

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 16th JUDICIAL DISTRICT
MACOMB COUNTY

MICHAEL A. COX, Attorney General for the State
of Michigan, *ex rel*, MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY (formerly
Michigan Department of Natural Resources),

Plaintiffs,

v

MACOMB COUNTY PARKS & RECREATION,
SOUTH MACOMB DISPOSAL AUTHORITY,
CONSUMERS ENERGY COMPANY (f/k/a
CONSUMERS POWER COMPANY), HURON-
CLINTON METROPOLITAN AUTHORITY,
CITY OF STERLING HEIGHTS, EDWARD AND
ELEANOR OCHYLSKI, ARCHDIOCESE OF
DETROIT, HIGGERSON FUNERAL HOME,
INC., ALBINO & LINDA BONANNI, ALB
CORPORATION, DR. AYMAN AND HALA
RAYES, THE CITY OF CENTER LINE, THE
CITY OF EASTPOINTE, THE CITY OF
ROSEVILLE, THE CITY OF ST. CLAIR
SHORES, AND THE CITY OF WARREN,

Defendants,

and

HILLSIDE PRODUCTIONS, INC.

Intervenor.

File No. 95-150 CE

Honorable Edward A. Servitto, Jr.

CONSENT DECREE

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CONSENT DECREE

The Plaintiffs are Michael A. Cox, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality ("MDEQ"), successor to the Michigan Department of Natural Resources.

The Work Defendants are the South Macomb Disposal Authority ("SMDA") and the Cities of Center Line, Eastpointe, Roseville, St. Clair Shores, and Warren (jointly "Member Cities"). The Member Cities join this action as Defendants with the consent of all Parties and they consent to the jurisdiction of this Court.

The Current Landowner Defendants are Consumers Energy Company (formerly Consumers Power Company), Huron-Clinton Metropolitan Authority, City of Sterling Heights, the Archdiocese of Detroit, and Macomb County Department of Parks and Recreation.

The Former Landowner Defendants are Edward and Eleanor Ochylski, Albino and Linda Bonanni, ALB Corporation, Higgerson Funeral Home, Inc. and Dr. Ayman and Hala Rayes.

The Intervenor is Hillside Productions, Inc. ("Hillside").

This Consent Decree ("Decree") requires the payment of monies, including reimbursement of MDEQ-incurred Past and Future Response Activity Costs, interim response activities, preparation and performance of a Remedial Investigation ("RI"), a Remedial Action Plan ("RAP") and remedial action at and in the vicinity of the former Freedom Hill and Fostoria Landfills that flank the Red Run Drain located southwest of the Metropolitan Parkway and Utica Road intersection, in the City of Sterling Heights and Clinton Township in Macomb County, Michigan.

The Parties agree not to contest: (a) the authority or jurisdiction of the Court to enter this Decree; or (b) any terms or conditions set forth herein.

The entry of this Decree by Defendants and Intervenor is neither an admission or denial of liability with respect to any issue dealt with in this Decree nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Decree finds, that the response activities set forth herein are necessary to abate the release or threatened release of hazardous substances into the environment, to control future releases, and to protect public health, safety, and welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

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

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

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

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon the Parties and their successors. Except as provided in Paragraph 2.2, no change or changes in the ownership or corporate status or other legal status of any of the Defendants or the Intervenor, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendants' or the Intervenor's responsibilities under this Decree. The Current Landowner Defendants and the Intervenor shall provide the MDEQ with written notice prior to the transfer of ownership or control of part or all of the Facility and shall also provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights or other property interest in the Facility. The Current Landowner Defendants and the Intervenor shall comply with the requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20116, and the Part 201 Rules implementing MCL 324.20116.

2.2 In the event that a Current Landowner Defendant sells or otherwise transfers ownership of all or a portion of its property in the Facility, and the purchaser or other transferee agrees in writing to undertake all obligations of the Current Landowner Defendant under Sections VII, XII, or XV of this Decree with respect to that property and after that agreement is approved in writing by the MDEQ, then the Current Landowner Defendant shall have no further obligations under Sections VII, XII, or XV of this Decree, as applicable, with respect to property and Sections covered by that agreement.

2.3 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of response activities and/or obligations pursuant to this Decree, each Defendant is responsible for compliance with the terms of this Decree that apply to it and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities and/or obligations in conformance with the terms and conditions of this Decree.

2.4 The signatories to this Decree certify that they are authorized to execute this Decree and to legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

3.1. In entering into this Decree, it is the mutual intent of the Parties to:

- (a) achieve and maintain compliance with Section 20107a(1)(a)-(c) of the NREPA and the Part 201 Rules.
- (b) conduct interim response activities (IRA) as determined to be necessary to comply with Part 201 and the Part 201 Rules.
- (c) conduct a remedial investigation in accordance with Part 201 and the Part 201 Rules.
- (d) develop and submit to the MDEQ an approvable Remedial Action Plan that complies with Part 201 and Part 201 Rules.
- (e) conduct all work specified in the MDEQ-approved Remedial Action Plan in accordance with its approved implementation schedule.
- (f) reimburse Plaintiffs for Past and Future Response Activity Costs and fund implementation of MDEQ-approved response activities as described in Section XIV (Payments and Reimbursement of Costs).
- (g) resolve, without further litigation, all Plaintiffs' claims against Defendants for Past and Future Response Activity Costs and the performance of response activities.

IV. DEFINITIONS

4.0 "Archdiocese of Detroit" means The Roman Catholic Archdiocese of Detroit, Adam J. Maida, Roman Catholic Archbishop of the Archdiocese of Detroit, Trinity High School (formerly known as Bishop Gallagher High School), the parish sponsors of Trinity High School (i.e., St. Matthew, St. Philomena, and Our Lady Queen of Peace parishes), and their respective agents, employees, officers, and directors.

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

4.2 "Defendants" means the Work Defendants, the Current Landowner Defendants, and the Former Landowner Defendants.

4.3 "Work Defendants" means the South Macomb Disposal Authority ("SMDA") and the Cities of Center Line, Eastpointe, Roseville, St. Clair Shores, and Warren (jointly "Member Cities").

4.4 "Current Landowner Defendants" means those Defendants that are a Party to this Decree that own or lease a portion of the Facility on or after the Effective Date. As of the Effective Date those Defendants are Consumers Energy Company (formerly Consumers Power Company), Huron-Clinton Metropolitan Authority, City of Sterling Heights, Archdiocese of Detroit, and Macomb County.

4.5 "Effective Date" means the date that the Court enters this Decree.

4.6 "Facility" means any area of the Waste Disposal Area where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), and further defined in the Part 201 Rules; or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, 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, has come to be located as a result of the migration of the hazardous substance from the Waste Disposal Area. The Facility does not include those portion of the Properties that are determined, through an MDEQ-approved Remedial Investigation to be performed by SMDA pursuant to this Decree, not to contain the Waste Disposal Area or hazardous substances in excess of the specified requirements or criteria that migrated from the Waste Disposal Area.

4.7 "Former Landowner Defendants" means ALB Corporation, Higginson Funeral Home, Inc., Edward and Eleanor Ochylski, Albino and Linda Bonanni, and Dr. Ayman and Hala

Rayes unless those Defendants acquire ownership of a portion of the Facility after the Effective Date.

4.8 "Future Response Activity Costs" means response costs lawfully incurred by the State to oversee, enforce, monitor, and document compliance with this Decree and to perform response activities required by this Decree, including, but not limited to, such costs incurred to: monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; collect and analyze samples; evaluate data; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare and review cost reimbursement documentation; and perform response activities pursuant to Paragraph 6.15 (The MDEQ's Performance of Response Activities) and Section IX (Emergency Response).

4.9 "Hillside" and "Intervenor" means Hillside Productions, Inc.

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

4.11 "Member Cities" means the Cities of Center Line, Eastpointe, Roseville, St. Clair Shores, and Warren that together make up the South Macomb Disposal Authority ("SMDA").

4.12 "Part 115" means Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.11501 *et seq.*, and the Administrative Rules promulgated thereunder.

4.13 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101-20142 and the Administrative Rules promulgated thereunder.

4.14 "Part 201 Rules" means the Administrative Rules promulgated under Part 201.

4.15 "Parties" means the Plaintiffs, Defendants, and Intervenor.

4.16 "Past Response Activity Costs" means those response activity costs that the State incurred and paid through August 31, 2005.

4.17 "Plaintiffs" means Michael A. Cox, Attorney General, of the State of Michigan, and the Michigan Department of Environmental Quality, their successor entities, and those authorized persons or entities acting on their behalf.

4.18 "Properties" means Parcels A through I in **Attachment A** containing the former Freedom Hill and Fostoria Landfills flanking the Red Run Drain located southwest of the Metropolitan Parkway and Utica Road intersection, in the City of Sterling Heights and Clinton Township in Macomb County, Michigan, and legally described in **Attachment B**.

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

4.20 "Remedial Investigation" or "RI" means an evaluation in accordance with Part 201 and the Part 201 Rules to determine the source, nature, extent, and impact of a release or threat of release and the collection of data necessary to select and conduct a "an appropriate" remedial action at a facility.

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

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

4.23 "Submissions" means all plans, reports, schedules, and other submittals that the Defendants are required to provide to the State pursuant to this Decree. "Submissions" does not include the notifications set forth in Section X (Delays in Performance, Violations, and *Force Majeure*).

4.24 "Waste Disposal Area" means the areas at the Properties and any adjacent properties containing waste materials, that have or may generate hazardous substances, that were deposited and disposed of during the operation of the Freedom Hill and Fostoria Landfills.

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

4.26 Unless otherwise specified in this Decree, "day" means a calendar day.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

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

5.2 This Decree does not obviate the Work Defendants' obligations to obtain and maintain compliance with other permits including, but not limited to, a National Pollutant Discharge Elimination System ("NPDES") permit, if applicable.

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Performance Objectives

SMDA shall perform all necessary response activities at the Facility to comply with the requirements of Part 201, including the response activities required to meet the performance objectives outlined in this Decree as follows:

(a) Under this Decree, SMDA assumes responsibility for performing all necessary response activities at the Facility that are not otherwise obligations of the other Defendants pursuant to this Decree or other applicable law.

(b) SMDA has the responsibility to meet any performance objectives in (i), (ii), and (iii) below for Interim Response Activity (IRA). The performance objectives of the IRA are to:

(i) Provide documentation to demonstrate that all the relevant factors of the Part 201 Rules applicable to interim response activities have been addressed.

(ii) Prevent or eliminate any explosive hazard in existing buildings, above or below ground structures, or confined spaces where methane may accumulate in soil gas, including venting any areas identified where methane levels in soil gas are at or above 1.25 percent by volume.

(iii) Mitigate any additional exposures or conditions attributable to the Facility requiring an interim response pursuant to Part 201 and the Part 201 Rules as identified by SMDA or the MDEQ and implement any other interim response activities necessary as approved by the MDEQ.

(c) SMDA shall conduct a remedial investigation ("RI"). The performance objectives of the RI are to identify the sources of contamination at the Facility and assess the nature, extent, and impact of the contamination at the Facility providing information sufficient to select an appropriate remedial action and adequately addresses those conditions prescribed in Part 201. This includes, but is not limited to, the following:

(i) Identification of the source or sources of contamination at the Facility and definition of the full nature and extent of the contamination at the Facility and present in soil, soil-gas, indoor air, groundwater, surface water, and sediments. The scope of the RI must be sufficient to define the nature and extent of the release or threat of release at the Facility,

including the three dimensional extent of methane as defined by the methane concentrations of 0.5 parts per million (ppm) groundwater and 1.25 percent by volume in soil gas.

(ii) Definition of risks to the public health, safety, and welfare and to the environment, including, but not limited to, the identification and evaluation of aboveground and underground structures where methane could accumulate.

(iii) Determination of the relevant exposure pathways.

(iv) Definition of the amount, concentration, hazardous properties, environmental fate, bioaccumulative properties, persistence, location, mobility, and physical state of the hazardous substances, including methane and methane-generating contamination at the Facility.

(v) Definition of extent to which hazardous substances, including methane, have migrated or are expected to migrate from the area of release, including the potential for hazardous substances to migrate along preferential pathways.

(vi) Definition of the geology, hydrogeology, groundwater flow, and gradients at the Facility.

(d) SMDA shall develop a Remedial Action Plan and perform remedial action as specified in an MDEQ-approved RAP. The performance objectives of the RAP are to address all releases of hazardous substances in all environmental media at the Facility consistent with Sections 20118, 20120a, 20120b, and 20120d of the NREPA and the Part 201 Rules. This includes, but is not limited to, the following:

(i) The MDEQ-approved RAP shall include all necessary information to sufficiently evaluate the relevant exposure pathways.

(ii) Assure that when implemented the MDEQ-approved RAP shall:

(1) Be protective of human health, safety, and welfare, and the environment.

(2) Meet and maintain compliance with applicable cleanup criteria as established under Section 20120a(1)(a)-(j) or 20120a(2), and Sections 20120a(15) and (17) of the NREPA, and further defined in the Part 201 Rules and, with specific regard to methane, this includes the requirement that concentrations of methane shall not exceed the applicable criteria for methane concentrations in soil gas (1.25 percent by volume in soil gas).

