

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CLARE

MICHAEL A. COX, Attorney General of
the State of Michigan, *ex rel* MICHIGAN
DEPARTMENT OF ENVIRONMENTAL
QUALITY, a State Agency,
Plaintiffs,

File No. 87-8108-CE

v

Honorable Thomas R. Evans

CITY OF CLARE, an incorporated Michigan City,
Defendant,

and

HATTON TOWNSHIP, an unincorporated Michigan Township,
Plaintiff, Cross-Complainant,

and

MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY, a State Agency,
Intervening Plaintiff, Cross-Defendant,

v

CITY OF CLARE, an incorporated Michigan City,
Defendant.

Dept. of Attorney General
RECEIVED

MAY 04 2007

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A TRUE COPY
Dated 5/11/07
CAROL A. MCAULAY, COUNTY CLERK

BY Jn DEPT. CLERK

CONSENT DECREE

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CONSENT DECREE

The Parties to this Consent Decree are Plaintiff Hatton Township and intervening Plaintiffs Michael A. Cox, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality (MDEQ), and Defendant City of Clare (Clare).

This Consent Decree (Decree) supersedes and replaces the previous Consent Decree between the Parties entered by this Court on July 13, 1988 (Previous Decree or 1988 Decree).

Since July 13, 1988, the Michigan Water Resources Commission Act, 1929 PA 245, as amended, was recodified in 1994 as Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* Likewise, the Michigan Solid Waste Management Act (SWMA), MCL 299.401 *et seq.*, was recodified in 1994 as Part 115, Solid Waste Management, of the NREPA, MCL 324.11501 *et seq.* Finally, the Michigan Environmental Response Act (MERA), MCL 691.1201 *et seq.*, was repealed and recodified in 1994 as Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.* While the Previous Decree established that the final remedy must clean up groundwater to established background criteria, the current law, Part 201, provides for final remedy approaches that achieve criteria established by the MDEQ based on property use.

This Decree acknowledges Clare's reasonably available resources to reimburse both past and future state-incurred response activity costs and to implement response activities detailed herein to achieve and maintain compliance with Parts 31, 115, and 201 of the NREPA, MCL 324.3101 *et seq.*, 324.11501 *et seq.*, 324.20101 *et seq.* at Clare's sanitary landfill (Clare Landfill) located in Hatton Township, Clare County, Michigan. The Decree also establishes those response activities (i.e., monitoring and contingency measures) that Clare will implement to

minimize and mitigate injury to public health, safety and welfare and the environment. Finally, the Decree establishes contingency response activities that Clare will implement should any groundwater monitoring response activity identify conditions that may present a public health risk to the health of residents located downgradient of the Clare Landfill.

The Parties agree, and the Court by entering this Decree finds, that the compliance and 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 minimize and mitigate injury to 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 324.11546(1), 324.3115(1) and 324.20137. This Court also has personal jurisdiction over Clare. Clare waives any objections and defenses regarding the jurisdiction of the Court.

1.2 The Court determines that the terms and conditions of this Decree are reasonable, adequately resolve the environmental issues raised in the Complaint, 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 resolve disputes arising under the same, including those that may be necessary for the Decree's construction, execution, or implementation, subject to Section XIX (Dispute Resolution).

II. DENIAL OF LIABILITY

Clare's execution of this Decree constitutes neither an admission or denial of liability with respect to any issue addressed in this Decree, nor an admission or denial of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Decree shall apply to and be binding upon Clare, Hatton Township and the State and their successors and assigns. Any change in ownership or corporate or legal status of Clare, including, but not limited to, any transfer of assets or of real or personal property, shall in no way alter Clare's responsibilities under this Decree. To the extent that Clare is the owner of all or a part of the Facility, Clare shall provide the MDEQ with written notice prior to its transfer of ownership of all or a part of the Facility and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Clare shall also comply with the requirements of Section 20116 of the NREPA, MCL 324.20116, and the Part 201 Rules.

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

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

IV. STATEMENT OF PURPOSE

In entering into this Decree, it is the mutual intent of the Parties that Clare achieve the following objectives: (a) to the extent applicable, achieve and maintain compliance with Section 20107a(1)(a)-(c) of the NREPA; (b) provide for the payment of the State's Past Response Activity Costs to the extent Clare has the ability to pay, and Future Response Activity Costs in a manner as set forth in this Decree; (c) to minimize and mitigate injury to public health, safety, and welfare and the environment through the implementation of long-term operation and maintenance measures at the Clare Landfill, and implementation of a long-term monitoring and contingency program that will ensure the protection of the public health and the environment in accordance with the MDEQ approved Long-term Operation/ Maintenance, Groundwater Monitoring, and Contingency Plan (Attachment C) and this Decree; and (d) implementation of any future contingency response activities that may be necessary including, but not limited to, replacement of down-gradient water supply wells, in accordance with the MDEQ approved Long-term Operation/Maintenance, Groundwater Monitoring, and Contingency Plan.

V. DEFINITIONS

- 5.1 "Clare" means the City of Clare and its successors.
- 5.2 "Consent Decree" or "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, which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Decree.
- 5.3 "Effective Date" means the date the Court enters this Decree.

5.4 "Facility" means any area of the Property identified in Attachment A where a hazardous substance, in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) under Part 201, Environmental Remediation, or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited, disposed of, or otherwise come to be located; and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property.

5.5 "Future Response Activity Costs" means all costs incurred by the State, that are not included in the attached Summary Report (Attachment B), to perform response activities required by this Decree pursuant to Paragraph 8.6 (The MDEQ's Performance of Response Activities) and Section XI (Emergency Response). Contractor costs incurred by the MDEQ, associated with the performance of said response activities are also considered Future Response Activity Costs.

5.6 "Hazardous Substances" means those substances as defined in Section 20101(1)(t) of Part 201, Environmental Remediation, of the NREPA.

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

5.8 "O&M Costs" means monitoring, operation and maintenance, oversight, and other costs pursuant to implementing response activities associated with the approved Long-term Operation/Maintenance, Groundwater Monitoring, and Contingency Plan (Attachment C).

5.9 "Part 31" means Part 31, Water Resources Protection, of the NREPA, as amended, MCL 324.3101 *et seq.* and the administrative rules promulgated thereunder.

5.10 "Part 115" means Part 115, Solid Waste Management, of the NREPA, as amended, MCL 324.11501 *et seq.* and the administrative rules promulgated thereunder.

5.11 "Part 201" means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.* and the administrative rules promulgated thereunder.

5.12 "Party" means either Clare or the State or Hatton Township. "Parties" means Clare and the State and Hatton Township.

5.13 "Past Response Activity Costs" means response activity costs that the State incurred and paid during the dates set forth in the Summary Report (Attachment B).

5.14 "Property" means the property located in Hatton Township, Clare County, Michigan, and described in the Legal Description (Attachment A).

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

5.16 "State" or "State of Michigan" means the Michigan Department of Attorney General (MDAG) and the MDEQ, and any authorized representatives acting on their behalf.

5.17 "Submissions" means all plans, reports, schedules, and other submittals that Clare is required to provide to the State or the MDEQ pursuant to this Decree. "Submissions" does not include the notifications set forth in Section XII (Delays In Performance, Violations, And *Force Majeure*).

5.18 Unless otherwise stated herein, all other terms used in this Decree, which are defined in pertinent parts of the NREPA and associated administrative rules, shall have the same meaning in this Decree as in those pertinent parts and rules.

VI. FINDINGS OF FACT AND DETERMINATIONS

The State makes the following Findings of Fact and Determinations.

6.1 Clare owns the real property located in Hatton Township, Clare County, Michigan, and described in the Legal Description set forth in Attachment A.

6.2 From at least 1974 to 1987, Clare has conducted, managed, maintained and operated a solid waste disposal area on the real property described in paragraph 6.1 (hereafter collectively referred to as the "Disposal Area"). The Disposal Area has generated, and continues to generate, leachate that has entered, degraded and continues to enter and degrade the soils and ground waters in proximity of the Disposal Area. The Disposal Area has not been licensed by the MDNR or, subsequently, the MDEQ, since September 1, 1979.

6.3 Response activities completed by Clare and the MDEQ at the Disposal Area since 1987 include the placement of a protective cap over the Disposal Area, the replacement of residential water supplies contaminated by Hazardous Substances originating from the Disposal Area, monitoring of Hazardous Substance migration from the Disposal Area, and a remedial investigation to determine the full nature and extent of soil and groundwater contamination.

