

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v

DANIEL P. FONS, an individual, J.  
FONS COMPANY, INC., a Michigan  
Corporation,

File No. 06- 945 -CE

Hon. BEVERLEY NETTLES-NICKERSON

Defendants.

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Attorney for Plaintiff  
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Lansing, MI 48909  
(517) 373-7540

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It is hereby certified that no other actions arising from the instant transaction or occurrence are currently before said court or have been previously dismissed by said Court.

**COMPLAINT**

Plaintiff Michigan Department of Environmental Quality (MDEQ), by its attorneys, Michael A. Cox, Attorney General of the State of Michigan, and James L. Stropkai, Assistant Attorney General, states as its Complaint as follows:

**STATEMENT OF THE CASE**

1. This is a civil action seeking: (a) to enforce an Administrative Order for Response Activity (Administrative Order) issued by the MDEQ on June 17, 2005 pursuant to § 20119 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.20119 that requires Defendants, Daniel P. Fons, an individual, and J. Fons Company, Inc (jointly

Defendants) as prior owners or operators of the former Sanicem Landfill Facility located in Oakland County, Michigan, to take those actions specified in the Administrative Order to abate and remedy releases of methane, a hazardous substance, emanating from the landfill that they have, without sufficient cause, failed to undertake (b) injunctive relief requiring Defendants to undertake work other than that contained in the Administrative Order to bring the former Sanicem Landfill Facility, as that term is defined in Paragraph 15, into compliance with Part 201 of NREPA, MCL 324.20101 *et seq*; (c) civil fines, and additional relief for violating Part 201 of NREPA, including, but not limited to civil fines for failing to comply with the Administrative Order as provided in § 20119 of NREPA, and for violating Part 31 of NREPA, MCL 324.3101 *et seq*, (d) recovery of all unreimbursed response activity costs lawfully incurred by the state of Michigan in undertaking response activities at the Facility as provided for by Part 201 of NREPA and its implementing rules. The Plaintiff is further seeking declaratory relief as to Defendants liability for all future response activity costs incurred by the State at the Facility as provided in § 20137(1)(d) of NREPA, MCL 324.20137(1)(d). Plaintiff also seeks exemplary damages from Defendant for violating their obligations as provided in § 20119(4)(b) of the NREPA, MCL 324.20119(4)(b).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction of this matter pursuant to § 20137(3) of the NREPA, MCL 324.20137(3).

3. Venue is proper in this Court pursuant to § 20137(3) of the NREPA, MCL 324.20137(3).

## PARTIES

4. Plaintiff Michigan Department of Environmental Quality (MDEQ) is the state agency mandated to protect and conserve the natural resources of the state in the interest of the health, safety, and welfare of the people as successor to the Michigan Department of Natural Resources (MDNR) under Executive Order 1995-16, effective October 1, 1995. The MDEQ has primary responsibility for implementing of Part 201 and Part 31 of NREPA, and is mandated to coordinate all activities required under Part 201 and Part 31 of NREPA (MCL 324.20101 *et seq* and MCL 324.3101 *et seq*, respectively) and Executive Order 1995-16. Accordingly, references to the MDEQ relating to events or actions prior to October 1, 1995 should be understood as having been taken by or involving the MDNR.

5. Defendant J. Fons Company, Inc. is a Michigan corporation with offices at 6451 E. McNichols, Detroit, MI 48212 and was a prior owner and operator, as defined in § 20101(1)(y) and (z) of NREPA, of the former Sanicem Landfill Facility as defined in Paragraph 15.

6. Defendant Daniel P. Fons is an individual and was the President of J. Fons Company, Inc., a partner in Sanicem Company, and an operator as defined in § 20101(1)(y) of NREPA, of the Landfill Facility, where waste was disposed of that caused and is continuing to cause releases of hazardous substances to the environment. Further, Defendant Daniel P. Fons was personally involved and directly participated in the operation of the Landfill Facility as defined in Paragraph 15, including directing the disposal of waste that resulted in, and to result in releases at the Facility.

### COMMON ALLEGATIONS

7. This action involves environmental contamination including, but not limited to methane and leachate (liquid contaminated by landfill waste) located at and emanating from property known as the former Sanicem Landfill Property, a portion of which is located in Orion Township and the remainder of which is located in the City of Auburn Hills, as more accurately described in attached Exhibit 1. (Hereinafter the Landfill Property).

8. The Landfill Property includes 5 parcels of land, comprising about 140 acres, approximately 40 acres of which are in Orion Township and approximately 100 acres of which are in the City of Auburn Hills (formerly Pontiac Township), both in Oakland County. (See attached Exhibit 1).

9. Waste, disposed of by Defendants, currently exists on about 60 acres of the Landfill Property.

10. On information and belief, the Defendants purchased the parcels of land that comprise the Landfill Property at various times between 1969 and 1980.

11. On information and belief, Defendants operated a landfill business at the Facility, as defined in Paragraph 15, from 1969 until September 1, 1977, that was licensed under 1965 PA 87, MCL 325.291 *et seq.*<sup>1</sup>

12. Defendants operated the Landfill Facility, as defined in Paragraph 15, until MDEQ issued a Cease and Desist Order on June 7, 1978, shutting down the landfill due to poor management practices, including, but not limited to, the unlawful dumping of refuse into the water table, leachate outbreaks, reintroduction of leachate back into the landfill, and causing

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<sup>1</sup> 1965 PA 87 was repealed with the enactment of the Solid Waste Management Act, 1979 PA 641, MCL 299.401, and recodified as Part 115, Solid Waste Management, of NREPA, MCL 324.11501 *et seq.*

odors to emanate from the landfill due to either, or both the leachate or methane gas emissions.

(Copy attached as Exhibit 2).

13. On information and belief, waste was no longer accepted at the Landfill Property after June 30, 1978.

14. Defendants, on information and belief, accepted residential and commercial waste during the period waste was accepted at the Landfill Property.

15. The Landfill Property and the areas affected by the migration of methane and other contaminants off the Landfill Property constitute a "facility" as that term is defined in Section 20101(1)(o) of the NREPA, MCL 324.20101(1)(o) (hereinafter Facility or Landfill Facility).

16. A variety of "hazardous substances," as that term is defined in Section 20101(1)(t) of the NREPA, MCL 324.20101(1)(t), have been detected in the leachate, soils, surface water and groundwater at and emanating from the Facility, including, but not limited to, methane, benzene, xylene, lead, nickel, and zinc in amounts in excess of the residential clean-up criteria provided in Part 201 of NREPA and its implementing rules.

17. "Releases" or "threatened releases", as defined in Sections 20101(1)(bb) and (ii) of NREPA, MCL 324.20101(1)(bb) and MCL 324.20101(1)(ii), respectively, of hazardous substances have occurred and continue to occur at the Facility, including, but not limited to, soils, groundwater and surface waters.

18. Methane gas, a hazardous substance, is present at the Facility and poses an imminent and substantial endangerment to the public health, safety, welfare or the environmental because:

(a) It has migrated and continues to migrate through the soil and presents risks of explosion and fire in nearby buildings.

(b) Methane in concentrations as high as 60%, which is 12 times the concentration needed to cause an explosion, have been detected in the soil gases, in and around buildings located north of the Landfill Property.

(c) Methane is potentially explosive in the presence of an ignition source (light switch, pilot light, static electricity etc.), when it accumulates at concentrations of between 5% (lower explosive limit) and 15% (upper explosive limit) in the air of an enclosed space (such as a building), and may burn at concentrations above 15% until the concentration is reduced to a level that may explode.

(d) When methane exceeds 1.25% in soil gas, action needs to be taken to reduce the risk of explosion. Due to the volatility and mobility of methane, actions to reduce the soil gas levels of methane below 1.25% need to be taken in order to prevent the concentration from reaching the lower explosive limit of 5%.

(e) Methane concentrations have caused alarms to go off twice at 140 Ellen Drive, Orion Township, indicating the presences of dangerous levels of methane in the building.

19. Hazardous substances present at the Facility may pose a threat to the public health, safety, welfare or the environment, because:

(a) Hazardous substances, including, but not limited to, xylene, lead and nickel, have migrated into a wetland through leachate outbreaks from the Landfill Property in amounts exceeding groundwater-surface water interface ("GSI") clean-up criteria as provided in Part 201 of NREPA and its implementing rules.

(b) Hazardous substances, including, but not limited to, metals and polynuclear aromatics ("PNA's), have been detected in soils at the Facility in concentrations that exceed residential criteria as provided in Part 201 of NREPA and its implementing rules.

(c) Hazardous substances, including, but not limited to, benzene, lead and zinc, in groundwater have been detected at the Facility at levels that exceed acceptable drinking water or GSI concentrations as provided in Part 201 of NREPA and its implementing.

20. Defendants are persons that are liable within the meaning of Section 20126(1)(b) of the NREPA, MCL 324.20126(1)(b), as former owners or operators of the Landfill Facility at the time of disposal of a hazardous substance and are responsible for an activity that caused and is causing a release or threat of release of hazardous substances into the environment.

21. The MDEQ notified the Defendants by letters dated April 25, 1995, February 2, 1999, and October 31, 2000, (Attached as Exhibits 3, 4 & 5 respectively), of their liability under Part 201 of NREPA for contamination at the Facility, and requested that they perform response activities in accordance with applicable state and federal laws, or alternatively that MDEQ might spend State funds for response activities at the Facility.

