

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

MDEQ Reference No.: AOC-RRD-13-002

Hartley and Hartley Landfill
Kawkawlin, Michigan
Bay County, Michigan

AGREEMENT BY CONSENT
FOR PAYMENT OF
STATE OVERSIGHT COSTS AND PERFORMANCE OF RESPONSE ACTIVITIES IN
ACCORDANCE WITH REMEDIAL ACTION PLAN

The Parties (as defined herein), by their respective executions of this Agreement by Consent for Payment of Future Oversight Costs and Performance of Response Activities in Accordance with Remedial Action Plan (Agreement), intend to replace the previously entered November 7, 1980 Stipulation and Consent Order for Closure (Order); the Amendment to the November 7, 1980 Stipulation and Consent Order for Closure dated September 25-28, 1984 (Amendment); and the Addendum by Consent dated November 14, 2002 (Addendum) with this Agreement.

RECITALS

The Parties agree that all of the work required to be performed under the Order, Amendment and Addendum has been fully performed, and it is therefore appropriate to terminate the Order, Amendment and Addendum. Notwithstanding any other provision in this Agreement, the release provision in Paragraph 8 of the Amendment; and Section IX (Covenant Not to Sue by the State), Section X (Covenant not to Sue by SCA), Section XI (Reservation of Rights by the State), and Section XII (Contribution Protection) of the Addendum, shall survive termination and continue in full force and effect, but as modified and supplemented as provided in this Agreement.

The Parties also agree that the relevant environmental functions of the Michigan Department of Natural Resources (MDNR) were transferred to the Michigan Department of

Environmental Quality (MDEQ) by Executive Order No. 1995-18. Subsequently, in 2010, the MDEQ was abolished and statutory functions and authority of the MDEQ were transferred to the Michigan Department of Natural Resources and Environmental Protection (MDNRE) by Executive Order 2009-45. In 2011, the current Michigan Department of Environmental Quality (MDEQ) was created, the MDNRE was abolished, and the relevant environmental functions of the MDNRE were transferred to the MDEQ by Executive Order 2011-1.

MDEQ's authority to enter into this Agreement is granted in the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.101 *et seq.* The Michigan Department of Attorney General's (MDAG) authority to enter into this Agreement arises from its authority to settle claims involving the State. Both MDEQ and MDAG agree to be bound by this Agreement.

This Agreement concerns the payment by SCA of future State Oversight Costs. This Agreement also addresses the implementation of response activities at the Facility in accordance with the MDEQ-approved Remedial Action Plan (RAP). All response actions will be conducted in compliance with Part 201, Environmental Remediation, of the NREPA (Part 201).

Thorium waste material regulated by the United States Nuclear Regulatory Commission (NRC) is known to be located at the Facility. The State recognizes that SCA must comply with all applicable statutes, regulations, and requirements established by the NRC for the proper long-term management of the thorium waste material. The Facility completed final status surveys in accordance with the NRC approved Decommissioning Plan. On April 23, 2007, the NRC terminated the Facility License (License No. SUC-1565) and authorized the release of the land for unrestricted use.

The entry of this Agreement by SCA is neither an admission of liability with respect to any issue dealt with in this Agreement, nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

Accordingly, in consideration of the recitals set forth above (which are made part of the Agreement and incorporated by reference) and for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. PARTIES BOUND

1.1 This Agreement shall apply to and be binding upon the State and SCA and their successors and assigns. No change or changes in the ownership or corporate status of SCA shall in any way alter SCA's responsibilities under this Agreement.

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

II. STATEMENT OF PURPOSE

2.1 In entering into the Agreement, the mutual objectives of the Parties are:

(a) to resolve, without litigation, State claims against SCA for recovery of future State Oversight Costs, and

(b) to complete response activities at the Facility in accordance with the MDEQ-approved RAP and this Agreement.

III. DEFINITIONS

3.1 "Addendum" means the Addendum by Consent dated November 14, 2002.

3.2 "Agreement" means this Agreement by Consent for Payment of Future Oversight Costs and Performance of Response Activities in Accordance with Remedial Action Plan and any Attachments hereto.

3.3 "Amendment" means the Amendment to the November 7, 1980 Order for Closure dated September 25-28, 1984.

3.4 "Effective Date" means the date that this Agreement is fully executed by all Parties to it.

3.5 "Facility" means any area, place, or property where a hazardous substance, originating from the SCA Property and/or the State Property as defined in this Agreement in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17) has been released, deposited, disposed of, or otherwise has come to be located. Solely for the purpose of this Agreement, the term "Facility" does not include the relocation of any hazardous substance(s) from the SCA Property or the State Property to any other properties or facilities.

3.6 "FAM" means the financial assurance mechanism that is acceptable to the MDEQ to pay for monitoring, operation and maintenance, oversight and other costs necessary to assure the effectiveness and integrity of the remedial action. The FAM is a component of the RAP.

3.7 "Long-Term RAP Costs" shall mean those costs necessary to assure the performance of monitoring, operation and maintenance, oversight, and other costs that are necessary to assure the effectiveness and integrity of the remedial action as set forth in the RAP.

3.8 "MDEQ" means the Michigan Department of Environmental Quality.

3.9 "Order" means the November 7, 1980 Stipulation and Consent Order for Closure.

3.10 "Parties" means the State and SCA.

3.11 "Remedial Action Plan" or "RAP" means the Remedial Action and Closure Report approved by the MDEQ on July 26, 2013 (Attachment D).

3.12 "RRD" means the Remediation and Redevelopment Division of the MDEQ.

3.13 "SCA" means, for the purposes of this Agreement only, CWM Chemical Services, L.L.C. being the successor corporation of the former SCA Chemical Services, Inc., at the time of entry of this Agreement.

3.14 "SCA Property" is the property described in Attachment A-1 to this Agreement.

3.15 "State" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality. For the purpose of this Agreement, the definition of State does not include the Michigan Department of Natural Resources.

3.16 "State Oversight Costs" means costs associated with the performance of response activities at the Facility related to the State's oversight, enforcement, monitoring and documentation of compliance with the Agreement. State Oversight Costs related to the Facility may include, but are not limited to, costs incurred to: monitor response activities; observe and comment on field activities; review and comment on submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; perform response activities pursuant to Section VI of this Agreement; attend and participate in meetings; prepare cost reimbursement documentation; and enforce and monitor Section V (Payment of Costs); provided such activities and tasks relate to the Facility.

3.17 "State Property" is the property described in Attachment A-2 of this Agreement.

3.18 For the work to be performed under this Agreement, the terms used in this Agreement which are defined in Part 201 of NREPA, MCL 324.20101 et seq., and/or the Part 201 rules, Mich. Adm. Code R.299.5101 et seq., shall have the same meaning in this Agreement as in Part 201 and its rules.

IV. DISPUTE RESOLUTION

4.1 Unless otherwise expressly provided for in this Agreement, including but not limited to Paragraph 4.2, the dispute resolution procedures of this Section shall be the mandatory initial mechanism to resolve disputes arising under or with respect to this Agreement. Engagement of dispute resolution among the Parties shall not be cause for SCA to delay the performance of any undisputed response activity required under this Agreement.

4.2 SCA does not waive any statutory right it may have to resort to a court of competent jurisdiction to resolve issues arising in this Agreement.

4.3 The State shall maintain an administrative record of any disputes that are initiated pursuant to this Section. The administrative record shall include the information SCA provides to the State under Paragraphs 4.4 through 4.6 including any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 4.4 through 4.6. SCA shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to MCL 324.20137(7).

4.4 Any dispute that arises under this Agreement with respect to MDEQ's disapproval, modification, or other decision concerning the requirements of Sections V, VI, or VII, shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the Parties. A dispute shall be considered to have arisen on the date that a Party to this Agreement receives a written Notice of Dispute from the other Party. This Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which the Party bases its position. The period of negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by mutual written agreement of the Parties. If the Parties do not reach an agreement within twenty (20) days, or within the agreed upon time period, the RRD District Supervisor will thereafter provide a written RRD Statement of Decision to SCA. In the absence of initiation of formal dispute resolution by SCA under Paragraph 4.5, the MDEQ's position as set forth in the RRD Statement of Decision shall be binding on the Parties.

4.5 If SCA and the MDEQ cannot informally resolve a dispute under Paragraph 4.4, SCA may initiate formal dispute resolution by submitting a written request for review of the disputed issues (Request for Review) to the RRD Division Chief. SCA must file the Request for Review with the RRD Division Chief and the MDEQ Project Coordinator within twenty (20) days of SCA's receipt of the RRD Statement of Decision issued pursuant to Paragraph 4.4. SCA's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which SCA bases its position. Within twenty (20) days of the RRD Division Chief's receipt of SCA's Request for Review, the RRD Division Chief will provide a written Final RRD Statement of Decision to SCA, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting his/her position; and all supporting documentation

relied upon by the RRD Division Chief in making his/her decision. The time period for the RRD Division Chief's review of the Request for Review may be extended by mutual written agreement of the Parties. The Final RRD Statement of Decision shall be binding on the Parties, subject to Paragraphs 4.2 and 4.6.

4.6 If SCA seeks to challenge any decision or notice issued by the MDEQ or the State under this Agreement, including any decision or notice regarding matters covered by Paragraphs 4.3, 4.4, and 4.5, SCA shall send a written Notice of Dispute to both the RRD Division Chief and the Assistant Attorney General assigned to this matter within twenty (20) days of receipt of the decision or notice by the MDEQ or the State. The Notice of Dispute shall include the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which SCA bases its position. The Parties shall have twenty one (21) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If an agreement is not reached within the twenty one (21) day period, the State will thereafter issue a written State Statement of Decision to SCA within sixty (60) days, which shall be binding on the Parties subject to Paragraph 4.2.