6.4 The Clare Landfill is a "facility" as that term is defined in Section 20101(l)(o) of Part 201, Environmental Remediation, of the NREPA.

6.5 In operating and managing the Disposal Area, Clare has discharged into the ground waters of the state certain Hazardous Substances that are or may become injurious to the public health, safety, or welfare, or to the domestic, commercial, industrial, agricultural, recreational, or other uses that are or may be made of the ground waters. Hazardous Substances discharged from the Disposal Area into the waters of the state constitute a "release or threatened release" within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of Part 201,

Environmental Remediation, of the NREPA. These Hazardous Substances continue to migrate onto and beyond adjacent properties.

6.6 The release or threatened release of Hazardous Substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, or welfare, or the environment within the meaning of Section 20119 of Part 201, Environmental Remediation, of the NREPA.

6.7 As a governmental entity, Clare is a "person" as that term is defined in Section 301(g) of the NREPA.

6.8 Clare is the present owner of the Property and Disposal Area. Additionally, Clare was owner and operator of the Property and the Disposal Area at the time of disposal of Hazardous Substances within the Disposal Area from 1974 through 1987. Therefore, Clare is responsible for an activity causing a release or threat of release at the Facility pursuant to Section 20126(1)(b) of Part 201, Environmental Remediation, of the NREPA.

6.9 Upon the discovery of the release of Hazardous Substances from the Disposal Area, the MDEQ, in 1986, ordered Clare to cease and desist its landfill operations. Clare did so in 1987. On July 13, 1988, the Parties entered into a court-ordered settlement (1988 Consent Decree) whereby Clare agreed to cap and properly close the Disposal Area. The 1988 Consent Decree, which was filed with and entered by the Clare County Circuit Court, also required that Clare define the extent of groundwater contamination and prepare and implement a remedial action plan to restore groundwater quality to its original uncontaminated condition. It is the MDEQ's determination that Clare has largely failed to comply with the terms of the 1988 Consent Decree.

6.10 In order to minimize and mitigate injury to the public health, safety, and welfare, and the environment, and to abate the danger or threat caused by the release or threat of release of Hazardous Substances at the Facility, it is necessary and appropriate that response activities provided in this Decree be performed at the Facility.

On the basis of these Findings of Fact and Determinations, the State has determined that entry of this Decree will expedite the performance of response activities, that Clare will properly perform the response activities required by this Decree, and that the entry of this Decree is in the public interest and will minimize litigation.

VII. COMPLIANCE WITH STATE AND FEDERAL LAWS

All actions required by 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, Parts 31 (Water Resources Protection), 115 (Solid Waste Management), and 201 (Environmental Remediation) of the NREPA, and the administrative rules promulgated under those parts, as well as those laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Decree.

VIII. PERFORMANCE OF RESPONSE ACTIVITIES

8.1 Performance Objectives

Clare shall perform all response activities at the Facility in compliance with Part 201 that are necessary to achieve and maintain the following performance objectives:

- (a) Comply with the applicable requirements of Section 20107a(1)(a)-(c) of the NREPA.

(b) Repair, monitor and maintain the landfill cap, gas vent system, stormwater controls, and access controls to properly manage and minimize surface water infiltration and runoff, provide a direct contact barrier, and eliminate and prevent unacceptable exposure to Hazardous Substances at the Clare Landfill.

(c) Conduct landfill gas monitoring and implement appropriate response activities to effectively monitor and prevent or eliminate unacceptable exposures and physical hazards associated with the migration of landfill gas from the Clare Landfill.

(d) Conduct a groundwater monitoring program and implement appropriate contingency response activities, to effectively monitor and prevent or eliminate exposures, via the drinking water pathway, to groundwater containing Hazardous Substances in exceedance of the residential cleanup criteria established Under Section 20120a(1)(a) and (17) of the NREPA.

(e) Establish and maintain financial assurance in the amount of \$200,000.00 to ensures Clare's ability to implement appropriate contingency response activities to address unanticipated conditions at the Facility that threaten public health and the environment or present unacceptable exposures, via the drinking water pathway, to groundwater containing Hazardous Substances in exceedance of the residential cleanup criteria established under Section 20120a(1)(a) and (17) of the NREPA.

8.2 Documentation of Compliance with Section 20107a of the NREPA

To the extent that Clare owns or operates all or a part of the Facility, Clare shall maintain and upon the MDEQ's request, submit documentation to the MDEQ for review and approval that summarizes the actions Clare has taken or is taking to comply with Section 20107a(1)(a)-(c) of Part 201, Environmental Remediation, of the NREPA and the related Part 201 Rules. Clare's

failure to comply with the requirements of this paragraph, Section 20107a of Part 201, Environmental Remediation, of the NREPA, or the related Part 201 Rules, shall constitute a violation of this Decree and shall be subject to the provisions of Section XVII (Stipulated Penalties) of this Decree.

8.3 Upon the effective date of this Decree, Clare shall implement the response activities set forth in the MDEQ-Approved Long-term Operation/Maintenance, Groundwater Monitoring and Contingency Plan (hereinafter "the Plan") (attachment C) and other response activities necessary to achieve the performance objectives set forth in Paragraph 8.1 of this Decree.

8.4 Modification of the Plan.

(a) If the MDEQ determines that a modification to a response activity workplan, including the Long-term Operation/Maintenance, Groundwater Monitoring, and Contingency Plan, is necessary to meet and maintain the performance objectives specified in Paragraph 8.1, or to meet any other requirement of this Decree, the MDEQ may require that such modification be incorporated into the MDEQ-approved Plan under this Decree. If extensive modifications are necessary, the MDEQ may require Clare to develop and submit a new Plan. Clare may request that the MDEQ modify the Plan by submitting such a request along with the proposed change in the Plan and the justification for that change to the MDEQ for review and approval. Clare shall forward any such modification request to the MDEQ at least thirty (30) days before the due date for performance of any affected response activity. Any plan modifications or any new plans shall be developed in accordance with the applicable requirements of this section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XV (Submissions and Approvals).

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

8.5 Progress Reports

(a) Clare shall submit to the MDEQ Project Coordinator 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 Clare has taken toward achieving compliance with this Decree during the specified reporting period.

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

(iii) The status of any access issues which affect or may affect the performance of response activities, and a description of how Clare 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, and treatment or disposal of those waste materials including copies of all waste manifests.

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

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

(b) Clare shall submit the first progress report to the MDEQ within one year following the Effective Date of this Decree. Thereafter, Clare shall submit progress reports annually unless otherwise specified in the MDEQ-approved work plans. Either the MDEQ may modify the schedule or Clare may request modification of the schedule for the submittal of progress reports contained in an MDEQ-approved work plan.

8.6 The MDEQ's Performance of Response Activities

Should Clare cease to perform the response activities required by this Decree, fail to perform response activities in accordance with this Decree, or perform 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 Clare, take over the performance of those response activities. The MDEQ is not, however, required to provide thirty (30) days written notice before performing response activities that the MDEQ determines are necessary pursuant to Section XI (Emergency Response). Should the MDEQ deem it necessary to take over the performance of response activities that Clare is obligated to perform under this Decree, Clare shall reimburse the State for its costs to perform these response activities, including any accrued interest. The accrual of such interest on the State's costs shall begin on the first day that the State begins to incur the response activity costs and shall be at the rate specified in Section 20126a(3) of the NREPA. Costs incurred by the State to perform response activities pursuant to this paragraph shall be deemed "Future Response Activity Costs"

and Clare shall reimburse the State for these costs and any accrued interest in accordance with Paragraphs 16.2, 16.4, and 16.5 of Section XVI (Reimbursement of Costs).

IX. ACCESS

9.1 Upon the Effective Date of this Decree, Clare shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties are owned, controlled by, or available to Clare. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, MDEQ staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and associated properties for the purpose of conducting any activity for which access is required for the implementation of this Decree or to otherwise fulfill any responsibility under state or federal laws with respect to the Facility, including, but not limited to the following:

- (a) Monitoring response or other activities at the Facility pursuant to this Decree;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, 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 the response activity;

- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;
- (h) Communicating with Clare's 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;
- (j) Assuring the protection of public health, safety, and welfare, and the environment; and
- (k) Conducting tests and inspections related to Clare's compliance with this Decree.