22. Under § 20014(1) of NREPA, MCL 324.20014(1), a liable owner or operator of property known to be a facility has an affirmative obligation, without notice or demand from MDEQ, to determine the nature and extent of the release at the facility and to diligently pursue response activities necessary to achieve clean-up criteria specified in Part 201 and its implementing rules. Defendants failed to comply with § 20014(1) of NREPA even after demanded to do so by MDEQ.

23. Defendants' operation of the Landfill Facility resulted in leachate outbreaks (releases) directly or indirectly discharging contaminants into the surface waters and groundwaters of the State in violation of Part 31 of NREPA, MCL 324.3101 *et seq.*

24. Defendants have failed to take actions necessary to stop the leachate outbreaks and bring the Landfill Facility into compliance with Part 31 of NREPA.

25. MDEQ performed limited remedial investigations at the Facility in 1992 and 1995, and undertook interim response activities in 1997, that included drum removal, monitor well installation and repair, and methane vent replacement.

26. In January 1999, MDEQ, placed a lien on parcels of the Landfill Property owned by Defendant J. Fons Co. to secure reimbursement of public funds spent by MDEQ at the Facility. (Exhibit 6).

27. On June 6, 2002, an Administrative Order by Consent, MDEQ Ref. # AOC-ERD-02-002 (AOC) was entered into by the State, Daniel P. Fons, Alice M. Fons, the J. Fons Company, and the developer and purchaser of the Landfill Property, Brown Road Group, L.L.C. ("BRG"), resolving MDEQ's claim for the response costs that it had incurred up to June 12, 2002 and releasing the liens that had been placed on a portion of the Landfill Property by MDEQ. The AOC was entered in order to facilitate the redevelopment of the Landfill property. (Exhibit 6).

28. On information and belief, Defendants sold some or all of the Landfill Property located in the City of Auburn Hills to BRG on June 20, 2002.

29. The AOC did not relieve Defendants of their liability for future response activities or future response activity costs that could be incurred by MDEQ at the Facility. (See Exhibit 6).



30. In order to facilitate the redevelopment of the Landfill Property, MDEQ agreed in a March 11, 2002 letter to allow BRG the opportunity to conduct any additional response activities that MDEQ deemed necessary at the Facility prior to MDEQ requiring Defendants to undertake them. (Exhibit 7).

31. Following the discovery of high concentrations of methane north of the Landfill Property, MDEQ, by letter dated October 20, 2003, (Attached Exhibit 8) requested BRG to conduct response activities necessary to mitigate and abate the methane hazards north of the Landfill Property.

32. While BRG undertook some of the response activities at the Facility, its actions were insufficient to mitigate or abate the imminent and substantial endangerment caused by the methane at the Facility.

33. Because the methane releases were not adequately addressed, MDEQ sent a demand letter dated May 20, 2004 to Defendant Daniel P. Fons requesting a commitment to undertake response activities at the Facility, in compliance with Part 201 of NREPA, including mitigating the methane hazard north of the Landfill Property; reimbursing the State for the past response activity costs that had been incurred since June 12, 2002, reimbursing the State for all future response activity costs that it will incur at the Facility, and resolving the payment of civil fines for failure to comply with state laws. (Exhibit 9).

34. Defendants have failed to undertake response activities at the Facility necessary to bring the Facility into compliance with State law, mitigate hazards to the State's natural resources and to abate the imminent and substantial endangerment caused by the presence of methane and other hazardous substances.

**ENFORCEMENT OF ADMINISTRATIVE ORDER  
FOR RESPONSE ACTIVITIES**

35. Plaintiff, MDEQ incorporates by reference the allegations contained in paragraphs 1 through 34.

36. Section 20119 of the NREPA, MCL 324.20119, provides, in part:

(1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person that without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than \$25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

37. MDEQ determined that the actual or threatened releases of methane at or from the Facility posed and continues to pose an imminent and substantial endangerment to the public

health, safety, or welfare, or the environment within the meaning of Section 20119 of the NREPA, MCL 324.20119.

38. Based on MDEQ's determination, it issued an Administrative Order for Response Activity, MDEQ Docket No. AO-RRD-05-001 under authority granted in Section 20119 of NREPA, requiring Defendants to perform response activities relating to the Facility, including abating the imminent and substantial endangerment that has been determined by MDEQ to exist at the Facility. (Attached Exhibit 10).

39. Defendants, failed, without sufficient cause, to comply with the requirements of the Administrative Order.

40. Defendants' past and continued failure to perform the response activities set forth in the Administrative Order for Response Activities constitute violations of Section 20119 of NREPA for which they are liable for civil fines in an amount of not more than \$25,000.00 per day for each day their failure to comply continues, and exemplary damages in an amount at least equal to, but no more than 3 times the amount of any costs of response activity incurred by the State.

41. In order to protect public health, safety, and welfare, and the environment, and to abate the imminent and substantial endangerment caused by the release or threat of release of methane from the Facility, MDEQ has begun delineating the extent of methane and undertaken same interim response activities to mitigate the risks to public health and safety from the methane present at the Facility. But, it is still necessary that the Defendants conduct the response activities required by the Administrative Order in order to protect the public health, safety, welfare and the environment.

42. Defendants are required by § 20119 of NREPA to conduct the response activities set forth in the Administrative Order.

43. Section 20137(1) of NREPA, MCL 324.20137(1) provides in pertinent part:

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

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

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

\* \* \*

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

(e) A civil fine of not more than \$1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than \$10,000.00 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.

(g) A civil fine of not more than \$25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative Order issued pursuant to Section 20119.

\* \* \*

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

### **RECOVERY OF RESPONSE ACTIVITY COSTS**

44. Plaintiff MDEQ incorporates by reference the allegation set forth in paragraph 1 through 43.

45. Section 20126a of NREPA, MCL 324.20126a provides, in part, that:

(1) . . . a person who is liable under section 20126 is jointly and severally liable for all of the following:

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

46. Section 20101(1)(ff) of NREPA, MCL 324.20101(1)(ff) provides that "Response activities costs or costs of response activity means all costs incurred in taking or conducting a response activity, including enforcement costs."

47. As a result of Defendants' failure to undertake response activities to address the releases or the threats of release of hazardous substances at the Facility, MDEQ has incurred response activity costs for which Defendants are jointly and severally liable under Part 201 of NREPA.

48. The response activities that have been undertaken by MDEQ include "interim response activity" as defined by Section 20101(1)(u) of NREPA, MCL 324.20101(1)(u) and "response activity" as defined by Section 20101(1)(ee) of NREPA, MCL 324.20101(1)(ee).

49. MDEQ has lawfully incurred response activity costs in excess of \$240,000.00 in conducting response activities at the Facility since June 2002 as set forth in Exhibit 11, and continues to incur such costs.

50. Defendants are jointly and severally liable for all response activity costs lawfully incurred by MDEQ in responding to the releases or threats of release of hazardous substances at or from the Facility, plus interest as provided by Part 201 of NREPA.

### **INJUNCTIVE RELIEF UNDER PART 201 OF NREPA**

51. Plaintiff MDEQ incorporates by reference the allegations set forth in paragraphs 1 through 50.

52. During the investigation of the Facility by MDEQ, hazardous substances, including methane, polynuclear aromatics (PNA's) and metals, were detected above the acceptable concentrations provided for in Part 201 of NREPA and its implementing rules for the unrestricted use of the Landfill Property.

53. As liable parties under § 20126 of NREPA, MCL 324.20126, Defendants are responsible for the performance of all response activities necessary to achieve and maintain compliance with Part 201 of NREPA and its implementing rules.

54. At the request of MDEQ, as provided in § 20114(1)(h) of NREPA, MCL 324.20114(h), owners and operators who have knowledge that their property is a facility must provide plans for undertaking interim response activities, evaluating the facility and for taking other response activities to protect the public safety and the environment.

55. MDEQ, by letters dated February 2, 1999 and October 31, 2000, demanded that Defendant Daniel P. Fons, a liable party, undertake the activities provided for in § 20114(1)(h) of NREPA, MCL 324.20114(1)(h) which he has failed to do. (See attached Exhibits 4 and 5). In addition, Defendant J. Fons Company, a liable party, was advised of its obligations by letter dated April 25, 1995. (See Exhibit 3).

56. Defendants have failed to comply with their obligation under § 20114(1)(h) of NREPA, MCL 324.20114(1)(h).

57. Based upon the foregoing statutory provisions, the State seeks injunctive relief against Defendants requiring them to perform interim response activity, conduct a remedial

investigation, develop and implement an appropriate remedial action plan to address the releases and threatened releases of all hazardous substances at the Facility in compliance with Part 201 of NREPA and its implementing rules.

**CIVIL FINES UNDER PART 201 OF NREPA**

58. Plaintiff, MDEQ incorporates by reference the allegations contained in paragraphs 1 through 57.

59. Section 20137(1)(g) of NREPA, MCL 324.20137(1)(g), provides for civil fines in the amount of up to \$25,000.00 for each day of violation of an administrative order issued by MDEQ on June 17, 2005.