4.7 If SCA does not comply with the MDEQ decision under Paragraph 4.4, 4.5, or 4.6, and SCA does not timely pursue further dispute resolution provided in this Agreement, the Department of Attorney General, on behalf of the MDEQ, may take such civil enforcement actions against SCA as authorized by law. In such an event, the MDEQ retains the right to perform the necessary response activities and to recover the costs from SCA. SCA reserves the right to argue that it may seek judicial review of the MDEQ decision.

4.8 Notwithstanding this Section, SCA shall pay to the MDEQ that portion of a demand for reimbursement of costs that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section V (Payment of Costs), as appropriate.

4.9 Section 20137(6) of the NREPA, shall govern whether any action or decision of the MDEQ or the Attorney General shall constitute a final agency action giving rise to any rights of judicial review. Nothing in this Agreement shall expand or reduce SCA's ability to obtain pre-enforcement review of this Agreement.

V. PAYMENT OF COSTS

5.1 SCA shall reimburse the State for all State Oversight Costs for matters covered in this Agreement. As soon as possible after each anniversary of the Effective Date of this Agreement, the MDEQ will provide SCA with a written demand of State Oversight Costs lawfully incurred by the State from the previous billing date. Any such demand will set forth with reasonable specificity the nature of the costs incurred. SCA shall reimburse the MDEQ within sixty (60) days after receipt of the written demand of lawfully incurred State Oversight Costs. Payment is to be made by check payable to the "State of Michigan – Environmental Response Fund" and sent to:

Accounting Services Division
Cashier's Office for MDEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

To ensure proper credit, the payments made pursuant to this Agreement must reference the Hartley & Hartley Landfill; CWM Chemical Services, L.L.C.; and RRD Account Number RD50039.

5.2 In the event that SCA fails to reimburse the State as provided in Paragraph 5.1 within the time frames set forth in this Agreement, SCA shall pay the MDEQ interest on those unreimbursed costs at the rate provided in Section 20126a(3) of NREPA.

5.3 SCA shall have the right to request a full and complete accounting of all demands made hereunder, including timesheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to the MDEQ. Providing these documents to SCA may result in the MDEQ incurring additional State Oversight Costs that will be included in the annual demand of State Oversight Costs. In any challenge by SCA to a demand for recovery of costs by the MDEQ, SCA shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(1)(a) of NREPA.

5.4 Costs recovered pursuant to this Agreement shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

VI. IMPLEMENTATION OF RESPONSE ACTIVITIES

6.1 SCA shall complete response activities at the Facility in accordance with the MDEQ-approved RAP and this Agreement.

6.2 Within sixty (60) days of the end of each calendar year after the first anniversary of this Agreement and within sixty (60) days of each calendar year anniversary thereafter, SCA shall provide an annual report to the MDEQ Project Coordinator describing the implementation of the MDEQ-approved RAP, including, but not limited to, the operation and maintenance activities and monitoring activities and any other response activities that have been undertaken by SCA at the Facility for the prior year (Annual Report). The Annual Report shall include an assessment and documentation of the integrity of all exposure control mechanisms on which the RAP is dependent and compliance with land or resource use restrictions, including institutional controls. If appropriate, the report shall describe any modifications to the RAP that should be implemented to assure the continued effectiveness and integrity of the remedial action.

6.3 The MDEQ reserves the right to review all non-privileged records, data and reports documenting the response activities that have been undertaken by SCA.

6.4 In the event that the MDEQ determines that additional response activity is necessary and consistent with the MDEQ-approved RAP, the MDEQ will provide written notice of such additional response activity to SCA. SCA may also propose additional response activities, including interim response activities, which shall be subject to approval by the MDEQ. SCA shall complete any additional response activities agreed to by the Parties, in accordance with the standards, specifications, and schedules approved by the MDEQ. However, only modifications necessary to assure the effectiveness and integrity of the selected remedial action in accordance with the MDEQ-approved RAP may be required under this Agreement.

6.5 SCA may request that the MDEQ consider a modification to the RAP by submitting a request for modification that provides sufficient detail as to the modification requested and provides justification for the modification to the MDEQ for review and approval. Any such request for modification by SCA must be forwarded to MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Upon MDEQ

approval, SCA shall perform the response activities that are provided for in the modification in accordance with MDEQ-approved implementation schedules.

6.6 Upon obtaining information concerning the occurrence or nonoccurrence of any event during the performance of response activities conducted in accordance with this Agreement that causes a release or threat of a release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare, or the environment, SCA shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat or endangerment, including the immediate notification of the MDEQ. In such an event, any action undertaken by SCA shall be in accordance with all applicable health and safety laws and regulations.

6.7 Within thirty (30) days of notifying the MDEQ of an occurrence under Paragraph 6.6, SCA shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release, threat, or endangerment caused or threatened by the incident and to prevent recurrence of such an incident.

6.8 Regardless of whether SCA notifies the MDEQ under this subsection, if response activities undertaken under this Agreement cause a release or threat of release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare, or to the environment, the MDEQ may:

(a) require SCA to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment;

(b) require SCA to undertake any such activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; and/or

(c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment.

6.9 In the event that the MDEQ undertakes any action pursuant to this Section to abate such a release, threat or endangerment, SCA shall reimburse the State for State Oversight Costs lawfully incurred by the State. Payment of such costs shall be made in the manner provided in Section V (Payment of Costs).

VII. LAND USE OR RESOURCE USE RESTRICTIONS

7.1 SCA shall file for recording, or cause to be filed for recording with the Bay County Register of Deeds, the MDEQ-approved Restrictive Covenant attached hereto as Attachment B within twenty one (21) days of the Effective Date.

VIII. ACCESS TO THE SCA PROPERTY

8.1 Upon reasonable notice to SCA and upon the Effective Date, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the SCA Property and any property at the Facility to which access is required for the implementation of this Agreement, to the extent access to the property is owned or controlled by SCA, for the purpose of conducting any activity authorized by this Agreement or to otherwise fulfill any responsibility under federal or State law with respect to environmental conditions at and related to the Facility, including, but not limited to:

- (a) monitoring the response activities or any other activities taking place pursuant to this Agreement at the Facility;
- (b) verifying any data or information submitted to the MDEQ;
- (c) conducting investigations relating to contamination at or near the Facility;
- (d) obtaining samples;
- (e) assessing the need for or planning or implementing response activities at or near the Facility;
- (f) assessing compliance with requirements for the implementation of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a remedial action;
- (g) inspecting and copying non-privileged records, operating logs, contracts or other documents; or

(h) communicating with SCA's Project Coordinator or other personnel, authorized representatives or consultants for the purpose of assessing compliance with this Agreement.

8.2 To the extent that response activities to be performed by SCA must occur on property or other areas that are controlled by persons other than SCA, SCA shall use its best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants. SCA shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, reasonable compensation to the owner. If after using its best efforts SCA is unable to obtain access, SCA shall notify the MDEQ within forty-five (45) days of a person's refusal to authorize access.

8.3 Any lease, purchase, contract or other agreement entered into by SCA, which transfers to another person a right of control over the SCA Property, or a portion of the SCA Property, shall contain a provision preserving for the MDEQ, or its authorized representatives undertaking the response activities the access provided under this Section.

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

IX. COVENANTS NOT TO SUE BY THE STATE

9.1 In consideration of this Agreement, the actions that have been or will be performed and the payments that have been or will be made by SCA under the terms of this Agreement, the Order, the Amendment and the Addendum, and except as specifically provided in this Section or Section XI (Reservation of Rights By The State), the State covenants not to sue or to take administrative action against SCA for claims arising from:

(a) performance of MDEQ-approved response activities that SCA performed under the Order, the Amendment and the Addendum;

(b) reimbursement of State Past Response Activity Costs and State Oversight Costs paid by SCA pursuant to the Addendum as of the Effective Date.

(c) performance of response activities by SCA under this Agreement and the MDEQ-approved RAP; and

(d) reimbursement of State Oversight Costs as set forth in Paragraph 5.1 of this Agreement.

9.2 The covenants not to sue shall take effect under this Agreement as follows:

(a) with respect to SCA's liability to perform MDEQ-approved response activities under the Order and the Amendment, the release provision in Paragraph 8 of the Amendment shall take effect upon the Effective Date of this Agreement;

(b) with respect to SCA's liability to perform MDEQ-approved response activities under the Addendum, the Covenant Not to Sue by the State (Section IX of the Addendum) shall take effect upon MDEQ's approval of the RAP, which will also serve as the Approval of Performance Activities pursuant to Section 13.2 of the Addendum;

(c) with respect to SCA's liability for State Past Response Activity Costs and State Oversight Costs reimbursed by SCA pursuant to the Addendum as of the Effective Date, the covenant not to sue shall take effect upon the Effective Date.

(d) with respect to SCA's obligation to perform response activities under this Agreement and the MDEQ-approved RAP, the covenant not to sue shall take effect upon SCA's performance of each of the response activities; and

(e) with respect to SCA's liability to pay State Oversight Costs as set forth in Paragraphs 5.1 of this Agreement, the covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Section V.

X. COVENANT NOT TO SUE BY SCA

10.1 Except as otherwise provided herein, SCA hereby covenants not to sue and agrees not to assert any claim or cause of action against the State with respect to the Facility or response activities relating to the Facility arising from this Agreement, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of the NREPA, MCL 324.20119(5) or any other provision of law. SCA retains the right to bring suit to enforce the provisions of this Agreement against any person not party to this Agreement.

10.2 In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, SCA agrees not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in this case. None of the legal rights and defenses referenced in this Agreement is waived against the MDNR, the owner of the State Property.

