

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

STATE OF MICHIGAN, DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 07-22720-CE

v

Honorable David J. Reader

CHARTER TOWNSHIP OF BRIGHTON,

Defendant.

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CONSENT DECREE

TRUE COPY
DANIELA BUELL
44th CIRCUIT COURT

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ATTACHMENTS

Attachment A – Property Description

Attachment B – Summary Report of Response Activity Costs

Attachment C – Table of Monitoring Wells

Attachment D – Site Basemap dated May 2006

Attachment E – Sample Restrictive Covenant

CONSENT DECREE

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ).

The Defendant is the Charter Township of Brighton.

This Consent Decree (Decree) requires, among other things, the preparation and performance of response activities to monitor groundwater and investigate the generation of landfill gases that will be undertaken at or adjacent to the former Brighton Township dump located at Corlett Drive, Brighton Township, Michigan. The Parties agree not to contest the authority or jurisdiction of the Court to enter this Decree or any terms or conditions set forth herein.

The entry of this Decree by the Defendant is for settlement purposes only. The Parties agree that entry of this Decree is neither an admission or denial of liability with respect to any issue dealt with in this Decree nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Decree finds, that the response activities specifically set forth herein are necessary to protect public health, safety, and welfare, and the environment.

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

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115 and MCL 324.20137. This Court also has personal jurisdiction over

the Defendant. The Defendant waives all objections and defenses that it may have with respect to jurisdiction of the Court or to venue in this Circuit for purposes of this Consent Decree.

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

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

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon the Defendant and the State and their successors and assigns. Any change in the ownership, corporate, or legal status of the Defendant, including, but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter either Party's responsibilities under this Decree. To the extent that the Defendant is the owner of a part or all of the Facility, the Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all 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. The Defendant shall comply with the requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20116, and the Part 201 Rules.

2.2 Notwithstanding the terms of any contract that the Defendant may enter with respect to the performance of response activities pursuant to this Decree, the Defendant 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.

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

III. STATEMENT OF PURPOSE

In entering into this Decree, it is the mutual intent of the Parties to: (a) perform the response activities identified in Paragraph 6.2 of this Decree in accordance with the implementation schedule set forth therein; (b) reimburse the State for Past and Future Response Activity Costs as described in Section XIV (Reimbursement of Costs); (c) resolve the State's claims for violations of state laws as specified in this Decree, and; (d) minimize litigation.

IV. DEFINITIONS

4.1 "Charter Township of Brighton" means Charter Township of Brighton or its successors.

4.2 "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.

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

4.4 "Facility" means any area of the Property identified in Attachment A where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited, or disposed of, or otherwise comes to be located; and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property.

4.5 "Future Response Activity Costs" means all costs incurred by the State on or after the Effective Date of this Decree to oversee, enforce, monitor, and document compliance with this Decree, and to perform response activities required by this Decree, including, but not limited to, costs incurred to: monitor response activities at the Facility, comment on field activities, collect and analyze samples to verify data collected pursuant to this Decree, review and comment on Submissions, attend and participate in meetings, evaluate data, prepare and review cost reimbursement documentation, and perform response activities pursuant to Paragraph 6.8 (The MDEQ's Performance of Response Activities) and Section IX (Emergency Response). Contractor costs incurred in connection with Paragraph 6.8 and Section IX are also considered Future Response Activity Costs.

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

4.7 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA),

MCL 324.20101 *et seq.*, and the Part 201 Administrative Rules.

4.8 "Part 201 Rules" means the administrative rules promulgated under Part 201.

4.9 "Party" means either the Defendant or the Plaintiff. "Parties" means the Defendant and the Plaintiff.

4.10 "Past Response Activity Costs" means response activity costs that the State incurred and paid during the dates set forth in the attached Summary Report (Attachment B) and any other response activity costs that the State has incurred prior to the Effective Date of this Decree.

4.11 "Property" means the property located at Corlett Drive, Brighton Township, Michigan and described in the legal description provided in Attachment A.

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

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

4.14 "Submissions" means all plans, reports, schedules, and other submissions that the Defendant is required to provide to the State or the MDEQ pursuant to this Decree. "Submissions" does not include the notifications set forth in Section X (*Force Majeure*).

4.15 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201

Rules, shall have the same meaning in this Decree as in Parts 3 and 201 and the Part 201 Rules. Unless otherwise specified in this Decree, "day" means a calendar day.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

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

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Performance Objectives

The Defendant shall perform the response activities identified in Paragraph 6.2.

The performance objectives of those response activities are to:

- (a) Determine and continue to monitor the extent of hazardous substances in groundwater and the direction of groundwater relative to the Property;
- (b) Determine and continue to monitor whether hazardous substances in groundwater have moved to residential wells near the Property;
- (c) Determine whether methane exists on the Property in concentrations greater than 0.5 parts per million (ppm) in groundwater or 1.25 percent by volume in soil gas;
- (d) Decommission groundwater monitoring wells located on the Property as identified in Attachment C;

(e) Survey remaining groundwater monitoring wells located on the Property as identified in Attachment C;

(f) Place land use and resource use restrictions, consistent with MCL 324.20120b, on the Property and on those areas beyond the boundaries of the Property where hazardous substances have come to be located in concentrations above residential cleanup criteria established by the MDEQ pursuant to Section 20120a(1)(a) of the NREPA;

(g) Maintain the fence surrounding the Property, and;

(h) Maintain the soil cover on the Property to prevent erosion and to prevent direct contact with hazardous substances.

6.2 Response Activities to be Performed by the Defendant

The Defendant shall perform the following response activities:

(a) Annually sample for volatile organic compounds (VOCs), for the ten-year period beginning on the Effective Date of this Decree, the water in the nine residential drinking water wells for the following addresses: the homes located at 11319 and 11307 Corlett Drive; the home located at 11302 Corlett Drive (whose well also serves 11314 and 11326 Corlett Drive), and; the homes located at 2111, 2123, 2157, 2169, 2187, and 2221 Corlett Road. The sampling shall be performed by collecting, from either a tap or a spigot, water that has not been treated for hardness. After five years of annual sampling, the Defendant may request that the MDEQ evaluate the sampling results and may request that the MDEQ eliminate such sampling, modify the sampling parameters, or reduce the sampling frequency. The MDEQ shall communicate any such reduction in sampling

frequency or modification of sampling parameters pursuant to the procedures set forth in Section XII (Project Coordinators and Communications/Notices).

(b) Within 90 days of the Effective Date of this Decree, survey the location and elevation of the 31 monitoring wells listed in the "Sample" column in Attachment C and depicted in the May 2006 Site Basemap (Attachment D). The survey shall tie each well surveyed in relation to a new permanent benchmark established as a reference for location and elevation at the beginning of the well survey.

(c) Within 90 days of the Effective Date of this Decree, decommission each of the twenty four (24) groundwater monitoring wells listed in the "Decommission" column of Attachment C in accordance with the specifications set forth in the ASTM Standard D 5299-99 (2005), "Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities" or other relevant or applicable standards that are in effect at the time the wells are abandoned. The static water level in each well to be decommissioned shall be determined prior to the initiation of the activities necessary for its decommissioning. Within 150 days of the Effective Date of this Decree, the Defendant shall prepare and submit to the MDEQ a log recording the decommissioning of each well that includes the diameter and depth of each well, the amount and type of material used to plug each well, whether the casing of each well was removed, and the signature of the person who performed the decommissioning.

(d) Sample the 31 groundwater monitoring wells listed in the "Sample" column of Attachment C at the frequency and for the parameters identified in that Attachment. The Defendant shall perform the first round of sampling within 60 days

after receiving approval of the work plan required under Paragraph 6.3(b) for performing the sampling identified in this Paragraph 6.2(d) and shall perform such sampling for 10 years thereafter. After two years of sampling, the Defendant may request that the MDEQ evaluate the sampling results for the wells to be sampled quarterly and semi-annually and may request that the MDEQ reduce the sampling frequency. The MDEQ shall communicate any such reduction in sampling frequency pursuant to the procedures set forth in Section XII (Project Coordinators and Communications/Notices).