60. Plaintiff is entitled to civil fine pursuant to § 20137(1)(g) of NREPA for Defendants' failure to comply with the Administrative Order for response activities issued to MDEQ on June 17, 2005.

61. Section 20137(1)(e) of NREPA, MCL 324.20137(1)(e), provides for civil fines in the amount of up to \$1,000.00 for each day of non-compliance without sufficient cause with a written request by MDEQ pursuant to § 20114(1)(h) of NREPA, MCL 324.20114(1)(h).

62. Plaintiff MDEQ is entitled to civil fines pursuant to § 20137(1)(e) of NREPA for Defendants' failure to comply with a request from MDEQ dated April 25, 1995 (see attached Exhibit 3).

63. Section 20137(1)(f) of NREPA, MCL 324.20137(1)(f), provides for civil fines in an amount up to \$10,000.00 for each day of violation of Part 201 of NREPA, a rule promulgated under Part 201.

64. Plaintiff MDEQ is entitled to civil fines pursuant to § 20137(1)(f) of NREPA for Defendants' violation of § 20114(1)(g) of NREPA, MCL 324.20114(1)(g), of failing to diligently

pursue response activities necessary to achieve the clean-up criteria specified in Part 201 of NREPA and its implementing rules.

### **PART 31 OF NREPA**

65. Plaintiff MDEQ incorporates by reference the allegations set forth in paragraphs through 64.

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

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

67. Section 3112 of NREPA, MCL 324.3112, prohibits the discharge of any waste or waste effluent into the waters of the State (groundwater or surface water) without a permit.

68. Defendants have caused numerous unpermitted discharges of waste to the waters of the State that have or may become injurious to one or more of the items set forth in §3109 of NREPA.

69. Defendants operation of the Landfill has caused leachate outbreaks resulting in discharges of injurious or potentially injurious substances to wetlands, surface water and groundwater at the Facility.

70. Section 3115(1) of NREPA, MCL 324.3115(1), provides that the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction, for violations Part 31 of NREPA or its implementing rules.



71. Section 3115(1) of NREPA, MCL 324.3115(1) also provides in part:

(1) ...In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

72. Defendants have failed to take action necessary to prevent the unpermitted discharges from the Facility.

73. Defendants' failure to prevent and stop the direct or indirect unpermitted discharges of substances that are or may be injurious to the items set forth in § 3109 of NREPA renders them liable for injunctive relief and civil fines of not less than \$2,500.00 up to \$25,000.00 per day that the violations continue.

#### **RELIEF REQUESTED**

Plaintiff requests this Honorable Court enter a judgment providing the following relief:

A. A Judgment requiring Defendants to comply fully with all the requirements of Administrative Order for Response Activity No. AO-RRD-05-001, including, but not limited to all requirements established in paragraphs 5.1 through 5.2 of the AOC.

B. A Judgment requiring Defendants to conduct all response activities necessary to bring the Sanicem Landfill Facility into compliance with Part 201 of NREPA, MCL 324.20101 *et seq*, and its implementing rules, and all other applicable state and federal environmental laws.

C. Impose upon Defendants civil fines of up to \$25,000.00 for each day of violation or failure to comply with the Administrative Order for response activity beginning from July 13, 2005 until they have complied with the terms of the Order.

D. Impose civil fines upon Defendants for violating § 20114(1)(g) and (h) of NREPA, MCL 324.20114 (1) (g) and (h), as provided in § 20137 of NREPA, MCL 324.20137.

E. Enter a judgment requiring Defendants, jointly and severally, to pay Plaintiff exemplary damages in an amount three times the amount of any response activity costs incurred by Plaintiff as a result of Defendants' failure to comply with the Administrative Order, but not less than the amount incurred by Plaintiff as provided in Section 20119(4)(b) of NREPA, MCL 324.2119(4)(b).

F. Enter a judgment requiring Defendant to pay Plaintiff all response activity costs that have been incurred by the State since 2002, together with prejudgment interest.

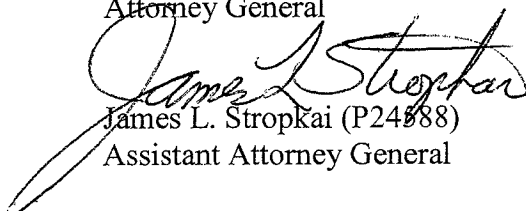
G. Enter a declaratory judgment requiring Defendants to reimburse the State for all future response activity costs it may incur.

H. Enter a Judgment imposing on Defendants a civil fine of up to \$25,000.00 for each day of violation or failure to comply with Part 31 of NREPA, MCL 324.3101 *et seq.*

I. Grant Plaintiff any further relief deemed appropriate and just.

Respectfully submitted,

Michael A. Cox  
Attorney General



James L. Stropkai (P24888)  
Assistant Attorney General

Attorney for Plaintiff

Environment, Natural Resources  
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P.O. Box 30755  
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(517) 373-7540

Dated: July 31, 2006

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# **EXHIBIT 1**

EXHIBIT 1

The following is a description Real Estate located in the County of Oakland, State of Michigan, containing one hundred forty (140) acres, more or less.

**Parcel A**

A parcel of land located in and being a part of the Southeast 1/4 of Section 35, Town 4 North, Range 10 East, Orion Township, and a part of the Northeast 1/4 of Section 2, Town 3 North, Range 10 East, Pontiac Township, Oakland County, Michigan, and being more particularly described as follows:

Commencing at the Southeast corner of said Section 35 and thence extending North 88 degrees 30 minutes West 1354.07 feet; thence South 01 degree 16 minutes 30 seconds West 379.30 feet; thence North 88 degrees 44 minutes West 1343.30 feet; thence North 02 degrees 10 minutes 30 seconds East 384.80 feet to the South 1/4 corner of said Section 35; thence South 88 degrees 30 minutes East 42.00 feet; thence North 03 degrees 21 minutes East 831.00 feet; thence South 88 degrees 21 minutes East 1877.10 feet; thence along a curve concave to the South Radius 400.00 feet whose long chord bears South 58 degrees 21 minutes East 400.00 feet; thence South 28 degrees 21 minutes East 183.79 feet; thence along a curve concave to the North Radius 300.00 feet whose long chord bears South 58 degrees 21 minutes East 300.00 feet; thence South 88 degrees 21 minutes East 10.00 feet to the East line of said Section 35; thence South 05 degrees 30 minutes East 317.00 feet to the point of the beginning.

09-35-400-005 - SE 1/4 Sec 35  
14-02-200-001 - NE 1/4 Sec 2

**Parcel B**

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point distant North 2603.87 feet and East 91.42 feet from center of Section, thence North 88 degrees 53 minutes 00 seconds East 650 feet, thence South 32 degrees 45 minutes 50 seconds West 490.04 feet, thence South 40 degrees 34 minutes 40 seconds West 133.25 feet, thence South 88 degrees 53 minutes 00 seconds West 302.38 feet, thence North 00 degrees 28 minutes 00 seconds East 100 feet, thence North 00 degrees 16 minutes 00 seconds West 400 feet to beginning.

14-02-200-002

**Parcel C**

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point on Easterly line of Lapeer Road, North 1498.12 feet and East 83.89 feet from center of Section, thence North 01 degree 10 minutes 00 seconds East 261.96 feet, thence North 00 degrees 28 minutes 00 seconds East 343.20 feet, thence North 88 degrees 53 minutes 00 seconds East 302.38 feet, thence North 40 degrees 34 minutes 40 seconds East, 133.25 feet, thence North 32 degrees 45 minutes 50 seconds East 490.04 feet, thence North 88 degrees 53 minutes 00 seconds East 400 feet, thence South 01 degree 08 minutes 00 seconds East 400 feet, thence South 01 degree 09 minutes 00 seconds East 704.73 feet, thence South 88 degrees 53 minutes 00 seconds West 1237.19 feet to beginning.