XI. RESERVATION OF RIGHTS BY THE STATE

11.1 The State reserves, and this Agreement is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against SCA with respect to all matters other than those specified in Paragraph 9.1 and 9.2, including, but not limited to, the following:

(a) the performance of any other response activities that are required to comply with Part 201 or assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP;

(b) future State Oversight Costs that SCA has not paid;

(c) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances outside of the Facility and 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;

(f) criminal acts; and

(g) the release or threatened release of hazardous substances or violations of federal or state law that occur during or after implementation of the response activities required by this Agreement.

11.2 The State reserves the right to take action against SCA if it discovers that any material information provided by SCA was false or misleading.

11.3 The State expressly reserves all rights and defenses pursuant to any available legal authority that they may have to enforce this Agreement against SCA.

11.4 Subject to Section IV and Paragraph 6.4 of this Agreement, the MDEQ retains all authority and reserves all rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary, or that SCA failed to perform in accordance with this Agreement, including any MDEQ-approved amendments, and to seek to recover response activity costs authorized by law.

11.5 In addition to, and not as a limitation of, any provision of this Agreement, the State retains all of its information gathering, inspection, access and enforcement authorities and rights under Part 201 of the NREPA and any other applicable statute or regulation.

11.6 Failure by the State to timely enforce any term, condition or requirement of this Agreement shall not:

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

(b) estop or limit the authority of the State to later enforce any such term, condition or requirement of this Agreement or to seek any other remedy provided by law.

11.7 This Agreement does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed in accordance herein will result in the achievement of the remedial criteria established by law or will be protective of public health, safety, or welfare, or the environment.

11.8 Nothing in this Agreement shall limit the power and authority of the State to take, 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.

XII. CONTRIBUTION PROTECTION

12.1 Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. (CERCLA) and to the extent provided in Section IX (Covenant Not to Sue by the State), SCA shall not be liable for claims for contribution for the matters set forth in Section IX of this Agreement to the extent allowable by law. The Parties agree that this Agreement constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. 9613(f)(3)(B), pursuant to which SCA has, as of the Effective Date, resolved its liability to the MDEQ for matters set forth in Section IX of this Agreement. This Section XII shall be effective upon entry of this Agreement. Entry of this Agreement does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or the CERCLA, 42 U.S.C. 9607 and 9613, to the extent allowable by law. Any rights that SCA may have to obtain contribution or otherwise recover costs or damages from any person not party to this Agreement are preserved, including, without limitation, the right to seek contribution from any person who is not a party to this administrative settlement under Section 113(f)(3)(B) of CERCLA, 9613(f)(3)(B), or under Part 201, based on this Agreement. Pursuant to Section 20129(9) of the NREPA, any action by SCA for contribution from any person not a party to this Agreement shall be subordinate to the rights of the State, if the State files an action for non-reimbursed response activity costs pursuant to the NREPA or other applicable federal or state law.

XIII. FINANCIAL ASSURANCE

13.1 SCA shall be responsible for providing and maintaining financial assurance in a mechanism acceptable to the MDEQ to pay for monitoring, operation and maintenance, oversight and other costs necessary to assure the effectiveness and integrity of the selected remedial action in accordance with the MDEQ-approved RAP.

13.2 The FAM shall be in an amount sufficient to cover the Long-Term RAP Costs at the Facility for a thirty (30) year period. The FAM shall be calculated based on an annual estimate of the maximum costs for the activity as if they were to be conducted by a person under contract to the state. The initial FAM approved by the MDEQ is included in Appendix J of the RAP and attached hereto as Attachment C.

13.3 Annually, as part of the Annual Report, SCA will provide the previous year actual Long-Term RAP Costs and an estimate of the amount necessary to assure Long-Term RAP Costs for the following thirty (30) year period. The Annual Long-Term RAP Cost Report shall also include all assumptions and calculations used in preparing the necessary cost estimate and be signed by an authorized representative of SCA who shall confirm the validity of the data.

13.4 SCA shall maintain the FAM until such time as SCA can demonstrate to the MDEQ that (a) such FAM is no longer necessary to protect the public health, safety, or welfare, or the environment, and is no longer necessary to assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP, or (b) until Long-Term RAP Costs are estimated to be equal to or below \$2,500 per year in 2013 dollars adjusted to account for inflation at the time the review is conducted, whichever occurs first, when averaged over five consecutive years.

13.5 If SCA wishes to change the type of FAM or can demonstrate that the FAM provides funds in excess of those needed to cover the Long-Term RAP Costs, SCA shall submit a request to the MDEQ for approval. Upon MDEQ approval of the request, SCA may change the type the FAM or reduce the amount of the FAM as approved by the MDEQ. Modifications to the FAM pursuant to this Paragraph shall be approved by the MDEQ's RRD Chief or his or her authorized representative.

13.6 If SCA dissolves or otherwise ceases to conduct business and fails to make arrangements acceptable to the MDEQ for the continued implementation of all activities required by the MDEQ-approved RAP, all rights under this Agreement regarding the FAM shall immediately and automatically vest in the MDEQ in accordance with the FAM.

XIV. PERMANENT MARKERS

14.1 SCA installed permanent markers at the Facility at locations shown on Attachment D (Figure 2 of the MDEQ-approved RAP).

14.2 SCA shall maintain the permanent markers in legible condition and in locations specified in the RAP until no longer required by this Agreement.

XV. COMPLIANCE WITH STATE AND FEDERAL LAWS

15.1 All actions required to be taken pursuant to this Agreement 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 of the NREPA, the Part 201 Rules, and laws relating to occupational safety and health.

15.2 Nothing in this Agreement shall be construed as releasing SCA from its obligation to obtain and maintain compliance with any permit or authorization required under state or federal law.

XVI. COMMUNICATIONS AND NOTICES

16.1 Whenever, under the terms of this Agreement, notice is required to be given or a report, sampling data, analysis or other document is required to be forwarded by one party to the other, such correspondence shall be directed to the following individuals at the addresses specified below or at such other address as may subsequently be designated in writing:

As to MDEQ – Project Coordinator:

Sue Kaelber-Matlock
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
401 Ketchum Street
Bay City, Michigan 48708

As to SCA – Project Coordinator:

Phil Mazor, District Manager
Waste Management-Autumn Hills RDF
700 56th Avenue
Zeeland, MI 49464-9328
Phone: 616-953-5909
Fax: 616-688-5781
Email: pmazor@wm.com

XVII. MODIFICATIONS

17.1 This Agreement shall not be modified, unless such a modification is in writing and signed by an authorized representative of SCA and the MDEQ RRD Chief or his or her authorized representative.

XVIII. APPLICABLE LAW

18.1 This Agreement shall be construed in accordance with the laws of the State of Michigan. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of Part 201, the Part 201 Rules and any other applicable laws.

XIX. SEPARATE DOCUMENTS

19.1 This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XX. EFFECTIVE DATE

20.1 This Agreement shall be effective upon the date that the last party executes this Agreement. All times for performance of activities under this Agreement shall be calculated from that date.

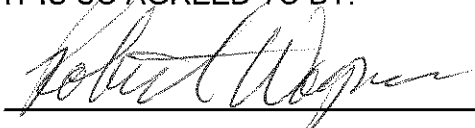
XXI. SURVIVAL

21.1 Notwithstanding any other provision in this Agreement, the release provision in Paragraph 8 of the Amendment; and Section IX (Covenant Not to Sue by the State), Section X (Covenant not to Sue by SCA), Section XI (Reservation of Rights by the State), and Section XII (Contribution Protection) of the Addendum shall survive termination of the Order, Amendment and Addendum and continue in full force and effect, but as modified and supplemented as provided in this Agreement.

XXII. SEVERABILITY

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

IT IS SO AGREED TO BY:



Robert Wagner, Chief

Remediation and Redevelopment Division

Michigan Department of Environmental Quality

8/2/13

Date

IT IS SO AGREED TO BY:



Richard S. Kuhl (P42042)

Assistant Attorney General

Environment, Natural Resources, and Agriculture Division

Michigan Department of Attorney General

8/5/13

Date

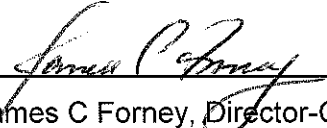
IT IS SO AGREED TO BY:

CWM Chemical Services, L.L.C.