(e) Submit to the MDEQ a written progress report that includes the groundwater sampling data with the quarterly progress reports to be submitted pursuant to Paragraph 6.7. In addition to the quarterly progress reports required pursuant to Paragraph 6.7(b), the Defendant shall submit to the MDEQ annual written progress reports that summarize the groundwater sampling results and include all the sampling data obtained during the year covered. The annual written progress reports shall describe groundwater collection methods, evaluate trends and sample results, and evaluate if migration of hazardous substances above applicable residential criteria is occurring. The Defendant shall submit each annual written progress report to the MDEQ for approval.

(f) Inspect the fencing surrounding the Property and the soil cover on the Property each time a quarterly, semi-annual and annual round of groundwater monitoring well sampling is performed pursuant to this Decree. The repair or replacement of any damaged fencing or soil cover shall be performed as soon as possible whenever any fence damage or erosion is observed.

(g) Within four years of the Effective Date of this Decree, in cooperation with the parcel owners, place land use and resource use restrictions, consistent with MCL

324.20120(b), protective of the public health, safety, welfare and the environment on the Property (presently owned by the State) and on the portions of the parcels immediately to the south of the Property where hazardous substances have come to be located in concentrations above residential cleanup criteria established by the MDEQ pursuant to Section 20120a(1)(a) of the NREPA. The form of the land use and resource use restrictions shall be substantially in the form of the restrictive covenant attached hereto as Attachment E, unless a restrictive control is impractical and exposure to hazardous substances may reliably be restricted by an institutional control in lieu of a restrictive covenant. The Defendant shall submit the proposed land use or resource use restriction to the MDEQ for review and approval. If a restrictive covenant(s) is approved, the Defendant shall file for recording, or arrange to have filed for recording, the MDEQ-approved restrictive covenant with the Livingston County Register of Deeds within 21 days of the MDEQ's approval. If an institutional control is approved, the Defendant shall adopt the institutional control within 75 days of the MDEQ's approval. The Defendant shall provide a true copy of the recorded restrictive covenant or final institutional control to the MDEQ within 21 days of the Defendant's receipt of the recorded restrictive covenant or adoption of an institutional control.

(h) Methane gas investigation. The Defendant shall perform a methane gas investigation that consists of the following:

(i) Within 60 days of the MDEQ's approval of the work plan submitted pursuant to Paragraph 6.3 for the response activities identified in Paragraph 6.2(h)(i)-(iii), install six gas probes in the southwestern portion of the Property where

trash is known to have been placed to determine the presence of methane in soil and, if encountered, groundwater.

- (ii) Perform quarterly sampling of the methane generated at the locations where the six gas probes have been installed.
- (iii) Submit to the MDEQ the methane sampling data with the quarterly reports to be submitted pursuant to Paragraph 6.7.
- (iv) Submit to the MDEQ for approval, within 60 days after submittal of the last written progress report to be submitted pursuant to Paragraph 6.2(h)(iii), a final written report that contains the following:

- (1) a description of the sampling that Defendant performed, including how, when and where it was performed;
- (2) an analysis of the sampling results, including an analysis of whether any of the samples collected is greater than 0.5 ppm in groundwater or 1.25 percent by volume in soil gas and an evaluation of any trends;
- (3) an analysis of whether additional sampling is needed to determine the full vertical and horizontal extent of methane in concentrations greater than 0.5 ppm in groundwater or 1.25 percent by volume in soil gas, and;
- (4) an analysis of whether actions are needed to mitigate threats to public health or the environment from methane and a description of any such actions.

6.3 Work Plans

- (a) The Defendant shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 6.1. The Defendant shall develop each work plan and perform the response activities

contained in each MDEQ-approved work plan in accordance with the requirements of Part 201 and this Decree. Upon MDEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Decree and made an enforceable part of this Decree. If there is a conflict between the requirements of this Decree and any MDEQ-approved work plan, the requirements of this Decree shall prevail.

(b) Within 30 days of the Effective Date of this Decree, the Defendant shall develop and submit to the MDEQ for approval work plans for performing the response activities identified in Paragraph 6.2(d) and in Paragraph 6.2(h)(i)-(iii), and both work plans shall include Quality Assurance/Quality Control Plans pursuant to Paragraph 6.4.

6.4 Quality Assurance Project Plan (QAPP)

Each QAPP the Defendant shall submit to the MDEQ for review and approval shall describe the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the response activities identified in Paragraph 6.2(d) and Paragraph 6.2(h). Each QAPP shall be developed in accordance with the United States Environmental Protection Agency's (EPA's) "EPA Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," American National Standard ANSI/ASQC E4-1994. The Defendant shall utilize recommended sampling methods, analytical methods, and analytical detection levels specified in the RRD Operational Memorandum No. 2, Sampling and Analytical Guidance, dated July 5, 2007, including all applicable

attachments. The Defendant shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria (S³TM) to determine the number of samples required to verify the cleanup and to determine sampling strategy. The Defendant shall comply with the above documents that supersede or amend these documents, and may utilize other methods demonstrated by the Defendant to be appropriate as approved by the MDEQ.

6.5 Health and Safety Plan (HASP)

Within thirty (30) days of the Effective Date of this Decree, the Defendant shall submit to the MDEQ a HASP that is developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* Response activities performed by the Defendant pursuant to this Decree shall be in accordance with the HASP. The HASP is not subject to the MDEQ's approval under Section XIII (Submissions and Approvals) of this Decree.

6.6 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a response activity work plan is necessary to meet and maintain the applicable performance objectives specified in Paragraph 6.1, to comply with Part 201, or to meet any other requirement of this Decree, the MDEQ may require that such modification be incorporated into a response activity work plan previously approved by the MDEQ under this Decree. If extensive modifications are necessary, the MDEQ may require the Defendant to develop and submit a new response activity work plan. The Defendant may request that the

MDEQ consider a modification to a response activity work plan by submitting such request for modification along with the proposed change in the response activity work plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by the Defendant must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Any work plan modifications or any new work plans shall be developed in accordance with the applicable requirements of this section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XIII (Submissions and Approvals).

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

6.7 Progress Reports

(a) The Defendant shall provide 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 have been taken toward achieving compliance with this Decree during the specified reporting period.
- (ii) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Decree received by the Defendant, its employees, or authorized representatives during the specified reporting period.

(iii) A fence inspection report, provided once annually on or before the anniversary of the Effective Date of this Decree, detailing the date and time inspections were made of the fence surrounding the Property and of any damage found and the date and time and nature of the activities performed to remedy any damage that may have been found.

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

(v) 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, if applicable.

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

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

(b) The first progress report shall be submitted to the MDEQ within ninety (90) days following the Effective Date of this Decree. Thereafter, progress reports shall be submitted quarterly by January 15, April 15, July 15, and October 15 of each year for the calendar quarter that precedes each of these dates. Pursuant to Paragraph 23.1, the MDEQ may approve modification of the schedule for the submission of progress reports.

6.8 The MDEQ's Performance of Response Activities

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

VII. ACCESS

7.1 Upon the Effective Date of this Decree, the Defendant 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 the Defendant. 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 to 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 activities or any other activities taking place pursuant to this Decree at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting, response activities at or near the Facility;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;
- (h) Determining whether the Facility or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Decree; and

(i) Assuring the protection of public health, safety, and welfare, and the environment.