9.2 To the extent that the Facility or part of the Facility is owned or controlled by persons other than Clare, Clare shall use its best efforts to secure from such persons written access agreements or judicial orders providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Clare shall provide the MDEQ with a copy of each written access agreement or judicial order secured pursuant to this section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Clare 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 Clare's receipt of the MDEQ's approval of the work plan for which such access is needed. Should Clare fail to secure access within sixty (60) days after filing judicial action, Clare shall promptly notify the MDEQ of the status of its efforts and provide an assessment of how any delay in obtaining access may affect the performance of response activities for which the access

is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a Force Majeure event pursuant to Section XII (Delays In Performance, Violations, And *Force Majeure*).

9.3 Should Clare enter into any lease, purchase, contract, or other agreement that transfers to another person a right of control over the Facility or a portion of the Facility, such an agreement shall contain a provision preserving for the MDEQ or any other person undertaking the response activities, and their authorized representatives, the access provided under Sections IX (Access) and XIII (Record Retention/Access to Information) of this Decree.

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

X. SAMPLING AND ANALYSIS

10.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the approved Monitoring and Contingency Plan (Attachment C).

10.2 Clare, or its consultants or subcontractors, shall provide notice to the MDEQ at least ten (10) days before Clare conducts any sampling activity under this Decree to allow the MDEQ Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or observe the sampling procedures. In circumstances where ten (10) days notice is not possible, Clare, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the appropriate MDEQ Project Coordinator and explain why earlier notification was not possible. If the MDEQ Project Coordinator concurs with the explanation provided, Clare may forego the ten (10)-day notification period for that particular sampling event.

10.3 Clare 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, Part 201, Part 31, or other relevant authorities. Clare shall include these results in the progress reports set forth in Paragraph 8.5 (Progress Reports).

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

XI. EMERGENCY RESPONSE

11.1 If, during Clare's performance of response activities under this Decree, an act or 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, Clare shall, to the extent its financial conditions allow, 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, Clare shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Clare shall be in accordance with all applicable health and safety laws and regulations.

11.2 Within ten (10) days of notifying the MDEQ of such an act or event described in Paragraph 11.1, Clare shall submit a written report setting forth a description of the act or event that occurred and the measures Clare has taken or will take 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 Clare notifies the MDEQ under this Section, if an

act or event causes a release, threat of release, or exacerbation, the MDEQ may require Clare to:

(a) 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; or (b) undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation. This section is not subject to the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

XII. DELAYS IN PERFORMANCE, VIOLATIONS, AND FORCE MAJEURE

12.1 Clare 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*. Clare shall not be in violation of this Decree where the State agrees that Clare's performance delay is attributable to a *Force Majeure* event under Paragraph 12.4(a) or pursuant to the resolution of a dispute between the Parties regarding an alleged *Force Majeure* event. Should Clare fail to comply with this Decree and such noncompliance is not attributable to a *Force Majeure* event, Clare shall be subject to the stipulated penalties set forth in Section XVII (Stipulated Penalties).

12.2 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 Clare, any entity controlled by Clare, or Clare's contractors, and which event delays or prevents the performance of any obligation under this Decree despite Clare's best efforts to fulfill the obligation. The requirement that Clare exercise "best efforts to fulfill the obligation" includes using best efforts: (a) to anticipate any potential *Force Majeure* event; (b) to address the effects of any potential *Force Majeure* event as it is occurring; and (c) following the potential *Force Majeure* event, such that any delay is minimized to the greatest extent possible. A *Force Majeure* event does not include,

among other things, power failures, equipment malfunctions, unanticipated or increased costs, changed financial circumstances, labor disputes, or failure to obtain a permit or license as a result of Clare's acts or omissions.

12.3 Should an event occur 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 should there be a delay in performance or other violation due to Clare's failure to comply with this Decree, Clare shall do the following:

(a) Notify the MDEQ by telephone or telefax within twenty-four (24) hours of discovering the event or violation; and

(b) Within ten (10) days of providing the 24-hour notice, provide written notice and supporting documentation to the MDEQ, which notice includes the following:

(i) A description of the event or violation and the anticipated length and precise cause of the delay, potential delay, or violation;

(ii) The specific obligations of this Decree that have been or may be affected by the delay or violation;

(iii) The measures Clare has taken or proposes to take to avoid, minimize, or mitigate the delay or the effect of the delay, or to cure the violation, and the timetable for performing those measures or for curing the violation;

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

(v) Whether Clare is requesting an extension for the performance of any of its obligations under this Decree and, if so, the specific obligations for

which it requests such an extension, and the length of and rationale for Clare's requested extension; and

(vi) A statement as to whether, in Clare's opinion, the event 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 or violation will avoid, minimize, or mitigate such endangerment.

12.4 The State will review any notification submitted by Clare pursuant to Paragraph 12.3(a) or (b) and advise Clare of one of the following:

(a) If the State agrees with Clare's assertion that a delay or potential delay is attributable to a *Force Majeure* event, the MDEQ's written determination 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 Clare is seeking an extension. An extension of the schedule for performance of an obligation affected by a *Force Majeure* event shall not, of itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with Clare's assertion that a delay or anticipated delay has been or will be caused by a *Force Majeure* event, the State will advise Clare of its decision. If Clare disagrees with the State's decision, Clare may initiate the dispute resolution process specified in Section XIX (Dispute Resolution) of this Decree. In any such proceeding, Clare must demonstrate by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *Force Majeure* event, that the duration of the delay or Clare's requested extension was or will be warranted under the

circumstances, that Clare exercised its best efforts to avoid and mitigate the delay or its effects, and that Clare has complied with all the requirements of this Section XII.

(c) If Clare'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, Clare shall undertake those actions determined by the MDEQ to be necessary and appropriate to address the performance delay or violation and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment as set forth in Section XVII (Stipulated Penalties). Penalties shall accrue as provided in Section XVII (Stipulated Penalties) regardless of when Clare notifies the MDEQ of a violation or when the MDEQ notifies Clare of a violation.

12.5 This Decree shall be modified as set forth in Section XXVII (Modifications) to reflect any modifications to the time schedule of the applicable response activity work plan that the Parties agreed to under Paragraph 8.4(a) or 12.4(a), or that are made pursuant to the resolution of a dispute between the Parties under Section XIX (Dispute Resolution).

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

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

XIII. RECORD RETENTION/ACCESS TO INFORMATION

13.1 Clare 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 copies of all records that are maintained or generated by representatives, consultants, or contractors of Clare. After the ten (10)-year period of document retention following completion of operation and maintenance and long-term monitoring at the Facility, Clare may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, Clare 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 Clare may offer to relinquish custody of all documents to the MDEQ. In any event, Clare shall obtain the MDEQ's written permission prior to the destruction of any documents. Clare's request shall be accompanied by a copy of this Decree and sent to all MDEQ Project Coordinators at the addresses in Section XIV (Project Coordinators and Communications/Notices) or to such other address that the MDEQ may subsequently designate in writing.

13.2 Upon request, Clare 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 and reasonable notice, Clare shall also make available to the MDEQ those employees, contractors, agents, or representatives of Clare with knowledge of relevant facts concerning the performance of response activities.

13.3 Should Clare submit to the MDEQ what it believes to be protected documents or information under Section 20117(10) of Part 201, Environmental Remediation, of the NREPA, Clare may so designate such documents or information in that submittal. If no such designation accompanies Clare's submitted information, the MDEQ may release the information to the public without further notice to Clare. Clare shall not claim as confidential or privileged the information described in Section 20117(11)(a-h) of Part 201, Environmental Remediation, of the NREPA. Information or data generated under this Decree shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA.

XIV. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

14.1 Each Party shall designate one or more Project Coordinators. When notices, progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to another Party under this Decree, or when other Party communications are necessary, such communications shall be directed to the designated Project Coordinator at the address listed below. Should a Party change its designated Project Coordinator, that Party shall provide the other Parties with written notice of the name, address, and telephone number of the successor, as soon as practicable.

A. As to the MDEQ:

(1) For all matters pertaining to this Decree, except those specified in Paragraphs 14.1A(2), (3), and (4) below:

Sue Kaelber-Matlock, Project Coordinator
Saginaw Bay District
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
503 N. Euclid Avenue, Bay City, Michigan, 48706
Phone: (989) 686-8025, extension 8303
Fax: (989) 684-9799
E-mail address: matlocks@michigan.gov

This Project Coordinator shall have primary oversight responsibility on behalf of the MDEQ for Clare's performance of response activities at the Facility and other requirements specified in this Decree, as appropriate.