Address: Waste Management-CSMG

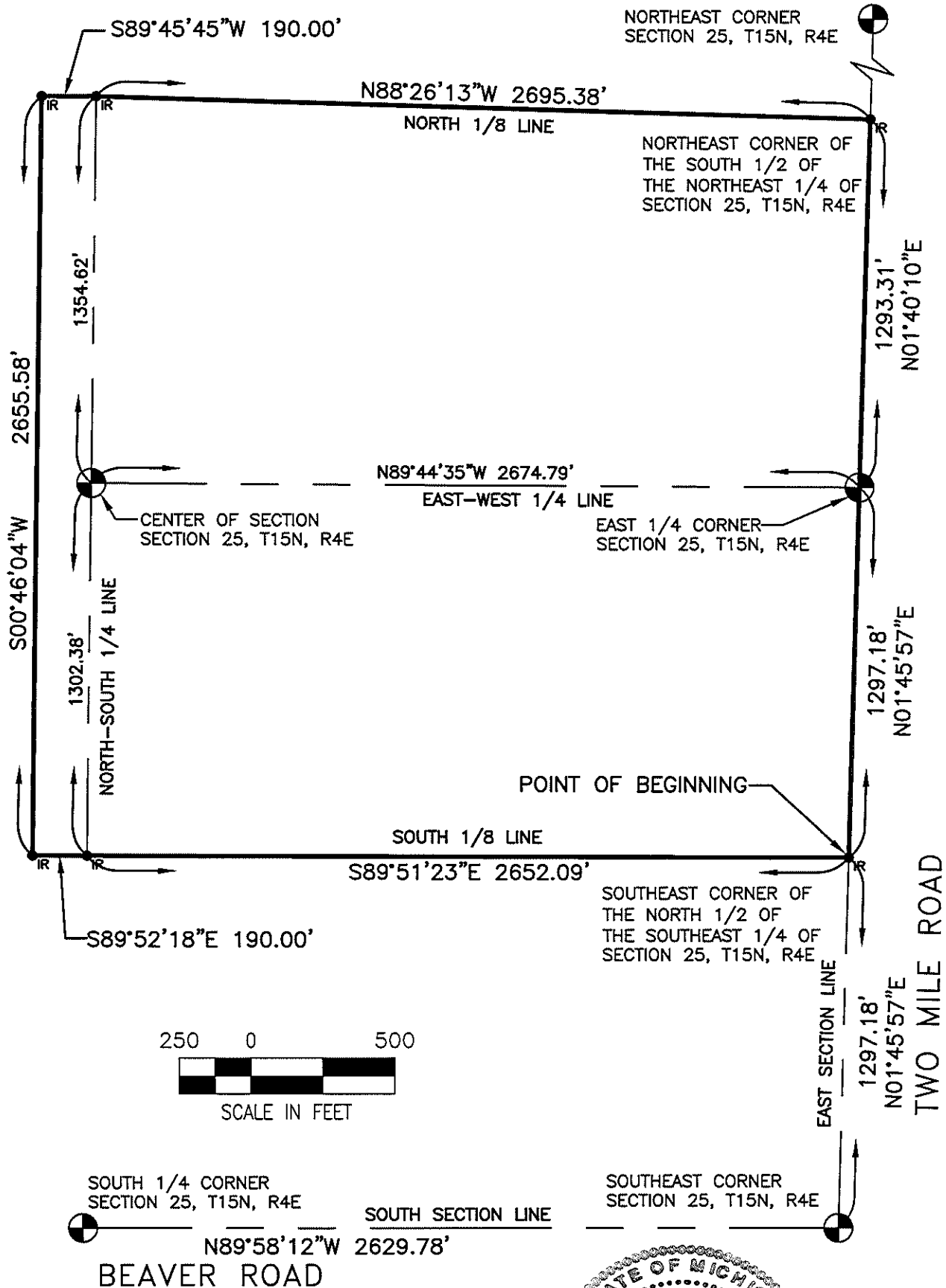
3965 Okemos Road, Suite B4

Okemos, MI 48864

By: 

James C Forney, Director-CSMG

31 July 2013
Date



DRAWING REVISED PER CLIENT 06/14/12
DRAWING REVISED PER CLIENT 11/14/12

Kristine N. Saia, P.S. #58654

SURVEY OF THE
PROPERTY BOUNDARIES
SUBJECT TO LAND OR
RESOURCE USE
RESTRICTION



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SEC. 25 , T15N , R4E	
BOOK #: 33-D PAGE #: 1	
DR BY: KNS	COMP BY:
CK BY:	SRVY BY:
JOB #: EMS2429.12B (012)	
DATE: 06/14/12	SHEET: 1 OF 1

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EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

East 190 feet of the Southeast 1/4 of the Northwest 1/4, ALSO the East 190 feet of the Northeast 1/4 of the Southwest 1/4, ALSO the South 1/2 of the Northeast 1/4, Also the North 1/2 of the Southeast 1/4 Of Section 25, Township 15 North, Range 4 East, Kawkawlin Township, Bay County, Michigan,
more commonly described as 2370 South Two Mile Road,
Kawkawlin Township, Bay County, Michigan.



03/30/2011 10:42:49 AM
RECORDED
VICTORIA L ROUPE
REGISTER OF DEEDS, BAY COUNTY MICHIGAN
RECEIPT# 56891, STATION 6
\$17.00 SURVEY

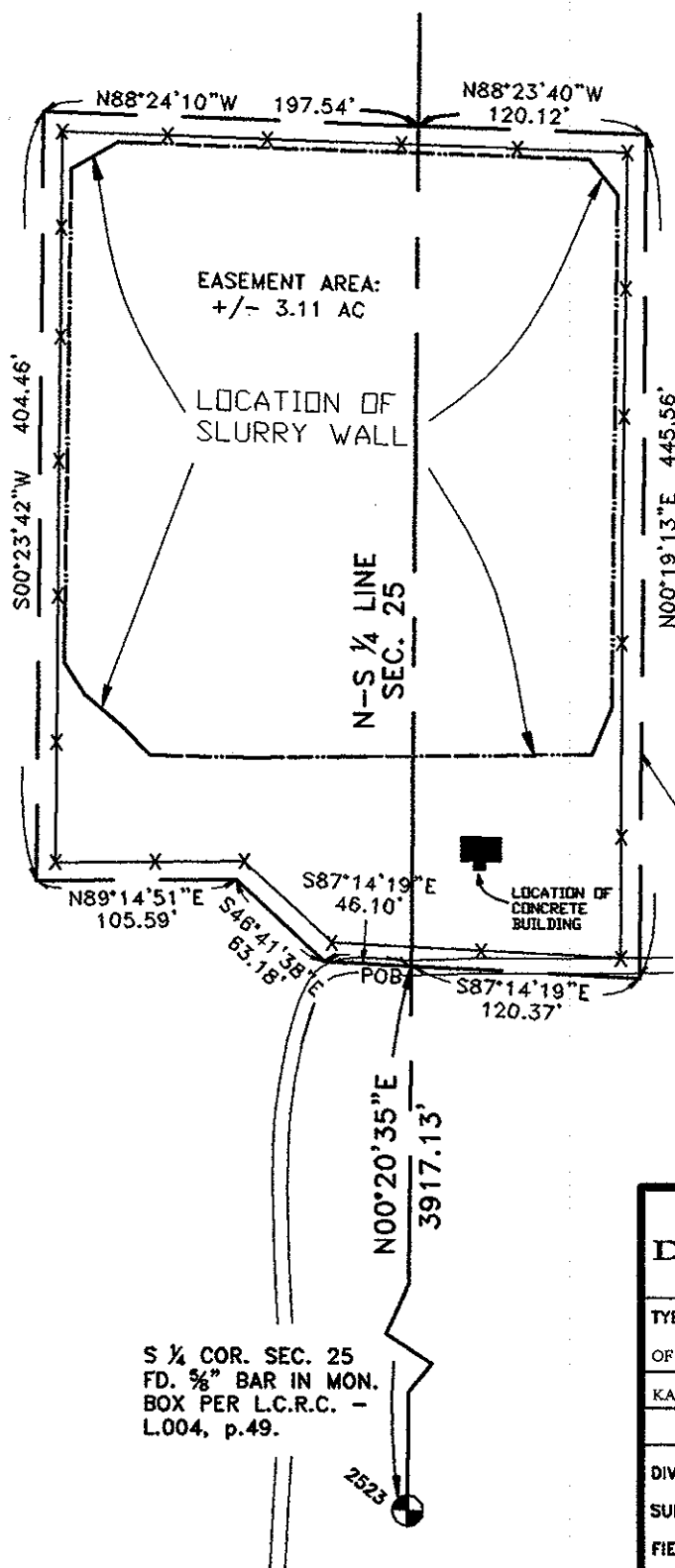


LIBER 2795

PAGE 169

SURVEY MAP

LOCATION OF A RESTRICTIVE EASEMENT
OF FORMER LANDFILL LOCATED IN THE N 1/2
OF SEC. 25, T15N, R04E, KAWKAWLIN TWP., BAY CO. MI

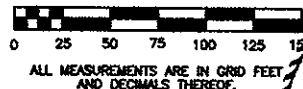


LEGEND

- = GRAVEL/DIRT DRIVE
- = CONCRETE STRUCTURE
- *** = LOCATION OF CHAIN-LINK FENCE
- = LOCATION OF UNDERGROUND SLURRY WALL
- ⊙ = 1/4 CORNER



Scale: 1" = 75'



ALL MEASUREMENTS ARE IN GRID FEET AND DECIMALS THEREOF.

EASEMENT LINE

Loretta A. Cwalinski
NOTARY PUBLIC, STATE OF MI
COUNTY OF OTSEGO
MY COMMISSION EXPIRES JUL 1, 2015
COUNTY OF OTSEGO



Carl T. Kiiskila

CARL T. KIISKILA, P.S.#33981

3-24-11

SHEET: 2 of 3

MICHIGAN

DEPT. OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION - SURVEY SECTION

TYPE OF SURVEY AND LOCATION: LOCATION OF RESTRICTIVE EASEMENT

OF FORMER LAND FILL LOCATED IN THE N 1/2 OF SECTION 25, T15N, R04E

KAWKAWLIN TOWNSHIP, BAY COUNTY, MICHIGAN

DIVISION: REMEDIATION

SURVEY PROJ. NO.: RD-0511

SURVEY BY: CARL T. KIISKILA P.S.#33981

DATE: FEBRUARY 2011

FIELD WORK BY: CARL KIISKILA/MATT DONTZ

DATE: FEBRUARY 2011

DRAWN BY: MATT DONTZ, P.S.

DATE: FEBRUARY 2011

CAD FILE: PAOPM\SurveyData\PROJECTS\2011\RD0511\dwg\RD0511.dwg

PLAN NO: R-9-L

2011 MAR 30 A 10:31

BAY COUNTY
REGISTER OF DEEDS



LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR THE LOCATION OF A RESTRICTIVE EASEMENT LOCATED IN THE N 1/2 OF SEC. 25, T15N, R04E, KAWKAWLIN TWP., BAY CO. MI

A restrictive easement in the North 1/2 of Section 25, T15N, R04E Kawkawlin Township,
Bay County, Michigan.