7.2 To the extent that the Facility, or any other property where the response activities are to be performed by the Defendant under this Decree, is owned or controlled by persons other than the Defendant, the Defendant 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. The Defendant 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, the Defendant 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 the Defendant's receipt of the MDEQ's approval of the work plan for which such access is needed. If the Defendant has not been able to obtain access within sixty (60) days after filing judicial action, the Defendant shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section X (*Force Majeure*). To the extent the Defendant is subject to the requirements of Section 20114 of the NREPA, the Defendant's failure to secure access or petition the court within one (1) year of having

reason to believe that access to another person's property is necessary to comply with Section 20114 of the NREPA subjects the Defendant to stipulated penalties pursuant to Paragraph 15.3 of Section XV (Stipulated Penalties).

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

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

VIII. SAMPLING AND ANALYSIS

8.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the QAPP specified in Paragraph 6.4 and the MDEQ-approved work plans.

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

explanation provided, the Defendant may forego the ten (10)-day notification period for that particular sampling event.

8.3 The Defendant 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 211, Underground Storage Tank Regulations, or Part 213 of the NREPA, or other relevant authorities. These results shall be included in the progress reports set forth in Paragraph 6.7.

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

IX. EMERGENCY RESPONSE

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

safety laws and regulations and with the provisions of the HASP referenced in Paragraph 6.5.

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

X. FORCE MAJEURE

10.1 The Defendant 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*." Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this section.

10.2 For the purposes of this Decree, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of the Defendant, of any person controlled by the Defendant, or of the Defendant's contractors, that delays or prevents the performance of any obligation under this Decree despite the Defendant's "best efforts to fulfill the obligation." The requirement that the Defendant exercises "best efforts to fulfill the obligation" includes the Defendant using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that the Defendant minimizes any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of the Defendant, such as an act of God, untimely review of permit applications or submission by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by diligence of the Defendant and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of the Defendant.

10.3 The Defendant shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by the Defendant to prevent or minimize the delay, and the timetable by

which those measures shall be implemented. The Defendant shall use its best efforts to avoid or minimize any such delay.

10.4 Failure of the Defendant to comply with the notice requirements of Paragraph 10.3, above, shall render this Section X void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3.

10.5 If the parties agree that the delay or anticipated delay was beyond the control of the Defendant, this may be so stipulated and the parties to this Decree may agree upon an appropriate modification of this Decree. If the parties to this Decree are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVI (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of the Defendant, and that all the requirements of this section have been met by the Defendant, is on the Defendant.

10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Defendant qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. RECORD RETENTION/ACCESS TO INFORMATION

11.1 The Defendant shall preserve and retain, for a period of ten (10) years after completion of the response activities the Defendant is required to perform pursuant to this Decree, all records, sampling and test results, charts, and other documents relating to the response activities the Defendant is required to performed pursuant to this Decree including documents that are maintained or generated by representatives, consultants, or

contractors of the Defendant. The Defendant shall retain in perpetuity any documents pertaining to the land use or resource use restrictions it has filed for recording, or caused to be filed for recording, pursuant to this Decree until the MDEQ determines that land use and resource use restrictions are no longer needed. After the ten (10)-year period of document retention, the Defendant may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, the Defendant 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 the Defendant may offer to relinquish custody of all documents to the MDEQ. In any event, the Defendant shall obtain the MDEQ's written permission prior to the destruction of any documents covered by this Paragraph. The Defendant's request shall be accompanied by a copy of this Decree and sent to the address listed in Section XII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

11.2 Upon request, the Defendant 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, the Defendant shall also make available to the MDEQ, upon reasonable notice, the

Defendant's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

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

XII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

12.1 Each Party shall designate one or more Project Coordinators. Whenever 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 the other Party under this Decree, or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Coordinator at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

A. As to the MDEQ:

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

James Innes, Project Coordinator
Lansing District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30242
Lansing, MI 48909
Phone: 517-335-6241
Fax: 517-241-3571
E-mail address: innesj@michigan.gov

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

(2) For all matters specified in this Decree that are to be 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: 517-373-2637

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

(3) For providing a true copy of each recorded restrictive covenant pursuant to Section VI (Performance of Response Activities); for correspondence concerning Record Retention pursuant to Section XI (Record Retention/Access to Information); and for correspondence concerning financial matters pursuant to Section XIV (Reimbursement of Costs):

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

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

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

Via courier:

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 Brighton Township Dump, Court Case No. 07-22720-CE, and the RRD Account Number 2244.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in Paragraph 12.1A.(1), the Chief of the Compliance and Enforcement Section designated in Paragraph 12.1A.(3), and the Assistant in Charge designated in Paragraph 12.1B.

B. As to the MDAG:

Assistant 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 the Defendant:

Charles E. Barbieri
Foster, Swift, Collins & Smith, P.C.
313 South Washington Square
Lansing, MI 48933
Phone: 517-371-8155
Fax: 517-371-7155
E-mail address: cbarbieri@fosterswift.com

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

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

XIII. SUBMISSIONS AND APPROVALS

13.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and shall be delivered to the MDEQ in accordance with the schedule set forth in this Decree. All Submissions delivered to the MDEQ pursuant to this Decree shall include a reference to the Brighton Township Dump and Court Case No. 07-22720-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 Consent Decree. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."*

13.2 After receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Decree, the MDEQ District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify the Defendant of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, the Defendant shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified,

and shall submit a new cover page and any modified pages of the Submission marked “Approved.”

13.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 13.2(c), the Defendant shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ’s notice of disapproval, the Defendant 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 the Defendant to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and the MDEQ demands payment of stipulated penalties pursuant to Section XV (Stipulated Penalties). The MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 13.2. If the MDEQ disapproves a revised Submission, the MDEQ will so advise the Defendant 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 the Defendant delivers an approvable Submission.

13.4 If any initial Submission contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by the Defendant to deliver an acceptable Submission that complies with Part 201 and this Decree, the MDEQ will notify the Defendant of such and will deem the Defendant to be in violation of this Decree. Stipulated penalties, as set forth in Section XV (Stipulated Penalties), shall begin

to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to the MDEQ.

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

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

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

XIV. REIMBURSEMENT OF COSTS

14.1 Within ninety (90) days of the Effective Date of this Decree, the Defendant shall pay the MDEQ One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000) to resolve all State claims for Past Response Activity Costs relating to matters covered in this Decree. Payment shall be made pursuant to the provisions of Paragraph 14.4.

14.2 The Defendant shall reimburse the State for all Future Response Activity Costs incurred by the State. Following the Effective Date of this Decree, the MDEQ will periodically provide the Defendant with a summary report (Summary Report) that identifies all Future Response Activity Costs incurred through the dates specified in the

Summary Report. Any such demand will set forth, with reasonable specificity, the nature of the costs incurred. Except as provided by Section XVI (Dispute Resolution), The Defendant shall reimburse the MDEQ for such costs within thirty (30) days of the Defendant's receipt of a written demand from the MDEQ.

14.3 The MDEQ shall provide to the Defendant a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ.

14.4 All payments made pursuant to this Decree shall be by certified check, made payable to the "State of Michigan –Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in Paragraph 12.1A.(4) of Section XII (Project Coordinators and Communications/Notices). The Brighton Township Dump, the Court Case No. 07-22720-CE, and the RRD Account Number 2244 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator at the address listed in Paragraph 12.1A.(1), the Chief of the Compliance and Enforcement Section, RRD, at the address listed in Paragraph 12.1A.(3), and the Assistant in Charge at the address listed in Paragraph 12.1B. Costs recovered pursuant to this section and payment of stipulated penalties pursuant to Section XV (Stipulated Penalties) shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

14.5 If the Defendant fails to make full payment to the MDEQ for Past Response Activity Costs or Future Response Activity Costs as specified in Paragraphs 14.1 and 14.2, interest, at the rate specified in Section 20126a(3) of the

NREPA, shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which the Defendant makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by the Defendant to an MDEQ demand for reimbursement of costs, the Defendant 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.