(3) Assure the ongoing effectiveness and integrity of the remedial action specified in an MDEQ-approved RAP.

(iii) Implement closure of the Waste Disposal Area consistent with the relevant and appropriate requirements of Part 115 and the Administrative Rules promulgated under Part 115.

6.2 Work Plans

In accordance with this Decree, SMDA shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 6.1. SMDA shall develop each work plan and perform the response activities contained in each work plan in accordance with the requirements of Part 201 and this Decree. Upon MDEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Decree and made an enforceable part of this Decree. If there is a conflict between the requirements of this Decree and any MDEQ-approved work plan, the requirements of this Decree shall prevail.

6.3 Quality Assurance Project Plan ("QAPP")

Within ninety (90) days of the Effective Date of this Decree, SMDA shall submit to the MDEQ for review and approval a QAPP, which describes the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Decree. The QAPP shall be developed in accordance with the United States Environmental Protection Agency's ("USEPA's" or "EPA's") "EPA Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." SMDA shall utilize recommended sampling methods, analytical methods, and analytical detection levels specified in "RRD Operational Memo No. 2, Sampling and Analysis under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Dated October 22, 2004 and effective February 1, 2005)." SMDA shall utilize appropriate MDEQ-approved guidance or

methods to determine the number of samples required to verify the cleanup and to determine sampling strategy. SMDA shall comply with the above documents or documents that supersede or amend these documents, and may utilize other methods demonstrated by the SMDA to be appropriate as approved by the MDEQ.

6.4 Health and Safety Plan ("HASP")

Within ninety (90) days of the Effective Date of this Decree, SMDA shall submit to the MDEQ a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150, the Occupational Safety and Health Act of 1970, 29 CFR 1910.120, and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* The HASP is not subject to the MDEQ's approval under Section XIII (Submissions and Approvals) of this Decree.

6.5 Interim Response Activities ("IRA")

(a) SMDA shall implement the following IRA to initiate compliance with the provisions of Paragraph 6.1(b)(ii):

(i) Develop and implement an emergency response plan for confirmed exceedances of ten percent (10%) of the lower explosive level of methane in any occupied structure, until terminated pursuant to the implementation schedule in the approved RAP.

(ii) Within one hundred twenty (120) days of the Effective Date of this Decree, SMDA shall develop and implement a program to document which structures/buildings in the Facility have continuous methane monitors with appropriate alarms, whether they are operating properly and are strategically placed in buildings where accumulation of explosive levels of methane is possible, and whether all cracks in the structures have been appropriately sealed.

(iii) Develop and initiate a work plan for methane investigation to determine the three dimensional extent of methane generated from the landfill waste as defined by the boundaries of methane concentrations at 0.5 ppm in groundwater and at 1.25 percent by volume in soil gas.

(iv) In any areas identified at the Facility where methane levels in the soil gas are at or above 1.25 percent by volume, SMDA, at minimum, shall:

(1) Within twenty-four (24) hours of discovery of methane at or above 1.25 percent by volume in soil gas, ensure nearby above and below-ground structures contain a properly functioning and strategically placed continuous methane monitor with appropriate alarms, and seal any cracks in the structures;

(2) Within forty-eight (48) hours of discovery of methane at or above 1.25 percent by volume in soil gas, initiate construction of a methane gas pressure control system as provided in the contingent work plan provided in Paragraph 6.5(b);

(3) Within five (5) days of discovery of methane at or above 1.25 percent by volume in the soil gas, the methane gas pressure control system shall be in operation; and

(4) Continue to operate, maintain and monitor all methane gas pressure control systems installed at the Facility in response to methane on an on-going basis, including the interim response activities initiated by the MDEQ prior to the Effective Date of this Decree, until terminated pursuant to the implementation schedule in the approved RAP.

(v) In any area where methane concentrations are at or above 0.5 ppm in groundwater, at a minimum SMDA shall:

(1) Within twenty-four (24) hours of discovery, report the location and concentrations to the MDEQ.

(2) Within thirty (30) days implement the additional response activities necessary to determine whether methane concentrations in soil gas require additional action to mitigate unacceptable exposures, including developing a work plan to further characterize soil gas methane concentrations in the area.

(vi) Mitigate as soon as practical, and within seventy-two (72) hours eliminate any explosive hazard in below-ground structures or confined spaces where methane accumulates in the structure at or above twenty-five percent (25%) of the Lower Explosive Level (LEL), and notify the local unit of government and MDEQ, until terminated pursuant to the implementation schedule in the approved RAP.

(b) Within one hundred twenty (120) days of the Effective Date of this Decree, SMDA shall submit to the MDEQ, for review and approval, a work plan for IRA. The work plan shall provide for the following:

(i) A detailed description of the specific response activities that will be conducted pursuant to the work plan and a description of how these response activities will implement the requirements of this paragraph and meet the performance objectives described in Paragraph 6.1(b). The work plan must include a standard contingent work plan for the installation of a methane gas pressure control system for use in venting areas where determined unacceptable levels of methane in soil gas exist. The factors specified in the Part 201 Rules shall be addressed in the work plan, as relevant to the Facility.

(ii) A description of how the proposed IRA will be consistent with the remedial action that is anticipated to be selected for the Facility in an MDEQ-approved RAP.

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

(iv) A plan for obtaining access to any properties not owned or controlled by Defendants and Intervenor that is needed to perform the response activities contained in the work plan.

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

(vi) A description of how any soil relocation will be in compliance with Section 20120c of Part 201 and the Part 201 Rules.

(c) Within one hundred twenty (120) days of receiving the MDEQ's approval of the IRA work plan, SMDA shall perform the response activities contained in the plan and submit progress reports and a final report in accordance with the approved implementation schedule.

6.6 Remedial Investigation ("RI")

(a) Within ninety (90) days of the Effective Date of this Decree, SMDA shall submit to the MDEQ, for review and approval, a work plan for conducting an RI, which shall be

of sufficient scope to provide the necessary data for an MDEQ-approved RAP. The work plan shall provide for the following:

- (i) A detailed description of the specific response activities that will be conducted pursuant to the work plan and a description of how these response activities will meet the performance objectives described in Paragraph 6.1(c). The factors specified in the Part 201 Rules shall be considered in the development of the work plan.

- (ii) A description of the history and nature of operations at the Facility.

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

- (iv) A plan for obtaining access to any properties not owned or controlled by Defendants or Intervenor that is needed to perform the response activities contained in the work plan.

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

- (vi) A description of how soil relocation, if applicable, will be in compliance with Section 20120c of Part 201 and the Part 201 Rules.

(b) Within thirty (30) days of receiving the MDEQ's approval of the RI work plan, SMDA shall commence the response activities contained in the plan and submit progress reports and an RI report in accordance with the approved implementation schedule.

6.7 Remedial Action Plan ("RAP")

(a) Within ninety (90) days of receiving MDEQ approval of the RI as specified by the procedure set forth in Paragraph 13.2 of Section XIII (Submissions and Approvals), SMDA shall submit a RAP to the MDEQ for review and approval. The RAP shall provide for the following:

- (i) A detailed description of the specific response activities to be conducted pursuant to the work plan, a description of how these response activities will meet the

performance objectives described in Paragraph 6.1(d). The RAP shall provide plans to address, including, but not limited to, the following elements:

(1) Design, construct, and maintain a landfill cap consistent with the relevant and appropriate requirements of Part 115 and its Rules to mitigate the potential for precipitation to infiltrate landfill waste material. This shall include a landfill erosion control and storm water management system to control erosion of the cap, and a plan for long-term operation, maintenance, and monitoring of the cap to ensure compliance with this performance objective.

(2) Design, construct, and operate a leachate collection and treatment system that collects and treats all leachate migrating from the Waste Disposal Area. This collection and treatment system shall be constructed as close as practical to the waste material to limit further migration and groundwater degradation. The leachate collection and treatment system shall meet or exceed the following performance specifications:

a. Reduce and maintain leachate levels in the Waste Disposal Area to prevent leachate from migrating laterally from the Waste Disposal Area and mitigate the vertical migration of any leachate in the Waste Disposal Area.

b. Assure leachate discharges from the leachate treatment system comply with all applicable laws, rules, and regulations.

(3) Design, construct, and operate a groundwater collection and treatment system that collects and treats groundwater migrating from the Waste Disposal Area, if necessary to prevent unacceptable exposures outside the Waste Disposal Area. The groundwater collection and treatment system shall meet or exceed the following performance specifications:

a. Maintain hydraulic control of groundwater outside the Waste Disposal Area, if necessary to prevent unacceptable exposures outside the Waste Disposal Area, as determined by and in a manner approved by the DEQ in a RAP.

b. Assure discharges from any groundwater treatment system comply with all applicable laws, rules, and regulations.

(4) Design, construct, and operate a landfill gas venting system that collects and treats all landfill gas migrating from the Waste Disposal Area. This collection and

treatment system shall be constructed as close as practical to the waste material to limit further migration and groundwater degradation.

(5) Mitigate exposures to any hazardous substances present in concentrations greater than the applicable criteria developed pursuant to the NREPA and approved by the MDEQ.

(6) Assure the long-term effectiveness and integrity of the response activities as approved in the MDEQ-approved RAP through the implementation of Part 201 land use and/or resource use restrictions, monitoring, and operation and maintenance plans and the placement of permanent markers.

(7) Comply with all applicable administrative requirements of a RAP, including providing financial assurance in a mechanism acceptable to the MDEQ.

(ii) A description and supporting documentation of how the results of the RI, or other response activities that have been performed at the Facility, support the selection of the remedial action contained in the RAP.

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

(iv) A plan for obtaining access to any properties not owned or controlled by Defendants and Intervenor that is needed to perform the response activities contained in the RAP. If SMDA proposes to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(b)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and that RAP provides for land and resource use restrictions, monitoring, operation and maintenance, or permanent markers as prescribed by Section 20120b(3)(a)-(d), the RAP shall include documentation from property owners, easement holders, or local units of government that the necessary access to these properties has been or will be obtained and that any proposed land or resource use restrictions can or will be placed or enacted.

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

(vi) A description of how soil relocation will be in compliance with Section 20120c of Part 201 and the Part 201 Rules.

(vii) Identification of the conditions, including the performance standards that may be used to void or nullify the MDEQ's approval of the RAP.

(b) Within thirty (30) days of receiving the MDEQ's approval of the RAP, SMDA shall commence performance of the response activities contained in the RAP and submit progress reports in accordance with the MDEQ-approved RAP. All submittals to the MDEQ, which in combination constitute an MDEQ-approved RAP, shall become incorporated into this Decree, and become an enforceable part of this Decree. Necessary elements of an MDEQ-approved RAP may include, but are not limited to, the following:

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

If SMDA chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(b)-(e) of the NREPA, and further defined in the Part 201 Rules, SMDA shall record, or cause to be recorded, any NAERs required by Section 20120b(2) of the NREPA and the RAP, with the Macomb County Register of Deeds within twenty-one (21) days after MDEQ's approval of the RAP or within twenty-one (21) days after completion of construction of the remedial action provided for in the RAP, as appropriate to the circumstances. Applicable requirements in the Part 201 Rules shall be addressed. The form, content, and schedule for filing the NAER must be approved by the MDEQ. SMDA shall provide documentation acceptable to the MDEQ that demonstrates that the twenty-one (21) day statutory time frame for recording the NAER was met (e.g., a date-stamped receipt from the Register of Deeds Office). Such documentation shall be submitted to the MDEQ within seven (7) days of the date the NAER was delivered to the Macomb County Register of Deeds for recording. SMDA shall also provide a true copy of the recorded NAER and the liber and page to the MDEQ within ten (10) days of SMDA's receipt of a copy from the Register of Deeds.

(ii) Restrictive Covenants

If SMDA chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and the RAP provides for placement of restrictive covenants, SMDA shall, with the consent of the Property owner(s) and consistent with Paragraph 15.2(b), record, or cause to be

recorded, the appropriate restrictive covenants required by the RAP with the Macomb County Register of Deeds within twenty-one (21) days after MDEQ's approval of the RAP or within twenty-one (21) days after completion of construction of the remedial action provided for in the RAP, as appropriate to the circumstances. Applicable requirements in the Part 201 Rules shall be addressed. The form, content, and schedule for filing the restrictive covenant must be approved by the MDEQ. SMDA shall provide documentation acceptable to the MDEQ that demonstrates that the twenty-one (21) day statutory time frame for recording the restrictive covenant was met (e.g., a date stamped receipt from the Register of Deeds Office). Such documentation shall be submitted to the MDEQ within seven (7) days of the date the restrictive covenant was delivered to the Macomb County Register of Deeds for recording. SMDA shall also provide a true copy of the recorded restrictive covenant and the liber and page to the MDEQ within ten (10) days of SMDA's receipt of a copy from the Register of Deeds.