Described as follows:

Commencing at the South 1/4 corner of Section 25, T15N, R04E; Thence N00°20'35"E
3917.13 feet along the North-South 1/4 line of said Section 25 to the Point of Beginning;
Thence S87°14'19"E 120.37 feet; Thence N00°19'13"E 445.56 feet; Thence
N88°23'40"W 120.12 feet to North-South 1/4 line of said section 25; Thence N88°24'10"W
197.54'; Thence S00°23'42"W 404.46 feet; Thence N89°14'51"E 105.59 feet; Thence
S46°41'38"E 63.18 feet; Thence S87°14'19"E 46.10 feet to the Point of Beginning.
Easement contains 3.11 acres more or less.

Bearing Basis is Michigan State Plane Coordinates South Zone-NAD 83 (1994).

LORETTA A. CIVALINSKI
NOTARY PUBLIC, STATE OF MI
COUNTY OF OTSEGO
MY COMMISSION EXPIRES Jul 2, 2015
ACTING IN COUNTY OF Otsego

Loretta A. Civalinski
3/24/11

Carl T. Kiiskila

CARL T. KIISKILA, P.S.#33981

SHEET: 3 of 3

MICHIGAN

DEPT. OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION - SURVEY SECTION

TYPE OF SURVEY AND LOCATION: LOCATION OF RESTRICTIVE EASEMENT

OF FORMER LAND FILL LOCATED IN THE N 1/2 OF SECTION 25, T15N, R04E

KAWKAWLIN TOWNSHIP, BAY COUNTY, MICHIGAN

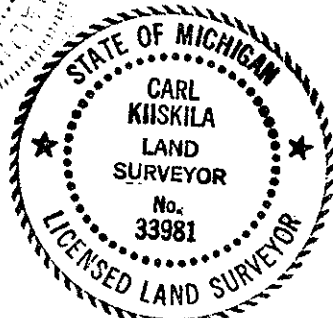
DIVISION: REMEDIATION SURVEY PROJ. NO.: RD-0511

SURVEY BY: CARL T. KIISKILA P.S.#33981 DATE: FEBRUARY 2011

FIELD WORK BY: CARL KIISKILA/MATT DONTZ DATE: FEBRUARY 2011

DRAWN BY: MATT DONTZ, P.S. DATE: FEBRUARY 2011

CAD FILE: PAOPMSurveyData\PROJECTS\2011\RD0511\dwg\RD0511.dwg



3-24-11

PLAN NO: R-9-L

DECLARATION OF RESTRICTIVE COVENANT

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

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Bay 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 2370 S. Two Mile Road in Kawkawlin, Bay County, Michigan and legally described in **Exhibit 1** attached hereto ("Property"). The tax identification numbers, as of June 21, 2012, associated with the Property are 080-025-100-010-00 and 080-025-200-010-00. The Property is associated with the Hartley & Hartley Landfill for which a Remedial Action Plan is being conducted. The remedial action activities that are being implemented to address environmental contamination are fully described in the Remedial Action Plan, dated [REDACTED] ("RAP"), and submitted by CWM Chemical Services, L.L.C., 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 Michigan Department of Environmental Quality ("MDEQ") approved the RAP on [REDACTED].

The RAP requires the recording of this Restrictive Covenant with the Bay County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; 2) assure that the use of Property is consistent with the exposure assumptions utilized in the development of cleanup criteria pursuant to Section 20120a(2) of the NREPA and the exposure control measures relied upon in the RAP; 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 RAP was approved by MDEQ. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the RAP; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 20120a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the 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.

The "*Survey of the Property Boundaries Subject to Land or Resource Use Restrictions*" is attached hereto as **Exhibit 2**. The "*Capped Waste Areas of Land Use Restrictions*," attached hereto as **Exhibit 3**, identifies the capped waste areas (the Northwest Landfill and the East Landfill Area) and provides the survey data that identifies the Property that is subject to land use or resource use restrictions as specified herein.

Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its predecessor and 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"), 2002 Michigan Register, effective December 21, 2002, 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.

Summary of Response Activities

Hazardous substances, including volatile organic compounds consisting of chlorinated organic compounds, their associated breakdown compounds, and other solvents, have been released and/or disposed of on the Property. Prior to recording of this Restrictive Covenant, response activities have been undertaken to contain the contamination. The following response activities were performed as described in the MDEQ-approved RAP:

- Appropriate covers for the MDNR, Northwest, and East Landfills;
- Slurry walls surrounding the MDNR and Northwest Landfills;
- A clay cut-off wall and slurry wall surrounding the East Landfill including the Cell A Remediation Area;
- Leachate collection at the MDNR, Northwest, and East Landfills;
- Free Product Investigation at PZ-4 (2007) and ELF SUMP sampling;
- Groundwater extraction at two locations with impacts;
- Removal of PCB contaminated materials from the EE area;
- Sediment capping in the PCB contaminated area (N-7); and
- Institutional controls including deed restrictions and site control.

These remedial actions addressed the following media of concern:

- Sediments
- Surface soils
- Groundwater
- Surface water

NOW THEREFORE,

Declaration of Land Use or Resource Use Restrictions

1. Declaration of Land and Resource Use Restrictions

Pursuant to the RAP, SC Holdings, Inc., as Owner of the Property, hereby declares and covenants that the Property shall be subject to the following restrictions and conditions:

a. Prohibited Land Uses and Activities. The Owner shall prohibit all uses of, and activities within the Property designated in Exhibit 2 that are not compatible with the RAP under Section 20120a(2) of the NREPA; that may result in exposures above levels established in the RAP; and that may interfere with any element of the RAP, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the RAP.

The prohibited activities include:

- i. Excavation of soils beyond the top thirty (30) inches at the Northwest Landfill and the top forty (40) inches at the East Landfill within the Capped Waste Areas identified in Exhibit 3, unless personnel are properly trained according to 29 CFR 1910.120. Any excavated areas within the Capped Waste Areas must have the cap restored to its original specifications, as identified in the Interim Response Work Plan Cover Improvements to East Landfill (RMT, September 2008) and the NRC Decommissioning Work Plan (RMT, March 2006), within ninety (90) days of discovery, weather and site conditions permitting. Any soils removed from excavation must comply with Part 201 of the NREPA.
- ii. Construction of any structure within the portions of the Property designated in Exhibit 2 must be reviewed and any associated risks addressed in accordance with the RAP. Structures will be limited to those related to response activities identified in the RAP.
- iii. Groundwater well installation, other than environmental monitoring wells, within the portions of the Property designated in Exhibit 2 for all purposes including domestic, commercial, and industrial uses. The groundwater well restriction applies to all waterbearing aquifers within the portions of the Property designated in Exhibit 2.
- iv. Altering or removing the fencing (depicted in Exhibit 3) on the Property that prohibits access to the Property.

b. Permanent Markers. The Owner shall not remove, cover, obscure, or otherwise alter or interfere with the permanent markers placed at access points within the Property, as depicted in Exhibit 3. The Owner shall keep vegetation and other materials clear of the permanent markers to assure that the markers are readily visible.

c. Contaminated Soil Management. The Owner shall manage all soils, media and/or debris located in the portions of the Property designated in Exhibit 3 (Capped Waste Areas) 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.

2. Access. The Owner shall grant to the MDEQ and its designated representatives the right to enter the Property designated in Exhibit 2 at reasonable times for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of the response activities and any records relating thereto, and to perform any actions necessary to maintain compliance with Part 201 and the RAP.

3. Notice. The Owner shall provide notice to the MDEQ of its 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-RD-[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 in accordance with Section 20116(3) of the NREPA.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the prohibited land uses and activities set forth in this Restrictive Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT, DATED_____, 2013, RECORDED IN THE OFFICIAL RECORDS OF BAY COUNTY, MICHIGAN, RECORDER OF DEEDS ON_____, 2013, AS DOCUMENT NUMBER_____[OR IN BOOK_____, PAGE_____]. THIS DECLARATION OF RESTRICTIVE COVENANT CONTAINS PROHIBITED LAND USES AND ACTIVITIES AS MORE SPECIFICALLY PROVIDED THEREIN.

4. **Term of Restrictive Covenant.** This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the MDEQ or its successor determines that the regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment, and may only be modified or rescinded with the written approval of the MDEQ or its successor.

5. **Enforcement of Restrictive Covenant.** The State of Michigan, through the MDEQ, and Owner may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

6. **Severability.** If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that 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.

7. **Authority to Execute Restrictive Covenant.** The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner and represents and certifies that he or she is duly authorized and has been empowered to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, CWM Chemical Services, L.L.C. has caused this Restrictive Covenant, RC-RD-[YR]-[number], to be executed on this _____ day of _____, 2013.

IN WITNESS WHEREOF, SC Holdings, Inc. has caused this Restrictive Covenant, RC-RD-[YR]-[number], to be executed on this _____ day of _____, 2013.

SC Holdings, Inc.

By: _____
(Signature)
James C. Forney
Its Authorized Representative

STATE OF MICHIGAN

COUNTY OF BAY

The foregoing instrument was acknowledged before me this _____ by
James C. Forney of SC Holdings, Inc., a Pennsylvania corporation, on behalf of the corporation.

Notary Public

Acting in _____ County, Michigan

My Commission Expires: _____

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

East 190 feet of the Southeast 1/4 of the Northwest 1/4, ALSO the East 190 feet of the Northeast 1/4 of the Southwest 1/4, ALSO the South 1/2 of the Northeast 1/4, Also the North 1/2 of the Southeast 1/4 of Section 25, Township 15 North, Range 4 East, Kawkawlin Township, Bay County, Michigan,
more commonly described as 2370 South Two Mile Road,
Kawkawlin Township, Bay County, Michigan.