XV. STIPULATED PENALTIES

15.1 The Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 15.2 and 15.3 for failure to comply with the requirements of this Decree, unless excused under Section X (*Force Majeure*). “Failure to Comply” by the Defendant shall include failure to complete Submissions and notifications as required by this Decree and, failure to perform response activities in accordance with MDEQ-approved plans, this Decree, and all applicable requirements of law and this Decree within the specified implementation schedules established by or approved under this Decree.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 14 th day
\$1000	15 th through 30 th day
\$1500	31 st day and beyond

15.3 Except as provided in Paragraph 15.2 and Section X (*Force Majeure*) and Section XVI (Dispute Resolution), if the Defendant fails or refuses to comply with any

other term or condition of this Decree, the Defendant shall pay the MDEQ stipulated penalties of Two Hundred Fifty Dollars (\$250.00) a day for each and every failure or refusal to comply.

15.4 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.

15.5 Except as provided in Section XVI (Dispute Resolution), the Defendant shall pay stipulated penalties owed to the State no later than thirty (30) days after the Defendant's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 14.4 of Section XIV (Reimbursement of Costs). Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period on the day after payment was due until the date upon which the Defendant makes full payment of those stipulated penalties and the accrued interest to the MDEQ. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Decree.

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

15.7 If the Defendant fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if the Defendant

violates this Decree. For any failure or refusal of the Defendant to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not limited to, seeking civil fines, injunctive relief, the specific performance of response activities, reimbursement of costs, exemplary damages pursuant to Section 20119(4) of the NREPA in the amount of three (3) times the costs incurred by the State as a result of the Defendant's violation of or failure to comply with this Decree, and sanctions for contempt of court.

15.8 The State, at its discretion, may seek stipulated penalties or statutory civil fines for any violation of this Decree that is also a violation of any provision of applicable federal law, state law, rule, regulation, permit, or MDEQ Administrative Order. However, the State is precluded from seeking both stipulated penalties under this Decree and statutory civil fines for the same violation.

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

XVI. DISPUTE RESOLUTION

16.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree, except for Section IX (Emergency Response), which is not disputable. However, the procedures set forth in this section shall not apply to actions by the State to enforce any of the Defendant's obligations that have not been disputed in accordance with this section. Engagement of dispute resolution

pursuant to this section shall not be cause for the Defendant to delay the performance of any response activity required under this Decree.

16.2 The State shall maintain an administrative record of any disputes initiated pursuant to this section. The administrative record shall include the information the Defendant provides to the State under Paragraphs 16.3 through 16.5 and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 16.3 through 16.5.

16.3 Except for undisputable matters identified in Paragraph 16.1, any dispute that arises under this Decree shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and the Defendant. 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. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event, the Defendant objects to any MDEQ decision concerning the requirements of this Decree that is subject to dispute under this Section, the Defendant shall submit the Notice of Dispute within ten (10) days of receipt of the MDEQ's notice of disapproval, modification or decision. 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 or within the agreed-upon time period, the RRD Lansing District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to the Defendant.

In the absence of initiation of formal dispute resolution by the Defendant under Paragraph 16.4, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

16.4 If the Defendant and the MDEQ cannot informally resolve a dispute under Paragraph 16.3, the Defendant may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Coordinator, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of the Defendant's receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 16.3. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. When the RRD Chief receives a Request for Review, the Lansing District Supervisor will have twenty (20) days to submit a written rebuttal to the RRD Chief, with a copy to the Defendant. Within twenty (20) days of the RRD Chief's receipt of the Lansing District Supervisor's rebuttal, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to the Defendant, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. In the absence of initiation of procedures set forth in Paragraph 16.5 by the Defendant, the MDEQ's Statement of Decision shall be binding on the Parties.

16.5 The MDEQ's Statement of Decision pursuant to Paragraph 16.4, shall control unless, within twenty (20) days after the Defendant's receipt of the MDEQ's Statement of Decision, the Defendant files with this Court a motion for resolution of the dispute, which sets forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) days of the Defendant's filing of a motion asking the Court to resolve a dispute, Plaintiff will file with the Court the administrative record that is maintained pursuant to Paragraph 16.2.

16.6 Any judicial review of the MDEQ'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 subject of this Decree, the Defendant shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, the Defendant shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent Plaintiff from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

16.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of the Defendant'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 the Defendant does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and the Defendant shall pay stipulated penalties as set forth in Paragraph 15.5 of Section

XV (Stipulated Penalties). The Defendant shall not be assessed stipulated penalties for disputes that are resolved in its favor. The MDAG, on behalf of the MDEQ, may take civil enforcement action against the Defendant to seek the assessment of civil fines or damages pursuant to Sections 20119(4) and 20137(1) of the NREPA or other statutory and equitable authorities. However, the MDAG, on behalf of the MDEQ, is precluded from seeking both stipulated penalties under this Decree and statutory civil fines or damages for the same violation.

16.8 Notwithstanding the provisions of this section and in accordance with Section XIV (Reimbursement of Costs) and Section XV (Stipulated Penalties), the Defendant 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 ongoing dispute resolution proceeding.

XVII. INDEMNIFICATION AND INSURANCE

17.1 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 the Defendant or any other person.

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

17.3 The Defendant shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and

representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between the Defendant and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

17.4 The State shall provide the Defendant notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 17.2 or 17.3.

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

17.6 The Defendant 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 the Defendant and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

17.7 Prior to commencing any response activities pursuant to this Decree and for the duration of this Decree, the Defendant shall secure and maintain comprehensive general liability insurance with limits of one million dollars (\$1,000,000), combined single limit, which names the MDEQ, the MDAG and the State of Michigan as additional insured parties. If the Defendant demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described

above, then with respect to that contractor or subcontractor, the Defendant needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by the Defendant, and prior to commencement of response activities pursuant to this Decree, the Defendant shall provide the MDEQ Project Coordinator and the MDAG with certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the Brighton Township Dump, Court Case No. 07-22720-CE, and the Remedial and Redevelopment Division. In addition, and for the duration of this Decree, the Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of the Defendant in furtherance of this Decree.

XVIII. COVENANTS NOT TO SUE BY THE STATE

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

- (a) Response activities that the Defendant performs pursuant to this Decree.
- (b) Reimbursement by the Defendant of Past Response Activity Costs incurred and paid by the State as set forth in Paragraphs 14.1 and 14.4 of Section XIV (Reimbursement of Costs) of this Decree.

(c) Reimbursement by the Defendant of Future Response Activity

Costs that are incurred and paid by the State as set forth in Paragraphs 14.2 and 14.4 of Section XIV (Reimbursement of Costs) of this Decree.

18.2 The covenants not to sue shall take effect under this Decree as follows:

(a) With respect to the Defendant's liability for response activities to be performed pursuant to this Decree, the covenant not to sue shall take effect upon a demonstration the Defendant is performing the response activities identified in Paragraph 6.2.

(b) With respect to the Defendant's liability for Past Response Activity Costs and Future Response Activity Costs incurred and paid by the State, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs, including any applicable interest that has accrued pursuant to Paragraph 14.5 of this Decree.

18.3 The covenants not to sue extend only to the Defendant and do not extend to any other person.

XIX. RESERVATION OF RIGHTS BY THE STATE

19.1 The covenants not to sue apply only to those matters specified in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State). The State expressly 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 the Defendant with respect to the following:

(a) The performance of response activities other than those identified in Paragraph 6.2 that are required to comply with Part 201, including, but not limited to,

response activities to address (i) the migration of hazardous substances in groundwater exceeding "facility" criteria under Part 201 beyond the locations at which hazardous substances were identified in groundwater in the May 31, 2006 report prepared by Malcolm Pirnie, Inc., and (ii) the presence of methane gas in concentrations greater than 0.5 ppm in groundwater or 1.25 percent by volume in soil gas.