(2) For all matters in this Decree specifically directed to the RRD Chief:
Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Phone: 517-335-1104
Fax: 517-241-9581

Via courier:
Chief, Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

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

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

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

Via courier:

Chief, Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

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

- (4) For all payments pursuant to Section XVI (Reimbursement of Costs) and Section XVII (Stipulated Penalties) and Section XVIII (Contingency Fund):

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

Via courier:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

To ensure proper credit, all payments made pursuant to this Decree must reference the Clare Landfill and the Case No. 87-8108-CE.

A copy of all correspondence sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 14.1A.(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 14.1A.(3), and the Assistant Attorney General in Charge designated in Paragraph 14.1B.

B. As to the Michigan Department of Attorney General:

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

C. As to Clare:

Mayor of the City of Clare
City of Clare
202 West Fifth Street
Clare, MI 48617-1490
Phone: 989-386-7541
Fax: 989-386-4508
E-mail address: khaven@cityofclare.org

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

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

XV. SUBMISSIONS AND APPROVALS

15.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and be delivered to the MDEQ in accordance with the schedules set forth in this Decree. All Submissions delivered to the MDEQ pursuant to this Decree shall include a reference to the Clare Landfill and Court Case No. 87-8108-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."

15.2 After receipt of any required Submission relating to response activities, the RRD Saginaw Bay District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify Clare of the deficiencies in the Submission. Upon receipt of the MDEQ's notice of approval or approval with modifications, Clare 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."

15.3 Upon receipt of the MDEQ's notice of disapproval pursuant to Paragraph 15.2(c), Clare shall correct the deficiencies and resubmit the Submission for MDEQ's 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, Clare 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 specified for Clare to provide the revised Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review any resubmitted Submission in accordance with the procedure set forth in Paragraph 15.2. Should the MDEQ disapprove of a resubmitted Submission, the MDEQ will so advise Clare 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 Clare delivers an approvable Submission.

15.4 If any initial Submission contains significant deficiencies such that the Submission is not, in the MDEQ's judgment, a good faith effort to deliver an acceptable Submission that complies with Part 201 and this Decree, the MDEQ will so notify Clare and deem Clare to be in violation of this Decree. Stipulated penalties, as set forth in Section XVII (Stipulated Penalties), shall begin to accrue on the day after the Submission was due and continue to accrue until Clare provides the MDEQ with an approvable Submission.

15.5 Upon the MDEQ's approval, any required Submissions and attachments thereto shall be deemed part of and enforceable under this Decree. Should any Submission or attachment thereto conflict with the requirements of this Decree, the latter shall prevail.

15.6 The MDEQ's approval or approval with modifications of a Submission shall constitute neither MDEQ's concurrence with any of the conclusions, methods, or statements in the Submission, nor a warrant that the Submission comports with law.

15.7 The MDEQ's informal advice, guidance, suggestions, or comments on any Submission by Clare shall not relieve Clare of its obligation to obtain any formal approval required under this Decree.

XVI. REIMBURSEMENT OF COSTS

16.1 Before execution of this Decree, the MDEQ analyzed Clare's ability to reimburse the State its response activity costs lawfully incurred in association with the Facility and the MDEQ concluded that Clare has limited financial resources to implement the ongoing monitoring requirements and unforeseen contingencies. In consideration of this analysis, Clare and the MDEQ have reached agreement that, within thirty (30) days of the Effective Date of this

Decree, Clare shall establish and capitalize a Contingency Fund in accordance with this Section and Section XVIII. (Contingency Fund) of this Decree, in the specific format for which is set forth in Attachment D (Certificates of Deposit). Clare shall establish the Contingency Fund with an initial deposit of Twenty-Nine Thousand dollars (\$29,000). Clare shall make six subsequent annual deposits of Twenty-Eight Thousand, Five Hundred dollars (\$28,500) into the Contingency Fund by July 1 of each year. By July 1, 2012, the sum total of all seven deposits will equal \$200,000. Clare's capitalization of the Contingency Fund and ultimate disbursement of its remaining balance as described in Section XVIII. (Contingency Fund) of this Decree are in resolution of the MDEQ's Past Response Activity Costs, including all costs the State has incurred before the Effective Date of this Decree and relating to matters covered in this Decree as documented in the attached Summary of Past Costs (Attachment B).

16.2 The State reserves the right to seek reimbursement from Clare for those Future Response Activity Costs incurred by the State pursuant to Paragraph 8.6 (The MDEQ's Performance of Response Activities) and Section XI (Emergency Response) of this Decree. The MDEQ will, as needed, provide Clare Summary Reports that set forth all Future Response Activity Costs incurred for a specified period, pursuant to Paragraph 8.6 and Section XI of this Decree. Clare shall reimburse the MDEQ for such costs within thirty (30) days of Clare's receipt of each Summary Report.

16.3 Clare shall have the right to request a full and complete accounting of all MDEQ cost demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ may incur additional Future Response Activity Costs in providing such documentation to Clare and said costs will be included in any demand for payment of Future Response Activity Costs.

16.4 All payments made pursuant to this Decree shall be by certified check and payable to the "State of Michigan –Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 14.1A.(4) of Section XIV (Project Coordinators and Communications/Notices). The Facility name "Clare Landfill", and the Court Case No. 87-8108-CE, 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 14.1A.(1), the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 14.1A.(3), and the Assistant Attorney General in Charge at the address listed in Paragraph 14.1B. Costs recovered pursuant to this section shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

16.5 If Clare fails to pay in full the MDEQ's Future Response Activity Costs as specified in Paragraph 16.2, 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 Clare pays in full those costs and the accrued interest to the MDEQ. Should Clare challenge the MDEQ's demand for reimbursement of costs, Clare 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 and Paragraph 8.6 of this Decree.

XVII. STIPULATED PENALTIES

17.1 Clare shall be liable for stipulated penalties in the amounts set forth in Paragraphs 17.2 and 17.3 for failure to comply with the requirements of this Decree, unless excused under Section XII (Delays in Performance, Violations, and *Force Majeure*). "Failure to Comply" by Clare shall include failure to complete required Submissions and notifications under

this Decree, and failure to perform response activities in accordance with MDEQ-approved plans, this Decree, and all applicable requirements of law within the specified implementation schedules established by or approved under this Decree.

17.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VIII (Performance of Response Activities):

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500.00	1 st through 14 th day
\$ 1000.00	15 th through 30 th day
\$ 1500.00	31 st day and beyond

17.3 Except as provided in Paragraph 17.2 and Section XII (Delays in Performance, Violations, and *Force Majeure*) and Section XIX (Dispute Resolution), if Clare fails or refuses to comply with any other term or condition of this Decree, Clare shall pay the MDEQ stipulated penalties of \$ 500.00 a day for each and every failure or refusal to comply.

17.4 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.

17.5 Except as provided in Section XIX (Dispute Resolution), Clare shall pay stipulated penalties owed to the MDEQ no later than thirty (30) days after Clare's receipt of the MDEQ's written demand. Clare's payment shall be in the manner set forth in Paragraph 16.4 of Section XVI (Reimbursement of Costs). Interest, at the rate provided in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period beginning on the day after payment was due until the date upon which Clare pays in full those stipulated penalties and the accrued interest to the MDEQ. Clare's failure to pay the stipulated

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

17.6 Clare's payment of stipulated penalties shall not alter Clare's obligation to perform the response activities required herein.

17.7 Should Clare fail to pay stipulated penalties when due, the MDEQ may institute proceedings to collect the penalties, as well as any accrued interest. The MDEQ's assessment of stipulated penalties is not, however, the MDEQ's exclusive remedy if Clare violates this Decree. The MDEQ 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, civil fines, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages under Section 20119(4) of the NREPA for three (3) times the costs incurred by the MDEQ as a result of Clare's violation of or failure to comply with this Decree, and sanctions for contempt of court.

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

XVIII. CONTINGENCY FUND

18.1 A Contingency Fund is necessary to assure that funds will be available to Clare and the MDEQ to take necessary action in the event that unanticipated conditions develop relative to the Clare Landfill Facility, which threaten human health or the environment. The Contingency Fund shall be in a dedicated interest-accruing financial mechanism mutually agreed upon by Clare and the MDEQ. The Contingency Fund shall be capitalized and maintained in an amount not less than Two Hundred Thousand dollars (\$200,000) in accordance with Paragraph 16.1 of Section XVI. (Reimbursement of Costs) of this Consent Decree. The intent of Clare and

the MDEQ is that this account be established with minimum administrative fees and minimum investment risk in order to maximize the monies available and the reliability of the Contingency Fund to assure the performance, if required, of contingency response activities to minimize or mitigate unacceptable exposures or injury to public health. All income and interest earned on the funds shall remain part of the Contingency Fund and be used only to remedy or mitigate unanticipated conditions which threaten human health or the environment.