EXHIBIT 2

**SURVEY OF THE PROPERTY BOUNDARIES SUBJECT TO LAND OR RESOURCE USE
RESTRICTIONS**

EXHIBIT 3

**CAPPED WASTE AREAS IDENTIFIED AS SUBJECT TO THE LIMITS OF LAND USE
RESTRICTIONS**

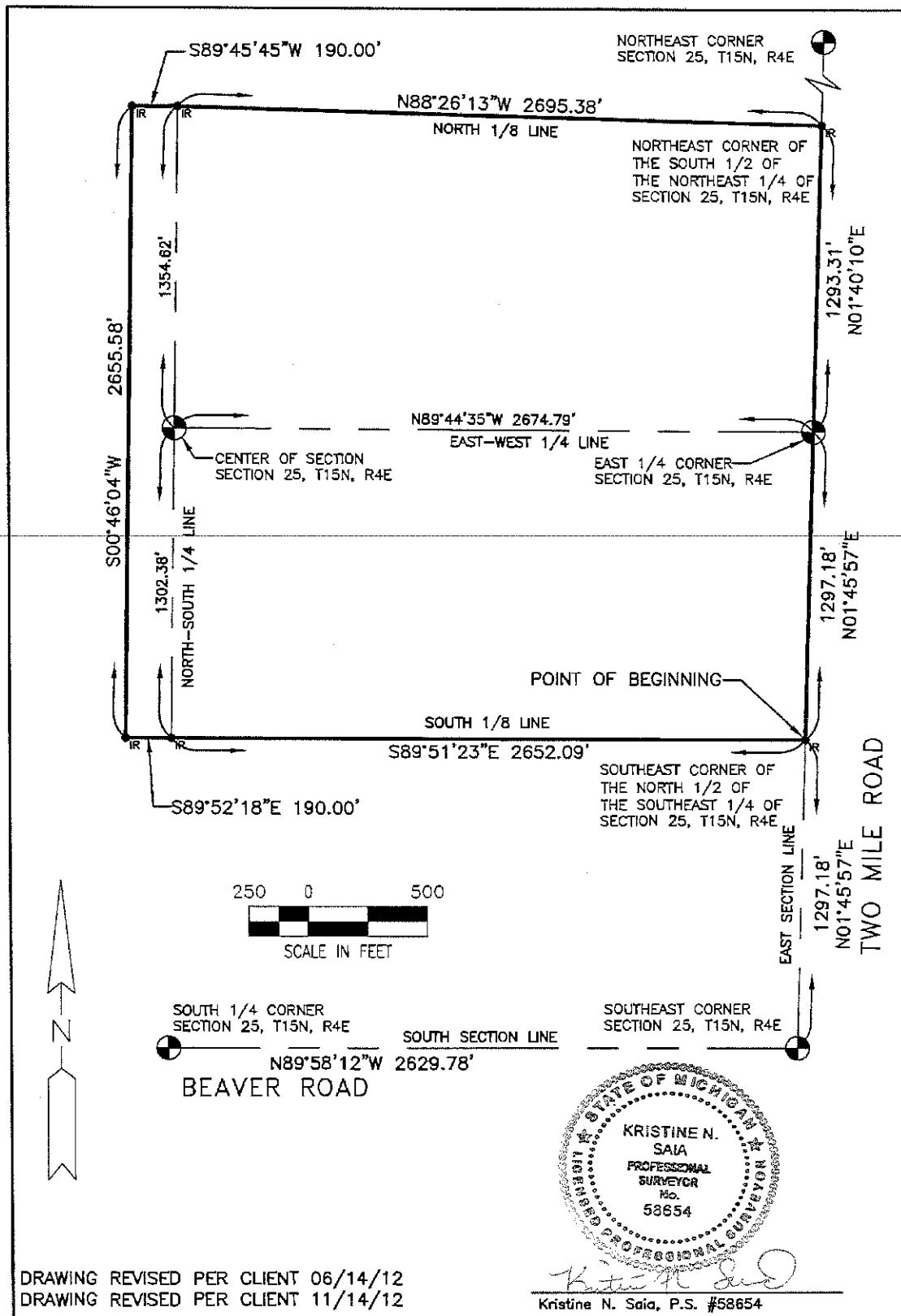
EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

East 190 feet of the Southeast 1/4 of the Northwest 1/4, ALSO the East 190 feet of the Northeast 1/4 of the Southwest 1/4, ALSO the South 1/2 of the Northeast 1/4, Also the North 1/2 of the Southeast 1/4 of Section 25, Township 15 North, Range 4 East, Kawkawlin Township, Bay County, Michigan,
more commonly described as 2370 South Two Mile Road,
Kawkawlin Township, Bay County, Michigan.

EXHIBIT 2

**SURVEY OF THE PROPERTY BOUNDARIES SUBJECT TO LAND OR RESOURCE USE
RESTRICTIONS**



SURVEY OF THE
PROPERTY BOUNDARIES
SUBJECT TO LAND OR
RESOURCE USE
RESTRICTION



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SEC. 25, T15N, R4E

BOOK #: 33-D PAGE #: 1

DR BY: KNS COMP BY:

CK BY: SRVY BY:

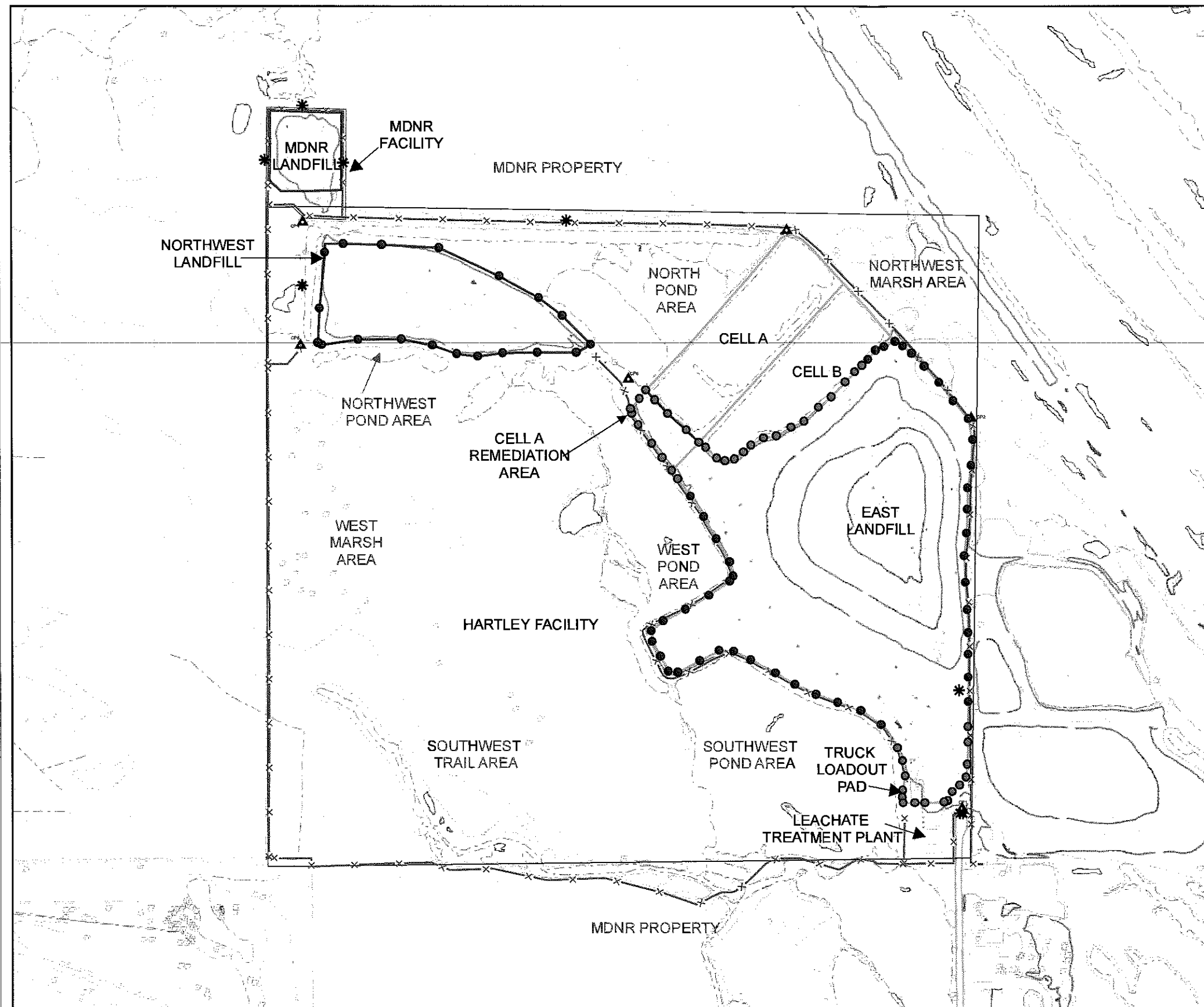
JOB #: EMS2429.12B (012)

DATE: 06/14/12 SHEET: 1 OF 1

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EXHIBIT 3

**CAPPED WASTE AREAS IDENTIFIED AS SUBJECT TO THE LIMITS OF LAND USE
RESTRICTIONS**



LEGEND

- * APPROXIMATE LOCATION OF PERMANENT MARKERS
- 2011 CLAY DIKE SURVEY LOCATION
- 2011 SLURRY WALL SURVEY LOCATION
- 2012 SURVEY LOCATION
- ▲ SURVEY CONTROL POINT
- APPROXIMATE PROPERTY BOUNDARY
- MDNR FACILITY
- x-x-x-x-x FENCE
- CLAY DIKE
- SLURRY WALL
- - - - - APPROXIMATE SURFACE WATER BOUNDARY

0 300 600 1,200 Feet



NOTES:

1. DURING CONSTRUCTION OF THE EAST LANDFILL CLAY CAP IN 2009, ALL OF THE CLAY DIKE AND THE FENCE ALONG THE EAST PROPERTY LINE WERE WITHIN THE SURVEYED PROPERTY LINE.
2. TOPOGRAPHIC BASE MAP WAS PREPARED BY AERO-METRIC, INC. OF SHEBOYGAN, WI. DATE OF AERIAL SURVEY IS DECEMBER 2009. TOPOGRAPHIC CONTOUR INTERVAL IS TWO FEET.
3. SURVEY DATA PROVIDED BY CERTIFIED SURVEYOR; RMT, NOVEMBER 2006 AND WADE TRIM, NOVEMBER 2012.

