MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:
Agri-Fuels, Inc.
Williams Road, Alma, Michigan

MDEQ Docket No. AOC-ERD-94-013

ASSIGNMENT OF ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY

This Assignment (Assignment) of Administrative Order by Consent for Response Activity (AOC), AOC-ERD-94-013, dated June 9, 1994, and attached as Attachment 1, is made and entered into by and between Terry Asphalt Materials, Inc. (Terry Asphalt or Assignor) and Michigan Paving & Materials Company (Michigan Paving or Assignee), a Michigan company, and the Michigan Department of Attorney General and the Michigan Department of Environmental Quality (MDEQ); collectively, the State. This Assignment concerns the AOC with respect to the 15.71 acre property located in Gratiot County at, 1950 Williams Street, Alma, Michigan, as legally described in Exhibit A of Attachment 1 (hereinafter Property). The Property is a portion of the former Mueller Bean and Grain a.k.a. Agri-Fuels, Inc. Facility (hereinafter, Facility, as that term is defined in the AOC), Site ID No. 29000083. This AOC and all its benefits, duties, and obligations were previously transferred from Terry Materials of Michigan, Inc. to Terry Asphalt on March 7, 2006.

1. For a valuable consideration, including purchase of the Property, Terry Asphalt hereby assigns the AOC to Michigan Paving. By signature, Michigan Paving hereby acknowledges that it has read the AOC and accepts all the benefits, duties, and obligations as set forth in the AOC and agrees to be bound by the terms of the said AOC.

2. This Assignment is made pursuant to Section XXVII (Covenant Not to Sue to Terry Asphalt by the State) of the AOC. Upon Execution of this Assignment and transfer of the Property, Michigan Paving shall have the full benefits, duties, and obligations of the AOC that previously only applied to the Assignor; Terry Asphalt (excluding any officer, director, or employees formerly employed by any previous owner or operator of the Property pursuant to Section XXVII of the AOC) shall be released from the responsibilities imposed by the AOC but shall continue to be afforded the protections of the AOC with respect to the Facility and the Property.

3. Michigan Paving covenants and warrants that all of the representations in the Affidavit of Gregg Campbell, executed on December 1, 2014, a copy of which is found in Attachment 2 of this Assignment, are true and accurate. These representations are incorporated by reference into this Assignment, and this Assignment shall be void if it is determined that Michigan Paving has provided any false information to the State, in which case the Assignor shall again become the entity responsible under the AOC.

4. Michigan Paving acknowledges that it may not further assign the benefits, duties, and obligations set forth under the AOC without first complying with the requirements contained in Section XXVII of the AOC, including obtaining the written approval from the State of Michigan, which shall not be unreasonably withheld.

5. Michigan Paving, by acknowledging and agreeing to accept the terms of the AOC, additionally acknowledges that it shall be responsible for complying with the due care obligations it may now or in the future have under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the Part 201 Administrative Rules for any existing contamination known or discovered to exist on the Property.

6. Michigan Paving agrees to reimburse the State its costs to review and approve this Assignment of the AOC.

7. This Assignment shall become effective upon the completion of the following:
   a. Execution of this Assignment by the parties;
   b. Closure on the purchase of the Property by Michigan Paving from Terry Asphalt;
   c. The MDEQ's receipt from Michigan Paving of a Notice of Transfer of Property from Terry Asphalt to Michigan Paving. Failure to provide the MDEQ with a Notice of Transfer of Property from the Assignor to the Assignee within ten (10) days of the consummation of transfer shall be cause for voidance of this Assignment. Included in the notice of transfer or in a separate notice, Michigan Paving shall verify that, as the Assignee, it has assumed responsibility for the duties and obligations set forth in the AOC as required pursuant to Paragraph 27.3 of the AOC;
   d. The MDEQ's receipt from Michigan Paving of a Spill Prevention, Control and Countermeasures Contingency Plan for the Property, pursuant to Title 40, Protection of Environment, Code of Federal Regulations (CFR), Part 112, Oil Pollution Prevention, as amended (40 CFR 112), and applicable rules, within 30 days for the consummation of transfer of the Property from Terry Asphalt to Michigan Paving;
   e. The MDEQ's receipt from Michigan Paving of the Assignee's Pollution Incident Prevention Plan (PIPP) for the Property pursuant to the Natural Resources and Environmental Protection Act, Part 31, Water Resources Protection, as amended, and the Part 31 Administrative Rules, R 324.2001 *et seq.* The content that should be provided within the PIPP is specifically identified in R 324.2006 (Rule 6 of the Part 5 Spillage of Oil and Polluting Materials Rules); and
   f. The MDEQ's receipt of payment of the State's cost to review and approve this Assignment.

IT IS SO STIPULATED AND AGREED:

Terry Asphalt Materials Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

Michigan Paving & Materials Company

By: _____

Print Name: GREGG CAMPBELL

Title: PRESIDENT

Date: 3/24/15

STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

_____

Robert Wagner, Chief
Remediation and Redevelopment Division

Date: 4/13/2015

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

_____

Richard S. Kuhl (P42042)
Environment, Natural Resources and Agriculture Division

Date: 4/3/2015

IT IS SO STIPULATED AND AGREED:

Terry Asphalt Materials Inc.

By: _____

Print Name: Anthony L. Martino, II

Title: SECRETARY

Date: _____

Michigan Paving & Materials Company

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

_____

Robert Wagner, Chief
Remediation and Redevelopment Division

Date: 4/13/2015

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

_____

Richard S. Kuhl (P42042)
Environment, Natural Resources and Agriculture Division

Date: 4/3/2015

Exhibit A

A PART OF THE SOUTHEAST ¼ OF SECTION 35, TOWNSHIP 12 NORTH-RANGE 3 WEST, CITY OF ALMA, GRATIOT COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT A POINT 33 FEET WEST AND 33 FEET SOUTH OF THE EAST ¼ CORNER OF SAID SECTION 35; THENCE ALONG THE SOUTH LINE OF WILLIAMS STREET RIGHT-OF-WAY, 33 FEET SOUTH OF THE EAST-WEST ¼ LINE, 1107.82 FEET THENCE SOUTH 00°11'31" WEST 972.12 FEET TO THE NORTH LINE OF THE RAILROAD RIGHT-OF-WAY; THENCE NORTHEASTERLY ALONG THE NORTH LINE OF THE RAILROAD RIGHT-OF-WAY TO A POINT ON THE WESTLINE OF JEROME ROAD 33 FEET WEST OF THE EAST LINE OF SAID SECTION 35; THENCE NORTH ALONG THE WEST LINE OF JEROME ROAD TO THE POINT OF BEGINNING.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Agri-Fuels, Inc.

Williams Road
Alma, Michigan

MDNR Docket No.:
AOC-ERD-94-013-A

Proceeding Under Section 10f and 14b(1) of the Michigan Environmental Response Act, Act 307 of 1982, as amended,
MCL 299.610f and 299.614b(1).

ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY

ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY
INDEX

JURISDICTION

This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Natural Resources ("MDNR"), Frank J. Kelley, Attorney General for the State of Michigan ("State"), the City of Alma, Michigan (the "City") and Terry Materials of Michigan, Inc. ("Terry"), pursuant to the authority vested in the MDNR by Sections 10f and 14b(1) of the Michigan Environmental Response Act of 1982 ("MERA" or "Act 307"), as amended, 1982 PA 307, MCL 299.610f and 299.614b(1). The Order concerns the performance by the City of certain response activities at Agri-Fuels, Inc., Alma, Gratiot County, Michigan (hereafter, the "Facility" as defined in Section 3(m) of MERA, MCL 299.601(m) to be any area, place or property where a hazardous substance has been released, deposited, stored, disposed of, or otherwise comes to be located.