(iii) Institutional Controls

If SMDA chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and the RAP provides for the enactment of institutional controls, the institutional controls shall be enacted within ninety (90) days of MDEQ's approval of the RAP. Applicable requirements in the Part 201 Rules shall be addressed. SMDA shall provide documentation that such institutional controls have been enacted to the MDEQ within ten (10) days of enactment.

(iv) Land Use Restrictions

If SMDA chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(b)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and the RAP provides for land use restrictions, within thirty (30) days of the MDEQ's approval of the RAP, SMDA shall, with the consent of the Property owner(s) and consistent with Paragraph 15.2(b), provide notice of the land use restrictions to the zoning authority of the local unit of government within which the Facility is located. Applicable requirements in the Part 201 Rules shall be addressed.

(v) Financial Assurance

If SMDA chooses to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of the NREPA, and further defined in the Part

201 Rules, and a financial assurance is a necessary component of the RAP, SMDA shall establish and maintain a financial assurance mechanism ("FAM") that will assure SMDA's ability to pay for monitoring, operation and maintenance, oversight, and other costs (collectively referred to as "O&M Costs") that are determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action as set forth in an MDEQ-approved RAP. The cost of activities covered by the FAM shall be documented on the basis of an annual estimate of maximum costs for the activity as if they were to be conducted by a person under contract to the state; not based on if the activities were being conducted by employees of the SMDA. The proposed FAM shall be submitted to the MDEQ as part of the RAP pursuant to Paragraph 6.7(a) for review and approval and shall be in an amount sufficient to cover O&M costs at the Facility for a thirty (30)-year period. If a FAM is a component of an MDEQ-approved RAP, every five (5) years after the MDEQ's initial approval of the FAM, SMDA shall provide to the MDEQ an update of the thirty (30)-year O&M Costs estimate. The updated cost estimate shall include documentation of O&M Costs for the previous five (5)-year period and be signed by an authorized representative of SMDA who shall confirm the validity of the data. SMDA shall revise the amount of funds secured by the FAM in accordance with that updated five (5)-year cost estimate unless otherwise directed by the MDEQ. If, at any time, the MDEQ determines that the FAM does not adequately secure sufficient funds, SMDA shall capitalize or revise the existing FAM or establish a new FAM acceptable to the MDEQ. After a FAM has been established, if SMDA can demonstrate that the FAM provides funds in excess of those needed to cover O&M Costs for the Facility, SMDA may submit a request to the MDEQ to reduce the amount of funds secured by the FAM. SMDA shall maintain the FAM in perpetuity or until SMDA can demonstrate to the MDEQ that such FAM is no longer necessary to protect the public health, safety, or welfare, or environment, and is no longer necessary to assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP. Any modification of a FAM will be considered to be a modification of a RAP and any such modification must be made in accordance with Section XXIII (Modifications).

(c) SMDA shall notify the MDEQ within ten (10) days of construction completion of a remedial action in an MDEQ-approved RAP that relies on the cleanup criteria established under Section 20120a(1)(b)-(j) of the NREPA, and further defined in the Part 201 Rules.

6.8 Groundwater Discharge Authorization

(a) To the extent that a mixing zone is required as part of the RAP pursuant to Section 20120a(15) of the NREPA, and upon MDEQ approval of the RAP, this Decree authorizes the discharge of those hazardous substances identified in the RAP for which mixing zone-based groundwater surface water interface (GSI) criteria have been developed by the MDEQ. At no time does this Decree authorize the discharge of:

- (i) hazardous substances in excess of the mixing-zone based GSI criteria established in the MDEQ-approved RAP;
- (ii) hazardous substances that were not specified in the MDEQ-approved RAP and this Decree;
- (iii) hazardous substances in excess of the applicable criteria developed pursuant to Part 201 for which mixing zone-based GSI criteria are not provided in the MDEQ-approved RAP. In the event the MDEQ-approved RAP is nullified pursuant to Paragraph 6.13(b)(ii) of this Decree and the nullification is based upon the groundwater discharge authorization no longer being protective of public health, safety, or welfare, or the environment, SMDA shall, within thirty (30) days of acquiring knowledge of such nullification, provide to the MDEQ a request for a revised mixing zone determination and reauthorization of the venting groundwater discharge.

(b) At least one hundred eighty (180) days prior to the five (5)-year anniversary of the MDEQ's approval of the RAP, SMDA shall submit to the MDEQ for review and approval a GSI Report. SMDA shall submit subsequent GSI Reports every five (5) years thereafter until authorization of a discharge to the waters of the state is no longer required. The GSI Report shall provide all information and data concerning the discharge of contaminated groundwater venting from the Facility to the surface water that is necessary to assess SMDA's on-going compliance with Part 201.

(c) The GSI Report shall, at a minimum, include the following information:

- (i) Identity of the Facility and the MDEQ reference number of this Decree.
- (ii) The name of the receiving surface water body and the location of the venting groundwater contaminant plume. This information should be provided in narrative form, which includes a quarter-quarter section description, and in map form.

(iii) The location, nature, and chemical characteristics of the past and ongoing source(s) of hazardous substances in the groundwater contaminant plume, including a description of whether the source has been removed or is still present. If the source is still present, identify the type, concentration, and mobility of these hazardous substances.

(iv) A summary of all GSI monitoring data and information on contaminant sources collected over the previous five (5) years. The summary shall include: (1) The Chemical Abstract Service (CAS) Number for each hazardous substance; (2) the worst case maximum concentrations of the hazardous substances in the groundwater contaminant plume at the GSI; (3) the identification of all hazardous substances that are non-aqueous phase liquids (light and dense), if present; (4) documentation of any changes in the groundwater contaminant plume's volume or concentrations of hazardous substances; and (5) the concentrations of the hazardous substances in the source area if hazardous substances from the source have not yet reached the groundwater, but are expected to do so. This information shall be provided in narrative and tabular form, and in map form that includes both a plan view showing groundwater concentration contours of the hazardous substances and a cross-sectional view, including the GSI.

(v) An analysis of the contaminant plume's general chemistry parameters, including, but not limited to, the major cations and anions, ammonia, chemical and biological oxygen demand, chlorides, and phosphorus.

(vi) The discharge rate in cubic feet per second of the groundwater contaminant plume. The discharge rate of the groundwater contaminant plume shall be calculated using that portion of the groundwater contaminant plume which is or may become contaminated above the generic GSI criteria.

(vii) The location of any other groundwater contaminant plumes entering the same surface water body in the vicinity of the Facility and their constituents and concentrations, if available.

(viii) If the groundwater contaminant plume contains hazardous substances that are identified as bioaccumulative chemicals of concern pursuant to Part 31, Water Resources Protection, of the NREPA, a description of the alternatives that could be employed to eliminate those hazardous substances from the discharge.

(ix) Any other information required by the MDEQ at the time of the GSI report.

(x) A certification statement and signature of an appropriate person. The certification statement shall be: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information."

(d) The MDEQ shall review the GSI Report and determine if the discharge complies with the mixing zone-based GSI criteria applicable at the time the GSI Report is submitted. In the event the MDEQ determines that the discharge complies with the then current applicable mixing zone-based GSI criteria, the authorization to discharge pursuant to Section 20120a(15) of the NREPA shall be reauthorized for a period of five (5) years and the MDEQ shall so notify SMDA. In the event the MDEQ determines that the discharge does not comply with the then current applicable mixing zone-based GSI criteria, the MDEQ approval of the RAP shall be immediately and automatically voided in accordance with Paragraph 6.13(b) of this Decree and the MDEQ shall so notify SMDA.

6.9 Interim Well Abandonment

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

Interim Well Abandonment Work Plan, SMDA shall submit an Interim Well Abandonment Report to the MDEQ.

6.10 Final Well Abandonment

Upon completion of the response and monitoring activities as set forth in an MDEQ-approved RAP, including operation and maintenance and long-term monitoring, SMDA shall submit to the MDEQ for review and approval a work plan for the final identification, plugging and abandonment of all remaining monitor and extraction wells at or related to the Facility (Final Well Abandonment Work Plan). The work plan shall identify the wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receiving the MDEQ's approval of the Final Well Abandonment Work Plan, SMDA shall properly plug and abandon the wells in accordance with the approved plan and the specifications described in ASTM Standard D 5299-92, "Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities," or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing all activities in the Final Well Abandonment Work Plan, SMDA shall submit a Final Well Abandonment Report to the MDEQ.

6.11 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a response activity work plan is necessary to meet and maintain the applicable performance objectives specified in Paragraph 6.1, to comply with Part 201, or to meet any other requirement of this Decree, the MDEQ may require that such modification be incorporated into a response activity work plan previously approved by the MDEQ under this Decree. If extensive modifications are necessary, the MDEQ may require SMDA to develop and submit a new response activity work plan. SMDA may request that the MDEQ consider a modification to a response activity work plan by submitting such request for modification along with the proposed change in the response activity work plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by SMDA must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Any work plan modifications or

any new work plans shall be developed in accordance with the applicable requirements of this Section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XIII (Submissions and Approvals).

(b) Upon receipt of the MDEQ's approval, SMDA shall perform the response activities specified in a modified response activity work plan or a new work plan in accordance with the MDEQ-approved implementation schedules.

6.12 Public Notice and Public Meeting Requirements Under Section 20120d of the NREPA

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

6.13 Voidance and Nullification of the MDEQ's Approval of a RAP

(a) If SMDA chooses to perform a RAP that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and SMDA allows a lapse of, or does not comply with, the provisions of Section 20120b(3) of the NREPA as provided for in this Decree or an MDEQ-approved RAP or other requirements specified below, the MDEQ's approval of the RAP is void from the time of the lapse or violation until the lapse or violation is corrected in accordance with Paragraph 6.13(d) and to the satisfaction of the MDEQ. Provisions and requirements addressed by this Paragraph include:

(i) Required land use or resource use restrictions, including, but not limited to, the following:

(1) A court of competent jurisdiction determines that a land use or resource use restriction is unlawful;

(2) A land use or resource use restriction is not filed or enacted in accordance with this Decree or the MDEQ-approved RAP;

(3) A land use or resource use restriction is violated or is not enforced by the controlling entity; or

(4) A land or resource use restriction expires or is modified or revoked without MDEQ approval.

(ii) Compliance with GSI criteria.

(iii) Monitoring.

(iv) Operation and maintenance.

(v) Permanent markers.

(vi) Financial assurance.

(b) The MDEQ's approval of the RAP shall be nullified until the lapse or violation is corrected to the satisfaction of the MDEQ if any of the following occur:

(i) If unknown conditions that existed at the Facility when the RAP was approved are later discovered and such conditions result in the remedial action no longer being protective of the public health, safety, or welfare, or the environment;

(ii) Failure of the remedial action or response activity to comply with the applicable cleanup criteria and conditions, including the MDEQ-approved RAP performance standards, or this Decree; or

(iii) The MDEQ determines that the RAP is not effective or reliable because the remedial action or response activity repeatedly fails, notwithstanding repeated cures within ninety (90) days of discovery of the failure by either SMDA or the MDEQ.

(c) Within thirty (30) days of SMDA becoming aware of a lapse or violation under Paragraph 6.13(a) or (b), SMDA shall provide to the MDEQ a written notification of such lapse or violation. This notification shall include a description of the nature of the lapse or violation, an evaluation of the impact or potential impact of the lapse or violation on the effectiveness and integrity of the RAP, and one of the following:

(i) If SMDA has corrected the lapse or violation, a written demonstration of how and when SMDA corrected the lapse or violation.

(ii) If SMDA has not yet corrected the lapse or violation, a work plan and implementation schedule for addressing the lapse or violation.

(iii) If SMDA believes it will not be able to correct the lapse or violation without modifying the MDEQ-approved RAP, an action plan and implementation schedule outlining the response activities SMDA will take to comply with Part 201 to assure that the Facility does not pose a threat to public health, safety, or welfare, or the environment. The action plan and implementation schedule identified in Paragraph 6.13(c)(iii) shall provide for the development of any response activity work plans and associated implementation schedules that are necessary to assure protection of public health, safety, and welfare, and the environment, including work plans for IRA, a RI to provide additional information to support the selection and approval of an alternate RAP, and an approvable alternate RAP that meets the performance objectives specified in Paragraph 6.1 and that complies with Part 201. SMDA shall develop those response activity work plans pursuant to the requirements specified in this Decree and shall submit those plans in accordance with the schedule established in an MDEQ-approved action plan. The MDEQ will review and approve any plans submitted pursuant to this Section in accordance with the procedures set forth in Section XIII (Submissions and Approvals). Upon

receipt of the MDEQ's approval, SMDA shall perform the response activities in accordance with the MDEQ-approved work plans.

(d) If SMDA does not comply with all of the requirements of Paragraph 6.13(c), or does not comply with the provisions of Section XIII (Submissions and Approvals), and independent of the statutory consequences of nullification of the MDEQ's approval of a RAP pursuant to Part 201, stipulated penalties as specified in Paragraph 16.2 shall begin to accrue the day the lapse or violation under Paragraph 6.13(a) or (b) occurred and continue to accrue until the lapse or violation is corrected to the satisfaction of the MDEQ.

