12th Street Landfill to the west; and a portion of the former powerhouse channel of the Plainwell Dam on the Kalamazoo River.

Source: Record of Decision issued by MDEQ, with U.S. EPA's concurrence, for the 12th Street Landfill OU#4 of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site, dated September 28, 2001.