18.2 The Contingency Fund shall be initially established in Certificates of Deposit in the format of Attachment D. If at any time, either the MDEQ or Clare determines that the Certificates of Deposit do not adequately secure the Contingency Fund, Clare shall, within 30 days of notifying the MDEQ, revise the existing financial mechanism, or establish an alternate interest-accruing financial mechanism that is acceptable to the MDEQ.

18.3 The Contingency Fund shall be for the exclusive use of Clare and the MDEQ to assure funds are available to reimburse a Party for any necessary contingency response activity to address unanticipated conditions at the Facility that threaten public health or the environment. Such funds shall not be disbursed without the MDEQ's written approval. To seek reimbursement for costs of any necessary contingency response activity, Clare shall submit to the MDEQ Project Coordinator designated in Paragraph 14.1A(1) documentation of the specific response activity costs and justification for the reimbursement. The MDEQ shall timely process any requests for approval of reimbursements from the Contingency Fund and shall not unreasonably withhold approval. Upon MDEQ approval the MDEQ will provide written authorization to Clare to allow Clare to cash one or more of the then existing certificates of deposit to use to pay the amount of the approved response activity costs. The amount of funds from the Certificates of

Deposit that exceed the amount of the response activity costs shall be immediately re-deposited by Clare into another MDEQ approved Certificate of Deposit in the amount of the excess funds.

18.4 The control of and disbursements from the Contingency Fund shall be at the sole discretion of the MDEQ. At the time of entry of this Consent Decree, there is no foreseen need to utilize monies from the Contingency Fund. However, in the event an unanticipated condition requires an immediate response activity, the monies in the Contingency Fund shall be in relatively liquid investments to ensure timely access to them.

18.5 Clare and the MDEQ understand and agree that Clare is responsible for assuring compliance with the obligations of the Consent Decree, including the Plan contained in Attachment C to the Consent Decree. Except as otherwise provided in this Section, the Contingency Fund is to reimburse Clare and the MDEQ for expenditures not anticipated at the time of entry of the Consent Decree and necessary to protect human health or the environment against conditions resulting from the Facility. The response activity costs related to replacing a residential potable well due to valid sampling results indicating exceedances of any generic residential clean-up criteria for drinking water identified in Table 1 of MAC R 299.5744 would be considered a reimbursable expenditure. The Contingency Fund shall not be used to reimburse Clare for expenditures related to the long term operation and maintenance or the groundwater monitoring program, or for the payment of stipulated penalties assessed under Section XVII (Stipulated Penalties) of this Decree.

18.6 If, after July 1, 2012, the Contingency Fund's balance is less than \$200,000, Clare shall recapitalize the Contingency Fund such that the Contingency Fund maintains a balance of at least \$200,000. Clare shall perform any needed recapitalization by January 1, 2014, or within 18 months following the disbursement that resulted in a balance less than \$200,000.

18.7 Any funds remaining in the Contingency Fund after the MDEQ's written determination that Clare has completed all response activity at the Clare Landfill Facility required pursuant to this Consent Decree shall be dispersed to the MDEQ in the manner specified in Paragraph 16.4 and deposited into the Environmental Response Fund, sub account of the Cleanup and Redevelopment Fund, established in accordance with Section 20108(3) of the NREPA or an appropriate successor fund and used for response activities that protect the public health, safety, and welfare, and the environment.

XIX. DISPUTE RESOLUTION

19.1 Unless otherwise expressly stated in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree except for Section XI (Emergency Response), the terms of which are not disputable. However, the procedures set forth in this Section shall not apply to the MDEQ's actions to enforce those obligations which Clare does not dispute in accordance with this Section. Nor shall Clare's invocation of dispute resolution under this Section justify Clare's delay in the performance of any response activity required under this Decree.

19.2 The State shall maintain an administrative record of any disputes initiated under this Section. The administrative record shall include the information Clare provides to the State under Paragraphs 19.3 through 19.5 and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 19.3 through 19.5.

19.3 Except for undisputable matters identified in Paragraph 19.1 and as otherwise provided under Paragraph 19.5, any dispute that arises under this Decree regarding the MDEQ's disapproval, modification, or other decision concerning actions or demonstrations required under Section VIII (Performance of Response Activities), Section X (Sampling and Analysis), Section

XII (Delays In Performance, Violations, And *Force Majeure*), Section XIII (Record Retention/Access to Information) or Section XV (Submissions and Approvals), shall first be the subject of informal negotiations between the Project Coordinators representing the MDEQ and Clare. 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 Saginaw Bay District Supervisor will thereafter provide Clare with the MDEQ's written Interim Statement of Decision. In the absence of initiation of formal dispute resolution by Clare under Paragraph 19.4, the MDEQ's position as set forth in the MDEQ's Interim Statement of Decision shall be binding on the Parties.

19.4 Should Clare and the MDEQ fail to informally resolve a dispute under Paragraph 19.3, Clare may initiate formal dispute resolution by submitting a written Request for Review to the MDEQ's RRD Chief, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed issues. Clare must submit its Request for Review within ten (10) days of its receipt of the MDEQ's written Interim Statement of Decision as set forth in Paragraph 19.3. Clare's Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting Clare's position; and supporting documentation upon which Clare bases its position. Within twenty (20) days of the MDEQ's RRD Chief's receipt of Clare's Request for Review, the MDEQ's RRD Chief will provide Clare

with the MDEQ's written Statement of Decision. The MDEQ's Statement of Decision will include a statement of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the MDEQ's position; and supporting documentation relied upon in making the decision. The time period for the MDEQ's RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Statement of Decision shall be binding on the Parties.

19.5 Should Clare seek to challenge any decision or notice issued by the MDEQ or the State under Section IX (Access), Section XVI (Reimbursement of Costs), Section XVII (Stipulated Penalties), Section XX (Indemnification and Insurance), Section XXI (Covenants Not to Sue by the State), or Section XXII (Reservation of Rights by the State), of this Decree, Clare shall send a written Notice of Dispute to both the MDEQ's RRD Chief and the Assistant Attorney General assigned to this matter within ten (10) days of Clare'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 Clare 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 provide Clare with the State's written Statement of Decision, which decision shall be binding on the Parties.

19.6 The MDEQ's Statement of Decision or the State's Statement of Decision pursuant to Paragraph 19.4 or 19.5, respectively, shall control unless, within twenty (20) days after Clare's receipt of one of those Decisions, Clare 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 ensure orderly implementation of this Decree. Within thirty (30) days of Clare's filing of a motion asking the Court to resolve a dispute, the MDEQ will file with the Court the administrative record that is maintained pursuant to Paragraph 19.2. If so ordered by the court, the administrative record may be supplemented in accordance with MCL 324.20137(5).

19.7 Any judicial review of the MDEQ's 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, Clare 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, Clare shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

19.8 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Clare'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 Clare does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Clare shall pay stipulated penalties as set forth in Paragraph 17.5 of Section XVII (Stipulated Penalties). Clare shall not be assessed stipulated penalties for disputes that are resolved in its favor.

19.9 Notwithstanding the provisions of this Section and in accordance with Section XVI (Reimbursement of Costs) and Section XVII (Stipulated Penalties), Clare 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.

XX. INDEMNIFICATION AND INSURANCE

20.1 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 Clare or any other person.

20.2 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 Clare for the performance of activities required by this Decree. Neither Clare nor any contractor shall be considered an agent of the State.

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

XXI. COVENANT NOT TO SUE BY THE STATE

21.1 In consideration of the actions that will be performed and the establishment of the Contingency Fund by Clare under the terms of this Decree, and except as specifically provided for in this section and Section XXII (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action against Clare for:

- (a) Response activities that Clare performs pursuant to MDEQ-approved work plans under this Decree.

(b) Reimbursement by Clare of Past Response Activity Costs incurred by the State as set forth in Paragraphs 16.1 and 16.5 of Section XVI (Reimbursement of Costs) of this Decree.

(c) Reimbursement by Clare of Future Response Activity Costs that are incurred and paid by the State as set forth in Paragraphs 16.2, 16.3, and 16.5 of Section XVI (Reimbursement of Costs) of this Decree.

21.2 The covenant not to sue shall take effect under this Decree as follows:

(a) With respect to Clare's liability for response activities performed pursuant to MDEQ – approved work plans and for Past Response Activity costs, the covenant not to sue shall take effect upon the completion of Clare's full capitalization of the Contingency Fund pursuant to Section XVI (Reimbursement of Costs) and Section XVIII (Contingency Fund) of this Decree.