(e) The provisions in Sections 6.13(a)-(b) are not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

6.14 Progress Reports

(a) SMDA shall provide to the MDEQ Project Coordinator and the designated representatives of Current Landowner Defendants and Intervenor written progress reports regarding response activities and other matters at the Facility related to the implementation of this Decree. These progress reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Decree during the specified reporting period.

(ii) All results of sampling and tests and other data received by SMDA, its employees or authorized representatives, during the specified reporting period that relates to the response activities performed pursuant to this Decree.

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how SMDA proposes to resolve those issues and the schedule for resolving the issues.

(iv) A description of the nature and amount of waste materials that were generated and the name and location of the facilities that were used for the off-site transfer, storage, treatment, or disposal of those waste materials.

(v) A description of data collection and other activities scheduled for the next reporting period.

(vi) Any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Decree.

(b) The first progress report shall be submitted to the MDEQ within sixty (60) days following the Effective Date of this Decree. Thereafter, progress reports shall be submitted by the fifteenth (15th) of each month thereafter unless otherwise specified in the MDEQ-approved work plans. Pursuant to Paragraph 6.11, either the MDEQ may modify or SMDA may request modification of the schedule for submittal of progress reports contained in an MDEQ-approved work plan.

6.15 The MDEQ's Performance of Response Activities

If SMDA ceases to perform the response activities required by this Decree, is not performing response activities in accordance with this Decree, or is performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to SMDA, take over the performance of those response activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section IX (Emergency Response). If the MDEQ finds it necessary to take over the performance of response activities that SMDA is obligated to perform under this Decree and lawfully incurs response activity costs in performing those activities SMDA shall reimburse the State such costs plus accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph shall be considered to be "Future Response Activity Costs" and SMDA shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 14.2, 14.4, and 14.5 of Section XIV (Payments and Reimbursement of Costs).

6.16 Member Cities

The Member Cities shall provide to SMDA whatever funds are necessary so that SMDA is able to fully carry out SMDA's obligations under this Decree and to amend the SMDA's

Articles of Incorporation, if necessary, so that SMDA is able to fully carry out SMDA's obligations under this Decree.

6.17 Notification to Current Landowner Defendants and Intervenor

(a) SMDA shall provide a complete copy of each submission required by this Decree to each Current Landowner and Intervenor whose property is the subject matter of the submission. Submissions include, but are not limited to, the following:

All work plans

Interim Response Activity Report

Emergency Response Plan for a confirmed exceedance of the prescribed methane limit

Ground Water Surface Water Interface Report

Remedial Investigation Report

Remedial Action Plan

Health and Safety Plan

Notices and reports pursuant to Paragraphs 9.1 and 9.2 (Emergency Response)

Notices of dispute and requests for review pursuant to Section XVII (Dispute Resolution)

(b) MDEQ shall provide to each Current Landowner Defendant and Intervenor whose property is the subject matter of a submission, copies of all approvals, approvals with conditions, rejections, denials, or disapprovals of such submission and copies of any written request for modification of a submission pursuant to Paragraph 23.1 and its approval if given. MDEQ shall provide to each Current Landowner Defendant and Intervenor whose property is the subject of enforcement action, notice of violation or dispute resolution under this Decree, a copy of all notices of violations, written demands for compliance, pleadings, dispute resolution documents, or the like which are sent to SMDA.

VII. ACCESS

7.1 Upon the Effective Date of this Decree, Current Landowner Defendants and the Intervenor shall allow both SMDA and MDEQ and their authorized employees, agents, representatives, contractors, and consultants to enter the Facility and any associated property areas at all reasonable times to the extent access to the Facility and any associated properties are owned, controlled by, or available to each Current Landowner Defendant or the Intervenor. Upon presentation of proper credentials and upon making a reasonable effort to contact the Current Landowner Defendant or Intervenor, as applicable, SMDA and MDEQ and their authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and associated property areas for the purpose of conducting any activity to which access is required for the implementation of this Decree or to otherwise fulfill any responsibility under federal or State laws with respect to the Facility, including, but not limited to, the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Decree at the Facility;
- (b) verifying any data or information submitted to the MDEQ;
- (c) assessing the need for, or planning, or conducting investigations relating to the Facility;
- (d) obtaining samples;
- (e) assessing the need for, or planning, or conducting, response activities at or near the Facility;
- (f) assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a remedial action;
- (g) inspecting and copying non-privileged records, operating logs, contracts, or other documents;
- (h) communicating with Defendants' Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Decree;

(i) determining whether the Facility or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Decree; and

(j) assuring the protection of public health, safety, and welfare and the environment.

With respect to associated property owned or controlled by Current Landowner Defendants and Intervenor outside the Facility, the Party seeking access under this Paragraph shall be limited to use of the minimum area of the property needed to perform its obligation or responsibility.

7.2 To the extent that the Facility, or any other property where the response activities are to be performed by SMDA under this Decree, is owned or controlled by persons other than Defendants, SMDA shall use its best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. SMDA shall provide the MDEQ, Current Landowner Defendants, and Intervenor with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, SMDA shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after SMDA's receipt of the MDEQ's approval of the work plan for which such access is needed. If SMDA has not been able to obtain access within sixty (60) days after filing judicial action, SMDA shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section X (Delays in Performance, Violations, and *Force Majeure*). Any failure by SMDA to make best efforts to secure access or petition the court within one (1) year of having reason to believe that access to a non-Party's property is necessary to comply with this Decree subjects SMDA to stipulated penalties pursuant to Paragraph 16.3 of Section XVI (Stipulated Penalties).

7.3 Any lease, purchase, contract, or other agreement entered into by a Current Landowner Defendant or Intervenor that transfers to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the SMDA and MDEQ or any other person undertaking the response activities, and their authorized representatives, the access provided under this Section and Section XI (Record Retention/Access to Information).

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

VIII. SAMPLING AND ANALYSIS

8.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the QAPP specified in Paragraph 6.3 and the MDEQ-approved work plans.

8.2 Any Defendant, or its consultants or subcontractors, shall provide the MDEQ ten (10) days' notice prior to any sampling activity to be conducted pursuant to this Decree to allow the MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10) days' notice is not possible, the Defendant, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the MDEQ Project Coordinator and explain why earlier notification was not possible. If the MDEQ Project Coordinator concurs with the explanation provided, the Defendant may forego the ten (10)-day notification period for that particular sampling event.

8.3 SMDA shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Decree, Parts 201, 211, or 213 of the NREPA, or other relevant authorities. These results shall be included in the progress reports set forth in Paragraph 6.14.

8.4 For the purpose of quality assurance monitoring, Defendants shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory used by that Defendant in implementing this Decree.

IX. EMERGENCY RESPONSE

9.1 If during the pendency of this Decree, or in the course of SMDA performing response activities conducted pursuant to this Decree, an act or the occurrence of an event causes a release or threat of release of a hazardous substance at or from the Facility, or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare or the environment, SMDA shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat of release, or exacerbation; and shall immediately notify the MDEQ Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, SMDA shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendants shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP referenced in Paragraph 6.4.

9.2 Within ten (10) days of notifying the MDEQ of such an act or event, SMDA shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether SMDA notifies the MDEQ under this Section, if an act or event causes a release, threat of release, or exacerbation, the MDEQ may: (a) require SMDA to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require SMDA to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

X. DELAYS IN PERFORMANCE, VIOLATIONS, AND *FORCE MAJEURE*

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

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

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

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

(2) The specific obligations of this Decree that may be or have been affected by a delay in performance or violation.

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

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

(5) Whether SMDA is requesting an extension for the performance of any of its obligations under this Decree and, if so, the specific obligations for which they are seeking such an extension, the length of the requested extension, and their rationale for needing the extension.

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

10.2 For the purposes of this Decree, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of SMDA, of any person

controlled by SMDA, or of SMDA's contractors, that delays or prevents the performance of any obligation under this Decree despite SMDA's "best efforts to fulfill the obligation." The requirement that SMDA exercise "best efforts to fulfill the obligation" includes SMDA using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that SMDA minimize any delays in the performance of any obligation under this Decree to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes, or failure to obtain a permit or license as a result of SMDA's acts or omissions.

10.3 SMDA shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." SMDA shall not be deemed to be in violation of this Decree if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to Paragraph 10.4(a) or if SMDA's position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If SMDA otherwise fails to comply with or violates any requirement of this Decree and such noncompliance or violation is not attributable to a *Force Majeure* event, SMDA shall be subject to the stipulated penalties set forth in Section XVI (Stipulated Penalties).

10.4 The State will provide written approval, approval with modifications, or disapproval of SMDA's written notification under Paragraph 10.1 and will notify SMDA as follows:

(a) If the State agrees with SMDA's assertion that a delay or potential delay in performance is attributable to a *Force Majeure* event, the MDEQ's written approval or approval with modifications, will include the length of the extension, if any, for the performance of specific obligations under this Decree that are affected by the *Force Majeure* event and for which SMDA is seeking an extension, and any modification to the plan of action submitted pursuant to Paragraph 10.1. An extension of the schedule for performance of a specific obligation affected

by a *Force Majeure* event shall not, by itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with SMDA's assertion that a delay or anticipated delay in performance has been or will be caused by a *Force Majeure* event, the State will notify SMDA of its decision. If SMDA disagrees with the State's decision, SMDA may initiate the dispute resolution process specified in Section XVII (Dispute Resolution) of this Decree. In any such proceeding, SMDA shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay or anticipated delay in performance has been or will be caused by a *Force Majeure* event; (ii) the duration of the delay or of any extension sought by SMDA was or will be warranted under the circumstances; (iii) SMDA exercised its best efforts to fulfill the obligation; and (iv) SMDA has complied with all requirements of this Section.

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

10.5 This Decree shall be modified as set forth in Section XXIII (Modifications) to reflect any modifications to the implementation schedule in the applicable response activity work plan that are made pursuant to Paragraph 10.4 or that are made pursuant to the resolution of a dispute between the Parties under Section XVII (Dispute Resolution).

10.6 SMDA's failure to comply with the applicable notice requirements of Paragraph 10.1 shall render this Section void and of no force and effect with respect to an assertion of *Force Majeure* by SMDA; however, the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to SMDA of any such waiver.

10.7 SMDA's failure to notify the MDEQ as required by Paragraph 10.1 constitutes an independent violation of this Decree and shall subject SMDA to stipulated penalties as set forth in Section XVI (Stipulated Penalties).

XI. RECORD RETENTION/ACCESS TO INFORMATION

11.1 SMDA shall preserve and retain, during the pendency of this Decree and for a period of ten (10) years after completion of operation and maintenance and long-term monitoring at the Facility, all records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances and the storage, generation, disposal, treatment and handling of hazardous substances at the Facility, and any other records that are maintained or generated pursuant to any requirement of this Decree, including records that are maintained or generated by representatives, consultants, or contractors of SMDA. However, if SMDA chooses to perform a remedial action from an MDEQ-approved RAP that relies on the cleanup criteria established under Section 20120a(1)(f)-(j) or (2) of the NREPA, and further defined in the Part 201 Rules, and the RAP provides for land use or resource use restrictions, SMDA shall retain any records pertaining to these land use or resource use restrictions in perpetuity. After the ten (10)-year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, SMDA may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, SMDA may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period of time, or SMDA may offer to relinquish custody of all documents to the MDEQ. In any event, SMDA shall obtain the MDEQ's written permission prior to the destruction of any documents. SMDA's request shall be accompanied by a copy of this Decree and sent to the address listed in Section XII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

11.2 Upon request, SMDA shall provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of response activities or other

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

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

XII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

12.1 MDEQ, SMDA, the Current Landowner Defendants, and the Intervenor shall each designate one (1) or more Project Coordinators. Whenever notices are required to be given or progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one (1) Party to the other Party under this Decree, or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Coordinator at the address listed below. If any Party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to all other Parties, in writing, as soon as practicable.

A. As to MDEQ:

(1) For all matters pertaining to this Decree, except those specified in Paragraphs 12.1 A.(2), (3) and (4) below:

Ernest Ndukwe, Project Coordinator
Southeast Michigan District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
27700 Donald Court
Warren, MI 48092-2793
Telephone: 586-753-3700

This Project Coordinator will have primary responsibility for overseeing the performance of response activities at the Facility and other requirements specified in this Decree for the MDEQ.

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

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

Via Courier
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the RRD shall also be provided to the MDEQ Project Coordinator designated in Paragraph 12.1A(1).

(3) For providing a true copy of a recorded NAER, a restrictive covenant, documentation that an institutional control has been enacted pursuant to Section VI (Performance of Response Activities), and for property ownership or control transactions pursuant to Paragraph 15.2(c); for Record Retention pursuant to Section XI (Record Retention/Access to Information); and for questions concerning financial matters pursuant to Section VI (Performance of Response Activities), including financial assurance mechanisms associated with a RAP, Section XIV (Payments and Reimbursement of Costs), and Section XVI (Stipulated Penalties):

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: (517) 373-7818
Fax: (51) 373-2637

Via Courier
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, RRD, shall also be provided to the MDEQ Project Coordinator designated in Paragraph 12.1A(1).