(b) Response activity costs that the Defendant has not paid or has not resolved pursuant to Paragraph 18.1.

(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 XVII (Indemnification and Insurance) of this Decree.

(h) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Decree or any other violations of state or federal law for which the Defendant has not received a covenant not to sue.

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

19.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

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

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

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

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

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

19.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by the Defendant in accordance with the MDEQ-approved work plans required by this Decree will result in the achievement of the performance objectives stated in Paragraph 6.1 of Section VI (Performance of

Response Activities) or the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

19.8 Except as provided in Paragraph 18.1(a) of Section XVIII (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

19.9 (a) The statute of limitations is tolled for the State's claims against the Defendant related to the performance of response activities to address methane gas that are required to comply with Part 201 and that are in addition to the response activities the Defendant shall perform pursuant to Paragraph 6.2(h). The statute of limitations for such claims is tolled from the date on which the complaint in this action was filed until two years after the MDEQ's approval of the final written report that the Defendant is required to submit pursuant to Paragraph 6.2(h). If the State, within two years after the MDEQ's approval of the final written report that the Defendant is required to submit pursuant to Paragraph 6.2(h), takes administrative action or files a new action pursuant to any applicable authority against the Defendant with respect to the performance of response activities to address methane gas that are required to comply with Part 201 and that are in addition to the response activities the Defendant shall perform pursuant to Paragraph 6.2(h), the Defendant shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations, laches or any other time-based defense.

(b) The statute of limitations is tolled for the State's claims against the Defendant related to the performance of response activities that are required to comply with Part 201 other than response activities to address methane gas. The statute of limitations for such claims is tolled from the date on which the complaint in this action was filed until two years after the MDEQ's approval of the final annual written progress report that the Defendant is required to submit pursuant to Paragraph 6.2(e). If the State, within two years after the MDEQ's approval of the final annual written progress report that the Defendant is required to submit pursuant to Paragraph 6.2(e), takes administrative action or files a new action pursuant to any applicable authority against the Defendant with respect to the performance of response activities that are required to comply with Part 201 other than response activities to address methane gas, the Defendant shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations, laches or any other time-based defense.

XX. COVENANT NOT TO SUE BY THE DEFENDANT

20.1 The Defendant hereby 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.

20.2 After the Effective Date of this Decree, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity

costs, or other appropriate relief relating to the Facility, the Defendant 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 MDEQ or the MDAG 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 XVIII (Covenants Not to Sue by the State).

XXI. RESERVATION OF RIGHTS BY THE DEFENDANT

21.1 In the event the State takes administrative action or files a new action pursuant to Paragraph 19.1, and except as otherwise provided in this Consent Decree, the Defendant retains all of its rights and defenses against liability in any such administrative action or new action.

XXII. CONTRIBUTION

Pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XVIII (Covenants Not to Sue by the State), the Defendant shall not be liable for claims for contribution for the matters set forth in Paragraph 18.1 of Section XVIII (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The Parties agree that entry of this Decree constitutes a judicially approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 USC 9613(f)(3)(B), pursuant to which the Defendant has, as of the Effective Date, resolved its liability to the MDEQ for the matters set forth in Paragraph 18.1 of this Decree. 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 the Defendant 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.

XXIII. MODIFICATIONS

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

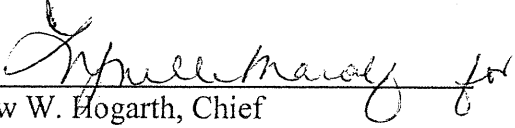
23.2 Modification of any other provision of this Decree shall be made only by written agreement between the Defendant's Project Coordinator, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG, and shall be entered with the Court.

XXIV. SEPARATE DOCUMENTS

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


IT IS SO AGREED AND DECREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
(517) 373-9837

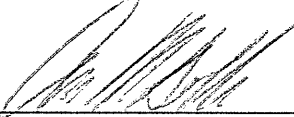
Dated 01/14/09

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

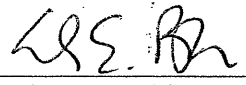

Neil D. Gordon (P56374)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-7540

Dated 1/14/2009

CHARTER TOWNSHIP OF BRIGHTON


Ann Bollin
Township Clerk
4363 Buno Road
Brighton, MI 48114
(810) 229-0550

Dated 1/14/2009


Charles E. Barbieri (P31793)
Attorney for Charter Township of Brighton
Foster, Swift, Collins & Smith, PC
313 S. Washington Square
Lansing, MI 48933
(517) 371-8155

Dated 1/14/09

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 15 day of January, 2009.

DANIEL A. BURRESS
Honorable David J. Reader

LF:BrightonTwp/07-22720-CE/Consent Decree

ATTACHMENT A

The legal description for the Property, located in Livingston County, Michigan, is as follows:

THE N 628 FT OF THE S 964 FT OF THE NE ¼ OF THE NW ¼
EXC THE W 635.6' THEREOF, SECTION 15 CONTAINING 10
ACRES, TOWN 2 NORTH RANGE 6 EAST, BRIGHTON
TOWNSHIP.

The Property Number (Property's Tax ID Number) is: 4712-15-100-019.

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDIATION AND REDEVELOPMENT DIVISION**

Date: 01/08/2009

Source: ERNIE

Cost Recovery Summary Report - Combined

Page: 1 of 2

Site Name: Brighton Twp Dump

County: Livingston

Site ID: 47000004

Packages: 450752-00 BRIGHTON TOWNSHIP DUMP: Original, Update #1, Update #2, Update #3, Update #4, Update #5, QMF #6, Interest 11/20/08, QMF #7

Total for Employee Salaries and Wages		
Period Covered: 07/01/1991 - 12/27/2008	\$262,943.59	
Indirect Dollars	\$43,287.11	
Sub-Total		<u>\$306,230.70</u>
Total for Employee Travel Expenses		
Period Covered: 08/01/1991 - 12/27/2008		\$4,310.55
Contractual Expenses		
TETRA TECH NUS (Former HNUS) (GA9303)		
Period Covered: 04/27/1991 - 08/29/1998	\$600,591.16	
WW OPERATION SERVICES (92GA7193)		
Period Covered: 07/01/1991 - 08/08/1991	\$7,810.00	
WW OPERATION SERVICES (92GA7200)		
Period Covered: 01/27/1992 - 05/04/1992	\$76,324.90	
WW OPERATION SERVICES (94 GA7080)		
Period Covered: 02/25/1994 - 09/01/1994	\$34,990.00	
Malcolm Pirnie, Inc. (LOE #9499) (P9001050)		
Period Covered: 12/16/1998 - 02/28/2002	\$153,899.52	
HOMRICH, INC. (Y90384)		
Period Covered: 07/09/1999 - 04/30/2001	\$111,362.92	
Trace Analytical Laboratories, Inc. (Y80243)		
Period Covered: 10/22/1999 - 07/31/2001	\$12,274.00	
Malcolm Pirnie, Inc. (LOE #2005) (P0001598)		
Period Covered: 05/01/2000 - 05/12/2006	\$480,679.08	
DLZ Laboratories, Inc. (Y80240)		
Period Covered: 05/25/2000 - 06/16/2000	\$2,805.00	
HOMRICH, INC. (Y02035)		
Period Covered: 01/01/2002 - 09/30/2002	\$367,354.14	
Trace Analytical Laboratories, Inc. (Y03088)		
Period Covered: 08/04/2004 - 11/18/2005	\$1,886.00	
Malcolm Pirnie, Inc. (P6200718)		
Period Covered: 05/13/2006 - 08/25/2006	\$9,382.48	
Contract Sub-Total		<u>\$1,859,359.20</u>
Total for Miscellaneous Expenses		
Period Covered: 07/01/1991 - 10/27/2008		\$4,666.51
MDNR/MDEQ Lab		
Period Covered: 11/08/1995 - 01/09/2006		\$134,820.98
Total for MDPH/Community Health Expenses		
Alternate Water Supply		
Period Covered:	\$0.00	
Bottled Water		
Period Covered: 03/10/1993 - 05/06/1996	\$997.56	