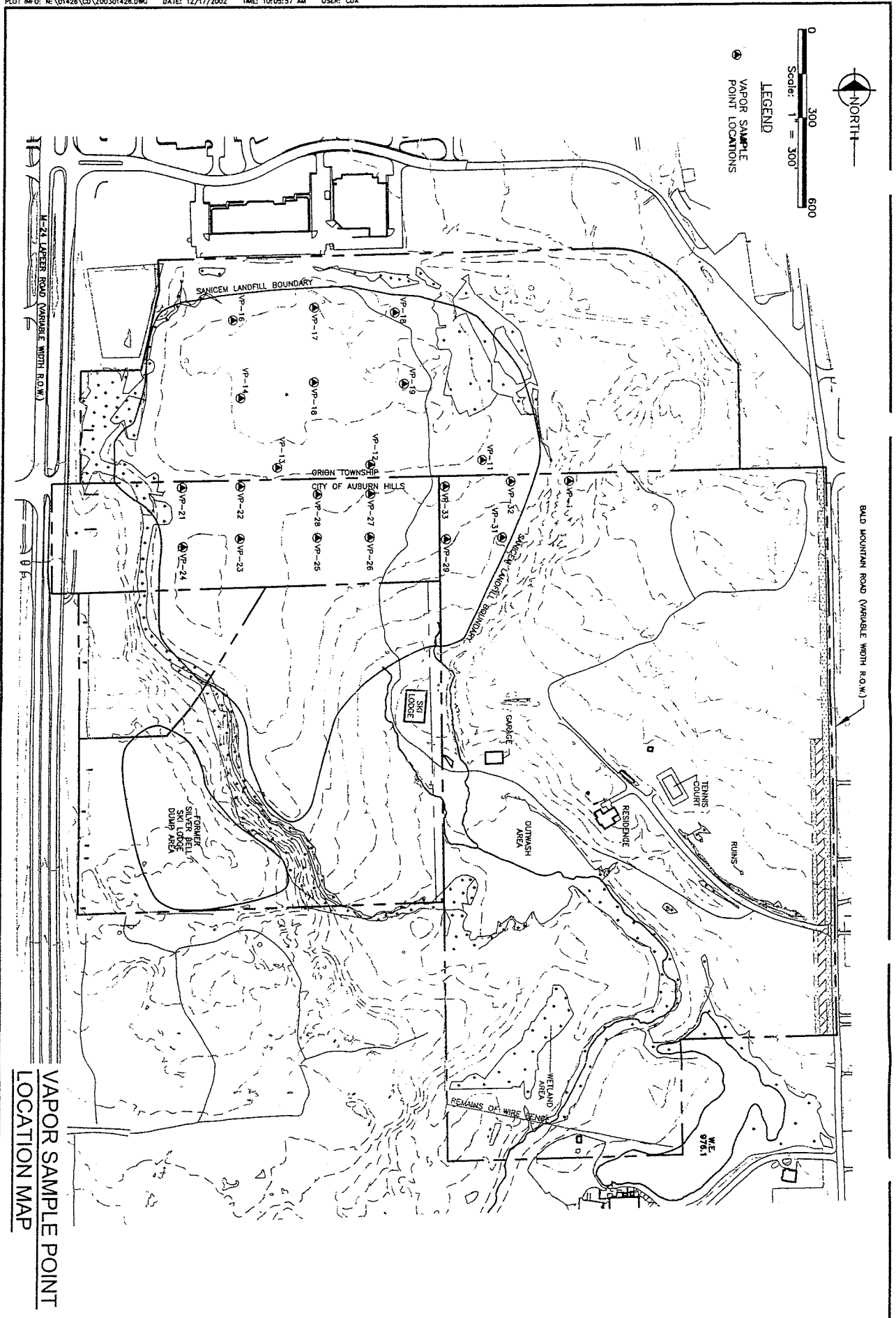
14-02-200-003

09-35-400-004

## Parcel D

East 1/2 of the Northeast Fractional 1/4 of Section 2, Town 3 North, Range 10 East, except beginning at East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 1372.14 feet, thence North 00 degrees 42 minutes 30 seconds West 633.17 feet, thence South 89 degrees 59 minutes 30 seconds East 1379.97 feet, thence South 633.12 feet to beginning, Also except beginning at point distant North 1390 feet and North 72 degrees 10 minutes 30 seconds West 356 feet and North 41 degrees 21 minutes 30 seconds West 404 feet from East 1/4 corner, thence South 57 degrees 03 minutes 30 seconds West 295 feet, thence North 32 degrees 56 minutes 30 seconds West 200 feet, thence North 57 degrees 03 minutes 30 seconds East 265.41 feet, thence South 41 degrees 21 minutes 30 seconds East 202.18 feet to beginning, Also except beginning at point distant North 633.12 feet from East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 544.50 feet, thence North 400 feet, thence South 89 degrees 59 minutes 30 seconds East 544.50 feet, thence South 400 feet to beginning.

14-02-200-011



VAPOR SAMPLE POINT  
LOCATION MAP



## **EXHIBIT 2**

STATE OF MICHIGAN



WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF NATURAL RESOURCES

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48926

HOWARD A. TANNER, Director

NATURAL RESOURCES COMMISSION

CARL T. JOHNSON  
E. M. LAITALA  
DEAN PRIDGEON  
HILARY F. SNELL  
HARRY H. WHITELEY  
JOAN L. WOLFE  
CHARLES G. YOUNGLOVE

June 7, 1978

Certified Mail

Mr. Dan Fons  
J. Fons Company  
6451 McNichols Road  
Detroit, Michigan 48213

Dear Mr. Fons:

CEASE AND DESIST ORDER

Sanicem-Orion  
Section 35, Orion Township  
Sanicem-Pontiac  
Section 2, Pontiac Township  
Oakland County

31130  
Action taken by the Resource Recovery Commission at their May 17, 1978, meeting recommended to me that the Sanicem Landfill located in Section 35 of Orion Township and Section 2 of Pontiac Township be ordered to cease and desist operation of the landfill because of violations of the provisions of Act 87, P.A. 1965, as amended, and the rules promulgated thereunder and for failure to expediently resolve operational problems with the disposal facility.

The order to cease operation is based on the following conditions which must be resolved before reopening of the facility will be considered:

1. Leachate control that prevents migration from the site has not to date been accomplished.
2. Ground water observation and monitor wells that have been requested have not to date been installed.
3. The Department has reason to believe that ground water contamination may be occurring.
4. There has been an inadequate application of the required final cover.






5. According to numerous citizen and local official complaints, odors resulting from either leachate or gas emissions have not been eliminated.
6. Perimeter drains for the surface water management and control have not been adequately developed.
7. There has been no successful determination to date establishing the elimination of any lateral migration of ground water into the existing refuse.
8. Complete information regarding a gas venting system has not been submitted for the staff to review and for determining need for establishment of additional vents or interceptor trenches to permanently eliminate dangers from migrating combustible gases.

Because of these items of non-compliance and your failure to resolve them in a timely fashion, you are hereby ordered to within 20 days of receipt of this letter cease and desist the disposal of all solid waste material at this landfill.

Further, you are directed to within 45 days submit an engineering plan acceptable to the Department of Natural Resources and Orion and Pontiac Townships that will resolve each of the problems upon which this order is based. When the Department finds that adequate progress is being made toward resolution of the problems, we will then consider reissuing the license for the facility.

Sincerely,

  
Howard A. Tanner  
Director

cc Summary  
Greenwich  
Oak Co H.D.  
(Chicago)

## **EXHIBIT 3**

STATE OF MICHIGAN

NATURAL RESOURCES  
COMMISSION

JERRY C. BARTNIK  
KEITH J. CHARTERS  
LARRY DEVUYST  
PAUL EISELE  
JAMES P. HILL  
DAVID HOLLI  
JOEY M. SPANO



JOHN ENGLER, Governor  
**DEPARTMENT OF NATURAL RESOURCES**  
STEVENS T MASON BUILDING, PO BOX 30028, LANSING MI 48909-7528

ROLAND HARMES, Director

REPLY TO:  
SE MICHIGAN DISTRICT HEADQUARTERS  
38980 SEVEN MILE RD  
LIVONIA MI 48152-1006

April 25, 1995

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Daniel Fons  
J. Fons Company  
6451 E. McNichols  
Detroit, Michigan 48212

Dear Mr. Fons:

SUBJECT: Sanicem Landfill (MERA #630060) Oakland, County

This letter is formal notice that:

1. The Michigan Department of Natural Resources (MDNR) has identified the Sanicem Landfill, Orion Township and Auburn Hills, Oakland County, Michigan, as a site of environmental contamination; and
2. The MDNR has recommended that the Legislature authorize expenditure of public funds under the Environmental Protection Bond Implementation Act, 1988 PA 328, for the purpose of investigating and remediating environmental contamination associated with this facility.

The State of Michigan is authorized by law, including the MERA, to use public funds to undertake response activities. In addition, a responsible party of a contaminated site is liable for all past and future costs incurred by the state in performing response activities under Sections 12 and 16a of the MERA, MCL 299.601 et seq, MSA 13.32(1) et seq; Section 12(8). The State of Michigan has incurred response activity costs in conducting response activities at the Facility. These response activities include, but are not limited to;

1. Conducting an Interim Response to stop the migration of contamination offsite. Repairing (if possible) the existing leachate collection system and methane vents and failed monitoring wells.
2. Conducting a hydrogeological investigation to determine the vertical and horizontal extent of the soil and groundwater contamination as well as the groundwater flow direction.

3. Conducting a risk assessment to determine the health hazards associated with the site.

Records obtained by MDNR staff from the Oakland County Register of Deeds (Liber 8060, Page 280; Liber 8060, Page 765; Liber 8060, Page 768; Liber 8060, Page 771; Liber 8060, Page 774) indicate that the J. Fons Company owns the property at this facility. Additional records obtained by MDNR staff from the MDNR Waste Management Division (WMD) indicate that J. Fons Company operated a landfill at this location.

Investigations conducted by staff from MDNR indicate the following:

1. J. Fons Company operated the Sanicem Landfill without an engineered liner nor adequate cover, from 1956 through 1978. Consequently exposed waste and leachate are present at the landfill.
2. Leachate from the landfill has migrated to nearby wetlands areas and surface water bodies.
3. Lead has been found in the groundwater at Sanicem Landfill at levels as high as 34 ppb and Arsenic at levels as high as 17 ppb. Both contaminants are present at levels exceeding the health based Type "B" drinking water standards.

The MDNR considers the groundwater contamination to be a threat to public health and the environment. The release or threatened release of hazardous substances at this facility, including the discharge and potential discharge of these substances into the groundwater, may violate Sections 6(1) and 7 of the Michigan Water Resources Commission Act, 1929 PA 245, as amended, as well as other state and federal laws.