(4) For all payments pursuant to Section XIV (Reimbursement of Costs) and Section XVI (Stipulated Penalties):

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

Via Courier:
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933

To ensure proper credit, all payments made pursuant to this Decree must reference the Red Run Drain Facility, the Court Case No. Macomb County Circuit 95-0150-CE, and the RRD Account Number RRD 2184. A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 12.1A(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 12.1A(3), and the Assistant Attorney General in Charge designated in Paragraph 12.1B.

B. As to the Department of Attorney General:

Assistant Attorney General in Charge
Environment, Natural Resources, and Agriculture Division
Department of Attorney General
6th Floor, G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48933
Telephone: (517) 373-7540
Fax: (517) 373-1610

C. As to SMDA:

Tim Donnellon
5191 Natorp Boulevard
Mason, OH 45040
Telephone: (513) 229-8860
Fax: (513) 229-7195

With a Copy to:
Chair of the Board
South Macomb Disposal Authority
20001 Pleasant Street
St. Clair Shores, MI 48080
Telephone: (586) 777-1284

D. As to Defendant HCMA:

Gary C. Bartsch, CEO
Huron-Clinton Metropolitan
1300 High Ridge Drive
Brighton, MI 48114-9058
Telephone: (810) 227-2757
Fax: (810) 225-6212

E. As to Defendant Macomb County:

George Brumbaugh
Macomb County Corporation Counsel
One South Main, 8th Floor
Mt. Clemens, MI 48043
Telephone: (586) 469-6346
Fax: (586) 307-8286

F. As to Defendant Archdiocese of Detroit:

C. Mary Carlisle
Director of Properties
Department of Finance and Administration
1234 Washington Boulevard, 3rd Floor
Detroit, MI 48226-1825
Telephone: (313) 237-5820
Fax: (313) 237-5791

With a Copy to:

R. Craig Hupp
Bodman, Longley & Dahling, LLP
100 Renaissance Center, 34th Floor
Detroit, MI 48243
Telephone: (313) 393-7599
Fax: (313) 393-7579

G. As to Defendant Consumers Energy Company:

David A. Olsen, P.E., Sr. Engineer
Consumers Energy Company
1945 West Parnall Road
Jackson, MI 49201
Telephone: (517) 788-2980
Fax: (517) 788-1068

H. As to Defendant City of Sterling Heights:

Jeffrey A. Bahorski
O'Reilly Rancillio PC
12900 Hall Road, Suite 350
Sterling Heights, MI 48313-1151
Telephone: (586) 726-1000
Fax: (586) 726-1560

I. As to Intervenor Hillside Productions, Inc.:

Cindy R. Victor
The Victor Firm
45172 Cass Avenue
Utica, MI 48317-5507
Telephone: (586) 254-3490
Fax: (586) 254-3579

12.2 SMDA's Project Coordinator shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Decree for Defendants.

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

XIII. SUBMISSIONS AND APPROVALS

13.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and shall be delivered to the MDEQ in accordance with the schedule set forth in this Decree. All Submissions delivered to the MDEQ pursuant to this Decree shall include a reference to the Red Run Drain (Freedom Hill and Fostoria Landfills) Facility – and the Court Case Number Macomb County Circuit Court No. 95-0150-CE. All Submissions delivered to the MDEQ for approval shall also be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document that has not received approval from the Michigan Department of Environmental Quality (MDEQ). This document was prepared pursuant to a court order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

13.2 With the exception of the submittal of a RAP, after receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Decree, the MDEQ District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify SMDA of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, SMDA shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Approved."

13.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 13.2(c), SMDA shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, SMDA shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period for SMDA to provide the revised Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 13.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise SMDA and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until SMDA delivers an approvable Submission.

13.4 Within six (6) months of receipt of a RAP, the RRD Division Chief will make a decision regarding the RAP and will in writing: (a) approve the RAP; (b) reject the RAP as insufficient if the RAP lacks any information necessary or required by the MDEQ to make a decision regarding RAP approval; or (c) deny approval of the RAP. The time period for a decision regarding the submitted RAP may be extended by the mutual consent of SMDA and the MDEQ. Upon receipt of a notice of approval from the MDEQ, SMDA shall proceed to take the actions and perform the response activities required by the MDEQ-approved RAP and shall submit a new cover page marked "Approved."

13.5 Within sixty (60) days of receipt of a rejection or denial of approval of a RAP from the MDEQ pursuant to Paragraph 13.4(b) or (c), SMDA shall submit the revised RAP to the MDEQ for review and approval. The time period for resubmission may be extended by the MDEQ. If the MDEQ does not approve the RAP upon resubmission, the MDEQ will so advise SMDA. Any stipulated penalties applicable to the delivery of the RAP shall accrue during the thirty (30)-day period or other time period for SMDA to submit another RAP, but shall not be payable unless the revised RAP is also rejected or approval is denied. The MDEQ will review

the revised RAP in accordance with the procedure stated in Paragraph 13.4. If the MDEQ rejects or denies a revised RAP, the MDEQ will so advise SMDA and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original RAP Submission and continue to accrue until SMDA delivers an approvable RAP.

13.6 If any initial Submission, including a RAP, contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by SMDA to deliver an acceptable Submission that complies with Part 201 and this Decree, the MDEQ will notify SMDA of such and will deem SMDA to be in violation of this Decree. Stipulated penalties, as set forth in Section XVI (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to the MDEQ. Any other delay in the delivery of a Submission, noncompliance with a Submission or attachment to this Decree; or failure to cure a deficiency of a Submission in accordance with Paragraph 13.3 or 13.5, shall subject SMDA to penalties pursuant to Section XVI (Stipulated Penalties) or other remedies available to the State pursuant to this Decree.

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

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

13.9 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by SMDA shall not be construed as relieving SMDA of its obligation to obtain any formal approval required under this Decree.

XIV. PAYMENTS AND REIMBURSEMENT OF COSTS

14.1 Within thirty (30) days of the Effective Date of this Decree, SMDA shall pay the MDEQ one million seven hundred thirty-two thousand six hundred fourteen dollars (\$1,732,614.00) to resolve all State claims for Past Response Activity Costs relating to matters covered in this Decree. Payment shall be made pursuant to the provisions of Paragraph 14.5.

14.2 SMDA shall reimburse the State for all Future Response Activity Costs lawfully incurred by the State. As soon as possible after each anniversary of the Effective Date of this Decree, the MDEQ will provide SMDA with a written demand for payment of Future Response Activity Costs that have been lawfully incurred by the State. Any such demand will set forth, with reasonable specificity, the nature of the costs incurred. Except as provided by Section XVII (Dispute Resolution), SMDA shall reimburse the MDEQ for such costs within sixty (60) days of SMDA's receipt of a written demand from the MDEQ.

14.3 SMDA shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to SMDA may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

14.4 SMDA's payments made pursuant to this Decree shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 12.1A(4) of Section XII (Project Coordinators and Communications/Notices). The Red Run Drain Facility, the Macomb Circuit Court Case No. 95-0150-CE, and the RRD Account Number RRD 2184 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 12.1A(1), the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph

12.1A(3), and the Assistant Attorney General in Charge at the address listed in Paragraph 12.1B. Costs recovered pursuant to this Section, payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties), shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

14.5 If SMDA fails to make full payment to the MDEQ for Past Response Activity Costs pursuant to Paragraph 14.1 or Future Response Activity Costs pursuant to Paragraph 14.2, interest at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which SMDA makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by SMDA to a MDEQ demand for reimbursement of costs, SMDA shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126a(1)(a) of the NREPA.

14.6 Within thirty (30) days of the Effective Date, the Current and Former Landowner Defendants shall pay the amounts specified in **Attachment C**.

14.7 Current and Former Landowner Defendants' payments are to be made by certified check payable to South Macomb Disposal Authority and sent to SMDA's designated representative:

Ted Wahby
South Macomb Disposal Authority
20001 Pleasant Street
St. Clair Shores, MI 48080
Telephone: (586) 777-1284

To ensure proper credit, payments made pursuant to this Consent Decree must be made by check referencing the Red Run Drain Facility name and Macomb County Circuit Court File Number 95-0150 CE with copies of the checks and transmittal letters sent to the Project Coordinators designated in Paragraphs 12.1A.(1), 12.1A.(3), and 12.1B. Within five (5) days following receipt of payment from a Current or Former Landowner Defendant, SMDA shall submit a notice in writing to the MDEQ and that Current or Former Landowner Defendant informing the MDEQ

that it has received payment. If SMDA fails to provide such notice, the Current or Former Landowner Defendant shall have the right to provide MDEQ with alternative proof of actual payment made to SMDA. Either this notice or some alternative proof acceptable to MDEQ shall be provided to the MDEQ, to serve as proof of satisfaction of the paying Current or Former Landowner Defendant's payment obligations under this Decree.

14.8 If any Current or Former Landowner Defendant fails to pay or make full payment to SMDA as specified in Paragraphs 14.6 and 14.7, interest shall begin to accrue on the unpaid balance at the rate specified in Section 20126a(3) of the NREPA on the day after payment was due until the date upon which the Current or Former Landowner Defendant makes full payment of those costs and the accrued interest to SMDA.

14.9 As part of the consideration for settlement of the Plaintiffs' claims in this matter, Defendants Archdiocese of Detroit (Archdiocese), City of Sterling Heights (City), and Consumers Energy Company has each agreed to pay the cost, estimated at forty thousand dollars (\$40,000.00), eight thousand five hundred dollars (\$8,500.00), and (fourteen thousand) \$14,000, respectively, for installing a fence (including site clearing along the fence line) in order to limit access to a portion of the Fostoria Landfill Site where the MDEQ is implementing interim response activities to address releases or threatened releases of methane gas from the Facility. Within thirty (30) days of the Effective Date of this Decree, the Archdiocese and City and Consumers shall provide to the MDEQ and SMDA, at the addresses specified in Paragraphs 12.1A(1) and 12.1C, respectively, written documentation that the site clearing and fencing has been completed and the amount paid which shall include copies of receipts for amounts paid for that activity. To the extent that the actual cost of fence installation is less than the previously estimated cost, the Defendants Archdiocese, City of Sterling Heights, or Consumers Energy, as applicable, shall pay to SMDA the difference in cost between the estimated and actual cost of fence installation pursuant to Paragraph 14.7.

XV. RESPONSIBILITIES OF CURRENT LANDOWNER DEFENDANTS
AND INTERVENOR

15.1 This Section of the Decree applies only to the Current Landowner Defendants and Intervenor. The Current Landowner Defendants as of the Effective Date include: the Archdiocese of Detroit, City of Sterling Heights, Consumers Energy Company, Huron-Clinton Metropolitan Authority, and Macomb County. The Intervenor is Hillside Productions, Inc.

15.2 Each Current Landowner Defendant and the Intervenor:

- (a) expressly acknowledges that the presumptive remedial action for the Facility:
 - (i) includes the containment of existing landfill wastes and hazardous substances in place; and
 - (ii) may require the implementation of specific deed restrictions, institutional controls, land use restrictions or zoning restrictions on the portions of its property that is part of the Facility as authorized and required by Part 201 and the Part 201 rules.
- (b) agrees while it owns or controls any portion of the Facility to timely consider, review, and not unreasonably withhold its consent to the implementation of such deed restrictions, institutional controls, land use restrictions on the portion of its property that is part of the Facility that are consistent with the presumptive remedial action specified in Paragraph 15.2(a) and the requirements of Part 201 and the Part 201 Rules, provided, however, that in the case of Consumers Energy Company, to the extent possible the response activities and land use restrictions shall not be inconsistent with the repair, relocation, replacement or continued operation of the present and any future natural gas pipeline which Consumers Energy had or may have on the property or future maintenance, operation, repair and upgrading of the same; and that is not a term of this Decree that the costs of relocation of the pipeline are imposed on Consumers Energy Company in the event such relocation is a required element of the response activities approved for the Facility.
- (c) agrees that any instrument transferring ownership or control of its property at the Facility shall contain a provision for binding all subsequent transferees to the commitments in Paragraphs 15.2, 15.3, and 15.4.

15.3 Each Current Landowner Defendant and the Intervenor:

(a) agrees to provide the MDEQ, its agents, or designees, and any persons implementing MDEQ-approved response activities (including SMDA or its agents) with an easement or an irrevocable agreement providing access to perform response activities on its property at the Facility, which easement or point of access, to the extent relevant, shall be so located as to minimize interference with the Current Landowner Defendant's or Intervenor's present or future use of its property; and the Archdiocese further agrees to provide the MDEQ, its agents or designees, and any persons implementing MDEQ-approved response activities such an irrevocable agreement over that part of its property that is outside the Facility as is necessary to provide access to the Fostoria Landfill if no other suitable access can be obtained; and

(b) agrees that any instrument transferring ownership or control of its property at the Facility shall contain a provision for establishing or maintaining the instrument providing the rights of access described in Paragraph 15.3(a).

15.4 Each Current Landowner Defendant and the Intervenor shall retain, to the extent required by law, its due care obligations under MCL 324.20107a(1) with respect to any portion of the Facility it continues to own or operate, provided, however, except to the extent expressly set forth in this Decree, such obligations shall not include any response activities, including, without limitation, the construction, operation, and maintenance of landfill cover(s), leachate collection systems, groundwater remediation, and methane control systems.