Brighton Twp Dump

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDATION AND REDEVELOPMENT DIVISION

Date: 01/08/2009

Source: ERNIE

Cost Recovery Summary Report - Combined

Page: 2 of 2

MDPH/MDCH Lab	
Period Covered: 07/01/1991 - 10/12/2006	\$27,099.00
Sub-Total	\$28,096.56
Attorney General Expenses	
Period Covered: 09/01/2000 - 11/30/2008	\$102,762.00
Other Expenses	
Period Covered:	\$0.00
Sub-Total	\$2,440,246.50
Interest Calculated from 04/02/2001 through 10/31/2008	\$2,425,657.94
Total Combined Expenses for Site and Interest	\$4,865,904.44
Run Date 01/08/2009	

Attachment C

Brighton Township Dump					
List of monitoring wells at the site					
Well #	Sample	Decommission	Parameters	Frequency	
MW-1		X			
MW-2	X		VOC	Annual	
MW-3		X			
MW-4		X			
MW-5		X			
MW-6	X		VOC	Annual	
MW-7		X			
MW-8		X			
MW-9		X			
MW-10	X		VOC	Annual	
MW-11	X		VOC	Annual	
MW-12		X			
MW-13		X			
MW-14	X		VOC	Annual	
MW-15		X			
MW-16		X			
MW-17		X			
MW-18	X		VOC	Annual	
MW-18DR	X		VOC	Annual	
MW-19	X		VOC	Annual	
MW-20		X			
MW-21		X			
MW-22		X			
MW-24	X		VOC	Annual	
MW-25	X		VOC	Annual	
MW-26		X			
MW-27		X			
MW-28	X		VOC	Annual	
MW-29		X			
MW-30		X			
MW-101S	X		VOC	Annual	
MW-101D	X		VOC	Annual	
MW-102S	X		VOC	Semi annual	May be reduced after 2 years
MW-102D	X		VOC	Annual	
MW-103S	X		VOC	Annual	
MW-103D	X		VOC	Annual	
MW-104S		X			
MW-104D		X			
MW-105S	X		Metals	Annual	
MW-105M	X		Metals	Annual	
MW-105D	X		Metals	Annual	

Attachment C

MW-201S	X		VOC	Annual	
MW-201D	X		VOC	Annual	
MW-202S	X		VOC	Semi annual	May be reduced after 2 years
MW-202D	X		VOC	Annual	
MW-203S	X		VOC	Semi annual	May be reduced after 2 years
MW-203I	X		VOC	Semi annual	May be reduced after 2 years
MW-204S	X		VOC	Quarterly	May be reduced after 2 years
MW-204D	X		VOC	Quarterly	May be reduced after 2 years
MW-205S	X		VOC	Quarterly	May be reduced after 2 years
MW-205D	X		VOC	Quarterly	May be reduced after 2 years
MW-EX-1	X		VOC	Semi annual	May be reduced after 2 years
PZ-1S		X			
PZ-1M		X			
PZ-1D		X			
Total 55	31	24			

ATTACHMENT D

MAY 2006
MALCOLM
PIRNE

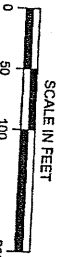
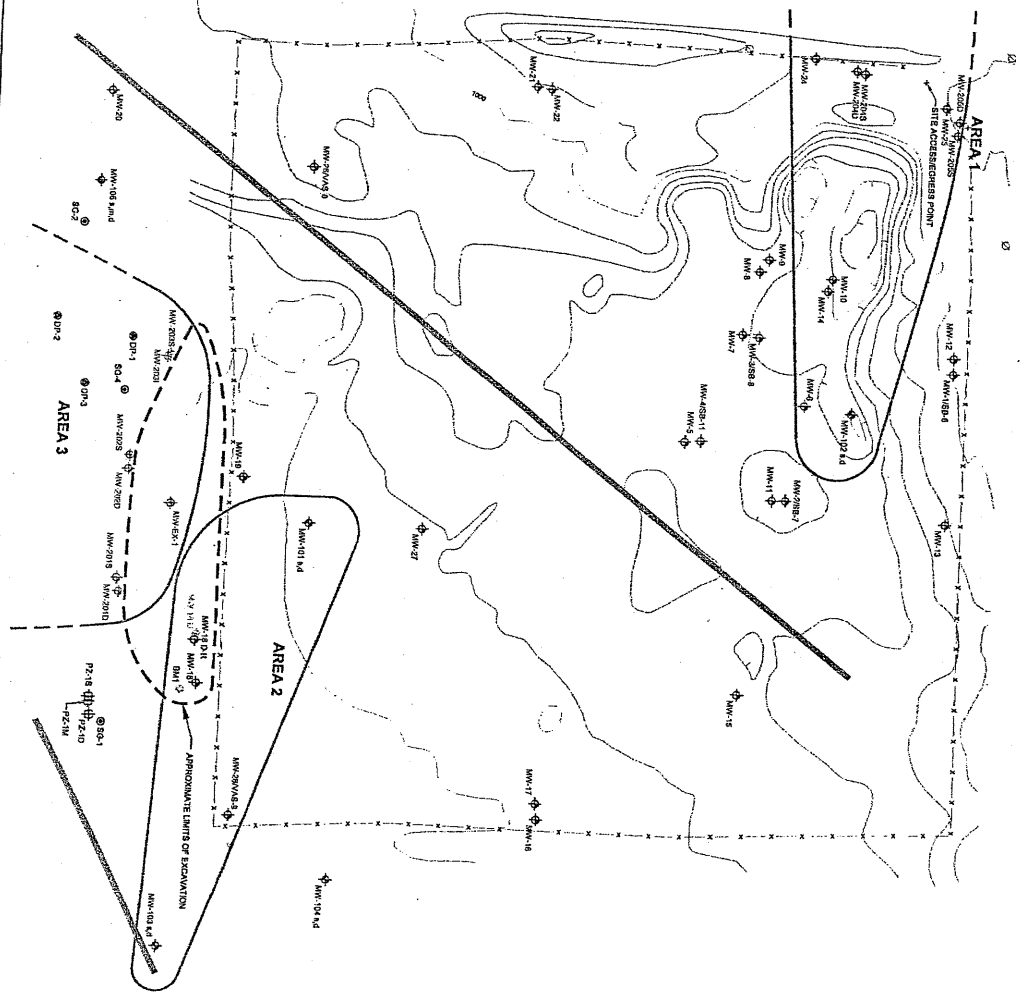


FIGURE 1

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
BRIGHTON TOWNSHIP LANDFILL SITE
BRIGHTON, MICHIGAN
SITE BASEMAP

- NOTES**
1. MONITORING POINTS INSTALLED IN 2005 WERE OWNED BY GC ENGINEERING P.C. ON 12/20/05. BRIGHTON TOWNSHIP HAS BEEN ADVISED BY GC ENGINEERING P.C. THAT THE MONITORING POINTS WERE USED IN 2005 WITH REFERENCE TO ALPINE ENGINEERING, INC. RECORDS.
 2. RESIDENTIAL, FLOOD, AND FERTILIZER APPLICATION ARE APPROXIMATE AND HAVE NOT BEEN VERIFIED.
 3. THIS DRAWING MAY BE REPRODUCED FOR USE IN THE STATE OF MICHIGAN OR IS AUTHORIZED REPRODUCTION.