EXHIBIT 3 CAPPED WASTE AREAS IDENTIFIED AS SUBJECT TO THE LIMITS OF LAND USE RESTRICTIONS

KAWKAWLIN SITE
BAY COUNTY, MICHIGAN

AECOM

NOV 2012

60135062

EXHIBIT 3 Table of Survey Data

Name	Easting	Northing	Elevation	Coordinate Projection
East Landfill 2011 Clay Dike Survey Locations				
5002	13238777.910000	792123.731000	591.985000	SP-NAD83(Intl Ft)
5003	13238778.260000	792223.697000	593.828000	SP-NAD83(Intl Ft)
5004	13238778.584000	792321.517000	595.187000	SP-NAD83(Intl Ft)
5005	13238779.697000	792415.256000	596.393000	SP-NAD83(Intl Ft)
5006	13238778.682000	792503.640000	597.126000	SP-NAD83(Intl Ft)
5007	13238775.618000	792596.470000	596.141000	SP-NAD83(Intl Ft)
5008	13238767.460000	792704.548000	595.341000	SP-NAD83(Intl Ft)
5009	13238762.142000	792811.433000	594.127000	SP-NAD83(Intl Ft)
5010	13238772.845000	792903.213000	593.002000	SP-NAD83(Intl Ft)
5011	13238777.806000	792999.834000	592.399000	SP-NAD83(Intl Ft)
5012	13238779.137000	793086.158000	593.000000	SP-NAD83(Intl Ft)
5013	13238792.388000	793177.569000	592.462000	SP-NAD83(Intl Ft)
5014	13238800.790000	793280.875000	591.296000	SP-NAD83(Intl Ft)
5015	13238783.180000	793363.622000	590.721000	SP-NAD83(Intl Ft)
5016	13238720.456000	793438.026000	589.360000	SP-NAD83(Intl Ft)
5017	13238662.880000	793511.320000	589.256000	SP-NAD83(Intl Ft)
5018	13238604.381000	793577.390000	589.540000	SP-NAD83(Intl Ft)
5019	13238554.228000	793628.144000	590.349000	SP-NAD83(Intl Ft)
5020	13238517.666000	793656.912000	590.771000	SP-NAD83(Intl Ft)
5021	13238485.441000	793677.662000	590.232000	SP-NAD83(Intl Ft)
5022	13238442.704000	793656.479000	589.389000	SP-NAD83(Intl Ft)
5023	13238407.247000	793640.613000	588.487000	SP-NAD83(Intl Ft)
5024	13238377.499000	793604.512000	588.328000	SP-NAD83(Intl Ft)
5025	13238351.215000	793580.631000	587.384000	SP-NAD83(Intl Ft)
5026	13237603.812000	793122.808000	586.679000	SP-NAD83(Intl Ft)
5027	13237656.526000	793050.786000	586.337000	SP-NAD83(Intl Ft)
5028	13237709.540000	792971.238000	586.530000	SP-NAD83(Intl Ft)
5029	13237760.100000	792881.702000	586.437000	SP-NAD83(Intl Ft)
5030	13237814.397000	792789.136000	586.735000	SP-NAD83(Intl Ft)
5031	13237828.225000	792731.725000	587.492000	SP-NAD83(Intl Ft)
5032	13237813.448000	792710.625000	587.907000	SP-NAD83(Intl Ft)
5033	13237729.674000	792652.455000	589.880000	SP-NAD83(Intl Ft)
5034	13237635.344000	792597.102000	589.501000	SP-NAD83(Intl Ft)
5035	13237543.070000	792551.409000	588.587000	SP-NAD83(Intl Ft)
5036	13237496.623000	792509.892000	588.563000	SP-NAD83(Intl Ft)

EXHIBIT 3 (Continued)
Table of Survey Data

Name	Easting	Northing	Elevation	Coordinate Projection
5037	13237500.261000	792467.431000	588.257000	SP-NAD83(Intl Ft)
5038	13237532.564000	792407.328000	588.100000	SP-NAD83(Intl Ft)
5039	13237565.930000	792346.952000	587.799000	SP-NAD83(Intl Ft)
5040	13237602.464000	792344.080000	587.496000	SP-NAD83(Intl Ft)
5041	13237691.816000	792389.836000	588.869000	SP-NAD83(Intl Ft)
5042	13237770.030000	792431.549000	589.178000	SP-NAD83(Intl Ft)
5043	13237829.508000	792428.364000	589.096000	SP-NAD83(Intl Ft)
5044	13237897.551000	792393.526000	588.119000	SP-NAD83(Intl Ft)
5045	13237995.612000	792339.747000	587.817000	SP-NAD83(Intl Ft)
5046	13238074.429000	792294.388000	588.736000	SP-NAD83(Intl Ft)
5047	13238160.998000	792253.904000	589.158000	SP-NAD83(Intl Ft)
5048	13238248.965000	792222.640000	588.899000	SP-NAD83(Intl Ft)
5049	13238342.247000	792187.505000	588.752000	SP-NAD83(Intl Ft)
5050	13238425.531000	792130.443000	588.856000	SP-NAD83(Intl Ft)
5051	13238490.584000	792038.781000	587.781000	SP-NAD83(Intl Ft)
Northwest Landfill 2011 Slurry Wall Survey Locations				
1030	13237194.551000	793632.806000	588.744000	SP-NAD83(Intl Ft)
1031	13237037.693000	793632.302000	588.766000	SP-NAD83(Intl Ft)
1032	13236898.329000	793631.377000	589.184000	SP-NAD83(Intl Ft)
1033	13236794.673000	793616.602000	588.454000	SP-NAD83(Intl Ft)
1034	13236710.375000	793626.854000	589.075000	SP-NAD83(Intl Ft)
1035	13236612.297000	793660.378000	588.670000	SP-NAD83(Intl Ft)
1036	13236484.392000	793686.048000	589.072000	SP-NAD83(Intl Ft)
1037	13236314.632000	793683.768000	589.004000	SP-NAD83(Intl Ft)
1038	13236165.017000	793663.493000	588.173000	SP-NAD83(Intl Ft)
1039	13236148.703000	793671.321000	588.048000	SP-NAD83(Intl Ft)
1040	13236156.454000	793809.982000	588.937000	SP-NAD83(Intl Ft)
1041	13236177.630000	794033.846000	589.727000	SP-NAD83(Intl Ft)
1042	13236252.669000	794070.810000	589.942000	SP-NAD83(Intl Ft)
1043	13236409.464000	794066.377000	588.852000	SP-NAD83(Intl Ft)
1044	13236639.476000	794054.235000	587.517000	SP-NAD83(Intl Ft)
1045	13236883.329000	793939.239000	586.819000	SP-NAD83(Intl Ft)
1046	13237044.853000	793851.814000	587.085000	SP-NAD83(Intl Ft)
1047	13237139.607000	793781.398000	586.452000	SP-NAD83(Intl Ft)
1048	13237254.874000	793664.018000	587.650000	SP-NAD83(Intl Ft)
Source: Certified Surveyor, Final Status Survey Report for Decommissioning Activities, RMT, December 2006.				

EXHIBIT 3 (Continued) Table of Survey Data

Point Number	Easting	Northing	Elevation	Code
East Landfill 2012 Survey Locations				
5002	13238777.91	792123.73	591.99	XYZ
5051	13238490.58	792038.78	587.78	XYZ
5025	13238351.21	793580.63	587.38	XYZ
5026	13237603.81	793122.81	586.68	XYZ
5100	13238776.20	792062.04	593.98	XYZ
5101	13238773.80	791972.22	592.86	XYZ
5102	13238767.50	791920.64	591.39	XYZ
5103	13238741.21	791887.78	591.45	XYZ
5104	13238710.17	791861.45	591.71	XYZ
5105	13238690.91	791826.13	591.08	XYZ
5106	13238676.70	791820.48	591.53	XYZ
5107	13238600.69	791815.82	589.95	XYZ
5108	13238561.32	791816.38	589.88	XYZ
5109	13238512.85	791985.55	588.85	XYZ
5110	13238523.38	791926.28	589.60	XYZ
5111	13238512.74	791868.82	587.62	XYZ
5112	13238511.17	791839.08	587.61	XYZ
5113	13238514.81	791815.60	587.99	XYZ
5114	13237581.68	793157.16	587.90	XYZ
5115	13237541.83	793209.42	588.33	XYZ
5116	13237500.65	793265.85	588.29	XYZ
5117	13237445.24	793341.78	587.55	XYZ
5118	13237417.66	793388.36	586.88	XYZ
5119	13237413.85	793405.03	586.75	XYZ
5120	13237450.20	793445.92	591.08	XYZ
5121	13237476.05	793479.89	589.15	XYZ
5122	13237513.29	793442.08	590.97	XYZ
5123	13237565.97	793386.02	591.55	XYZ
5124	13237639.52	793319.22	591.44	XYZ
5125	13237690.20	793270.04	591.41	XYZ
5126	13237718.40	793250.64	587.96	XYZ
5127	13237763.07	793206.76	586.32	XYZ
5128	13237795.98	793197.01	587.57	XYZ
5129	13237834.48	793203.18	587.37	XYZ
5130	13237871.57	793231.05	586.45	XYZ
5131	13237901.62	793258.19	586.67	XYZ
5132	13237951.68	793286.77	587.40	XYZ
5133	13238002.27	793296.76	586.97	XYZ
5134	13238062.76	793330.09	586.88	XYZ
5135	13238116.08	793356.18	587.37	XYZ
5136	13238174.48	793411.22	587.04	XYZ
5137	13238225.86	793454.63	588.19	XYZ
5138	13238282.80	793512.82	587.84	XYZ
5139	13238323.17	793553.69	588.00	XYZ
Source: State Certified Surveyor, Wade Trim, November 2012.				