XVI. STIPULATED PENALTIES

16.1 SMDA shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 for failure to comply with the requirements of this Decree, unless excused under Section X (Delays in Performance, Violations, and *Force Majeure*). "Failure to Comply" by SMDA shall include failure to complete Submissions and notifications as required by this Decree, failure to perform response activities in accordance with MDEQ-approved plans and this Decree, and failure to pay response activity costs and penalties in accordance with all applicable requirements of law and this Decree within the specified implementation schedules established by or approved under this Decree.

16.2 The following stipulated penalties shall accrue per violation per day for any violation by SMDA of Section VI (Performance of Response Activities), Section IX (Emergency Response), Section X (Delays in Performance, Violations, and *Force Majeure*), and Section XIII (Submissions and Approvals).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1 st through 14 th day
\$ 1,500	15 th through 30 th day
\$ 3,750	31 st day and beyond

16.3 Except as provided in Paragraph 16.2 and Section X (Delays in Performance, Violations, and *Force Majeure*) and Section XVII (Dispute Resolution), if SMDA fails or refuses to comply with any other term or condition of this Decree, SMDA shall pay the MDEQ stipulated penalties of:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 187	1 st through 14 th day
\$ 375	15 th through 30 th day
\$ 1,125	31 st day and beyond

a day for each and every failure or refusal to comply.

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

16.5 Except as provided in Section XVII (Dispute Resolution), SMDA shall pay stipulated penalties owed to the State no later than thirty (30) days after SMDA's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 14.5 of Section XIV (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which SMDA makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties

within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Decree.

16.6 The payment of stipulated penalties shall not alter in any way SMDA's obligation to perform the response activities required by this Decree.

16.7 If SMDA fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if SMDA violates this Decree. For any failure or refusal by SMDA to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law, including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to Section 20119(4) of the NREPA in the amount of three (3) times the costs incurred by the State as a result of SMDA's violation of or failure to comply with this Decree, and sanctions for contempt of court.

16.9 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Decree.

XVII. DISPUTE RESOLUTION

17.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree, except for Paragraph 6.13(a)-(b) (Voidance and Nullification of the MDEQ's Approval of a RAP) of Section VI (Performance of Response Activities) and Section IX (Emergency Response), which are not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendants' or Intervenor's obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution under this Section shall not be cause for Defendants to delay the performance of any

response activity required under this Decree, unless the dispute directly involves the response activity and the Defendants submit a schedule modification request and the MDEQ approves it pursuant to Section XXIII (Modifications).

17.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Defendants and Intervenor provide to the State under Paragraphs 17.3 through 17.5 and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 17.3 through 17.5. Defendants and Intervenor shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(5).

17.3 Except for undisputable matters identified in Paragraph 17.1 and disputes related to the RAP, any dispute that arises under this Decree with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of Section VI (Performance of Response Activities), Section VIII (Sampling and Analysis), Section X (Delays in Performance, Violations, and *Force Majeure*), Section XI (Record Retention/Access to Information), or Section XIII (Submissions and Approvals), shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ, the Defendants, and Intervenor, as applicable. A dispute shall be considered to have arisen on the date that a Party to this Decree receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The period of informal negotiations shall not exceed ten (10) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within ten (10) days, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Decision, in writing, to each other Party to the dispute. In the absence of initiation of formal dispute resolution by any disputing Party under Paragraph 17.4, the MDEQ's position as set forth in the MDEQ's Statement of Decision shall be binding on the Parties.

17.4 If any disputing Party and the MDEQ cannot informally resolve a dispute under Paragraph 17.3 or if the dispute involves a RAP, any disputing Party may initiate formal dispute resolution by submitting a written Request for Review to the RRD Division Chief, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of the disputing Party's receipt of the Statement of Decision issued by the MDEQ pursuant to Paragraph 17.3. If the dispute is in regards to a RAP, either Party may initiate formal dispute resolution by filing a Request for Review. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. When the MDEQ issues a Request for Review, the disputing Party will have twenty (20) days to submit a written rebuttal to the RRD Division Chief, with a copy to the MDEQ Project Coordinator. Within twenty (20) days of the RRD Division Chief's receipt of the disputing Party's Request for Review or Defendants' rebuttal, the RRD Division Chief will provide the MDEQ's Final Statement of Decision, in writing, to the disputing Party, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting her/his position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Division Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Final Statement of Decision shall be binding on the Parties.

17.5 If any Party seeks to challenge any decision or notice issued by the MDEQ or the State under Section VII (Access), Section XIV (Payments and Reimbursement of Costs), Section XVI (Stipulated Penalties), Section XVIII (Indemnification and Insurance), Section XIX (Covenants Not to Sue by Plaintiffs), or Section XX (Reservation of Rights by Plaintiffs), of this Decree, the disputing Party shall send a written Notice of Dispute to both the RRD Division Chief and the Assistant Attorney General assigned to this matter within ten (10) days of the disputing Party's receipt of the decision or notice from the MDEQ or the State. The Notice of Dispute shall include all relevant facts that provide the basis for the dispute; factual data, analysis, or opinion supporting its position; and supporting documentation upon which the

disputing Party bases its position. The Parties shall have fourteen (14) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If the Parties do not reach an agreement on any dispute within the fourteen (14)-day period, the State will thereafter issue, in writing, the State's Statement of Decision to the disputing Party, which shall be binding on the Parties.

17.6 The MDEQ's Final Statement of Decision or the State's Statement of Decision to the Parties pursuant to Paragraph 17.4 or 17.5, respectively, shall control unless, within twenty (20) days after the disputing Party's receipt of one of those Decisions, the disputing Party files with this Court a motion for resolution of the dispute. The motion shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) days of the disputing Party's filing of a motion asking the Court to resolve a dispute, Plaintiffs will file with the Court the administrative record that is maintained pursuant to Paragraph 17.2.

17.7 Any judicial review of the Final MDEQ Statement of Decision or the State's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are the subject of this Decree, the disputing Party shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the disputing Party shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent Plaintiffs from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

17.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of SMDA's failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that SMDA does not prevail on the disputed matters, the MDEQ may

demand payment of stipulated penalties and SMDA shall pay stipulated penalties as set forth in Paragraph 16.5 of Section XVI (Stipulated Penalties). SMDA shall not be assessed stipulated penalties for disputes that are resolved in its favor.

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

XVIII. INDEMNIFICATION AND INSURANCE

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

18.2 Each Work Defendant shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, any acts or omissions of that Work Defendant, its officers, employees, agents, or any other person acting on its behalf, or under its control, in performing the activities required by this Decree.

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

18.4 The State shall provide Work Defendants notice of any claim for which the State intends to seek indemnification pursuant to Paragraph 18.2 or 18.3.

18.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of Work Defendants for the performance of activities required by this Decree. Neither Work Defendants nor any contractor shall be considered an agent of the State.

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

18.7 Prior to commencing any response activities pursuant to this Decree and for the duration of this Decree, SMDA shall secure and maintain comprehensive general liability insurance with limits of two million dollars (\$2,000,000), combined single limit, which names the MDEQ and the State of Michigan as additional insured parties. If SMDA demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, SMDA needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by SMDA, and prior to the commencement of response activities pursuant to this Decree SMDA shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, and for the duration of this Decree, SMDA shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of SMDA in furtherance of this Decree.

XIX. COVENANTS NOT TO SUE BY PLAINTIFFS

19.1 In consideration of the actions that will be performed and the payments that will be made by Work Defendants under the terms of this Decree, and except as specifically provided for in this Section and Section XX (Reservation of Rights by Plaintiffs), the State of Michigan hereby covenants not to sue or to take further administrative action against Work Defendants for:

(a) Performance of response activities by any Party related to releases or threatened releases of hazardous substances that occurred at the Facility before the Effective Date of this Decree, provided the performance objectives of Paragraph 6.1 are being met.

(b) Reimbursement by Work Defendants of Past Response Activity Costs incurred by the State as set forth in Paragraphs 14.1 and 14.5 of Section XIV (Payments and Reimbursement of Costs) of this Decree.

(c) Reimbursement by Work Defendants of Future Response Activity Costs that are incurred by the State as set forth in Paragraphs 14.2, 14.3, and 14.6 of Section XIV (Reimbursement of Costs) of this Decree.

19.2 In consideration of the payments to be made by the Current Landowner Defendants and Former Landowner Defendants under the terms of this Consent Decree, except as specifically provided in this Section and Section XX (Reservation of Rights by Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against the Current Landowner and Former Landowner Defendants for Covered Matters. For purposes of this Decree, "Covered Matters" shall include any and all liability under state or federal law to the State of Michigan or any other Party for releases or threatened releases of hazardous substances that occurred at the Waste Disposal Area before the Effective Date, including performance of response activities, past and future response activity costs at the Facility for performance of response activities at the Facility, except to the extent that any Current Landowner Defendant or Former Landowner Defendant violates Section 20107a(1) of the NREPA and is responsible for exacerbation of existing contamination pursuant to Section 20107a(2) of the NREPA. This covenant not to sue shall take effect upon the receipt by SMDA of the payments required by Paragraphs 14.6, 14.7, and 14.8 and, if applicable, the verification required by Paragraph 14.9. This covenant not to sue

extends only to the Current Landowner Defendants and Former Landowner Defendants and does not extend to any other person.

19.3 The covenants not to sue pursuant to Paragraph 19.1 shall take effect under this Decree as follows:

(a) With respect to Work Defendants' liability for response activities related to releases or threatened releases of hazardous substances that occurred at the Facility before the Effective date of this Decree, the covenant not to sue shall take effect upon MDEQ's approval of the RAP submitted pursuant to Section VI (Performance of Response Activities).

(b) With respect to Work Defendants' liability for Past Response Activity Costs and Future Response Activity Costs incurred by the State and paid by Defendants, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

19.4 The covenants not to sue extend only to Defendants as specified above and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY PLAINTIFFS

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1 of Section XIX (Covenants Not to Sue by Plaintiffs) for Work Defendants and in Paragraph 19.2 of Section XIX (Covenants Not to Sue by Plaintiffs) for the Current Landowner and Former Landowner Defendants. These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in Paragraphs 19.1 and 19.2 of Section XIX (Covenants Not to Sue by Plaintiffs) until such time as these covenants become effective as set forth in Paragraphs 19.2 and 19.3, as applicable, of Section XIX (Covenants Not to Sue by Plaintiffs). The MDEQ and the Attorney General reserve the right to bring an action against Defendants under federal and state laws for any matters for which Defendants have not received a covenant not to sue as set forth in Section XIX (Covenants Not to Sue by Plaintiffs). The State reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Defendants with respect to all other matters, including, but not limited to, the following:

As to Work Defendants Only:

(a) The performance of response activities that are required to comply with Part 201 and to achieve and maintain the performance objectives specified in Paragraph 6.1 of Section VI (Performance of Response Activities).

As to All Defendants:

- (b) Response activity costs that any obligated Defendant has not paid.
- (c) The past, present or future treatment, handling, disposal, release or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility.
- (d) The past, present or future treatment, handling, disposal, release or threat of release of hazardous substances taken from the Facility.
- (e) Damages for injury to, destruction of, or loss of natural resources and the costs for any natural resource damage assessment.
- (f) Criminal acts.
- (g) Any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance) of this Decree.
- (h) The release or threatened release of hazardous substances or violations of federal or state law that occur during or after the performance of response activities required by this Decree, but only as to the Defendant(s) responsible for the release, threatened release, or violation.

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

20.3 The MDEQ and the Attorney General expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree or to compel Defendants to comply with the NREPA.

20.4 In addition to, and not as a limitation of any other provision of this Decree, the MDEQ retains all authority and reserves all of its rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

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

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

(a) Provide or be construed to provide a defense for Defendant's noncompliance with any such term, condition, or requirement of this Decree.

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

20.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by SMDA in accordance with the MDEQ-approved work plans required by this Decree will result in the achievement of the performance objectives stated in Paragraph 6.1 of Section VI (Performance of Response Activities) or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

20.8 Except as provided in Section XIX (Covenants Not to Sue by Plaintiffs), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

XXI. COVENANT NOT TO SUE BY DEFENDANTS

21.1 Except as provided in Section XVII (Dispute Resolution), Defendants hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

21.2 After the Effective Date of this Decree, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the Attorney General in such a proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by Plaintiffs).

XXII. CONTRIBUTION PROTECTION

22.1 Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9613(f)(2) (CERCLA or Superfund), 1980 PL 96-510, Defendants shall not be liable for claims for contribution for the matters addressed in this Decree, to the extent allowable by law.

22.2 For purposes of this Section, the "matters addressed" in this Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the State or any other person with respect to the Facility. The "matters addressed" in this Decree do not include those response costs or response actions as to which the State has reserved its rights

under this Decree, in the event that the State asserts rights against one or more Defendants coming within the scope of such reservations.