The MDNR has determined that, as an owner and operator, J. Fons Company is a potentially responsible party. Additional response activities may ultimately be required to fully remedy environmental problems at this facility. These include, but are not limited to:

1. Conducting a Feasibility Study to determine the response activities necessary to remediate the contamination both at the facility and offsite.
2. Developing and implementing an approved Remedial Action Plan.
3. Conducting ongoing monitoring to verify the efficacy of the remedial action that is chosen.

The MDNR believes that the J. Fons Company is responsible for undertaking the necessary response activities at this facility in accordance with the requirements prescribed in Part 5 of the Administrative Rules promulgated pursuant to the MERA unless an exemption or defense to liability as provided in Sections 3(t), 3(u) or 12a of the MERA applies.

The MDNR requests that you notify this office within 15 days of the date of this letter to indicate your intention to comply with the above requested work items.

Demand is hereby made for payment covering the cost for the activities performed by MDNR (described above) plus any costs, which continue to accrue, including any and all interest as authorized to be recovered under state law. Interest shall begin to accrue on the date of your receipt of this notice of demand.

If you wish to voluntarily resolve your liability for the above amount plus any costs which continue to accrue, including any and all interest as authorized to be recovered under state and federal law, the State of Michigan requires the J. Fons Company to commit to the payment of these costs. Your willingness to enter into an agreement should be included in your written response to this letter. To determine the amount of past costs, please contact: Pat McKay, Chief, Cost Recovery Unit, Environmental Response Division, Michigan Department of Natural Resources, P.O. Box 30426, Lansing, Michigan 48909.

Failure to meet your responsibilities leaves you vulnerable to the following escalated enforcement action by the MDNR:

1. Request that the Attorney General take enforcement action against the J. Fons Company as a potentially responsible party.
2. Perform the required response activities utilizing public funding. Any expenditure of public funds and accumulated interest for this purpose is subject to cost recovery actions by the state pursuant to federal or state law, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC 9607(a); Section 12 of the MERA, MCL 299.612; and Section 10(2) of the Michigan Water Resources Commission Act, MCL 323.10(2).

The files used to prepare this notice are located in the MDNR Southeast Michigan District Office. If you wish to review these files or if you have questions regarding this letter, please

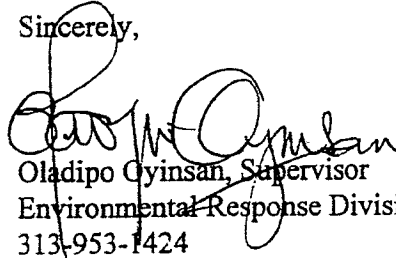
Mr. Daniel Fons

-4-

April 25, 1995

direct your inquiries to Mr. Maurice Sanders at: Environmental Response Division, Southeast Michigan District Office, MDNR, 38980 W. Seven Mile Road, Livonia, Michigan 48152. His telephone number is 313-953-1525.

Sincerely,



Oladipo Oyinsan, Supervisor  
Environmental Response Division  
313-953-1424

Enclosure

cc: Mr. Doug Brown, Orion Township Supervisor  
Mr. Robert Grusnick, Mayor, Auburn Hills  
Mr. A. Michael Leffler, Department of Attorney General  
Mr. Larry Elmleaf, MDNR  
Mr. James Thomas, MDNR  
Mr. Maurice Sanders, MDNR  
Ms. Rhonda Cross, MDNR

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:

*James Ford*  
4/24/95

4a. Article Number

742 745 781

4b. Service Type

- ☒ Registered ☐ Insured  
☐ Certified ☐ COD  
☐ Express Mail ☒ Return Receipt for Merchandise

7. Date of Delivery

4/27/95

8. Addressee's Address (Only if requested and fee is paid)

*[Signature]*  
4/24/95

5. Signature (Addressee)

6. Signature (Agent)

I also wish to receive the following services (for an extra fee):

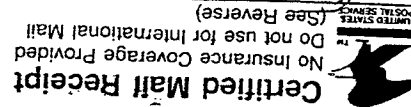
1. ☐ Addressee's Address  
 2. ☐ Restricted Delivery

Consult postmaster for fee.

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 \*U.S. GPO: 1992-323-402

**DOMESTIC RETURN RECEIPT**



P 542 745 781

Sent to		Street & No		P.O. State & ZIP Code		Postage		Certified Fee		Special Delivery Fee		Restricted Delivery Fee		Return Receipt Showing to Whom & Date Delivered		Return Receipt Showing Date, & Address of Delivery		TOTAL Postage & Fees		Postmark or Date	
<i>[Signature]</i>		<i>[Address]</i>				\$		\$												<i>4/27/95</i>	

PS Form 3800, June 1990

## **EXHIBIT 4**





JOHN ENGLER, Governor

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*"Better Service for a Better Environment"*

HOLLISTER BUILDING, PO BOX 30473 LANSING MI 48909-7973

INTERNET: [www.deq.state.mi.us](http://www.deq.state.mi.us)

RUSSELL J. HARDING, Director

REPLY TO:

SE MICHIGAN DISTRICT OFFICE  
38980 SEVEN MILE RD  
LIVONIA MI 48152-1006

February 2, 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Daniel Fons  
6451 E. McNichols  
Detroit, Michigan 48212

SUBJECT: Sanicem Landfill, 4901 S. Lapeer Road, Orion and Pontiac Township, Oakland County, Michigan

This letter is to advise you of conditions that are present at Sanicem Landfill, (MERA #630060) Oakland, County (the Facility), which are regulated under Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Documents obtained from the Michigan Department of Environmental Quality (MDEQ) files indicate that the J. Fons Company, under the direction of Daniel P. Fons, the former president, acquired a license from Orion Township and began operation at or around May 23, 1969 to landfill 15 acres on the northern portion of the facility. On May 5, 1970, a second license was granted to extend the landfill by an additional 55 acres of land in Pontiac Township. According to records kept by J. Fons Company the amount of waste disposed of daily at the landfill during their operation, was approximately 7,000 to 8,000 cubic yards.

Inspections conducted by MDEQ, Waste Management Division (WMD) staff in 1970 revealed iron, chloride and hardness concentrations at least 10 times the concentrations for uncontaminated surface water. Staff also observed that refuse was being dumped into the water table, and that additional cover was required. From 1970 through 1978, staff cited additional deficiencies including leachate outbreaks, and lack of final grading and seeding.

Samples collected in 1995 by Weston Environmental Company, the level of effort contractor for the Michigan Department of Environmental Quality (MDEQ), Environmental Response Division (ERD) indicate that levels of arsenic and lead were found in the soils above the direct contact criteria and drinking water protection criteria, respectively. Groundwater samples were found to contain phenanthrene above the groundwater surface interface criteria. Drums were also observed at the facility during the investigation.

The conditions confirmed at the facility indicate that a hazardous substance in concentrations which exceed the residential cleanup requirements of Section 20120a(1) (a) of (17) of the NREPA or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA was released, deposited, or became located at the Sanicem Landfill. Any area, place or property where hazardous substances exceed this threshold constitutes a "facility" which is regulated under Part 201.

A person who owns or operates a facility has certain obligations under Part 201, as well as under other state and federal law. "Person" is defined as an individual, partnership, corporation, association, governmental entity or other legal entity.

According to documents obtained from the Oakland County Register of Deeds, on September 23, 1969, Daniel Fons, John P. Fons, Gerald Fons, Robert J. Fannon and John J. Fannon Jr. acquired sidwell numbers 14-002-200-001, 14-002-200-002 and 14-002-200-003 from F.H. Martin Construction. On October 23, 1996, Daniel Fons and Alice Fons acquired sidwell number 14-002-200-017 from J. Fons Company and are the current owners of the property generally known as Sanicem landfill located at 4901 S. Lapeer Road, Orion and Pontiac Township, Oakland County, Michigan.

Sanicem Company is listed on the license application as the property owner, J. Fons Company, Inc. is listed as the applicant, and Daniel Fons is listed as the responsible person to contact. Mr. Daniel P. Fons signed the application as the President. Daniel Fons also acquired insurance from the landfill in June of 1969, and signed the surety bond for solid waste disposal on behalf of the J. Fons Company.

According to records contained in the MDEQ files, Daniel Fons was the President of J. Fons Company from 1969 through July 1997. During that period, in a deposition of Daniel Fons, conducted by the MDEQ on March 10, 1998, Daniel Fons stated that he was "running the J. Fons Company. Daniel Fons further stated that, "As president, I was responsible for everything". Daniel Fons also indicated that he paid the bills. He stated that he was one of the partners of Sanicem, who also owned the Sanicem Landfill property from approximately 1969 until the mid 1980's, at which time J. Fons Company bought the property from Sanicem.