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

**FINANCIAL ASSURANCE MECHANISM
PART 201**

PERFORMANCE BOND

Surety:	Lexon Insurance Company
Address:	10002 Shelbyville Road Suite 100 Louisville, KY 40223
Bond Number:	1084580
Total Amount of Bond:	\$4,503,336.87
Effective Date:	July 16, 2013
Principal:	CWM Chemical Services, L.L.C.
Business Address:	700 56 th Avenue Zeeland, MI 49464
Facility Name:	Hartley and Hartley Landfill
Facility/Property Address:	2370 S. Two Mile Road Kawkawlin, MI 48706
MDEQ Site ID No.:	09000015

RECITALS

A. On 7/26/13, the Michigan Department of Environmental Quality (hereinafter, MDEQ) approved a Remedial Action Plan for the Hartley and Hartley Facility (Facility) 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.*, as provided for in the Agreement By Consent For Payment of State Oversight Costs and Performance of Response Activities in Accordance with Remedial Action

Plan (Agreement) that was entered between the MDEQ, Department of Attorney General, and CWM Chemical Services, L.L.C. on 8/7/13 for the Facility. The Agreement includes provisions for the implementation of land use and resource use restrictions, monitoring, operation and maintenance, installation of permanent markers, and a financial assurance mechanism (FAM) for the Facility. Pursuant to Paragraph 13.1 of the Agreement, CWM Chemical Services, L.L.C. (hereinafter, Principal) is required to provide financial assurance, in a mechanism acceptable to the MDEQ, to pay for "monitoring, operation and maintenance, oversight and other costs necessary to assure the effectiveness and integrity of the selected remedial action in accordance with the MDEQ-approved RAP for the Facility (hereinafter, Long-Term RAP Requirements). Paragraph 13.2 of the Agreement further requires the FAM to be in an amount sufficient to cover the cost of the Long-Term RAP Requirements at the Facility for a thirty (30) year period and be calculated based on an annual estimate of the maximum costs for the activity as if they were to be conducted by a person under contract to the state (hereinafter, Current Cost Estimate).

B. The Current Cost Estimate is: Four Million Five Hundred Three Thousand Three Hundred Thirty-Six and 87/100 Dollars (\$4,503,336.87).

C. The Principal is providing this Performance Bond (Bond) to the MDEQ to fulfill its obligations under the Agreement. Lexon Insurance Company (Surety) is an insurer who is authorized to transact the business of surety and fidelity insurance in the state of Michigan and is an acceptable surety on federal bonds as listed in Circular 570 of the United States Department of Treasury. The Principal and Surety, and their heirs, executors, administrators, successors, and assigns, jointly and severally, are firmly bound unto the MDEQ to fulfill their obligations as set forth in the Bond.

D. The definition of the terms used in this Bond is the same as those used in the Agreement.

NOW, THEREFORE, the Principal and Surety agree to the following:

1. This Bond as issued is sufficient to cover the Current Cost Estimate.

Adjustments to the amount of the Bond may only be made as follows:

(a) If there is an increase in the Current Cost Estimate, the Principal, within sixty (60) days of becoming aware of the increased costs, shall increase the amount of financial assurance by making arrangements with the Surety for an increase in this Bond to an amount at least equal to the increased Current Cost Estimate and submitting evidence of such increase to the MDEQ, by submitting a Rider to increase the current bond, submitting a replacement performance bond, or by establishing an alternative FAM that is acceptable to the MDEQ.

The Surety acknowledges that the Principal is obligated to provide increased financial assurance to pay for the performance of the Long-Term RAP Requirements if either of the following occur: (i) the Principal's Current Cost Estimate update, which the Principal is required to conduct annually pursuant to Paragraph 13.2 of the Agreement, shows that the Principal will incur costs to perform the Long-term RAP Requirements, in excess of the Current Cost Estimate; or (ii) the Principal is required to implement a modification to the remedial action pursuant to the Agreement and that modification increases the Current Cost Estimate.

(b) If the annual cost estimate conducted by the Principal is less than the Current Cost Estimate provided for by this Bond or if the Principal demonstrates that the Bond provides funds in excess of the Current Cost Estimate, the amount of this Bond may be reduced to that lesser amount following the Principal and Surety's receipt of written approval for such reduction by the MDEQ.

2. This Bond shall continue in full force and effect for a period beginning with the effective date of this Bond and ending only when this Bond is terminated or cancelled. This Bond may only be terminated or cancelled when the Principal has satisfied one of the following conditions (a) through (c) below and the Principal and Surety have received written authorization for such termination or cancellation from the MDEQ:

(a) The FAM is no longer necessary to protect the public health, safety, or welfare, or the environment, and is no longer necessary to assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP and all of the State Oversight Costs have been paid.

(b) The Current Cost Estimate is estimated to be equal to or below \$2,500 per year in 2013 dollars adjusted to account for inflation at the time the review is conducted, whichever occurs first, when averaged over five consecutive years and all of the State Oversight Costs have been paid.

(c) The Principal provides an alternative FAM acceptable to the MDEQ.

3. The Surety shall become liable as provided for in this Bond only when the Principal has failed to 1) perform the Long-Term RAP Requirements; 2) pay State Oversight Costs as required by the Agreement, or 3) provide alternative financial assurance acceptable to the MDEQ as provided for in this Bond or the Agreement. If the Principal fails to meet any of these obligations and the MDEQ authorized representative (division chief of the Part 201 implementing program) has issued a written notification to the Principal and Surety regarding the Principal's failure to comply, the Surety shall do the following as directed by the MDEQ within thirty (30) days:

(a) If the Principal has failed to perform the Long-Term RAP Requirements, the Surety shall either perform those requirements in accordance with the MDEQ remedial action or make payment to the MDEQ for the full amount guaranteed by this Bond.

(b) If the Principal has failed to pay the State Oversight Costs in accordance with the Agreement, the Surety shall make payment to the MDEQ for the full amount of the State Oversight Costs that the Principal has not paid.

(c) If the Principal has failed to provide an alternative financial assurance mechanism within sixty (60) days of receipt of the Surety's intent to cancel this Bond as specified in Paragraph 6 of this Bond, the Surety shall make payment to the MDEQ for the full amount guaranteed by this Bond.

4. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder unless and until such payment or payments amount in the aggregate to the amount of this Bond; however, in no event shall the Surety's obligation hereunder exceed the amount of this Bond.

5. The Surety agrees that any amendments to the remedial action or to any applicable laws, statutes, rules, or regulations shall not affect its obligations with respect to this Bond, except that any modifications of the remedial action that cause an increase or decrease in the amount of financial assurance shall be handled in accordance with Paragraph 1.

6. The Surety may initiate the process to cancel this Bond by sending written notice of its intent to cancel by certified mail to the Principal and to the MDEQ. Within sixty (60) days of the MDEQ's receipt of the Surety's intent to cancel this Bond, the Principal must either provide an extension of this Bond or provide an alternative financial assurance mechanism to the MDEQ. The Surety shall not cancel this Bond during the one hundred and twenty (120)-day period after the Principal and the MDEQ receive the notice of intent to cancel. However, the Surety may cancel this Bond after the one hundred and twenty (120)-day period or upon its receipt of written authorization for such cancellation from the MDEQ.

7. The Principal may terminate this Bond by sending written notice to the Surety and the MDEQ, provided, however, such termination shall only become effective if the Principal has met the requirements of Paragraph 2. The Surety may then terminate this Bond when the Principal and Surety have received written authorization for such termination from the MDEQ.

8. If the MDEQ determines that either the Principal or Surety has not complied with any of the terms or conditions of this Bond, the MDEQ shall have recourse to the rights created under this Bond. The MDEQ reserves all its other rights against the Principal under the applicable statutes.

In witness whereof, the Principal and Surety have executed this Bond, affixed their seals, and attached their justification for power of attorney as of the effective date written above.

The persons whose signatures appear below hereby certify that they are authorized to execute this Bond on behalf of the Principal and Surety and that the wording of this Bond is identical to the wording provided by the MDEQ.

Sealed with our seals, dated July 16, 2013.

CWM Chemical Services, L.L.C.
PRINCIPAL

By: 
Signature

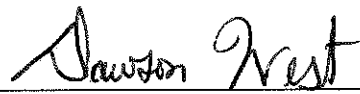
Donna L. Meals, Authorized Representative

Print or type

Title: _____
Type or Print

Date: July 16, 2013

Lexon Insurance Company
SURETY

By: 
Signature

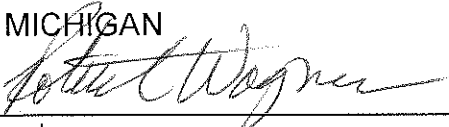
Dawson West
Print or type

Title: Attorney-in-Fact
Type or Print

Date: July 16, 2013

STATE OF MICHIGAN

By:


Signature

Robert Wagner, Division Chief
Remediation and Redevelopment Division
Department of Environmental Quality

Date:

8/7/13

POWER OF ATTORNEY

LX - 072005

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Brook T. Smith, Mark A. Guidry, Raymond M. Hundley, Jason D. Cromwell, James H. Martin, Sandra L. Fusinetti, ***

Deborah Neichter, Jill Kemp, Jackie C. Koestel, Sheryon Quinn, Dawson West, Bonnie J. Wortham, Amy Meredith, Lynnette Long, Barbara Duncan *****

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 5,000,000.00 Five million dollars***** dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

**LEXON INSURANCE COMPANY**

BY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/13

Maureen K. Aye
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Woodridge, Illinois this 16th Day of July, 20 13.



Philip G. Lauer
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."