II. DENIAL OF LIABILITY

The execution of this Order by the City and Terry is neither an admission of liability with respect to any issue dealt with in this Order nor is it an admission of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon the City and Terry and their successors and assigns as is further delineated in this Order. No change in ownership or corporate status shall in any way alter the City's or Terry's responsibilities under this Order. The City and Terry shall provide the MDNR with written notice prior to the transfer of ownership of part or all of the Facility, and shall provide a copy of this Order to any subsequent lessees, owners, grantees of any interest whatsoever, or successors before ownership rights are transferred. The City and Terry shall comply with the requirements of Section 10c of MERA, MCL 299.610c. The City and Terry, as provided in Paragraph 7.6 hereof, shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order within three (3) calendar days of the effective date of such retention. Notwithstanding the terms of any such contract, the City is responsible for compliance with the terms of this Order, and shall ensure that such contractors, subcontractors, laboratories and consultants perform all work in conformance with the terms and conditions of this Order.

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

IV. STATEMENT OF PURPOSE

In entering into this Order, it is the mutual intent of the Parties to: 1) remediate "Existing Contamination", as defined in Section VI, at and emanating from the Facility, 2) minimize litigation, 3) provide a mechanism for Terry to lease, with option to purchase, the property without incurring liability for existing contamination and 4) engender the social and economic benefits accompanying the reuse of this property by Terry.

V. FINDINGS OF FACT

5.1 The Agri-Fuels property, as legally described in Attachment A and made a part hereof, comprises approximately 15.71 acres and is located within the City of Alma corporation limits in Gratiot County. The property is bordered on the north by Williams Street, the east by Jerome Road and the south by the Chesapeake and Ohio railroad line. The property adjacent on the west is owned by Total Petroleum. Surrounding businesses to the property include Alma Products and United Technology to the north and Total Petroleum and Amerigas to the south.

5.2 The property is located in an industrial area of the City and was originally acquired by Agri-Fuels, Inc. in 1980 for the development of an ethanol production plant.

5.3 In accordance with the provisions of Section 67a of the General Property Tax Law, Act 206 of the Public Acts of 1893, as amended, the State of Michigan acquired deed to the property on October 10, 1985.

5.4 The city of Alma subsequently acquired deed to the property on August 14, 1986, in accordance with Act 223, Public Act 1909, as amended.

5.5 On February 2, 1989, the consulting firm of Dames and Moore conducted a Phase I Environmental Assessment of the property on behalf of the City and Procter and Gamble Paper Products Company. The findings of the Phase I investigation were indicative of the possible presence of petroleum hydrocarbons in the groundwater.

5.6 A site investigation was conducted by G.R. Kunkle and Associates on February 21, 1992 on behalf of the City of Alma and Mueller Bean Company, which at that time was using the property for the bulk storage for liquid nitrogen and Amthio. The findings of the February 2, 1992 site investigation, as documented in the Site Investigation Report dated March 27, 1992 indicated the possible release of ammonium nitrate within the clay containment area as indicated by high nitrate concentrations in soil samples collected from the facility.

5.7 The city of Alma entered into a lease with Mueller Bean Company on August 1990, which was later amended on March 24, 1992 for the lease of property, facilities and equipment.

5.8 In January of 1993, a remedial investigation of the groundwater contamination conducted by EarthFax Engineering on behalf of Total Petroleum revealed the presence of free-phase hydrocarbons on the northern portion of the property and dissolved hydrocarbons in the area between the Total Petroleum refinery and the former Agri-Fuels structure.

5.9 A Phase II Site Investigation was conducted by G.R. Kunkle and Associates on behalf of the City of Alma for the purpose of determining if the soils in the vicinity of the nitrogen storage tanks had been impacted by past activities on the property and determining the source of the petroleum hydrocarbons present on the property. The findings of the Phase II site investigation as documented on February 28, 1994 indicated that petroleum hydrocarbons present on the property had migrated from the Total Petroleum Refinery property and that nitrate contamination of the soil and groundwater had occurred in the area of the liquid nitrogen fertilizer storage tanks.

5.10 Releases of Nitrate, a hazardous substance, have occurred to the soils and groundwater at the property.

5.11 The City is "person" under MCL 299.601(W).

5.12 The City is the current owner of the property and was the owner of the property at the time of the release of a hazardous substance, namely nitrate.

5.13 Mueller Bean Company was the operator of the Facility at the time of the release of the hazardous substance, namely nitrate, at the Facility.

5.14 Terry is a "person" under MCL 299.601(W).

5.15 On February 22, 1994, the City accepted a "Letter of Intent" tendered by Terry for the lease, with option to purchase, of the property.

5.16 It is the intent of the City to conduct or cause to be conducted a Type C remediation plan for the Facility, thereby facilitating the reuse and redevelopment of the property by Terry.

VI. DETERMINATIONS

6.1 On the basis of the Findings of Fact, the MDNR makes the following determinations:

(a) The Agri-Fuels, Inc. property is a "Facility" as that term is defined in Section 3(m) of MERA, MCL 299.603(m).

(b) The City and Terry are each a "person" as that term is defined in Section 3(w) of MERA, MCL 299.603(w).

(c) Nitrate, a "hazardous substance" as that term is defined in Section 3(p) of MERA, MCL 299.603(p), is present in the soils and groundwater at the Facility.

(d) The presence of nitrates in the groundwater and soils at the Facility constitutes an actual or threatened "release" within the meaning of Sections 3(x) and 3(ff) of MERA, MCL 299.603(x) and MCL 299.603(ff).

(e) The actual or threatened releases of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare or the environment within the meaning of Section 10f of MERA, MCL 299.610f.

(f) In order to protect public health, safety, welfare and the environment, and to abate the danger or threat, it is necessary and appropriate that response activity be taken.

(g) The City is a person that may be liable within the meaning of Sections 10f and 12(1) of MERA, MCL 299.610f and MCL 299.612(1).

6.2 On the basis of the finding of facts, the MDNR and the Attorney General make the following determinations:

(a) The City will properly implement the response activities required by this Order.

(b) This Order is in the public interest, will expedite effective response activity, will minimize litigation and will foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential.

(c) "Existing Contamination" refers to any Hazardous Substance at any level above "Type A" or "Type B" levels as those terms are defined in Act 307 rules, in any media, including soils, groundwater, or surfacewater or the potential release of a discarded hazardous substance in a quantity that may become injurious to the environment or to the public health, safety or welfare, that (1) presently exists at the Property, (2) has emanated from the Property, (3) is subjacent to the Property or (4) regardless of its location, is attributable to past releases at the Property. For purposes of this definition "presently" means it exists on the effective date of this Order and "past" means it occurred prior to the effective date of this

Order. For further purpose of defining Existing Contamination, the State, the City and Terry agree that all data and technical reports for the Facility produced to date by, or on the behalf of, the City, Total Petroleum, or the State are probative evidence of the nature and extent of Existing Contamination for purposes of this agreement and shall be admissible as evidence in any proceeding involving a dispute over the same. In the event that any dispute arises between the State, the City or Terry concerning whether any release(s) or threat(s) of releases of hazardous substances occurred prior to the effective date of this Order, the burden of proof in such a dispute shall be borne by the parties in accordance with MERA subsections 12(7) and 12c(1).