According to records kept by J. Fons Company, the amount of waste disposed of daily at the landfill during their operation (1969 through 1978), was approximately 7,000 to 8,000 cubic yards. The MDEQ closed the landfill on June 30, 1978 due to inadequate cover, uncontrolled leachate migration off-site, failure to eliminate odors due to methane gas and failure to install monitoring wells. The J. Fons Company initiated corrective actions to reopen the landfill from August through October of 1981. Due to the fact that the problems were not corrected at the facility, the license was revoked. The problems that still exist at the facility include uninhibited erosion exposing refuse, as well as leachate streams flowing off the landfill and into wetlands. The MDEQ believes that Daniel P. Fons is responsible for an activity causing a release or threat of release of a hazardous substance and therefore is a person liable under Section 20126 of Part 201. Persons liable under Part 201 are responsible for all costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under Part 201, including, but not limited to, Sections 20107a, 20114, 20118, 20120a, 20120b, 20120c and 20120d of Part 201 of the NREPA and Part 5 of the Part 201 Administrative Rules, unless an exemption or defense to liability applies. The MDEQ's position is based on the MDEQ's current knowledge of the facts pertaining to this facility and is subject to reconsideration should new information become available.

Mr. Daniel Fons

3

February 2, 1999

A person who owns property that he or she has knowledge is a facility, shall perform due care pursuant to Section 20107a of the NREPA. These obligations include the following with respect to hazardous substances at the facility:

1. Undertake measures as are necessary to prevent exacerbation of the existing contamination. Exacerbation is defined as the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to existing contamination:
  - (i) Contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above cleanup criteria specified in Section 201201(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to Section 20120b.
  - (ii) A change in facility conditions that increases response activity costs.
2. Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances and allow for the intended use of the facility in a manner that protects the public health and safety.
3. Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeable could result from those acts or omissions.

This letter serves as MDEQ's written request for Daniel P. Fons to voluntarily undertake response activity to remedy the environmental contamination at this facility. Pursuant to Section 20114(1)(h) of the NREPA, please take the following actions:

- i. Provide a plan for and undertake interim response activities.
- ii. Provide a plan for and undertake evaluation activities.
- iii. Take any other response activities determined by the MDEQ to be technically sound and necessary.
- iv. Submit to the MDEQ a Remedial Action Plan (RAP) that when implemented will achieve the cleanup criteria specified in Part 201.
- v. Implement the approved RAP in accordance with the schedule approved by the MDEQ.

Please provide your written commitment, a description of actions taken to date and schedule of proposed actions regarding response activities at the Sanicem Landfill, to Rhonda Cross within 15 days of receipt of this letter.

Failure of Daniel P. Fons to comply with the various provisions of Part 201 without sufficient cause may result in enforcement action by the State of Michigan and the assessment of fines and penalties.

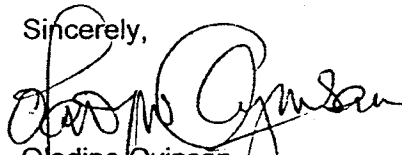
Mr. Daniel Fons

4

February 2, 1999

The files used to prepare this notice are located in the MDEQ Southeastern Michigan District Office. If you wish to review the files or if you have questions regarding this letter, please direct your inquiries to Maurice Sanders, Environmental Response Division, Southeastern District Office at (734)-953-1525. A copy of Part 201 of the NREPA, as amended, is enclosed for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Oladipo Oyinsan", written over a circular stamp or seal.

Oladipo Oyinsan  
Southeastern Michigan District Office  
Environmental Response Division  
734-953-1429

Enclosure

cc: Mr. Dan Schultz, DEQ  
Ms. Patricia McKay, DEQ  
Mr. James Thomas, DEQ  
Ms. Rhonda Cross, DEQ  
Mr. Maurice Sanders, DEQ



JOHN ENGLER, Governor

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*"Better Service for a Better Environment"*

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INTERNET: [www.deq.state.mi.us](http://www.deq.state.mi.us)

RUSSELL J. HARDING, Director

REPLY TO:

SE MICHIGAN DISTRICT OFFICE  
38980 SEVEN MILE RD  
LIVONIA MI 48152-1006

February 2, 1999

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RETURN RECEIPT REQUESTED

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Detroit, Michigan 48212

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Mr. Daniel Fons

3

February 2, 1999

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- i. Provide a plan for and undertake interim response activities.
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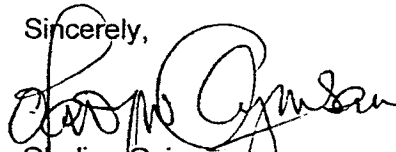
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Failure of Daniel P. Fons to comply with the various provisions of Part 201 without sufficient cause may result in enforcement action by the State of Michigan and the assessment of fines and penalties.

February 2, 1999

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Sincerely,

A handwritten signature in black ink, appearing to read "Oladipo Oyinsan", written over a horizontal line.

Oladipo Oyinsan  
Southeastern Michigan District Office  
Environmental Response Division  
734-953-1429

Enclosure

cc: Mr. Dan Schultz, DEQ  
Ms. Patricia McKay, DEQ  
Mr. James Thomas, DEQ  
Ms. Rhonda Cross, DEQ  
Mr. Maurice Sanders, DEQ



## **EXHIBIT 5**

STATE OF MICHIGAN



JOHN ENGLER, Governor

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*"Better Service for a Better Environment"*

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: [www.deq.state.mi.us](http://www.deq.state.mi.us)

RUSSELL J. HARDING, Director

REPLY TO:

ENVIRONMENTAL RESPONSE DIVISION  
KNAPPS CENTRE  
PO BOX 30426  
LANSING MI 48909-7926

October 31, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Daniel P. Fons  
6451 East McNichols  
Detroit, Michigan 48212

Dear Mr. Fons:

SUBJECT: Notice of Demand Regarding the Sanicem Landfill Facility,  
Orion Charter Township and the City of Auburn Hills, Oakland County,  
MDEQ Site ID No. 453316

This Notice of Demand (Notice) serves as formal and final notification to you of your legal responsibility relating to the release or threatened release of hazardous substances on and emanating from the Sanicem Landfill property (see attachment) located at 4901 South Lapeer Road and associated areas in Orion Charter Township and the city of Auburn Hills, Oakland County, Michigan. This property and associated areas (hereinafter the Facility) are known to contain concentrations of hazardous substances that exceed the residential cleanup requirements of Section 20120a(1)(a) and (17) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or the cleanup criteria for unrestricted residential closure under Part 213, Leaking Underground Storage Tanks, of the NREPA. Therefore, the Facility meets the definition found in Section 20101(1)(o) of the NREPA, which defines a facility as an area, place, or property where the concentrations of hazardous substances exceed these criteria and is subject to regulation under state of Michigan law. The state has spent, and is continuing to spend, state funds to address this Facility.

This Notice is provided as a follow-up to the February 2, 1999 Michigan Department of Environmental Quality (MDEQ) notice letter and the October 12, 1999 telephone conversation with the MDEQ staff and your attorney, Mr. Richard Barr. In addition, the MDEQ also sent the J. Fons Company a formal notice letter on April 21, 1995, addressed to you as president of the company. In the MDEQ's previous communications, you were notified of the existence of contamination at this Facility and were requested to undertake response activities to remedy that contamination as required by state and federal laws.

RECEIVED ERD S.E. MICH.

NOV - 3 2000

FILE \_\_\_\_\_

COUNTY \_\_\_\_\_

Because you failed to comply with these requests, the state demands that you commit, in the form of a binding legal agreement, to undertake the necessary and appropriate response activities to address contamination at the Facility; to reimburse past and future response activity costs incurred by the state for responding to the release or threatened release of hazardous substances at the Facility; and to resolve the payment of penalties for your failure to comply with state and federal laws. If you fail to voluntarily resolve the above matters with the state, the state intends to foreclose on its liens on the Sanicem Landfill property and pursue any and all legal remedies available under state and federal law.

### **SUMMARY OF SITE HISTORY AND RESPONSE ACTIVITIES**

The J. Fons Company, under your direction as president, opened the Sanicem Landfill in 1969. The landfill property had previously been used as a dump by prior owners since approximately 1967. Parcels associated with the Facility are numerous and are held by various parties.

The J. Fons Company acquired a license on May 23, 1969, to utilize 15 acres on the northern portion of the Facility as a landfill. On May 5, 1970, a second license was granted to the J. Fons Company to extend the landfill by an additional 44 acres of land in the city of Auburn Hills. Numerous applications for a solid waste disposal area license were submitted to the MDEQ from 1970 to 1978. An application dated October 2, 1978, listed the Sanicem Company as the property owner and the J. Fons Company as the applicant. You signed the application as president of the J. Fons Company and were listed as the responsible person to contact. According to records contained in the MDEQ files, you were president of the J. Fons Company from 1969 through July 1997.