- LEGEND**
- DRIVE POINT - MALCOLM PIRNE, 2005
 - ◆ MONITORING WELL - MALCOLM PIRNE, 2005
 - ◆ MONITORING WELL - MALCOLM PIRNE, 2005
 - ◆ MONITORING WELL - SINGLE
 - ◆ MONITORING WELL - CLUSTER OF TWO
 - ◆ MONITORING WELL - CLUSTER OF THREE
 - ◆ MONITORING WELL - ABANDONED
 - ◆ PRECIPITATION
 - ◆ STAFF GAUGE
 - UTILITY POLE
 - GENERAL AREA OF VOC CONTAMINATION
 - APPROXIMATE BOUNDARY BETWEEN NORTHWESTERN AND SOUTHEASTERN PORTIONS OF SITE
 - FENCE
 - TOPOGRAPHIC CONTOUR INTERVAL
 - EXCAVATION (JAN 2001)

RC_MDEQ-Apv'd.doc

05/12/03

Replaces RCON.doc and RCOFF.doc



Michigan Department of Environmental Quality
Remediation and Redevelopment Division

THE ATTACHED MODEL DOCUMENT ENTITLED:

DECLARATION OF RESTRICTIVE COVENANT

IS A DRAFT DOCUMENT WHICH IS SUBJECT TO REVISION. IT IS PROVIDED TO THE PUBLIC AS PRELIMINARY GUIDANCE AS TO THE CONTENT, FORMAT AND TERMS OF THIS NOTICE. IT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, BY ANY OTHER PARTY. PLEASE CONTACT THE COMPLIANCE AND ENFORCEMENT SECTION, REMEDIATION AND REDEVELOPMENT DIVISION, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, AT 517-373-7818 TO RECEIVE THE MOST RECENT DRAFT OF THIS DOCUMENT.

NOTE: There are recording requirements for instruments filed with Michigan county register of deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201, [link to Act 103](#).

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.

*This restrictive covenant model document is to be used when preparing a document to comply with Rule 524(2) and (3) of the Part 201 Administrative Rules (Part 201 Rules), R 299.5524(2) and (3). This document is only appropriate for use with response activities (either a remedial action or an interim response activity designed to meet criteria) approved by the MDEQ under the limited or site-specific categories allowed for under Section 20120a(1)(f) through (j) and (2) of the NREPA, or if a restrictive covenant is being relied upon in lieu of a Notice of Approved Remediation. This document should **not** be used if the MDEQ has not approved the response activities. This document replaces both the former RCON.doc and RCOFF.doc.*

Drafting notes appear as italicized, bold type; insertion directions appear in italicized, bold type in bold brackets; and word choices appear in regular, bold type in bold brackets. Replace the bold notes, directions, and word choices with the appropriate information. The final format of the document shall comply with Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201, to allow for recordation by the Register of Deeds, [link to Act 103](#).

DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No.: RC-RRD-[YR]-[number]

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the **[insert name of County]** County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at **[insert location of property (e.g. city or township, and county)]** and legally described in Exhibit 1 attached hereto ("Property"). The Property is associated with **[insert the Part 201 site name and site ID number]** for which a **[insert as appropriate: remedial action plan (RAP) OR interim response designed to meet criteria (IRDC)]** is being conducted. The **[insert as appropriate: remedial action OR response activities]** that **[is OR are]** being implemented to address environmental contamination are fully described in the **[insert title of the RAP OR IRDC document]**, dated **[insert date]** **[insert as appropriate: ("RAP") OR ("IRDC")]**, and submitted by **[insert name of person proposing plan (PPP)]**. The Michigan Department of Environmental Quality ("MDEQ") approved the **[insert as appropriate: IRDC OR RAP]** on **[insert date]**, pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 et seq.

The **[insert as appropriate: IRDC OR RAP]** required the recording of this Restrictive Covenant with the **[insert County]** County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; **[and]** 2) assure that the use of Property is consistent with the exposure assumptions utilized in the development of cleanup criteria pursuant to Section **[insert appropriate cleanup category]** of the NREPA and the exposure control measures relied upon in the **[insert as appropriate: IRDC OR RAP]** **[insert**

if there is an enduring physical component of the response activity (e.g., cap): ; and 3) to prevent damage or disturbance of any element of the response activity constructed on the Property]. The restrictions contained in this Restrictive Covenant are based upon information available to the MDEQ at the time the *[insert as appropriate: IRDC OR RAP]* was approved by the MDEQ. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the *[insert as appropriate: IRDC OR RAP]*; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section *[insert appropriate cleanup category]* of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the *[insert: IRDC OR RAP]*; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

[Insert one of the two following optional paragraphs, as appropriate.

OPTION 1: *To be used if the entire property will be subject to all of the land or resource use restrictions provided in this restrictive covenant:*

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

OPTION 2: *To be used if following if not all of the Property is to be subject to land or resource use restrictions:*

The “*Limits of Land or Resource Use Restrictions,*” attached hereto as Exhibit 2, provides the legal description(s) and a survey that distinguishes those portions of the Property that are subject to land use or resource use restrictions as specified herein.]

Summary of Response Activities

[Insert a paragraph similar to the following that briefly describes the affected media, the nature of the hazardous substances, and how the response activities address unacceptable risks for all relevant pathways that require restrictions.

SAMPLE: Hazardous substances including lead, trichloroethylene (TCE), cyanide and phenols have been released and/or disposed of on the Property. Prior to recording of this Restrictive Covenant, response activities have been undertaken to remove or treat in-place some of the contamination. Lead and TCE remain present at levels that require controls to prevent unacceptable exposures. An exposure barrier, consisting of six (6) inches of clean soil and vegetation, has been placed, as described below, to prevent direct contact with the lead impacted soils. A vapor barrier has been placed under Building B (identified in Exhibit 2) to prevent migration of TCE into the building at levels that would result in unacceptable exposures through inhalation.]

[If this restrictive covenant is being recorded in association with an IRDC, insert the following paragraph and attach an exhibit which provides a survey and legal description of the areas of the Property or general description of the specific media (i.e., groundwater, soils, etc.) that are not being addressed under the IRDC:

Areas of the Property described in Exhibit [] may contain hazardous substances in excess of the concentrations developed as the unrestricted residential criteria under Section 20120a(1)(a) or (17) of the NREPA that have not been addressed through the response activities undertaken pursuant to the MDEQ-approved IRDC. The MDEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.]

Definitions

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

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

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

NOW THEREFORE,

Declaration of Land Use or Resource Use Restrictions

Pursuant to *[insert as appropriate: the RAP OR IRDC OR [insert specific settlement agreement, etc.]] [insert name of PPP], [insert as appropriate: as Owner of the Property OR with the express written permission of the Owner of the Property]*, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

1. The Owner shall prohibit all uses of *[insert as appropriate: the Property OR portions of the Property designated in Exhibit 2 as [insert designation of area of Property subject to restrictions; if more than one area, distinguish between areas]]* that are not compatible with the *[insert land use category]* category under Section *[insert appropriate section of 20120(1)(b) through (j) or (2)]* of the NREPA and generally described in the Description of Allowable Uses, attached hereto as Exhibit []. *[If the local zoning ordinance allows for more intensive uses within the Property's current zoning, insert the following: The following uses allowed under the [insert name of local zoning authority and zoning code designation] zoning code designation are prohibited: [list prohibited uses.]]* Cleanup criteria for land use-based response activities are located in the Government Documents Section of the State of Michigan Library.