(b) With respect to Clare's liability for Future Response Activity Costs, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

21.3 The covenant not to sue extends only to Clare and does not extend to any other person.

XXII. RESERVATION OF RIGHTS BY THE STATE

22.1 The covenant not to sue applies only to those matters specified in Paragraph 21.1 of Section XXI (Covenant Not to Sue by the State). This covenant not to sue does not apply to, and the State reserves its rights on, the matters specified in Paragraph 21.1 until such time as this covenant become effective as set forth in Paragraph 21.2. The State reserves the right to bring an action against Clare under federal and state laws for any matters for which Clare has not received

a covenant not to sue as set forth in Section XXI (Covenants Not to Sue by the State). 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 Clare with respect to all other matters, including, but not limited to, the following:

- (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 8.1 of Section VIII (Performance of Response Activities).
- (b) Response activity costs that Clare 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 XX (Indemnification and Insurance) of this Decree.
- (h) The release or threatened release of Hazardous Substances or violations of state or federal law that occur during or after the performance of response activities required by this Decree.

22.2 The State has concluded that this Decree is appropriate based, in part, on the representations, information, and documentation provided by Clare relating to its financial status.

If the financial information or documentation provided by Clare is determined to have been substantially inaccurate in the portrayal of Clare's financial status, the State's covenant not to sue provided under Section XXI (Covenant Not To Sue By The State) of this Decree shall be automatically null and void. The State further reserves the right to take action against Clare if it discovers at any time that any material information provided by Clare prior to or after entry of this Decree was false or misleading.

22.3 The State expressly reserves all rights and defenses pursuant to any available legal authority that they may have to enforce this Decree or to compel Clare to comply with the NREPA.

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

22.5 In addition to, and not as a limitation of any provision of this Decree, the State retains all information gathering, inspection, access and enforcement authorities and rights under Parts 31, 115 and 201 and any other applicable statute or regulation.

22.6 The State's failure to timely enforce any term, condition, or requirement of this Decree shall not:

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

(b) Estop or limit the State's authority to enforce any such term, condition, or requirement of this Decree, or to seek any other remedy provided by law.

22.7 This Decree does not constitute the State's warranty or representation that the response activities performed by Clare in accordance with the MDEQ-approved work plans

required by this Decree will result in the achievement of the performance objectives stated in Paragraph 8.1 of Section VIII (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.

22.8 Except as provided in Paragraph 21.1(a) of Section XXI (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of the State, 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.

XXIII. COVENANT NOT TO SUE BY HATTON TOWNSHIP

23.1 Hatton Township covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this 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.

23.2 Hatton Township covenants not to sue or take any civil, judicial, or administrative action against Clare, or its authorized representatives, for any claims or causes of action against Clare that may arise from events leading up to this Decree.

23.3 After the Effective Date of this Decree, should the State initiate any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Hatton Township agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*,

collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the State 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 XXI (Covenants Not to Sue by the State).

XXIV. RESERVATION OF RIGHTS BY HATTON TOWNSHIP

24.1 The covenant not to sue applies only to those matters specified in Paragraphs 23.1 and 23.2 of Section XXIII (Covenant Not to Sue by Hatton Township). This covenant not to sue does not apply to, and Hatton Township reserves its rights on, the matters specified in Paragraphs 23.1 and 23.2 until such time as this covenant becomes effective as set forth in Paragraph 23.3. Hatton Township reserves the right to bring an action against the State or Clare under federal and state laws for any matters for which the State and Clare have not received a covenant not to sue as set forth in Section XXIII (Covenants Not to Sue by Hatton Township). Hatton Township reserves, and this Decree is without prejudice to, all rights to file a new action pursuant to any applicable authority against the State and Clare with respect to all other matters.

24.2 Hatton Township reserves the right to take action against Clare if it discovers at any time that any material information provided by Clare prior to or after entry of this Decree was false or misleading.

24.3 Hatton Township expressly reserves all rights and defenses pursuant to any available legal authority that it may have to enforce this Decree or to compel Clare to comply with the NREPA.

24.4 Hatton Township's failure to timely enforce any term, condition, or requirement of this Decree shall not:

- (a) Provide or be construed to provide a defense for Clare's noncompliance with any such term, condition, or requirement of this Decree; or
- (b) Estop or limit the authority of Hatton Township to enforce any such term, condition, or requirement of this Decree, or to seek any other remedy provided by law.

XXV. COVENANT NOT TO SUE BY CLARE

25.1 Except as provided in Section XIX (Dispute Resolution), Clare covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this 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.

25.2 After the Effective Date of this Decree, should the State initiate any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Clare agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the State 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 covenant not to sue set forth in Section XXI (Covenant Not to Sue by the State).

XXVI. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA or Superfund), 42 USC 9613; and to the extent provided in Section XXI

(Covenant Not to Sue by the State), Clare shall not be liable for claims for contribution for the matters set forth in Paragraph 21.1 of Section XXI (Covenant Not to Sue by the State) of this Decree, to the extent allowable by law. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by Clare 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 state or federal law.

XXVII. MODIFICATIONS

27.1 The Parties may only modify this Decree according to the terms of this section. The modification of any Submission required by this Decree may be made only upon written approval from the MDEQ Project Coordinator.

27.2 Modification of any other provision of this Decree shall be made only by written agreement between Clare's Project Coordinator, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG.

XXVIII. 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.

XXIX. SEVERABILITY

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

IT IS SO AGREED AND DECREED BY:

By: James R. Stropkai
James Stropkai (P24588)
Assistant Attorney General
Attorney for Plaintiff MDEQ

4/4/07
Date

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

4/9/07
Date

S/
Matthew D. Zimmerman (P33296)
Varnum, Riddering, Schmidt & Howlett, LLP
Attorneys for Defendant City of Clare

Date

Jaynie Smith Hoerauf
Jaynie Smith Hoerauf (P47885)
Jaynie Smith Hoerauf, P.C.
Attorney for Defendant City of Clare

4/4/07
Date

Patrick Humphrey
Patrick Humphrey, Mayor
City of Clare
202 W. Fifth St
Clare, Michigan 48617-1490

4/4/07
Date

David J. Dreyer
David J. Dreyer (P23247)
Dreyer, Hovey, & Diederich, LLP
Attorney for Plaintiff Hatton Township

7-26-07
Date

William L. Hileman
William Hileman
Hatton Township Board Supervisor

3-29-07
Date

IT IS SO DECREED, ADJUDGED AND DECREED THIS 15th day of May, 2007.

Thomas R. Evans
Honorable Thomas R. Evans
Circuit Court Judge

LEGAL DESCRIPTION

The North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 34, T 18 N, R 4 W, Hatton Township,
County of Clare, Michigan

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDATION AND REDEVELOPMENT DIVISION

Date: 06/16/2006
Source: ERNIE
Page: 1 of 1

Cost Recovery Summary Report

Site Name: Clare Sanitary LF City of

County: Clare

Site ID: 18000007

Package: 450965-00

Clare Sanitary LF City of: Original

Total for Employee Salaries and Wages		
Period Covered: 12/05/1992 - 11/19/2005	\$135,197.73	
Indirect Dollars	\$25,342.32	
Sub-Total		\$160,540.05
Total for Employee Travel Expenses		
Period Covered: 05/29/1998 - 08/30/2005		\$14,278.98
Contractual Expenses		
Malcolm Pirnie, Inc. (LOE #2005) (P1000461)		
Period Covered: 01/05/2001 - 09/10/2004	\$1,710,290.08	
Trace Analytical Laboratories, Inc. (Y80243)		
Period Covered: 01/16/2001 - 04/10/2003	\$37,142.40	
Contract Sub-Total		\$1,747,432.48
Total for Miscellaneous Expenses		
Period Covered: 02/22/2001 - 04/14/2003		\$8,919.84
MDNR/MDEQ Lab		
Period Covered: 10/29/1999 - 09/03/2002		\$476,802.69
Total for MDPH/Community Health Expenses		
Alternate Water Supply		
Period Covered:	\$0.00	
Bottled Water		
Period Covered: 03/10/1993 - 03/10/1993	\$42.00	
MDPH/MDCH Lab		
Period Covered: 10/31/1997 - 10/11/2005	\$40,470.75	
Sub-Total		\$40,512.75
Attorney General Expenses		
Period Covered: 03/31/1993 - 04/30/1993		\$440.00
Other Expenses		
Period Covered:		\$0.00
Sub-Total		\$2,448,926.79
Interest Calculated from through		\$0.00
Total Combined Expenses for Site and Interest		\$2,448,926.79

Run Date 12/05/2005

**Long-Term Operation/Maintenance, Groundwater Monitoring, and Contingency Plan
City of Clare Sanitary Landfill
Hatton Township, Clare County**

I. Location and History

The Clare Sanitary Landfill site (Landfill) is located on the west side of Old US 27 and Browns Road in rural Clare County, approximately five miles north of the City of Clare. The Landfill is located on an approximately 79-acre parcel of land containing a closed 17-acre landfill and a 2½-acre former dump area. The site is located approximately one mile south of the Middle Branch Tobacco River in the Saginaw Bay Watershed.