Records kept by the J. Fons Company indicate that the amount of waste disposed of daily at the landfill during its operation was approximately 7,000 to 8,000 cubic yards. The MDEQ staff observed during the inspections that refuse was being unlawfully dumped into the water table and that additional cover over the refuse was required. From 1970 through 1978, the MDEQ staff cited additional deficiencies at the Facility, including, but not limited to, leachate outbreaks and lack of final grading and seeding. The MDEQ sent a letter to you as president of the J. Fons Company, dated June 7, 1978, as a formal Notice of Intent to Deny the license application for the Facility. The license denial was made on the basis of the following conditions: (1) leachate control had not been accomplished; (2) groundwater observation and monitor wells that had been previously requested had not been installed; (3) the MDEQ had reasons to believe that groundwater contamination existed; (4) there had been an inadequate application of the required final cover; (5) odors resulting from either leachate or gas emissions had not been eliminated; (6) perimeter drains for the surface water management and control had not been adequately developed; (7) there had been no successful determination establishing the elimination of migration of groundwater and surface water into the

existing refuse; (8) complete information regarding the gas venting system, including determining any need for establishment of additional vents or interceptor trenches to permanently eliminate danger from migrating combustible gases had not been submitted; and (9) the reintroduction of leachate back into the landfill was to have been discontinued on January 21, 1978, but had continued. The MDEQ staff observed leachate being dumped from a truck into the landfill on May 16 and 17, 1978. A Cease and Desist Order sent to you dated June 7, 1978, was based upon the above conditions. The MDEQ closed the landfill on June 30, 1978, due to these conditions. On September 25, 1978, at an administrative hearing, a consent order was issued between the state and the petitioner, the J. Fons Company. The consent order required that the J. Fons Company correct the conditions described above and not operate the landfill until after October 30, 1978, or upon issuance of the necessary permits and licenses. The J. Fons Company failed to meet the conditions in the consent order.

The J. Fons Company initiated corrective actions from August through October 1981 with the intent of reopening the landfill. The J. Fons Company never satisfactorily corrected the problems. Consequently, the Sanicem Company failed to obtain a license to operate and did not reopen the landfill.

Starting in March 1995, a contractor on behalf of the MDEQ performed a remedial investigation (RI) of the Facility. During the RI, drums were observed at the Facility, and the presence of abandoned heavy equipment on the northern portion of the Facility was also noted. Soil samples collected during the RI showed levels of lead above the industrial direct contact criteria. Analysis of leachate from seeps along the landfill perimeter indicated lead levels exceeded drinking water standards. Groundwater sample results indicated phenanthrene was present at levels above the groundwater/surface water interface criteria. The groundwater, including the leachate, at the Facility discharges into a wetland.

In 1996, the contractor for the MDEQ completed an RI and performed some interim response activities at the Facility, including, but not limited to, drum removal, geophysical survey, installation of soil borings and monitoring wells, sample collection and analyses of soil and water samples, monitoring well repair and replacement, methane vent replacement, and repair of the leachate collection system to mitigate off-site migration of leachate.

On August 21, 1998, the MDEQ perfected liens on three parcels of the Facility (Sidwell Nos. 14-02-200-001, 14-02-200-002 and 14-02-200-003) still owned by you to protect the interest of the state in recovering response activity costs at the Facility.

The Facility is presently unused, with unrestricted access and uninhibited erosion exposing refuse. Leachate streams flow off the landfill and into wetlands.

### IDENTIFICATION OF PERSON(S) WHO ARE LIABLE

Persons who are liable pursuant to Section 20126 of the NREPA include the owners and operators of the Facility who are responsible for an activity causing a release or threat of release of a hazardous substance.

As previously stated, abandoned drums were observed at the Facility, and soil and groundwater sample results indicated contamination existed above residential land-use criteria. Hence, this Facility is a facility as defined by Part 201.

The MDEQ considers you an operator of the Facility who is responsible for an activity causing a release or threat of release of a hazardous substance, and, therefore, you are a person liable under Section 20126 of the NREPA.

Based on information available to the MDEQ, you were in control of or responsible for the operation of the Facility, as evidenced by the following facts:

- In your deposition conducted by the MDEQ on March 10, 1998, you stated that you were "running the J. Fons Company." You further stated that, "As president, I was responsible for everything."
- You stated that you were one of the partners of the Sanicem Company who also owned the Sanicem Landfill property from approximately 1969 until the mid-1980s, at which time the J. Fons Company bought the property from the Sanicem Company.
- You signed the landfill permit application and were listed as the responsible person to contact.

As an operator, you were responsible for disposing of about 7,000 to 8,000 cubic yards of waste daily into the landfill. You, on behalf of the J. Fons Company and/or the Sanicem Landfill, were informed by the MDEQ of deficiencies at the Facility, such as reintroduction of leachate into the landfill and inadequate application of final cover. However, as the person responsible for the operation of the Facility, you continued to operate in a manner that you knew, or should have known, would cause environmental contamination. The inadequate disposal of this waste, operation, and closure of the landfill has resulted in uncontrolled leachate migration off-site, uncontrolled methane gas production, and exposed drums and debris at the Facility.

Therefore, you are liable as a person who is responsible for an activity that caused a release or threat of release at the Facility.

Pursuant to Section 20126a of the NREPA and Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended

(CERCLA), 42 U.S.C. Section 9607(a), each person who is liable for a facility is jointly and severally liable for all past and future costs lawfully incurred by the state in performing response activities. These persons also may have liability under other applicable state and federal laws.

#### **DEMAND FOR PAYMENT OF COSTS, FINES, AND PENALTIES INCURRED**

The state is authorized by law to use public funds to undertake response activities that are necessary to protect the public health, safety and welfare and the environment. The MDEQ has spent, and continues to spend, public funds on response activities at the Facility.

The MDEQ hereby demands payment from you in the amount of \$929,205.99 plus any costs that continue to accrue, including any and all interest. This amount includes \$591,183.69 in response activity costs, which have been incurred and paid by the state through the dates indicated on the enclosed Summary Report. Costs attributed to response activities that have been conducted by the state include, but are not limited to, a geophysical survey, installation of soil borings and monitoring wells, collection and analyses of soil and groundwater samples, removal of drums and contaminated soils, monitoring well repair and replacement, methane vent replacement, repair of leachate collection system, staff time and travel, and attorney fees.

Pursuant to Section 20137(1)(f) and Section 3115 of Part 31, Water Resources Protection, of the NREPA, the state also may seek to assess and recover fines and penalties from a liable person for violations of the provisions of the NREPA. These fines and penalties accrue at the rate of not more than \$10,000 per day pursuant to Section 20137(1)(f) of the NREPA, and \$25,000 per day pursuant to Section 3115 of the NREPA. Based on the information presently available to the MDEQ, the state may assess these penalties for the following violations: (1) failure to perform due care pursuant to Section 20107a of the NREPA; (2) failure to diligently pursue response activities at the Facility pursuant to Section 20114(1)(g) of the NREPA; and (3) unauthorized discharges to the surface waters of the state pursuant to Section 3109(1) of the NREPA from leachate seeps on the south side of the former landfill discharging into an adjacent wetland.

#### **REQUEST FOR RESPONSE ACTIVITIES**

This Notice also serves as the MDEQ's written request that you undertake response activities to remedy contamination at the Facility. If you do not agree to undertake these response activities, the state may perform these response activities, and you will be legally liable for the reimbursement of the costs for those response activities to the state.

Pursuant to Section 20114 of the NREPA, an owner or operator who has knowledge that a property is a facility and who is liable under Section 20126 of the NREPA is required to undertake response activities as necessary to protect the public health, safety, and welfare and the environment and to diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201. You were previously notified by letter dated February 2, 1999, from the MDEQ of your responsibility to undertake these response activities as required by state law, but you have not conducted these response activities. Pursuant to Section 20114(1)(h) of the NREPA, the MDEQ again requests that you submit work plans for the following response activities to the MDEQ project manager for review and approval:

1. Within 45 days of receipt of this letter, provide a plan for and undertake evaluation activities to determine if additional RI activities are necessary.
2. Undertake any other response activities determined by the MDEQ to be technically sound and necessary.
3. Within 120 days of receipt of this letter, submit to the MDEQ for approval a remedial action plan (RAP) that, when implemented, will achieve the cleanup criteria specified under Part 201 and its rules.
4. Implement the MDEQ-approved RAP in accordance with a schedule approved by the MDEQ.

The MDEQ strongly suggests that you proceed expeditiously with the development of the above-referenced plans. Pursuant to state law, you are responsible for complying with the above requirements. These requirements are in effect regardless of the progress of any anticipated negotiations to voluntarily enter into a legal agreement with the state. Any such negotiations should not be used as an excuse to delay the preparation, submittal, and performance of those plans.

Additionally, pursuant to Section 20107a of the NREPA and the Part 10 Rules, an owner or operator of property who has knowledge the property is a facility shall: (1) undertake measures as are necessary to prevent exacerbation of the existing contamination; (2) exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety; and (3) take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions. The MDEQ hereby requests that you implement measures as appropriate to address any of the above concerns that exist at this Facility.

**TIMING AND FORM OF RESPONSE TO THIS NOTICE OF DEMAND**

A meeting has been scheduled for Monday, November 20, 2000, at 2:30 p.m., in the Knapp's Office Centre, 300 South Washington Square, Lansing, Michigan, for you and your representative to meet with representatives of the Environmental Response Division (ERD), MDEQ, and the Natural Resources and Environmental Quality Division, Michigan Department of Attorney General (MDAG), to discuss this Notice. Ten days prior to the above-scheduled meeting date, please confirm your intent to attend the meeting by writing Ms. Rhonda Cross, Enforcement Case Manager, Southeast Michigan District Office, ERD, at 38980 West Seven Mile Road, Livonia, Michigan 48152, or telephoning her at 734-953-1497. If you wish to voluntarily resolve your liability as described in this Notice, you must enter into an enforceable Administrative Order by Consent (AOC) with the state in which you agree to reimburse the state its past and future response costs, resolve the state's fine/penalty claim, and undertake response activities. Enclosed is a copy of the model AOC document that the MDEQ and the MDAG would require you to enter to settle this matter. If you intend to dispute any of the costs or claims made by the state in this Notice, you are required to provide for discussion at the aforementioned meeting a detailed list of the specific disputed items, including the basis for each dispute, within 30 days of your receipt of this Notice.