2. The Owner shall prohibit activities *[insert as appropriate: on the Property OR within the portions of the Property] designated in Exhibit 2 as "[insert designation]"* that may result in exposures above levels established in the *[insert as appropriate: RAP OR IRDC]*. These prohibited activities include:

[NOTE: List all Restricted Property-specific prohibited activities that are necessary to reliably restrict exposures to hazardous substances here. Examples of such restrictions are:

- A. Any excavation or other intrusive activity that could affect the integrity of the *[insert thickness and material of barrier]* that has a base elevation of *[insert reproducible benchmark]* at the locations shown in Exhibit 2.
- B. Any construction of wells or other devices to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are part of an MDEQ-approved response activity. Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations including, but not limited to, Part 201 of the NREPA.]

3. The Owner shall prohibit activities on the Property that may interfere with any element of the *[insert as appropriate: IRDC OR RAP]*, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the *[insert as appropriate: IRDC OR RAP]* in the *[insert as appropriate: IRDC OR RAP]*.

[NOTE: List all Restricted Property-specific prohibited activities that are necessary to maintain the effectiveness and integrity of the RAP/IRDC.]

[Insert the following paragraph if permanent markers are required, and renumber the paragraphs as appropriate:

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

[If contaminated soils, media or debris are present on the Property and require management in accordance with statutory requirements, insert one of the following two optional paragraphs, and renumber the paragraphs as appropriate:

OPTION 1: To be used if, at the time of recording the restrictive covenant, it is known that the relocation of contaminated media would result in generation of hazardous waste as defined in Part 111, Hazardous Waste Management, of the NREPA. The boundaries of the area(s) must be surveyed and delineated on Exhibit 2 and insert the following:

5. Contaminated Soil Management. *[Insert as appropriate: Soils, media, and/or debris]* identified in Exhibit 2 as *[insert designation of area]* at an elevation of approximately *[insert top and bottom elevation of material]* *[was/were]*, at the time of recording of this Restrictive Covenant, material that would constitute a "Hazardous

Waste,” as defined in Part 111, Hazardous Waste Management, of the NREPA, when generated. If the Owner undertakes any excavation or otherwise disturbs the *[insert as appropriate: soil, media, and/or debris]* identified as potential Hazardous Waste, the Owner shall, at that time, confirm whether the *[insert as appropriate: soils, media, and/or debris]* *[is/are]* a Hazardous Waste. If so, the Owner shall handle and dispose of the *[insert as appropriate: soils, media, and/or debris]* in full compliance with all relevant requirements of state and federal laws that govern Hazardous Waste including, but not limited to, Part 111 of the NREPA; and Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; and the administrative rules promulgated thereunder. If the *[insert as appropriate: soils, media, and/or debris]* are not Hazardous Waste at the time of excavation or disturbance, the Owner shall manage such soils, media and/or debris and all other soils located on the Property in accordance with the requirements of Section 20120c of the NREPA, the Part 201 Administrative Rules promulgated thereunder, and all other relevant state and federal laws.

OPTION 2: *If, at the time of recording the restrictive covenant, it is unknown whether there is contamination located on the Property that, if relocated, would result in the generation of a Hazardous Waste, as defined in Part 111 of the NREPA, insert the following:*

5. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of the NREPA; Part 111, Hazardous Waste Management, of the NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.}

6. Access. The Owner shall grant to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the *[insert as appropriate: RAP OR IRDC]*, including the right to take samples, inspect the operation of the response activities and, inspect any records relating thereto, and to perform any actions necessary to maintain compliance with, Part 201 and the *[insert as appropriate: RAP OR IRDC]*.

7. Notice. The Owner shall provide notice to the MDEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the MDEQ under this Paragraph shall be made to: Director, MDEQ, P.O. Box 30473, Lansing, Michigan 48909-7973; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, MDEQ Reference Number RC-RRD-[YR]-[number]. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

8. Term and Enforcement of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees,

or persons acting under their direction and control. This Restrictive Covenant may only be modified or rescinded with the written approval of the MDEQ.

The State of Michigan, through the MDEQ, ***[insert if appropriate: and [insert name of PPP]]*** may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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

10. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner ***[insert the following, if portions of the property subject to land use or resource use restrictions overlap any easement holders' property interests: and all other holders of a legal interest whose interest is materially affected by this Restrictive Covenant (as documented and attached hereto as Exhibit []],*** and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, [PPP] has caused this Restrictive Covenant,
RC-RRD-[YR]-[number], to be executed on this _____ day of _____, 200__.

[insert name of PPP]

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

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

[NOTE: Choose only one of the following four acknowledgments:

OPTION 1: If PPP is an individual:

The foregoing instrument was acknowledged before me this [date] by [PPP].

OPTION 2: If PPP is a corporation:

The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation/PPP], a [state or place of incorporation corporation], on behalf of the corporation.

OPTION 3: If PPP is a partnership:

The foregoing instrument was acknowledged before me this [date] by [name of partnership or agent], partner [or agent] on behalf of [name of partnership/PPP], a partnership.

OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):

The foregoing instrument was acknowledged before me this [date] by [name of attorney in fact] as attorney in fact on behalf of [name of principal].]

Notary Public

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

My Commission Expires: _____

AGREED AND CONSENTED TO BY OWNER:

[Insert Owner's Name]

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

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

NOTE: Choose only one of the following four acknowledgments:

OPTION 1: If property owner is an individual:

The foregoing instrument was acknowledged before me this [date] by [name of owner], Owner.

OPTION 2: If property owner is a corporation:

The foregoing instrument was acknowledged before me this [date] by [name of officer or agent, title of officer or agent] of [name of corporation/owner], a [state or place of incorporation corporation], on behalf of the corporation.

OPTION 3: If property owner is a partnership:

The foregoing instrument was acknowledged before me this [date] by [name of partnership or agent], partner [or agent] on behalf of [name of partnership/owner], a partnership.

OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):

The foregoing instrument was acknowledged before me this [date] by [name of attorney in fact] as attorney in fact on behalf of [name of principal].]

Notary Public

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

My Commission Expires: _____

EXHIBIT 1

LEGAL DECRIPTION OF PROPERTY

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

EXHIBIT 2

SURVEY OF THE PROPERTY

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

EXHIBIT []

AREAS OF THE PROPERTY NOT ADDRESSED BY THE IRDC

[NOTE: This exhibit must provide a survey and legal description of each area of the Property and/or general description of each media (e.g., groundwater, soil, etc.) that are not being addressed by the IRDC.]

EXHIBIT []

DESCRIPTION OF ALLOWABLE USES

[NOTE: This exhibit must be consistent with the exposure assumptions contained in the relevant Part 201 Rules, or an alternative exposure assumption used to derive a site-specific criterion, if one was approved in the RAP/IRDC, and those uses are consistent with the property zoning.]

EXHIBIT []
CONSENT OF EASEMENT HOLDERS

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

[Insert additional signature blocks if multiple easement holders]

[Insert Easement Holder's Name]

By: _____
Signature

Name: _____
Print or Type Name

Its: _____
Title

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

[NOTE]: Choose only one of the following four acknowledgments:

OPTION 1: If property owner is an individual:

The foregoing instrument was acknowledged before me this **[date]** by **[name of owner]**, Owner.

OPTION 2: If property owner is a corporation:

The foregoing instrument was acknowledged before me this **[date]** by **[name of officer or agent, title of officer or agent]** of **[name of corporation/owner]**, a **[state or place of incorporation corporation]**, on behalf of the corporation.

OPTION 3: If property owner is a partnership:

The foregoing instrument was acknowledged before me this **[date]** by **[name of partnership or agent]**, partner **[or agent]** on behalf of **[name of partnership/owner]**, a partnership.

OPTION 4: For an individual acting as principal by an attorney in fact (power of attorney):

The foregoing instrument was acknowledged before me this **[date]** by **[name of attorney in fact]** as attorney in fact on behalf of **[name of principal].**

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

My Commission Expires: _____