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDNR, THE ATTORNEY GENERAL, THE CITY OF ALMA, AND TERRY HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VII. IMPLEMENTATION

7.1 Within one hundred and eighty (180) days of the effective date of this Order, the City shall commence, or cause to be commenced, the work detailed in the Proposed Remedial Investigation and Conceptual Remedial Action Plan ("RI/Conceptual RAP"), dated April 22, 1994, as attached hereto as Attachment 1, and as amended to address MDNR comments dated May 17, 1994 as attached hereto as Attachment 2.

Each component of the amended RI/Conceptual RAP, as amended, and approved modifications thereto, shall be deemed incorporated into this Order and made an enforceable part of this Order. All work shall be conducted in accordance with Act 307, the 307 Rules (Michigan Administrative Code ("MAC") R 299.5101 et seq), and any amendments thereto and the requirements of this Order, including any standards, specifications and schedules contained in the RI/Conceptual RAP, dated April 22, 1994, as amended.

(b) The City shall submit a Quality Assurance Plan ("QAPP"). The ("QAPP") shall, at a minimum, describe the quality control, quality assurance, sampling protocol and chain of custody procedures that shall be implemented in carrying out the tasks required by this Order. The QAPP shall be developed in accordance with the U.S. EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80, EPA-600/4-83-004; NTIS PB 83-170514; and the MDNR QAPP Guidance dated February 1993.

(c) The City shall submit a Health and Safety Plan to the MDNR which shall not be subject to MDNR approval as provided in Section XVIII. The Health and Safety Plan shall, at a minimum, assign Facility safety and security responsibilities to all on-site personnel, establish personnel safety and protection standards, establish mandatory safety operating procedures for physical and chemical hazards that may be encountered at the Facility, demarcate and classify various zones of contamination, establish decontamination procedures and provide for

contingencies that may arise during the course of the implementation of this Order. The Health and Safety Plan shall be developed in accordance with the standards promulgated pursuant to Section 126 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC § 9621, Section 6 of the Occupational Safety and Health Act of 1970 and the Michigan Occupational Safety and Health Act.

7.3 The parties acknowledge and agree that this Order does not constitute a warranty or representation of any kind by the MDNR that the work performed in accordance herein will result in the achievement of the remedial criteria as established by law.

7.4 The City shall submit to the MDNR a complete written description of the activities conducted pursuant to this Section, as part of any submission, report, plan or other document required under the terms of this Order. Such description shall include, but not be limited to, an overview of the work conducted, a complete description of the methodologies employed and documentation and analysis of data collected pursuant to this Order and the subject submission, report, plan or other document.

7.5 Terry shall use the Property for the specific purposes set forth in the Economic Development Plan, as attached hereto as Attachment 3 and made a part hereof, adopted by the City on March 28, 1994, and the Letter of Intent as attached hereto as Attachment 4 and made a part hereof, dated February 21, 1994, and in a manner which is

not inconsistent with response activities that shall be performed by the City at the Facility. In accordance with Section 14a(3) of MERA, Terry shall cooperate with the MDNR or other persons conducting Response Activities approved by the MDNR and shall use due care and reasonable precautions with respect to the Existing Contamination. Terry's use of the Property shall not cause contamination or contribute to or exacerbate the Existing Contamination, interfere with the implementation or completion of any Response Activity, pose health risks, or cause an increase in the cost of Response Activities.

7.6 The City and Terry shall notify the MDNR of any new use(s) they intend to make of the Property and shall be responsible for implementation of additional Response Activities, as approved by the State, which are required to protect the public health and safety or the environment in light of such new use(s).

VIII. ADDITIONAL RESPONSE ACTIVITY

8.1 As used in this Section, "Additional Response Activity" shall mean all activities not specifically set forth in the approved RI/Conceptual RAP, as amended, that the MDNR determine are necessary to meet the Performance and Cleanup Standards described in the administrative rules pursuant to MERA, MAC R 299.5101 et seq, and all applicable state and federal requirements, and that do not fundamentally change the overall remedial approach outlined in the RI/Conceptual RAP, as amended.

These activities may include modifications to the components of the remedial action and to the type and cost of materials, equipment, facilities, services and supplies used to implement the remedial action.

8.2 In the event that the MDNR determines that additional response activity is necessary, notifications of such additional response activity will be provided to the City's project coordinator. The City may also propose additional response activity which shall be subject to approval by the MDNR. Any additional response activity determined to be necessary by the MDNR, or otherwise agreed to by the parties, shall be completed by the City in accordance with the standards, specifications and schedules approved by the MDNR.

8.3 Unless the MDNR agrees to extend the time period, within sixty (60) days of receipt of notice from the MDNR that additional response activity is necessary, or from the date on which the parties otherwise agree that additional response activity is necessary, the City shall submit a plan for the additional response activity to the MDNR for approval. The plan shall be developed in conformance with the requirements of this Order. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Order. The City shall implement the plan for additional response activity in accordance with the schedule contained therein.

8.4 Nothing in the preceding paragraph shall limit the power and authority of the MDNR, the Attorney General or a court, to take,

direct or order all appropriate action to protect public health, welfare and safety or the environment or to prevent, abate or minimize an actual or threatened release of contaminants.

IX. ENGAGEMENT OF A CONTRACTOR

G.R. Kunkle has been designated by the City to be its contractor to perform the technical activities required under this Order. All work performed by said contractor pursuant to this Order shall be under the general direction and supervision of a qualified individual with a minimum of five (5) years direct experience and expertise in the investigation and cleanup of sites of environmental contamination. The City's contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A statement of qualifications and identification of personnel designated for the project, shall be provided to the MDNR within thirty (30) days of the effective date of this Order.

X. QUALITY ASSURANCE/SAMPLING

10.1 The City shall assure that the MDNR and its authorized representatives are allowed access to any laboratory utilized by the

City in implementing this Order for quality assurance monitoring.

10.2 The City shall submit to the MDNR the results of all sampling or tests and all other data generated by the City or its contractor(s), or on the City's behalf, in the course of implementing this Order. Said results shall be included in progress reports as set forth in Section XVIII.

10.3 At the request of the MDNR, the City shall allow the MDNR or its authorized representatives to take split and/or duplicate samples of any samples collected by the City pursuant to the implementation of this Order. Except as may be necessary for sampling required pursuant to Section XIII, the City shall notify the MDNR not less than seven (7) days in advance of any sample collection activity. In addition, the MDNR shall have the right to take any additional samples that it deems necessary.

10.4 Notwithstanding any provision of this Order, the MDNR and the Attorney General shall retain all of their information gathering, inspection and enforcement authorities and rights under Act 307 and any other applicable statute or regulation, with the exception of those matters covered by the covenants in XXVI and XXVII.

XI. PROJECT COORDINATORS

11.1 Within ten (10) days after the effective date of this Order, the City shall designate a project coordinator who shall have primary responsibility for implementation of the work at the Facility. The MDNR's project coordinator shall be Eric VanRiper, Environmental Quality Analyst, Environmental Response Division, MDNR. The MDNR's project coordinator will be the primary designated representative for the MDNR at the Facility. Terry's project coordinator shall be Charles Barbieri of Foster, Swift, Collins and Smith, PC. Terry's project coordinator will be the primary designated representative for Terry at the Facility. All communication between the parties and all documents, reports, approvals and other submissions and correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. If any party decides to change its designated project coordinator, the name, address and telephone number of the successor shall be provided, in writing, to the other party seven (7) days prior to the date on which the change is to be effective. This paragraph does not relieve the City from other reporting obligations under the law.