Since about 1974, the City of Clare (Clare) has owned the Landfill site. Both the 17-acre and the 2½-acre parcels had been previously used for landfilling activity. Clare continued to operate the landfill until 1987.

In June 1986, the Michigan Department of Public Health sampled several residential wells in the immediate vicinity of the Landfill. Five residential potable water wells have been replaced. The State of Michigan continues to fund potable water sampling for the surrounding residences.

On July 13, 1988, the Michigan Department of Natural Resources, the Michigan Department of Attorney General, and Hatton Township entered into a judicial consent decree (Decree) with Clare to resolve environmental contamination issues at the Landfill. Pursuant to the Decree, Clare capped and seeded the Landfill in September 1989. The Decree also required Clare to complete additional hydrogeologic investigation to determine the vertical and horizontal extent and chemical characteristics of any contamination which might be emanating from the Landfill. In addition, the Decree required Clare to submit a remedial action plan (RAP) that would address the groundwater contamination to background levels.

Clare conducted semi-annual sampling of the existing wells until the State retained a contractor to complete additional hydrogeological work in December 2000. Phase I of the remedial investigation activities was completed in 2001. Phase I included a site survey, well reconnaissance, sampling of all 17 existing monitor wells and 7 residential wells in the area, installation of 18 staff gauges and sampling of 10 surface water locations, and a geophysical survey. The Phase II Investigation included installation of 31 new monitoring wells, vertical aquifer sampling of the new wells at 10' intervals, analysis of 54 soil samples, another round of groundwater monitoring of all existing and new wells, and test pitting of the old landfill to evaluate sources. Phase II was completed in 2002. Phase III work included installation of another 8 monitoring wells to evaluate potential sources from the old landfill, another 2 rounds of groundwater sampling, and re-capping the old landfill to repair the excavations from the test pitting. The state contractor completed a cap evaluation in June 2004 and identified several areas of concern on both the old and main landfill caps. A surveyed map, D-4232-1, attached hereto, identifies areas of erosion and ponded water on the main landfill cap, and areas of vegetation die-off potentially from landfill gas.

II. Operation/Maintenance and Groundwater Monitoring Program

Clare shall conduct long-term groundwater monitoring, complete the cap maintenance to prevent ponding and erosion, repair damaged gas vents, evaluate landfill gas migration, control storm-water off the site, and reliably restrict access. Residential potable water supplies shall be monitored by the local health department at Clare's expense. Clare shall submit annual reports of inspection activities and groundwater monitoring results to the Michigan Department of Environmental Quality (MDEQ). The MDEQ will abandon wells installed by the state contractor that are not needed for long-term monitoring.

A. Landfill Cap Maintenance

The cap on the main landfill has subsided in several locations and storm-water is collecting in the depressions. Additional capping material is needed to fill these areas and must be graded to prevent ponded water from accumulating on the landfill cap. These low areas are designated on the attached map as "ponded water". Clare shall complete this requirement in accordance with the regulations regarding Part 115, Waste Management of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), shall do so by no later than December 31, 2007. Clare shall submit as-built documentation to the MDEQ with the first annual inspection report.

Annual inspection of the landfill cap is necessary to identify areas of differential settlement, erosion, leachate outbreaks, burrowing animals, and stressed vegetation. Except as otherwise approved by the MDEQ in writing, Clare shall complete repair of these areas within 60 days of discovery and submit repair documentation to the MDEQ with the annual inspection report.

B. Landfill Vent Maintenance

The existing landfill gas vents have heaved out of the ground or settled in several locations. Clare shall repair the gas vents so that they function properly in compliance with the regulations regarding Part 115 of the NREPA. Clare shall complete this repair work by no later than December 31, 2007. Clare shall also conduct an annual inspection to determine general maintenance and needed repair work. Except as otherwise approved by the MDEQ in writing, Clare shall complete the repairs within 60 days of discovery. Clare shall submit as-built and repair documentation to the MDEQ with the annual inspection report.

C. Landfill Gas Monitoring

During the implementation of investigation response actions, the MDEQ identified certain locations within the landfill (see attached map) as areas where landfill gas has been observed or is suspected to be present from the presence of dead vegetation. Clare shall therefore conduct monitoring for gas at the property boundaries and, if landfill gas is migrating off-site of the landfill, Clare shall immediately implement any response activities necessary to prevent exposure to local residents. If response activities must be implemented, Clare shall be required to monitor off-site. Clare shall submit documentation of such mitigation activities to the MDEQ with the annual inspection report.

D. Signs and Fencing

Clare shall install and maintain at the entrance to the site signs indicating Restricted Access and/or No Trespassing. Clare shall immediately repair and maintain the fencing so as to prevent general access. Clare shall keep the entrance gate locked to prevent vehicular traffic. Clare shall submit documentation of such repairs and maintenance to the MDEQ with the annual inspection report.

E. Storm-water Control

There are storm-water concerns in many areas of the site. The MDEQ has observed erosion prone areas along the eastern property boundary. Rock dams which had been installed to slow storm-water run-off are no longer functioning properly and storm-water has washed out part of the access road. Clare shall manage the storm-water in a manner compliant with all applicable local, state, and federal regulations. Clare shall conduct an annual inspection to determine the general condition of the storm-water controls. Except as otherwise approved by the MDEQ in writing, Clare shall complete repair of any erosion prone areas within 60 days of discovery. Clare shall submit as-built and repair documentation to the MDEQ with the annual inspection report.

F. Groundwater Monitoring Program

Clare shall twice yearly, during spring and fall, analyze the groundwater from the following 19 monitoring wells to determine the quality of the groundwater migrating away from the landfill areas. Clare shall sample the wells using low flow sampling techniques, and document the field parameters and static water elevations for each well using the parameter list set forth in Table 1 (attached hereto). Clare's analytical methods and sampling protocol shall be in compliance with Operational Memo RRD-2.

MW 10-90	MW 15-135	MW E-175	MW AC-85
MW 16-118	MW 17-100	MW G-130	MW AH-95
MW-18-135	MW A-160	MW N-114	MW F-115
MW C-WT	MW C-235	MW O-95	MW M-WT
MW N-155	MW AA-176	MW AD-85	

G. Potable Water Residential Well Sampling

Clare, at its sole expense, shall arrange for and assure that the local health department shall sample and analyze the potable groundwater from the following residential drinking water wells at least twice yearly, during the spring and fall.

4887 S. Clare Avenue
5020 S. Clare Avenue
Between 4887 S. Clare and 4075 E. Browns Rd. (new modular residence)
5250 S. Clare Avenue
5296 S. Clare Avenue
5476 S. Clare Avenue

5540 S. Clare Avenue
5507 S. Clare Avenue
4075 E. Browns Road
4141 E. Browns Road
4143 E. Browns Road
4201 E. Browns Road
4318 E. Browns Road
4502 E. Browns Road
4885 E. Browns Road

In addition, Clare shall work with the Clare County Health Department to provide proper notification to all persons seeking to construct a new residence or business interest within the Area of Potential Groundwater Impact down-gradient of the Landfill. Also, Clare shall be responsible, financially and otherwise, for having the Clare County Health Department monitor any new potable groundwater supply well that is approved for installation down-gradient of the landfill within the Area of Potential Groundwater Impact.

For the purposes of this Plan, the Area of Potential Groundwater Impact is initially defined as the area within the following geographic boundaries: East of U.S. 27, South of the Tobacco River, West of S. Cornwell Road, and North of Adams Road. Clare acknowledges that the Area of Potential Groundwater Impact will be expanded if monitoring data suggests that impacted groundwater may migrate beyond the boundaries of the defined geographic area.