22.3 Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or the CERCLA, 42 USC 9607 and 9613. Pursuant to Section 20129(9) of the NREPA, any action by Defendants for contribution from any person that is not a Party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable federal or state law.

XXIII. MODIFICATIONS

23.1 The Parties may only modify this Decree according to the terms of this Section. The modification of any Submission required by this Decree, excluding a RAP, may be made only upon written approval from the MDEQ Project Coordinator. Any modifications to an MDEQ-approved RAP must be approved in writing by the RRD Division Chief or his or her authorized representative.

23.2 Modification of any other provision of this Decree shall be made only by written agreement of all the Parties affected by the modification, the RRD Division Chief or his or her authorized representative, and the designated representative of the Michigan Department of Attorney General, and shall be entered with the Court.

XXIV. PREVIOUS SETTLEMENT, PROPOSED CONSENT DECREE, AND APPELLATE PROCEEDINGS

This Decree constitutes the whole agreement of the Parties with respect to the subject of this litigation. Upon the entry of this Decree without objection by any Party, any previous settlement between the Current and Former Landowner Defendants and the State is void, the proposed Consent Decree Between Plaintiffs and Certain Defendants dated July 12, 2004, together with SMDA's Application for Leave to Appeal in Michigan Supreme Court Case Nos. 127639, 127640, 127641, 127642, and 127647 are withdrawn and dismissed with prejudice.

XXV. SEPARATE DOCUMENTS

The parties may execute this Decree in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IT IS SO AGREED BY:

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Attorney for Plaintiffs

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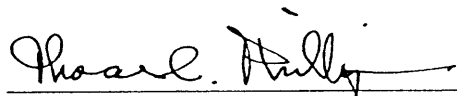
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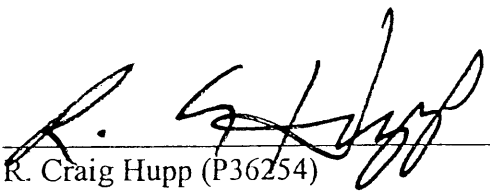
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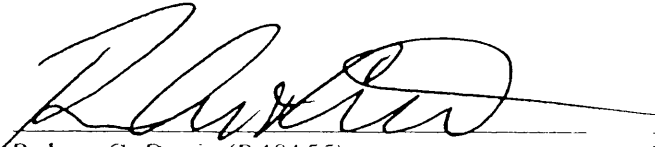
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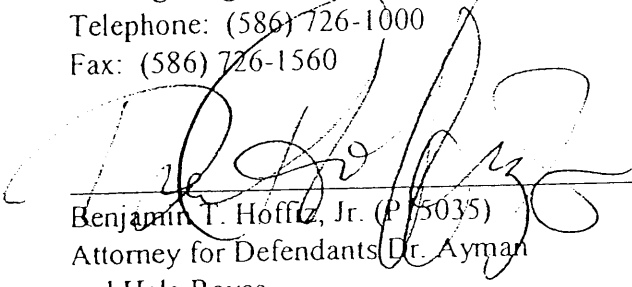
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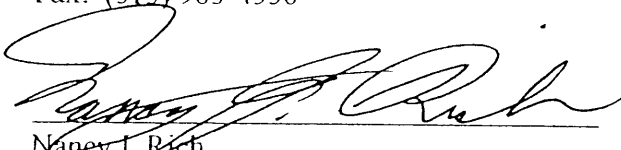
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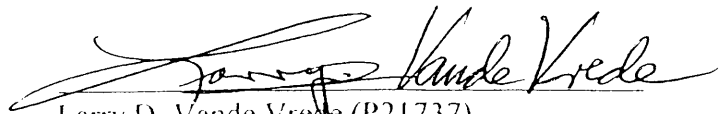
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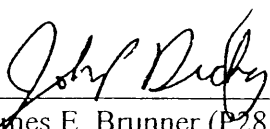
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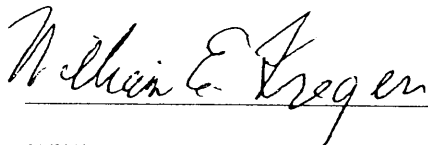
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IT IS SO AGREED THAT THE CONSENT DECREE IN *Michael A. Cox, Attorney General, ex rel Michigan Department Of Environmental Quality v Macomb County Parks and Recreation, et al.*, Macomb Circuit Court No. 95-150-CE, SHALL BE BINDING AGAINST THE HURON-CLINTON METROPOLITAN AUTHORITY BY:



William E. Kreger, Chairman
Board of Commissioners of the
Huron-Clinton Metropolitan Authority

Date

8/11/2005



Gregory J. Almas
Secretary to the Board of Commissioners of the
Huron-Clinton Metropolitan Authority

Date

8/11/2005

IT IS SO ORDERED, ADJUDGED, AND DECREED THIS _____ day of _____, 2005.

EDWARD A. SERVITTO
CIRCUIT JUDGE

AUG 29 2005

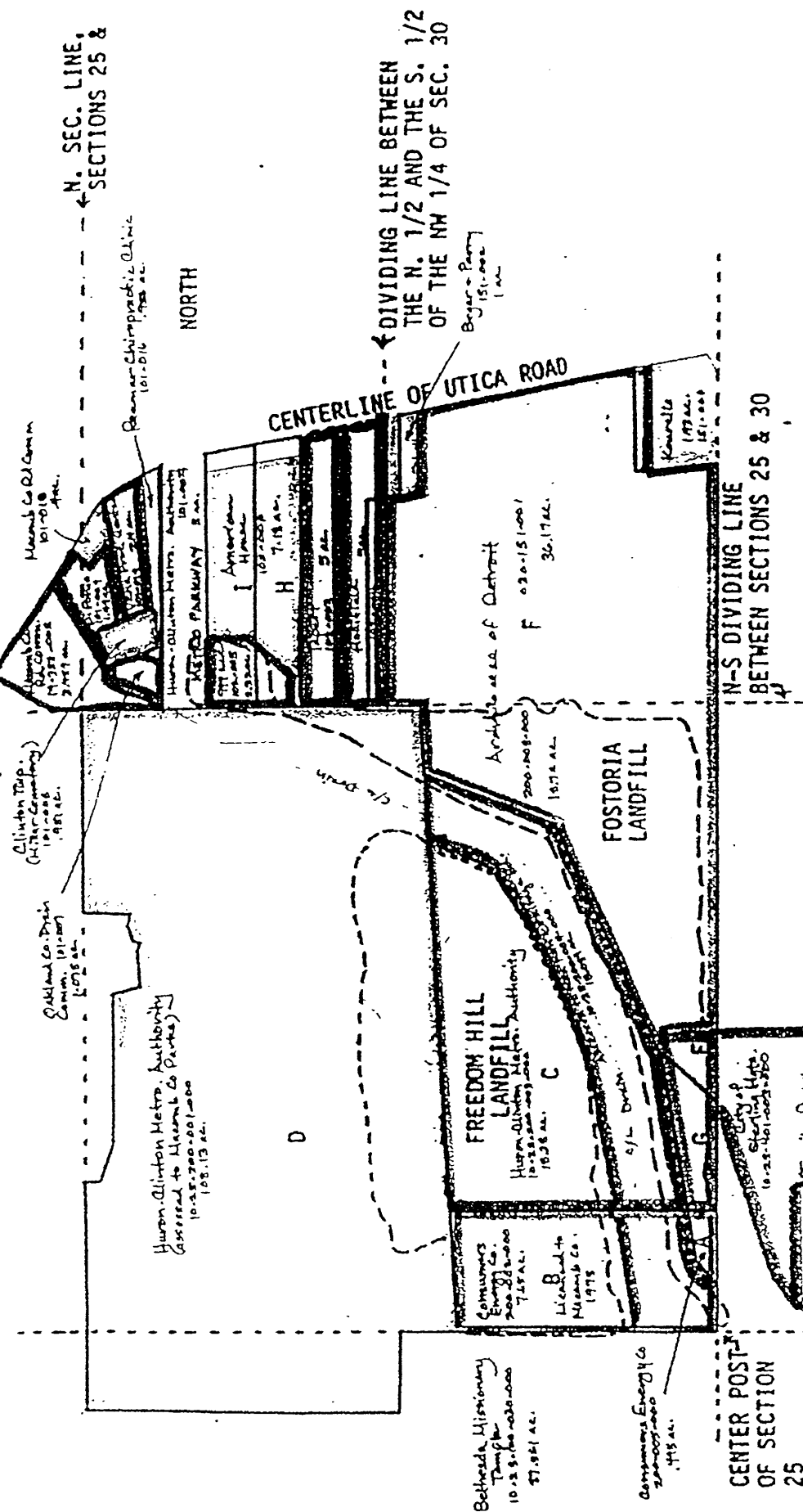
Honorable Edward A. Servitto, Jr.
A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: *K. Smith* Court Clerk

SMDA/1994006052/CD7.26.05 Final

ATTACHMENT A

RED RUN DRAIN FACILITY (FREEDOM HILL AND FOSTORIA LANDFILLS)



LEGEND

BOUNDARIES OF CLOSED LANDFILLS AS DETERMINED IN STUDY CONDUCTED BY E. C. JORDAN COMPANY

PARCEL BOUNDARIES

..... OR * BOUNDARIES OF LAND HELD BY THE DRAINAGE BOARD OF THE RED RUN DRAIN

ATTACHMENT B

NOTE: Except for the subparcels for Parcels H and I, all of the property parcel letter(s) and the property parcel description(s) contained in the this Attachment B are identical to and correspond to the parcel letter(s) and property parcel description(s) used for the Property in the attachments to the March 11, 1994 Notice of Demand for Payment and Response Activities letter sent by the Department of Environmental Quality [then the Department of Natural Resources] to parties then identified by DNR as legally responsible for the **Red Run Drain- Freedom Hill & Fostoria Facility**.

Property Parcel, Owner and/or Operator & Legal Property Description:

Parcels A and B - Consumers Power Company, Owner

The legal description [from Liber 1792, Page 35 as recorded at the Macomb County Register of Deeds] is as follows:

The W'ly 500 feet of the following described lands: A parcel of land in the NE 1/4 of Section 25, described as beginning at the center of said section; thence N 00° 11' W, 1074.8 feet to the South line of the Huron-Clinton Metropolitan Authority property; thence N 86° 50' 50" E along the South line of the Huron-Clinton Metropolitan Authority property, 2336.86 feet; thence S 20° 52' 40" W, 588.2 feet; thence S 65° 13' 10" W, 1059.34 feet; thence S 81° 20' W, 908.79 feet; thence S 38° 08' W, 97 feet; thence S 87° 10' 30" W, 212.31 feet to the place of beginning.

Parcel C - Huron Clinton Metropolitan Authority, Owner; leased to Macomb County Parks and Recreation

The legal description [from Liber 2330, Page 116 as recorded at the Macomb County Register of Deeds] is as follows:

A parcel of land located in and being a part of the Northeast 1/4, Section 25, Town 2 North, Range 12 East, Sterling Township, Macomb County, Michigan, and being more particularly described as follows: Commencing at a point 500.41 feet North 87 degrees 01 minutes East and 96.70 feet North 0 degrees 40 minutes 30 seconds West from the Center Post of the said Section 25 and thence extending North 0 degrees 40 minutes 30 seconds West 1005.05 feet; thence North 87 degrees 09 minutes 30 seconds East 1859.42 feet; thence South 21 degrees 11 minutes 20 seconds West 588.20 feet and South 65 degrees 11 minutes 20 seconds West 1059.34 feet and South 81 degrees 10 minutes 30 seconds West 679.17 feet along the Southeasterly sideline of the Red Run Drain easement to the point of beginning & containing 32.649 acres of land. (aka Parcel 54A)

Parcel D - Huron Clinton Metropolitan Authority, Owner; leased to Macomb County Parks and Recreation

The legal description [from Liber 895, Page 8 as recorded at the Macomb County Register of Deeds] is as follows:

Land in Section 25, Town 2 North, Range 12 East, Sterling Township, Macomb County, Michigan, described as: North 95 acres of the North East 1/4 and East 10 acres of North 1/2 of North West 1/4, except the following described parcel: Beginning at a point 872.98 feet West of the North East corner of Section 25; thence South 2° 09' West 183.26 feet; thence North 77° 51' West 57.51 feet; thence South 80° 49' 30" West 60.66 feet; thence South 25° 06' 30" West 39.01 feet; thence North 58° 29' West 18.83 feet; thence South 84° 17' 30" West 146.16 feet; thence North 18° 32' 30" West 140.29 feet; thence North 89° 58' 30" West 618.52 feet; thence North 69° 37' 30" West 166.82 feet; thence North 1° 19' 40" East 29.4 feet; thence East 1119.84 feet to the point of beginning.

*Also except all that part lying North of the South right of way line of North Metropolitan Parkway.

Subject to the rights obtained by the United States of America in Civil Cause No. 9229, District Court for the United States for the Eastern District of Michigan, Southern Division, for the Red Run Drain, so-called. (aka Parcel 54)

Parcel E - City of Sterling Heights, Owner

The legal description [from Liber 3361, Page 236 as recorded at the Macomb County Register of Deeds] is as follows:

T.2N. R.12E., Section 25, City of Sterling Heights, Macomb County, Michigan.