11.2 The MDNR may designate other authorized representatives, employees, contractors and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

XII. ACCESS

12.1 To the extent access to the Facility is owned, controlled by, or available to the City and Terry, from the effective date of this Order, the MDNR, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Order, including, but not limited to:

(a) Monitoring the work or any other activities taking place pursuant to this Order on the Facility;

(b) Verifying any data or information submitted to the MDNR;

(c) Conducting investigations relating to contamination at or near the Facility;

(d) Obtaining samples;

(e) Assessing the need for or planning and implementing response actions at or near the Facility; and

(f) Inspecting and copying nonprivileged records, operating logs, contracts or other documents.

(g) Interviewing employees, contractors, agents, or representatives of the City and Terry.

12.2 Upon reasonable notice, Terry shall grant the City, or its authorized contractors, the right to access the Facility for the purpose of conducting response activities, to the extent the property is

owned, controlled by or available to Terry provided the response activities are being conducted in accordance with a work plan which has been reviewed and approved by the MDNR. Any party who is conducting response activities pursuant to an MDNR-approved work plan will request its consultant and contractors to coordinate all activities at the Facility with Terry, to use its best efforts to minimize interference and, whenever possible, to employ efforts that are the least intrusive to Terry's property, operation or activities unless such interference is necessary for implementation to response activities. For the purpose of this section, "Best Efforts" does not mean taking actions that would result in the undue disruption or halt of Terry's operation or activities at the Property.

12.3 To the extent that the Facility or any other area where the work is to be performed by the City under this Order is owned or controlled by persons other than the City or Terry, the City shall use its best efforts to secure from such persons access from the parties and their authorized employees, agents, representatives, contractors and consultants. The City shall provide the MDNR with a copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best effort" includes, but is not limited to, reasonable compensation to the owner to secure such access or taking judicial action to secure such access. If, after using best efforts, the City is unable to obtain access within forty-five (45) days of the effective date of this Order, the City shall promptly notify the MDNR. The State may thereafter assist the City in obtaining access. The City shall,

within thirty (30) days of receipt of a written request from the MDNR, reimburse the State for all costs not inconsistent with law incurred by the State in obtaining access in the manner provided by Section XXVI.

12.4 All parties granted access to the Facility pursuant to this Order shall comply with all applicable health and safety laws and regulations.

12.5 Notwithstanding any provision of this Order, the MDNR and the Attorney General shall retain all of their inspection and access authorities under any applicable statute or regulation.

XIII. CREATION OF DANGER

13.1 Upon obtaining information concerning the occurrence of any event during performance of Response Activities conducted pursuant to this Order that causes or threatens 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, welfare or the environment, the City or Terry, as appropriate, shall immediately undertake all appropriate action to prevent, abate or minimize such release or endangerment and shall immediately notify the MDNR's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by the

City or Terry, shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan. The City or Terry, as appropriate, shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent recurrence of such an incident. Regardless of whether the City or Terry notifies the MDNR under this subsection, if Response Activities undertaken under this Order cause or threaten a release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare or to the environment, the MDNR may: (a) require the City or Terry, as appropriate, 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 the City or Terry, as appropriate, to undertake any such activities that the MDNR determines are necessary to prevent or abate any such release, threat or endangerment; and/or (c) undertake any actions that the MDNR determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDNR undertakes any action to abate such a release, threat or endangerment, the City shall reimburse the state for all costs incurred by the state that are lawfully incurred. Payment of such costs shall be made in the manner provided in Paragraph 25.3.

13.2 Nothing in the preceding subsection shall limit the power and authority of the MDNR, the State of Michigan to take, direct or order all appropriate action to protect the public health, welfare

and safety, or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

XIV. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Act 307, the Act 307 Rules, laws relating to occupational safety and health and other state environmental laws. Other agencies may also be called upon to review the conduct of work under this Order. Further, the City and Terry must designate, in a report to the MDNR, any facilities that the City and Terry proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XV. RECORD RETENTION/ACCESS TO INFORMATION

15.1 The City and Terry and their representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of ten (10) years after its termination, all records, sampling or test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant

to any requirement of this Order. After the ten (10) year period of document retention, the City and Terry and their successors shall obtain the MDNR's written permission prior to the destruction of such documents and, upon request, the City and Terry and/or its successors shall relinquish custody of all documents to the MDNR. The City and Terry's request shall be accompanied by a copy of this Order and sent to the following address or at such other address as may subsequently be designated in writing by the MDNR:

Chief
Environmental Response Division
Michigan Department of Natural Resources
P.O. Box 30426
Lansing, MI 48909

15.2 The City shall, upon request, provide to the MDNR all documents and information within its possession, or within the possession or control of its employees, contractors, agents or representatives relating to the work at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the work. The City and Terry shall also, upon request, make available to the MDNR, upon reasonable notice, the City or Terry's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the work.

15.3 The City or Terry may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information

requested by this Order. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDNR, it may be made available to the public by the MDNR without further notice to the City or Terry. Analytical data shall not be claimed as confidential or privileged by the City or Terry.

XVI. NOTICES

Whenever, under the terms of this Order, 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 specified addresses or at such other address as may subsequently be designated in writing:

As to MDNR:

Eric VanRiper
Environmental Response Division
10650 S. Bennett Drive
Morrice, Michigan 48857
Telephone: (517) 625-4621

As to the City:

Doug Thomas, City Manager
525 East Superior
P.O. Box 278
Alma, Michigan 48801
Telephone: (517) 463-8336

As to Terry Industries:

Charles Barbieri
Foster, Swift, Collins and Smith, P.C.
313 South Washington Square
Lansing, Michigan 48903
Telephone: (517) 371-8155

As to MDNR for financial/escrow matters:

Chief, Cost Recovery Unit
Environmental Response Division
Telephone: (517) 335-3378

Regular Mail:
Cost Recovery Unit
Environmental Response Division
P.O. Box 30426
Lansing, Michigan 48909

Via Courier:
Mr. David Koski
Cost Recovery Unit
Environmental Response Division
300 South Washington Square
Lansing, Michigan 48903

As to MDNR for record retention:

Chief
Environmental Response Division
Telephone: (517) 373-9837

Regular Mail:
Environmental Response Division
P.O. Box 30426
Lansing, MI 48909

Via Courier:
300 South Washington Square
Lansing, Michigan 48903

XVII. SUBMISSIONS AND APPROVALS

17.1 All plans, submissions and reports (submissions") identified in the RI/Conceptual RAP, as amended shall be delivered to the MDNR in accordance with the schedule set forth in this Order. Prior to receipt of MDNR approval, any report submitted to the MDNR for approval shall be marked "Draft" and shall include, in a prominent

location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the Michigan Department of Natural Resources ("MDNR"). This document was prepared pursuant to a government Administrative Order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDNR."

17.2 Upon receipt of any plan, report or other item relating to the work that is required to be submitted for approval pursuant to this Order, the MDNR project coordinator will in writing: (a) approve the submission; (b) disapprove the submission, notifying the City of deficiencies; or (c) approve the submission with modifications. Upon receipt of a notice of approval or modification from the MDNR, the City shall proceed to take any action required by the plan, report, or other item as approved or as modified, and shall submit a new cover page and the modified pages of the plan marked "Final."

17.3 Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDNR, the City shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the plan, report or other item for approval. Notwithstanding a notice of disapproval, the City shall proceed to take any response action not directly related to the deficient portion of the submission. If, upon resubmission, the plan, report or other item is not approved,

the MDNR shall so advise the City, and the City shall be deemed to be in violation of this Order.

17.4 A finding of approval or approval with modifications shall not be construed to mean that the MDNR concurs with all conclusions, methods or statements in the submissions or warrants that the submission comports with law.