The MDEQ will provide Clare with formal notification when monitoring data supports a determination to expand the geographic boundaries of the Area of Potential Groundwater Impact, and will notify Clare of the new geographic boundaries. Within 60 days of receipt of such notification, Clare shall work with the Clare County Health Department to identify potable water supply wells within the new geographic boundaries, and initiate water quality monitoring of potentially affected wells. Within 90 days of receipt of such notification, Clare shall prepare a modification of the Groundwater Monitoring Plan that incorporates the new Potable Water Residential Well Sampling. Finally, Clare shall ensure that the requisite notification of any new approved potable water well commence immediately within the new geographic boundaries.

H. Contingency Measures

If contaminant concentrations exceed any generic residential clean-up criteria for drinking water identified in Table 1 of MAC R 299.5744 in a residential drinking water well, Clare shall immediately take all actions necessary to provide safe potable water to the residence. Within 24 hours of notice of the exceedance, Clare shall verbally notify the MDEQ's Project Coordinator. Within 10 calendar days of notice of the exceedance, Clare shall provide a written contingency plan to the MDEQ's Project Coordinator for review and approval. The contingency plan shall identify contingency actions which have occurred, are occurring, and those that Clare is planning to undertake to mitigate the conditions which threaten human health or the environment, including but not limited to any necessary expansion of the Area of Potential Groundwater Impact. Clare's need to notify and provide the MDEQ with a written plan shall not delay Clare's immediate action to provide safe potable water to the residence.

I. Annual Inspection and Monitoring Reports

Clare shall submit to the MDEQ in the first quarter of each calendar year an annual inspection report detailing the condition of the cap, gas vents, fencing, monitoring wells, and storm-water controls. A sample inspection report is attached. The submittal shall include a monitoring report that contains the following: a) groundwater monitoring results; b) potable water residential well sampling results; c) field parameters; and, d) static water elevations for the wells in the long-term monitoring program.

J. Monitoring Well Abandonment

The following 25 monitoring wells, which were installed by the MDEQ, and are not needed for long-term groundwater monitoring, shall be properly abandoned by the MDEQ in accordance with 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 or devices are abandoned or removed.

MW A-355	MW B-WT	MW B-315	MW C-333
MW D-WT	MW D-344	MW E-315	MW F-85
MW F-295	MW G-318	MW H-295	MW I-279
MW J-294	MW K-WT	MW K-312	MW L-295
MW M-356	MW O-275	MW P-WT	MW Q-WT
MW R-WT	MW AB-82	MW AE-83	MW AF-84
MW AJ-85			

The MDEQ will also make provisions for the removal of any equipment from local streams or surface water bodies that were used to determine regional groundwater direction.

Except as otherwise approved by the MDEQ in writing, Clare shall within two year(s) of the Effective Date of this Decree, properly abandon or remove the following 13 monitoring wells, which were installed by Clare and are not needed for long-term groundwater monitoring. The wells shall be abandoned or removed in accordance with 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 or devices are abandoned or removed.

MW-1	MW-2	MW-3	MW-4	MW-5	MW-6
MW-7	MW-8	MW-9	MW-11	MW-12	MW-13
MW-14					

- TABLE 1 -

General Requirements

- Twice yearly sampling during spring and fall.
- Monitoring to be conducted using low-flow sampling techniques.
- Results submitted in annual report to DEQ in the first quarter of each year.
- Analytical methods and reporting limits in compliance with Operational Memo RRD-2.

Parameter List for Semi-Annual Groundwater Monitoring Program at Clare Landfill

Field Parameters

Groundwater Elevation
Temperature
pH
Specific Conductance
Dissolved Oxygen
Turbidity

Inorganic Parameters

Bicarbonate Alkalinity
Chlorides
Ammonia
Total Inorganic Nitrogen
Sulfate
Manganese
Potassium
Sodium
Boron

Organic Compounds

Tetrahydrofuran	1,1,2-Trichloroethane
Diethyl ether	Dioxane
Vinyl chloride	2-Butanone (MEK)
Trichloroethylene	Carbon disulfide
Tetrachloroethene	Benzene
1,1-Dichloroethane	Ethylbenzene
1,2-Dichloroethane	Toluene
1,1-Dichloroethylene	Xylene
cis 1,2-Dichloroethylene	Methyltertbutylether (MTBE)
trans 1,2-Dichloroethylene	Butyl benzyl phthalate
1,1,1-Trichloroethane	Bis (2-ethylhexyl) phthalate



Michigan Department of Environmental Quality
Remediation and Redevelopment Division

***THE ATTACHED FINANCIAL ASSURANCE MECHANISM MODEL DOCUMENT
ENTITLED:***

CERTIFICATE OF DEPOSIT AND TIME DEPOSIT ACCOUNT

IS A DRAFT DOCUMENT THAT IS SUBJECT TO REVISION. IT IS PROVIDED TO THE PUBLIC AS A PRELIMINARY GUIDANCE AS TO THE CONTENT, FORMAT AND TERMS OF THE FINANCIAL ASSURANCE MECHANISM. IT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CONVEY ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, TO ANY PARTY. PLEASE CONTACT THE COMPLIANCE AND ENFORCEMENT SECTION, REMEDIATION AND REDEVELOPMENT DIVISION, MDEQ, AT 517-373-7818 TO ASCERTAIN WHETHER THIS DRAFT IS THE MOST RECENT DRAFT OF THIS DOCUMENT.

The Michigan Department of Environmental Quality (MDEQ) will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. Questions or concerns should be directed to the MDEQ Office of Personnel Services, P.O. Box 30473, Lansing, MI 48909.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDATION AND REDEVELOPMENT DIVISION

FINANCIAL ASSURANCE MECHANISM
PART 201

AGREEMENT AND ACCEPTANCE OF
CERTIFICATES OF DEPOSIT

Person Proposing the Plan (Designated Party): City of Clare, an incorporated Michigan City.

Name of Facility : *Clare Sanitary Landfill* (hereinafter, the Facility)

Address of Facility: *Hatton Township, Clare County, Michigan*

Site ID No: 18000007

It is agreed between **[insert name of Issuing Institution]**, the Michigan Department of Environmental Quality (Department), and City of Clare (the Designated Party) that the Certificates of Deposit (Certificates), in the amounts specified in the Paragraph 16.1 of Consent Decree, File No. 87-8108-CE, issued by **[insert name of Issuing Institution and address]**, in the name of and for the sole benefit of the Department Authorized Representative (Part 201 implementing Division Chief) of the Department, is accepted as financial assurance for the Contingency Fund for the above-referenced Part 201 regulated Facility, pursuant to Section 20120b(3)(e) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; and the Part 201 Administrative Rules (Part 201 Rules) promulgated there under.

1. Each Certificate will be for a (1) year duration and will be renewed automatically.
2. Interest accruing for each Certificate shall be maintained as part of that renewed Certificate.
3. The Department Authorized Representative, or an authorized representative from the City of Clare, but only with the Department Authorized Representative's written approval, are the only persons who may cash any or all of the Certificates. If any of the following occur, the Department Authorized Representative may cash any or all of the Certificates as follows:

- (a) If the Designated Party does not renew or replace any or all of the Certificates or provide an acceptable form of financial assurance to the Department at least sixty (60) days before the maturity date of any or all of the Certificates, the Department authorized representative may cash any or all of the Certificates.
 - (b) If the Designated Party does not provide for monitoring, operation and maintenance, and other costs determined to be necessary by the Department to assure the effectiveness and integrity of the Long-Term Operation/ Maintenance, Groundwater, and Contingency Plan at the Facility, and the Department, upon providing a 30-day notice to the Designated Party, implements these response activities, the Department Authorized Representative may cash any or all of the Certificates to pay or reimburse the Department for its response activity costs.
 - (c) If the Designated Party does not reimburse the Department within thirty (30) days of the Designated Party's receipt of a summary of response activity costs from the Department, the Department Authorized Representative may cash any or all of the Certificates for the amount of costs the Designated Party owes the Department.
4. If any or all of the Certificates are cashed by the Department authorized representative, all accrued interest for those Certificates shall be paid to the Department Authorized Representative.
5. If cashing any or all of the Certificates results in a surplus of funds (i.e., funds in excess of the estimated costs for monitoring, operation and maintenance, oversight, and other costs), these surplus funds will be treated in accordance with the terms of the Consent Decree. If no terms for disbursement are specified in the Consent Decree, the surplus funds will be held by the State in the Environmental Response Fund. These funds will be used solely for response activities at the Facility.

Michigan Department of Environmental Quality:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

City of Clare, Designated Party

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

Acknowledged by ***[insert name of Issuing Institution]***, Issuing Institution:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____