If at the aforementioned meeting, you agree to engage in good-faith negotiations with the state to pursue resolution of this matter, the MDEQ and the MDAG will provide an additional 60 days beyond the date of that meeting to resolve this matter. Resolution must include entry into an enforceable AOC with the state to reimburse the state its response activity costs, to resolve the state's fine/penalty claim, and to agree to the implementation of response activities.

If we are unable to resolve this matter in accordance with the schedule outlined above, the state will take appropriate action to secure the implementation of necessary response activities and to recover all response activity costs, interest, and fines and penalties. Such action may include foreclosure on the state's liens and/or a lawsuit pursuant to Sections 20137 and 3115 of the NREPA and/or Section 107 of the CERCLA.

If you wish to review the MDEQ files on the Sanicem Landfill Facility, please contact Mr. Benjamin Mathews, Project Manager, Southeast Michigan District Office, ERD, at 734-953-1447. A courtesy copy of this Notice is being sent to the local units of government in which the Facility is located.



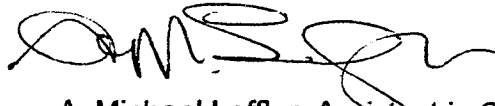
October 31, 2000

If you have questions regarding this Notice, please contact Ms. Cross, or you may contact either of us.

Sincerely,



Alan J. Howard, Chief  
Environmental Response Division  
Michigan Department of Environmental Quality  
517-335-1104



A. Michael Leffler, Assistant in Charge  
Natural Resources and Environmental  
Quality Division  
Michigan Department of Attorney General  
517-373-7540

Enclosures

cc: Mr. Tom McMillin, Mayor, City of Auburn Hills  
Orion Charter Township  
Mr. Richard Barr, Dean & Fulkerson, P.C.  
Mr. James Stropkai, MDAG  
Mr. Arthur R. Nash Jr., Deputy Director, MDEQ  
Mr. Philip Schrantz, MDEQ  
Ms. Patricia A. McKay, MDEQ  
Mr. Oladipo Oyinsan, MDEQ  
Ms. Rhonda Cross, MDEQ  
Mr. Benjamin Mathews, MDEQ

63-211590  
QUIT CLAIM DEED  
STATUTORY FORM

LIBER 8489 PAGE 280

83

91384

KNOW ALL MEN BY THESE PRESENTS, That ~~John J. Fannon, Jr.~~ and Mary C. Fannon, his wife,

whose address is 780 Grand Marais, Grosse Pointe Park, Michigan 48230

Quit Claim ~~John J. Fannon, Jr., Inc.~~ a Michigan Corporation,

whose street number and postoffice address is 6451 E. McNichols Road, Detroit, Michigan 48212

the following described premises situated in the Townships of Pontiac & Orion County of Oakland, and State of Michigan ~~XXXXXX~~, as described and set forth in the attachment hereto which is made a part hereof, marked Exhibit I.

#

RECORDED  
OAKLAND COUNTY MICHIGAN  
REGISTER OF DEEDS  
83 OCT -6 -9:29  
LYNN D. ALLEN  
CLERK-REGISTER OF DEEDS

MAKE YOUR REAL ESTATE TRANSFERS SAFE BY USING BURTON TITLE INSURANCE

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, for ~~XXXXXX~~ and encumbrances of record, but retaining unto the Grantor any and all gas now possessed and/or hereafter acquired to such property.

Exempt by Public Act No. 67 of 1969 7.456 (5) a

Dated this 3rd day of August

Signed in the presence of:

Signed by:

*Lawrence D. Heitsch*  
Lawrence D. Heitsch

*John J. Fannon, Jr.*  
JOHN J. FANNON, JR.

*Beverly A. Pohocsucut*  
Beverly A. Pohocsucut

*Mary C. Fannon*  
MARY C. FANNON

STATE OF MICHIGAN ) ss.  
COUNTY OF oakland

The foregoing instrument was acknowledged before me this 3rd day of August

19 82 by John J. Fannon and Mary C. Fannon, his wife

Grantor

LAWRENCE D. HEITSCH

Notary Public, Oakland Co. MI 19  
My Commission Expires June 20 1984

Oakland

Notary Public,  
County, Michigan

When Recorded Return To:

Send Subsequent Tax Bills To:

Drafted by:  
LAWRENCE D. HEITSCH

Grantee

Grantee

Business Address  
P.O. Box 1198  
Birmingham, Michigan 48012

Tax Parcel # \_\_\_\_\_ Recording Fee \_\_\_\_\_ Revenue Stamps \_\_\_\_\_

EXHIBIT 1

The following is a description Real Estate located in the County of Oakland, State of Michigan, containing one hundred for [REDACTED] more or less.

A parcel of land located in and being a part of the Southeast 1/4 of Section 35, Town 4 North, Range 10 East, Orion Township, and a part of the Northeast 1/4 of Section 2, Town 3 North, Range 10 East, Pontiac Township, Oakland County, Michigan, and being more particularly described as follows:

Commencing at the Southeast corner of said Section 35 and thence extending North 88 degrees 30 minutes West 1354.07 feet; thence South 01 degree 16 minutes 30 seconds West 379.30 feet; thence North 88 degrees 44 minutes West 1343.30 feet; thence North 02 degrees 10 minutes 30 seconds East 384.80 feet to the South 1/4 corner of said Section 35; thence South 88 degrees 30 minutes East 42.00 feet; thence North 03 degrees 21 minutes East 831.00 feet; thence South 88 degrees 21 minutes East 1877.10 feet; thence along a curve concave to the South Radius 400.00 feet whose long chord bears South 58 degrees 21 minutes East 400.00 feet; thence South 28 degrees 21 minutes East 183.79 feet; thence along a curve concave to the North Radius 300.00 feet whose long chord bears South 58 degrees 21 minutes East 300.00 feet; thence South 88 degrees 21 minutes East 10.00 feet to the East line of said Section 35; thence South 05 degrees 30 minutes East 317.00 feet to the point of the beginning.

09-35-400-005-SK 1/4 SW 35-  
14-02-200-001-NE 1/4 Sec 2

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point distant North 2603.87 feet and East 91.42 feet from center of Section, thence North 88 degrees 53 minutes 00 seconds East 650 feet, thence South 32 degrees 45 minutes 50 seconds West 490.04 feet, thence South 40 degrees 34 minutes 40 seconds West 133.25 feet, thence South 88 degrees 53 minutes 00 seconds West 302.38 feet, thence North 00 degrees 28 minutes 00 seconds East 343.20 feet, thence North 88 degrees 53 minutes 00 seconds East 302.38 feet, thence North 40 degrees 34 minutes 40 seconds East, 133.25 feet, thence North 32 degrees 45 minutes 50 seconds East 490.04 feet, thence North 88 degrees 53 minutes 00 seconds East 400 feet, thence South 01 degree 08 minutes 00 seconds East 400 feet, thence South 01 degree 09 minutes 00 seconds East 704.73 feet, thence South 88 degrees 53 minutes 00 seconds West 1237.19 feet to beginning.

14-02-200-002

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point on Easterly line of Lapeer Road, North 1498.72 feet and East 83.89 feet from center of Section, thence North 01 degree 10 minutes 00 seconds East 261.96 feet, thence North 00 degrees 28 minutes 00 seconds East 343.20 feet, thence North 88 degrees 53 minutes 00 seconds East 302.38 feet, thence North 40 degrees 34 minutes 40 seconds East, 133.25 feet, thence North 32 degrees 45 minutes 50 seconds East 490.04 feet, thence North 88 degrees 53 minutes 00 seconds East 400 feet, thence South 01 degree 08 minutes 00 seconds East 400 feet, thence South 01 degree 09 minutes 00 seconds East 704.73 feet, thence South 88 degrees 53 minutes 00 seconds West 1237.19 feet to beginning.

14-02-200-002

over  
09-35-400-004

RECORDED

East 1/2 of the Northeast Fractional 1/4 of Section 2, Town 3 North, Range 10 East, except beginning at East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 1372.14 feet, thence North 00 degrees 42 minutes 30 seconds West 633.17 feet, thence South 89 degrees 59 minutes 30 seconds East 1379.97 feet, thence South 633.12 feet to beginning, Also except beginning at point distant North 1390 feet and North 72 degrees 10 minutes 30 seconds West 356 feet and North 41 degrees 21 minutes 30 seconds West 404 feet from East 1/4 corner, thence South 57 degrees 03 minutes 30 seconds West 295 feet, thence North 32 degrees 56 minutes 30 seconds West 200 feet, thence North 57 degrees 03 minutes 30 seconds East 265.41 feet, thence South 41 degrees 21 minutes 30 seconds East 202.18 feet to beginning, Also except beginning at point distant North 633.12 feet from East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 544.50 feet, thence North 400 feet, thence South 89 degrees 59 minutes 30 seconds East 544.50 feet, thence South 400 feet to beginning.

14-02-200-011