17.5 No informal advice, guidance, suggestions or comments by the MDNR regarding reports, plans, specifications, schedules or any other writing submitted by the City shall be construed as relieving the City of its obligation to obtain such formal approval as may be required by this Order.

XVIII. PROGRESS REPORTS

The City shall provide to the MDNR written quarterly progress reports relating to response action that shall: (a) describe the actions that have been taken toward achieving compliance with this Order during the previous quarter; (b) describe data collection and activities scheduled for the next quarter; and (c) include all results of sampling and tests and other data received by the City, its employees or authorized representatives during the previous quarter relating to the response activities performed pursuant to this Order. The first quarterly report(s) shall be submitted to the MDNR within one hundred and eighty

(180) days following the effective date of this Order and Quarterly thereafter until the issuance of the Certificate of Completion as provided in Section XXXIII.

XIX. INDEMNIFICATION AND INSURANCE

19.1 The City shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of the City, its officers, employees, agents or any persons acting on its behalf or under its control in carrying out response actions pursuant to this Order. 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 entered into by or on behalf of the City in carrying out actions pursuant to this Order. Neither the City nor any contractor shall be considered an agent of the State.

19.2 The City waives any and 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 City and any person for performance of Response

Activities at the Facility, including claims on account of construction delays.

19.3 The City shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, agreement or arrangement between the City and any person for performance of Work at the Facility, including claims on account of construction delays.

19.4 Prior to commencing any response activities on or near the site, the City's shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance with limits of one million dollars ($ 1,000,000), combined single limit, naming the MDNR, the Attorney General and the State of Michigan as additional insured parties. If the City demonstrates by evidence satisfactory to the MDNR that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, the City 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 method used to insure, the City shall provide the MDNR and the Attorney General with certificates evidencing said insurance and the MDNR's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Order, the City 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 action on behalf of the City in furtherance of this Order. Prior to commencement of the Work under this Order, the City shall provide to the MDNR satisfactory proof of such insurance.

19.5 Terry shall indemnify and save and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Terry, its officers, employees, agents or contractors in connection with the Facility. This requirement shall be subject to Sections XXXIII and XXXIV.

19.6 This Agreement shall not be construed as an indemnity by the State for the benefit of Terry or any other party.

19.7 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 entered into by Terry or on behalf of Terry in carrying out actions pursuant to the Agreement. Neither Terry nor any contractor shall be considered an agent of the State.

XX. PUBLIC REVIEW OF REPORTS

The MDNR reserves the right to hold a public comment period if determined to be necessary. When the MDNR determines that the RI/Conceptual RAP, as amended required under this Order is acceptable for public review, the RI/Conceptual RAP, as amended shall be made available by the MDNR for public comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDNR. Following the public review and comment period, the MDNR may refer the RI/Conceptual RAP, as amended back to the City for revision pursuant to public comments and MDNR comments. In addition, the City shall provide information for the responsiveness summary as required by the MDNR. The City shall prepare all portions of a draft responsiveness summary specified by the MDNR. The MDNR will prepare the final responsiveness summary for the RI/Conceptual RAP, as amended.

XXI. MODIFICATIONS/INCORPORATION BY REFERENCE

21.1 If this Order, other than the RI/Conceptual RAP, as amended or Time Schedules referenced herein, is modified, such modifications shall be in writing by signature of the Director of the MDNR and Attorney General and the City and Terry's designated Project Coordinator or other authorized representative. Amendments to

RI/Conceptual RAP, as amended and Time Schedules referenced in this Order shall be made in writing by the MDNR Project Coordinator.

21.2 The RI/Conceptual RAP, as amended and Time Schedules referenced herein are incorporated into this Order and are an enforceable part thereof. Any plans, specifications and schedules required by this Order are, upon approval by the MDNR, incorporated into this Order and made enforceable parts thereof.

XXII. DELAYS IN PERFORMANCE

22.1 Any delay attributable to a Force Majeure shall not be deemed a violation of the City's obligations under this Order in accordance with this Section.

22.2 The City shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure". "Force Majeure" is defined, for the purpose of this Order, as an occurrence or nonoccurrence arising from causes beyond the control of the City, and which could not be avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes or failure to obtain a permit or license as a result of the City's actions or omissions.

22.3 When circumstances occur that the City believe constitute a Force Majeure, the City shall notify the MDNR by telephone or telefax of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Within five (5) working days after the City first become aware of such circumstances, the City shall supply the MDNR, in writing, with an explanation of the causes(s) of any actual or expected delay, the anticipated duration of the delay, and the measures taken and to be taken by the City to avoid, minimize or overcome the delay and the timetable for implementation of such measures. Failure of the City to comply with the written notice provision of this subsection shall constitute a waiver of the City's right to assert a claim of Force Majeure with respect to the circumstances in question.

22.4 If the MDNR agrees that a delay is or was caused by Force Majeure, the City's delay shall be excused and the MDNR shall provide the City such additional time as may be necessary to compensate for the Force Majeure event. The City shall have the burden of demonstrating (i) that the delay is or was caused by a Force Majeure event; and (ii) that the amount of additional time requested is necessary to compensate for that event.

22.5 An extension of one compliance date based upon a particular Force Majeure incident does not mean that the City qualifies for an extension of a subsequent compliance date without meeting its

burden of proof as specified in this (Section XXII) for each incremental step or other requirement for which an extension is sought.

XXIII. DISPUTE RESOLUTION

23.1 If any party objects to any notice of disapproval, modification or decision concerning a "Covered Matter" as defined in subparagraph 26.2, including Section VIII, hereof, and factual matters arising under Sections XXVI and XXVII, hereof, the parties shall notify the MDNR, in writing, of their objections within seven (7) days of receipt of the notice. The MDNR and the parties shall have ten (10) days from the receipt by the MDNR of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this ten (10) day period, the MDNR shall provide written statement of its decision to the parties, and the parties shall commence the activities required by the MDNR decision within five (5) days of receipt of the MDNR decision.

23.2 In the event the City does not commence the activities required by the MDNR decision, the MDNR, in cooperation with the Department of Attorney General, may take such civil enforcement actions against the City as may be provided for by Sections 10f(4) and 16(1) of MERA, MCL 299.610f(4) and MCL 299.616(1), and other statutory and/or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by law. In such an

event, the MDNR retains the right to perform necessary response activities and to recover the costs thereof from the City. Engagement of a dispute resolution among the parties shall not be cause for the delay of any Work.

23.3 Should a dispute arise, the City shall establish a Dispute Resolution Escrow and shall pay that portion of a demand, with any applicable interest that is subject to a good faith dispute into the Dispute Resolution Escrow. The Escrow Agent shall be selected by the City and subject to the approval of MDNR. The Dispute Resolution Escrow shall be solely and exclusively to reimburse the State's oversight costs and to conduct the response activities set forth in this Order. During the pendency of any dispute concerning the reimbursement of future oversight costs or the payment of stipulated penalties the City shall pay that portion of a demand, with any applicable interest, that is subject to a good faith dispute into the Dispute Escrow established pursuant to this Section. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order. Penalties shall be paid into this account as they continue to accrue, at least every seven (7) days. Upon each deposit, the City shall provide the MDNR with a copy of the deposit slip. Within ten (10) days of the MDNR decision, the escrow agent shall pay the balance of the account, including all accrued stipulated penalties or any relevant portion thereof, to the respective party to the extent each party prevailed in dispute resolution. Payments to the MDNR shall be in the manner provided in Section XXIV.

23.4 Notwithstanding this Section, the City shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Section XXIV and XXV, as appropriate.