Commencing at the center post of Section 25, thence N. 87 degrees 01'00"E. 500.41 feet to the Point of Beginning, which is also the southeast corner of Parcel M582B1, thence N. 87 degrees 01'00"E. 485.75 feet, thence N. 88 degrees 20'00"E. 253.95 feet to the northwest corner of Sterling Moravian Subdivision, thence N. 0 degrees 07'30"W. 197.91 feet, thence S. 65 degrees 13'10"W. 75.27 feet, thence S.81 degrees 20'00"W. 679.19 [error - feet left out] S. 0 degrees 40'30"E.96.70 feet to the Point of Beginning, containing 2.43 acres more or less, EXCEPTING therefrom a parcel of land in Section 25, Town 2 North, Range 12 East, City of Sterling Heights, Macomb County, Michigan, a parcel of land in the NE 1/4 of Section 25 described as beginning on the East and West 1/4 line of said section 958.29 feet East of the center of said section, running thence West 745.98 feet; thence N. 38° 08' E, 97 feet; thence N 81° 20' E, 908.79 feet; thence S'ly to the place of beginning, all being in T2N, R12E. Subject to Easements and Restrictions of Record. **[*NOTE: Due to an apparent error during the transfer of legal title to Parcel G, no legal description for Parcel E was available and therefore the description for Parcel E was constructed using pertinent sections of various other legal descriptions.]**

Parcel F - Archdiocese of Detroit, Owner

The legal description [from the PLAT OF SURVEY FOR RECORDATION at Liber 3475, Page 117 as recorded at the Macomb County Register of Deeds] is as follows:

A parcel of land located in and being a part of the Northeast 1/4 of Section 25, Town 2 North, Range 12 East, Sterling Township and the Northwest ¼ of Section 30, Town 2 North, Range 13 East, Clinton Township, Macomb County, Michigan, and being more particularly described as follows: Commencing at the East 1/4 Corner of said Section 25, S. 88° 20' 00" W., 1395.26 feet along the East/West 1/4 line which is partly also the North line of Sterling Moravian Subdivision as recorded in Liber 61, Pages 13-15 of Plats, Macomb County Records, thence N. 01° 11' 49" E., 193.98 feet to the Southerly side of Red Run Drain easement, thence N. 66° 30' 20" E., 984.07 feet and N. 22° 30' 20" E., 588.20 feet along the Southeasterly sideline of Red Run Drain Easement; thence North 88° 28' 30" E., 263.89 feet to the East line of Section 25, thence N. 0° 02' 03" E., 214.64 feet along East line of Section 25, thence N. 89° 59' 00" E., 853.83 feet, thence S. 10° 18' 00" E., 133.98 feet thence N. 89° 59' 00" E., 330.00 feet to the center line of Utica Road, thence S. 10° 18' 00" E., 989.01 feet along said Centerline, thence S. 89° 48' 00" W., 430.53 feet, thence S. 06° 06' 00" E., 207.27 feet, to a point on the East/West 1/4 line of Section 30, thence N. 89° 55' 00" W., 977.10 feet along the East/West 1/4 line to the West 1/4 Post of said Section 30, which is also the point of beginning and containing 54.9035 acres being subject o **[NOTE: Apparently should say "to"]** the R.O.W. of Utica Road and all easements and matters of record.

Parcel G - City of Sterling Heights, Owner

The legal description [from Liber 3361, Page 236 as recorded at the Macomb County Register of Deeds] is as follows:

A parcel of land in the NE 1/4 of Section 25 A parcel of land in the NE 1/4 of Section 25 described as beginning on the East and West 1/4 line of said section 958.29 feet East of the center of said section, running thence West 745.98 feet; thence N 38° 08' E, 97 feet; thence N 81° 20' E, 908.79 feet; thence S'ly to the place of beginning, all being in T2N, R12E.

Parcel H – Now Two Subparcels - Formerly Owned by ALB Corporation

The legal description [from Liber 3884, Page 832 as recorded at the Macomb County Register of Deeds] is as follows:

Part of Section 30, Town 2 North, Range 13 East, described as: Beginning at a point 385.6 feet Northwesterly from the intersection of the center of Utica Road and the South line of the North 1/2 of the Northwest 1/4 of Section 30; thence Northwesterly along the center of Utica Road 202.27 feet; thence

Westerly 1076.54 feet to the West line of Section 30; thence Southerly to the Northwest corner of land of Charles Smith; thence Easterly 1113.02 feet to the point of beginning, containing 5 acres of land, more or less. Subject to the rights of the public and of any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Subparcel A-1, portion of what was Parcel H in 1994 demand letter - 999, L.L.C. (Current Owner).

[In 1994 and prior, this was Part of Parcel H – **Described in WD as Description of Parcel “A-1”**]. This Subparcel is known to have landfill waste.

A parcel of land located in part of the North ½ of the Northwest ¼ of Section 30, Town 2 North, Range 13 East, Clinton Township, Macomb County, Michigan described as beginning at a point N. 10° 12' 11" W. (385.61 feet record), 385.55 feet measured along the centerline of Utica Road (variable in width), from where the centerline of Utica Road is intersected by the East and West ¼ line in the Northwest ¼ of said Section 30 (as monumented) and N. 89° 52' 36" W. (1,113.02 feet record), 1,119.65 feet measured along a line parallel to the South line of the North ½ of the Northwest ¼ of Section 30 and along the West line of said Section 30 and township line N. 00° 02' 12" W., 25.04 feet; thence from said point of beginning and continuing along said West line of Section 30 and township line N. 00° 02' 12" W., 174.07 feet; thence S. 89° 52' 36" E., 275.00 feet along a line parallel said South line of the North ½ of the Northwest ¼ of Section 30; thence S. 00° 02' 12" E., 120.00 feet; thence S. 64° 12' 17" W., 194.31 feet; thence N. 99° 52' 36" W. **[NOTE: Apparently should say N. 89° 52' 36" W.]**, 100.00 feet to the point of beginning located on said West line of Section 30, containing .93 acres of land, being subject to easements and restrictions of record.

Subparcel B1, portion of what was Parcel H in 1994 demand letter - Ahmeto, L.L.C. (Current Owner).

[In 1994 and prior, this was Part of Parcel H – **Described in WD as Description of Parcel “B1”**]. This Subparcel is **not** known to have landfill waste.

A parcel of land located in part of the North ½ of the Northwest ¼ of Section 30, Town 2 North, Range 13 East, Clinton Township, Macomb County, Michigan described as beginning at a point N. 10° 12' 11" W. (385.61 feet record), 385.55 feet measured along the centerline of Utica Road (120 feet wide), from where the centerline of Utica Road is intersected by the South line of the North ½ of the Northwest ¼ of said Section 30 (as monumented) and N. 89° 52' 36" W., 60.99 feet to a point on the Westerly right-of-way line of Utica Road; thence from said point of beginning and along a line parallel to the South line of the North ½ of the Northwest ¼ of Section 30 N. 89° 52' 36" W. (1,052.03 feet record), 1,058.66 feet measured; thence along the West line of said Section 30 and township line N. 00° 02' 12" W., 25.04 feet; thence S. 89° 52' 36" E., 100.00 feet; thence N. 64° 12' 17" E., 194.31 feet; thence N. 00° 02' 12" W., 89.14 feet; thence along a line parallel to the South line of the North ½ of the Northwest ¼ of Section 30 S. 89° 52' 36" E., 747.94 feet; thence along said Westerly right-of-way line of Utica Road S. 10° 12' 11" E., 202.39 feet to the point of beginning containing 3.83 acres of land, being subject to easements and restrictions of record.

Parcel I – Now Two Subparcels - Formerly Owned by Higgerson Funeral Home

The legal description [from Liber 2331, Page 389 as recorded at the Macomb County Register of Deeds] is as follows:

Lying in the north half (1/2) of the northwest quarter (1/4) of Section 30, Township 2 North, Range 13 East, Macomb County, Michigan, and more particularly described as follows, to-wit: Beginning in the center of the Utica Road (so-called) at a point 587.88 feet northwesterly from where the center of said Utica Gravel Road is intersected by the East and West quarter (1/4) **[should say 1/8 - legal description is apparently incorrect]** line in the Northwest quarter (1/4) of said Section 30, Town 2 North, Range 13 East, Macomb County, Michigan; thence Northwest along the center line of said Utica Road a distance of 209.38 feet; thence Westerly and parallel to the said East and West quarter (1/4) line in the Northwest quarter (1/4) of said Section 30, a distance of 1038.77 feet to the Westerly line of Section 30, thence southerly along the said Westerly line of Section 30, a distance of 205.93 feet; thence easterly and

parallel to the East and West quarter (1/4) Section line in the Northwest quarter (1/4) of Section 30, a distance of 1076.54 feet to the place of beginning, containing 5 acres of land.

Subparcel A-2, portion of what was Parcel I in 1994 demand letter - 999, L.L.C. (Current Owner).

[In 1994 and prior, this was Part of Parcel I – **Described in WD as Description of Parcel “A-2”**]. This Subparcel is known to have landfill waste.

A Parcel of Land located in Part of the North ½ of the Northwest ¼ of Section 30, Town 2 North, Range 13 East, Clinton Township, Macomb County, Michigan described as beginning at a point N. 10° 12' 11" W. (385.61 feet record), 385.55 feet measured along the centerline of Utica Road (variable in width), from where the centerline of Utica Road is intersected by the East and West ¼ line in the Northwest ¼ of said Section 30 (as monumented) and N. 89° 52' 36" W. (1,113.02 feet record), 1,119.65 feet measured along a line parallel to the South line of the North ½ of the Northwest ¼ of Section 30 and along the West line of said Section 30 and township line N. 00° 02' 12" W., 199.11 feet; thence from said point of beginning and continuing along said West line of Section 30 and township line N. 00° 02' 12" W., 205.93 feet to a point located S. 00° 02' 12" E. (680.87 feet record) 680.93 feet measured from the Northwest corner of Section 30; thence along the South right-of-way line of Metropolitan Parkway (213.72 feet wide) said line being parallel to said South line of the North ½ of the Northwest ¼ of Section 30 S. 89° 52' 36" E., 300.00 feet; thence S. 00° 02' 12" E., 150.00 feet; thence S. 44° 57' 48" W., 35.36 feet thence S. 00° 02' 12" E., 30.86 feet; thence N. 89° 52' 36" W., 275.00 feet to the point of beginning located on said West line of Section 30, containing 1.39 acres of land and being subject to easements and restrictions of record.

Subparcel B2, portion of what was Parcel I in 1994 demand letter - Ahmetro, L.L.C. (Current Owner).

[In 1994 and prior, this was Part of Parcel I – **Described in WD as Description of Parcel “B2”**]. This Subparcel is **not** known to have landfill waste.

A parcel of land located in part of the North ½ of the Northwest ¼ of Section 30, Town 2 North, Range 13 East, Clinton Township, Macomb County, Michigan described as beginning at a point N. 10° 12' 11" W. (587.88 feet record), 587.94 feet measured along the centerline of Utica Road (120 feet wide), from where the centerline of Utica Road is intersected by the South line of the North ½ of the Northwest ¼ of said Section 30 (as monumented) and N. 89° 52' 36" W., 60.99 feet to a point on the Westerly right-of-way line of Utica Road; thence from said point of beginning and along a line parallel to the South line of the North ½ of the Northwest ¼ of Section 30 N. 89° 52' 36" W., 747.94 feet; thence N. 00° 02' 12" W., 30.86 feet; thence N. 44° 57' 48" E., 35.36 feet; thence N. 00° 02' 12" W., 150.00 feet; thence along the South right-of-way line of Metropolitan Parkway (213.72 feet wide) said line being parallel to said South line of the North ½ of the Northwest ¼ of Section 30 S. 89° 52' 36" E., 685.99 feet; thence along the Westerly right-of-way line of Utica Road S. 10° 12' 11" E., 209.32 feet to the point of beginning containing 3.36 acres of land, being subject to easements and restrictions of record.

ATTACHMENT C

CURRENT AND FORMER LANDOWNER DEFENDANT PAYMENT AMOUNTS

MACOMB COUNTY PARKS & RECREATION				\$250,000.00
CONSUMERS ENERGY COMPANY*				\$200,000.00
HURON-CLINTON METROPOLITAN AUTHORITY				\$200,000.00
ARCHDIOCESE OF DETROIT*				\$125,000.00
CITY OF STERLING HEIGHTS*				\$ 8,500.00
EDWARD AND ELEANOR OCHYLSKI				\$ 62,000.00
HIGGERSON FUNERAL HOM, INC.	\$7,490.00			
and ALBINO & LINDA BONANNI,	\$ 840.00			
and ALB CORPORATION,	<u>\$2,670.00</u>			
DR. AYMAN AND HALA RAYES		jointly	\$	11,000.00
			\$	<u>1,500.00</u>
		TOTAL		\$858,000.00

* These Defendants may substitute fencing work payments for cash payments in the manner described in Paragraph 14.9 of this Consent Decree.