23.5 No action or decision of the MDNR or the Attorney General shall constitute final agency action giving rise to any rights of judicial review, prior to the Attorney General's initiation of judicial action to compel the City to comply with this Order to enforce a term, condition or other action required by this Order in accordance with Section 16 of MERA, MCL 299.616. Nothing in this Order shall expand the City's ability to obtain pre-enforcement review of this Order. The City or Terry may seek review of disputed issues by the Chief of the Environmental Response Division ("ERD"). A written request for review must be filed with the Chief of ERD and the appropriate ERD District Office within ten (10) working days of the City's or Terry's receipt of MDNR's statement of its decision.

XXIV. REIMBURSEMENT OF COSTS

24.1 The City shall reimburse the State for future oversight, excluding enforcement costs, incurred by the State in overseeing the remedial activities of the City for matters covered in this Order. As soon as possible after each anniversary of the effective date of this Order, pursuant to Sections 10f(4) and 16(1) of MERA, MCL 299.610f(4)

and MCL 299.616(1), the MDNR will provide the City with a written demand of oversight costs lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred. The State's entitlement to be reimbursed for oversight costs shall be limited to two thousand, five hundred dollars ($2,500.00) per year.

24.2 Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 9(3) of MERA, MCL 299.609(3). The City shall also 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 MDNR. Except as provided by Section XXIII, the City shall reimburse the MDNR for such costs within thirty (30) days of receipt of a written demand from the MDNR. In any challenge by the City to a demand for recovery of costs by the MDNR, the City shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 12(2)(a) of MERA, MCL 299.612(2)(a). All payments made to the State pursuant to this Order shall be by check payable to the "State of Michigan - Environmental Response Fund", and shall be sent by first-class mail to the following address:

Administration Section
Environmental Response Division
Department of Natural Resources
P.O. Box 30426
Lansing, MI 48909

The former Agri-Fuels facility and AOC-ERD-94-014 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDNR Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources Division, 530 Mason Building, Lansing, Michigan 48909.

XXV. STIPULATED PENALTIES

25.1 Except as provided by Sections XXIII and XXIV, if the City fails or refuses to comply with any term or condition in Sections VII, VIII, XIII and XXV, the City shall pay the MDNR stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

Period of Delay	Penalty Per Violation Per Day
1st through 15th day	$ 100.00
15th through 30th day	$ 250.00
Beyond 30 Days	$ 1,000.00

25.2 Except as provided in Sections XXIII and XXIV, if the City fails or refuses to comply with any other term or condition of this Order, other than Section XIV, the City shall pay the MDNR stipulated

penalties of $ 100.00 a day for each and every failure or refusal to comply .

25.3 The City shall notify the MDNR, in writing, of any violation of this Order no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDNR as required by this Paragraph constitutes an independent violation of this Order.

25.4 Stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Order.

25.5 Except as provided in Section XXIII, stipulated penalties owed to the state shall be paid no later than thirty (30) days after receiving a written demand from the state. Payment shall be made in the manner provided in Section XXIV. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 12(4) of MERA, MCL 299.612(4). 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 Order.

25.6 Liability for or payment of stipulated penalties are not the state's exclusive remedy in the event the City violates this Order. The state reserves the right to pursue any other remedy or remedies that it is entitled to under this Order or any applicable law for any failure or refusal of the City to comply with the requirements of this Order, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan as a result of the City's violation of or failure to comply with this Order pursuant to Sections 10f(4) and 16(1) of MERA, MCL 299.610 f(4) and MCL 299.616(1) and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXVI. COVENANT NOT TO SUE TO THE CITY BY THE STATE

26.1 In consideration of the response activities that will be performed and the payments that will be made by the City under the terms of this Order, and except as specifically provided in this Section, the State of Michigan hereby covenants not to sue or take any civil, judicial or administrative action against the City (excluding any officers, directors or employees formerly employed by any previous owner or operator of the Property) for any claims arising from Covered Matters.

26.2 "Covered Matters" shall include any liability to the State of Michigan under applicable state and federal law relating to the Facility for existing contamination which was identified prior to the effective date of this Order for the following:

(a) Performance of the approved response activity by the City under the Order; and

(b) Payment of oversight costs incurred by the State as set forth in Paragraphs 25.1 and 25.2 of this Order.

26.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 26.2. The State reserves, and this Order is without prejudice to, all rights against the City with respect to all other matters, including, but not limited to, the following:

(a) Liability arising from a violation by the City of a requirement of this Order, including conditions of approved submittal required herein;

(b) Liability for any other response activities required at the Facility for unknown contamination;

(c) Liability for response activity costs other than those referred to in Section XXIV;

(d) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substance(s) outside of the Facility and not attributable to the Facility;

(e) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substance(s) taken from the Facility;

(f) Liability for damages for injury to, destruction of, or loss of natural resources;

(g) Liability for criminal acts;

(h) Any matters for which the State is owed indemnification under Section XIX of this Order; and

(i) Liability for violations of federal or state law which occur during or after implementation of the Remedial Activities .

26.4 With respect to the City's liability for Facility response costs incurred prior to the effective date of this Order, the State hereby covenant not to sue the City. With respect to liability for performance of response activities required to be performed under this Order, and response activity costs incurred by the State after the effective date of this Order and reimbursement of those costs by the

City's pursuant to Section XXIV of this Order, the covenant not to sue shall take effect upon issuance by the MDNR of the Certification of Completion in accordance with Section XXXIII. The covenant not to sue is conditioned upon the complete and satisfactory performance by the City of its obligations under this Order. The covenant not to sue extends only to the City and does not extend to any other person.

26.5 The State's Pre-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings to enforce this Administrative Order or in a new action or to issue an administrative order seeking to compel the City (1) to perform additional response activities pursuant to Section VIII hereof, relating to existing contamination at the Facility or (2) to reimburse the State of Michigan for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the entry of this Order; or

(b) Information is received, in whole or in part, after the entry of this Order;

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action

is not protective of the public health, safety or welfare or the environment.

26.6 The State's Post-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel the City (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the Certification of Completion; or

(b) Information is received, in whole or in part, after the Certification of Completion;

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of the public health, safety or welfare or the environment.

26.7 For purposes of Paragraph 26.5, the information previously received by and the conditions known to the MDNR shall include only that information and those conditions set forth in the administrative record supporting the Remedial Action at the time of

entry of this Order. For purposes of Paragraph 26.6, the information previously received by and the conditions known to the MDNR shall include only that information and those conditions set forth in the administrative record supporting the Remedial Action, and any information received by the MDNR pursuant to the requirements of this Order prior to Certification of Completion of the Remedial Action.

26.8 With the exception of the covenants in Sections XXVI and XXVII, nothing contained in this Administrative Order by Consent shall affect the liability of any other Potentially Responsible Party, including Mueller Bean Company, for the release or threat of release of hazardous substances regarding the Agri-Fuels property.

XXVII. COVENANT NOT TO SUE TO TERRY BY THE STATE

27.1 In consideration of the response activities that will be performed and the payments that will be made by the City under the terms of this Order, and except as specifically provided in this Section, the State of Michigan hereby covenants not to sue or take further civil, judicial, or administrative action against Terry (excluding any officer, director or employees formerly employed by any previous owner or operator of the Property) for any claims arising from: (a) Existing Contamination associated with the Facility; and, (b) the acts or omissions of any owner or operator of the Property prior to the

effective date of this Order that may have contributed to or caused Existing Contamination at the Facility.

27.2 Terry shall not assign any of its rights or responsibilities under this Order, except as provided in this Section XXVII.

27.3 Terry may assign its rights and responsibilities under this Order in connection with the transfer of fee title to all or a portion of the Property, provided that the transferee demonstrates those items set forth in Paragraph 27.6 and the State first approves the transfer in writing. Upon consummation of such transfer the transferee assumes responsibility for the obligations of Terry as set forth in this Order. Terry shall continue to enjoy the protections afforded by the Order, but shall automatically be released from the responsibilities imposed by the Order upon Terry's receipt of the State's written approval of the transfer.

27.4 Terry may sell on land contract, lease or sublease or otherwise convey an interest which does not constitute a fee title interest with respect to all or any part of the Property; provided that the transferee demonstrates those items set forth in Paragraph 27.6 and the State first approves of the transfer in writing. In the event of such a transfer both Terry and the transferee shall have full rights, duties, obligations and benefits as afforded in this Order.

27.5 The State shall not unreasonably withhold any approval under this Section XXVII, and shall either grant or deny the approval, in writing, stating the reasons for any denial, within thirty (30) days following its receipt of a written request for approval. The State shall not, as a condition of approval of a transfer, require the expenditure of additional funds for investigation or remediation of Existing Contamination at the Facility, except for any investigation necessary to demonstrate that the transferee's proposed use of the Property will not be inconsistent with the obligations of Terry as set forth in this Order.

27.6 Prior to transfer of fee title to all or any portion of the Property, the transferee shall demonstrate to the satisfaction of the MDNR, all of the following:

(a) That the transferee is financially capable of redeveloping and reusing the Property in accordance with the covenant not to sue as set forth in this Section XXVII;

(b) That the transferee is not affiliated in any way with any person that may be liable under Section 12 of the MERA for Existing Contamination at the Facility;

(c) That the redevelopment or reuse of the Property by the transferee will not do any of the following:

(1) Exacerbate or contribute to Existing Contamination or cause new contamination;

(2) Interfere with the implementation of Response Activities;

(3) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the Facility.

XXVIII. COVENANT NOT TO SUE TO THE STATE BY THE CITY AND TERRY

28.1 The City and Terry hereby covenants not to sue or take any civil, judicial or administrative action against the State, it agencies or their authorized representatives, for any claims or cause of action against the State with respect to the Facility arising from this Order including any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 10f(5) of MERA, MCL 299.610f(5) or any other provision of law.

28.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, the City and Terry 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 MDNR or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in the Paragraph affects the

enforceability of the covenants not to sue set forth in Sections XXVI, XXVII and XXVIII (Covenants Not to Sue by the State).

XXIX. CONTRIBUTION PROTECTION

Pursuant to Section 12c(5) of MERA, MCL 299.612 c(5) and to the extent provided in Sections XXVI and XXVII, the City and Terry shall not be liable for claims for contribution regarding matters addressed in this Order. Entry of this Order does not discharge the liability of any other person(s) liable under Section 12 of MERA, MCL 299.612. In any action by the City or Terry for contribution from any person not a party to this Order, the City's or Terry's cause of action shall be subordinate to the right of the State of Michigan if the State files an action pursuant to MERA or other applicable federal or state law, in accordance with Section 12c(8) of MERA, MCL 299.612c(8).

XXX. RESERVATION OF RIGHTS BY THE STATE AGAINST THE CITY

30.1 The MDNR and the Attorney General reserve the right to bring an action against the City under federal and state law for any matters that are defined by subparagraph 26.3

30.2 The MDNR and the Attorney General expressly reserve any and all rights and defenses that they may have to enforce this Order

against the City, including the MDNR's right both to disapprove of Response Activities performed by the City and to require the City to perform tasks in addition to those detailed in this Order.

30.3 In the event the MDNR determines that the City has failed to implement any provisions of the Order in an adequate or timely manner, the MDNR may perform, or contract to have performed, any and all portions of the response activity(ies) as the MDNR determines necessary and to recover response activity costs.

30.4 Failure by the MDNR or the Attorney General to timely enforce any term, condition or requirement of this Order, shall not:

(a) Provide or be construed to provide a defense for Respondents' noncompliance with any such term, condition or requirement of this Order: or

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

30.5 Notwithstanding any other provision of this Order, the MDNR retains all authority and reserves all rights to take any and all response activity(ies) authorized by law.

XXXI. RESERVATION OF RIGHTS BY THE STATE AGAINST TERRY

The covenant stated in Section XXVII shall apply only to Existing Contamination. The State reserves the right to take independent judicial or administrative actions against Terry for any of the following: (a) Post-Existing Contamination associated with the Facility; (b) the release or threat of release of any Hazardous Substance resulting from the redevelopment or reuse of the Property by Terry; (c) the exacerbation of or contribution to the Existing Contamination associated with the Property, including; (i) the introduction of any substance (such as air or water), other than as part of an approved RAP, and (ii) redevelopment and construction which has the effect of exacerbating or contributing to Existing Contamination; (d) Terry's interference with or failure to cooperate with the MDNR, its contractors or other persons conducting MDNR approved Response Activities; (e) failure by Terry to exercise due care and reasonable precautions with respect to any release or threat of release; (f) any action by Terry which renders a Response Activity required by this Order less effective or more expensive than it might otherwise be; or (g) any other violations of law not relating to the Existing Contamination.

XXXII. VOIDANCE OF COVENANT NOT TO SUE TO TERRY

The covenant not to sue to Terry shall be null and void upon Terry's failure to fully comply with the provisions of Paragraphs 7.5 and 7.6 herein.

XXXIII. CERTIFICATION

33.1 When the City determines that it has completed all the work required by this Order, it shall submit to the MDNR a notification of completion and a draft final report. The draft final report shall summarize all response actions performed under this Order. The draft final report shall include or reference any supporting documentation.

33.2 Upon receipt of the Notification of Completion, the MDNR will review the Notification of Completion, the draft final report, any supporting documentation and the actual response actions performed pursuant to this Order. Within ninety (90) days of receipt of the Notification of Completion, the MDNR will determine whether the City has satisfactorily completed all requirements of this Order, including, but not limited to, completing the work required by this Order, complying with all terms and conditions of this Order and paying any and all cost reimbursement and stipulated penalties owed to the MDNR. If the MDNR determines that all requirements have been satisfied, the MDNR will so

notify the City, and upon receipt of a "Final" final report in accordance with Section XVII, shall issue a Certificate of Completion.

XXXIV. AGREEMENT FOR TYPE C REMEDY

Upon completion of the Response Activities addressing the Existing Contamination in connection with the Property, Terry's obligations set forth in Section VII of this Order shall automatically terminate except to the extent that such obligations may be incorporated into a written agreement between the State, the City and Terry with respect to a Type C closure, including contamination that has migrated beyond the boundaries of the legal description of the Agri-Fuels property.

XXXV. SEPARATE DOCUMENTS

This Order 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.

XXXVI. EFFECTIVE DATE

This Order is effective upon the date that the City and Terry receives written notice that the Director has signed the Order. All

times for performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein.

IT IS SO AGREED AND ORDERED BY:

Roland Harmes
Director
Michigan Department of Natural Resources

6/9/94
Date

Gary Finkbeiner
Assistant Attorney General
Natural Resources Division

6/9/94
Date

IT IS SO AGREED BY:

Stewart McDonald
Mayor
City of Alma

5-24-94
Date

William Stuckey
City Clerk/Treasurer
City of Alma

5-24-94
Date

IT IS SO AGREED BY:

Marc Terry President

Marc Terry, President
Terry Materials of Michigan, Inc.

5/23/94
Date

almaaoc3.dft

PROPOSED REMEDIAL INVESTIGATION AND CONCEPTUAL REMEDIAL ACTION PLAN

Prepared for:

CITY OF ALMA
525 East Superior Street
Alma, Michigan 48801

Site Location:

CITY OF ALMA
1950 Williams Street
Alma, Michigan 48801

April 22, 1994

Prepared by:

G. R. Kunkle and Associates, Inc.
2209 Euler Road, Suite 1
Brighton, Michigan 48116-7414
(810) 227-6240

Project No: 94019

CITY OF ALMA

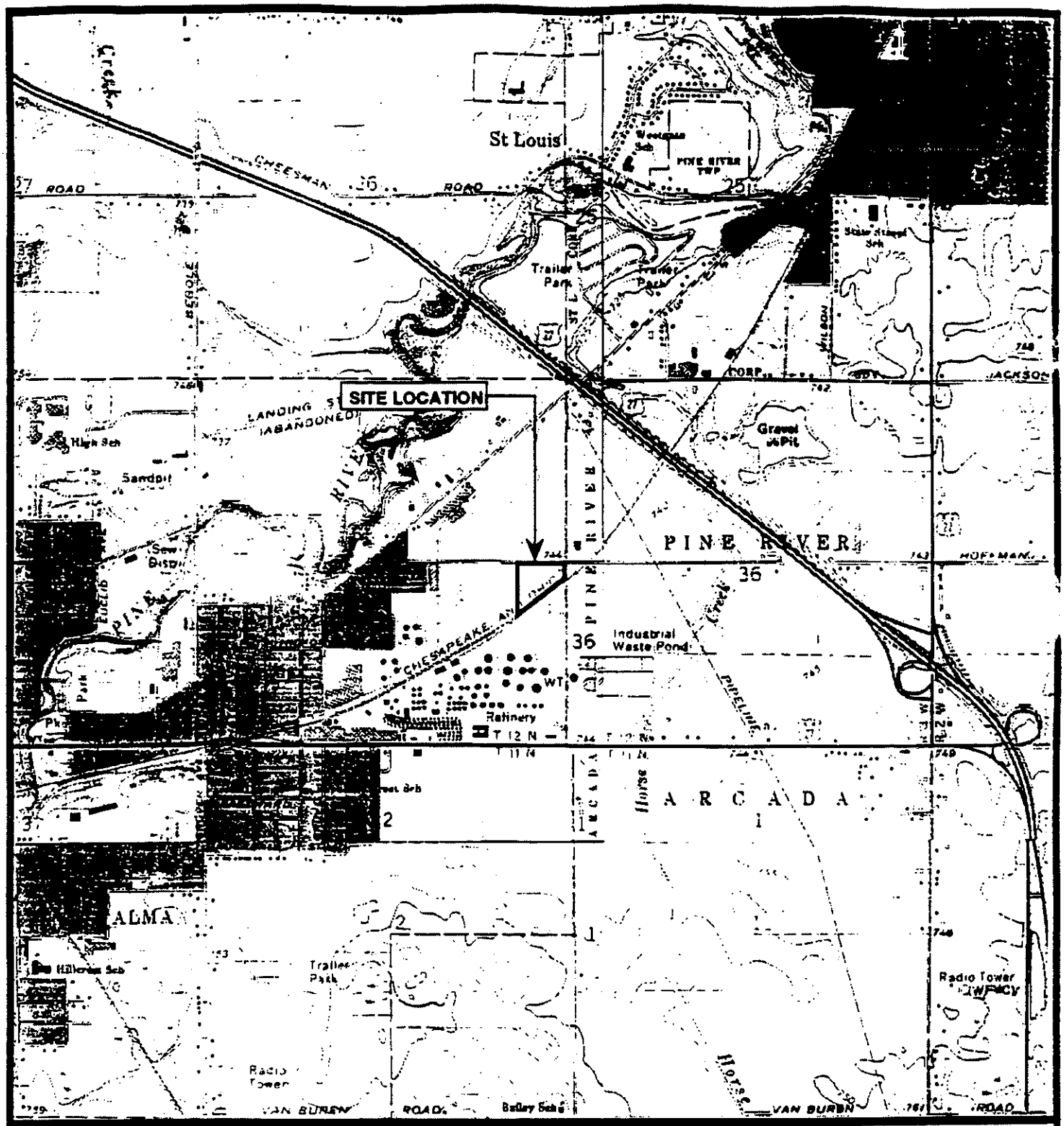
PROPOSED REMEDIAL INVESTIGATION AND CONCEPTUAL REMEDIAL ACTION PLAN

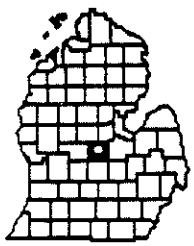
TABLE OF CONTENTS

CITY OF ALMA

PROPOSED REMEDIAL INVESTIGATION AND CONCEPTUAL REMEDIAL ACTION PLAN

LIST OF FIGURES





City of Alma
Gratiot County, Michigan

Base map taken from U.S. Geological Survey Topographic Map - Alma North, Alma South, Ithaca and St. Louis, Michigan quadrangles, dated 1973.

NORTH

SITE LOCATION MAP

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

SCALE: 1" = 2000' DATE: 4-18-94

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

94019 / SJB

FIGURE 1

1.0 INTRODUCTION

G. R. Kunkle and Associates, Inc. (GRK&A), was retained by the City of Alma (CA), to develop a Conceptual Remedial Action Plan (RAP) for the elevated nitrate concentrations encountered in the soil and ground water at the former Michigan Agrifuels plant in Alma, Michigan. This plan is being prepared to facilitate transfer of the CA owner exemption with respect to environmental contamination as per Enrolled House Bill Number 4718 to a prospective property purchaser. This Conceptual RAP will address the additional investigation and remediation work which is anticipated to be necessary at the site at this time. A proposed plan for site investigation and remediation must be on file with the Michigan Department of Natural Resources (MDNR) prior to transfer of the exemption to identify the potential costs associated with the additional remedial work at the site. This plan also allows the MDNR to verify that financial assurance for the completion of the project is available

Benzene, toluene, ethyl benzene and xylene (BTEX) contamination also exists in the ground water beneath the site. Additional work at the site will be required to identify the horizontal and vertical extent of the BTEX contamination at this location. The potentially responsible party (PRP) for the BTEX plume will be allowed access to the CA site. Some of the BTEX PRP work may overlap the investigation and remediation proposed for the impacted nitrate area. In the event that the work does overlap, CA and the BTEX PRP will attempt to work together and share the costs of the additional investigation and remediation at the site. However, since CA is not the source of the BTEX contamination, CA only intends to address the elevated nitrate concentrations at the site.

CA's remedial investigation and conceptual RAP implementation schedule will coincide with the proposed schedule submitted by the BTEX PRP. However, in the event that the BTEX PRP does not make substantial forward progress with investigation and remediation efforts, CA is willing to commit to the following schedule.

Completion of Remedial Investigation	December, 1994
Submittal of GI Type C Final RAP and Monitoring Plan	June, 1995
Department Approval of Type C Final RAP and Monitoring Plan	December, 1995
Installation of Monitoring System Wells	March, 1996
Implementation of Monitoring Plan	June, 1996

2.0 SITE LOCATION AND PREVIOUS SITE INVESTIGATIONS

The CA property is located at 1950 Williams Street in Alma, Michigan. The location of the site is presented in Figure 1, Site Location Map. The site consists of an office building, numerous grain silos and liquid nitrogen fertilizer tanks. Railroad tracks

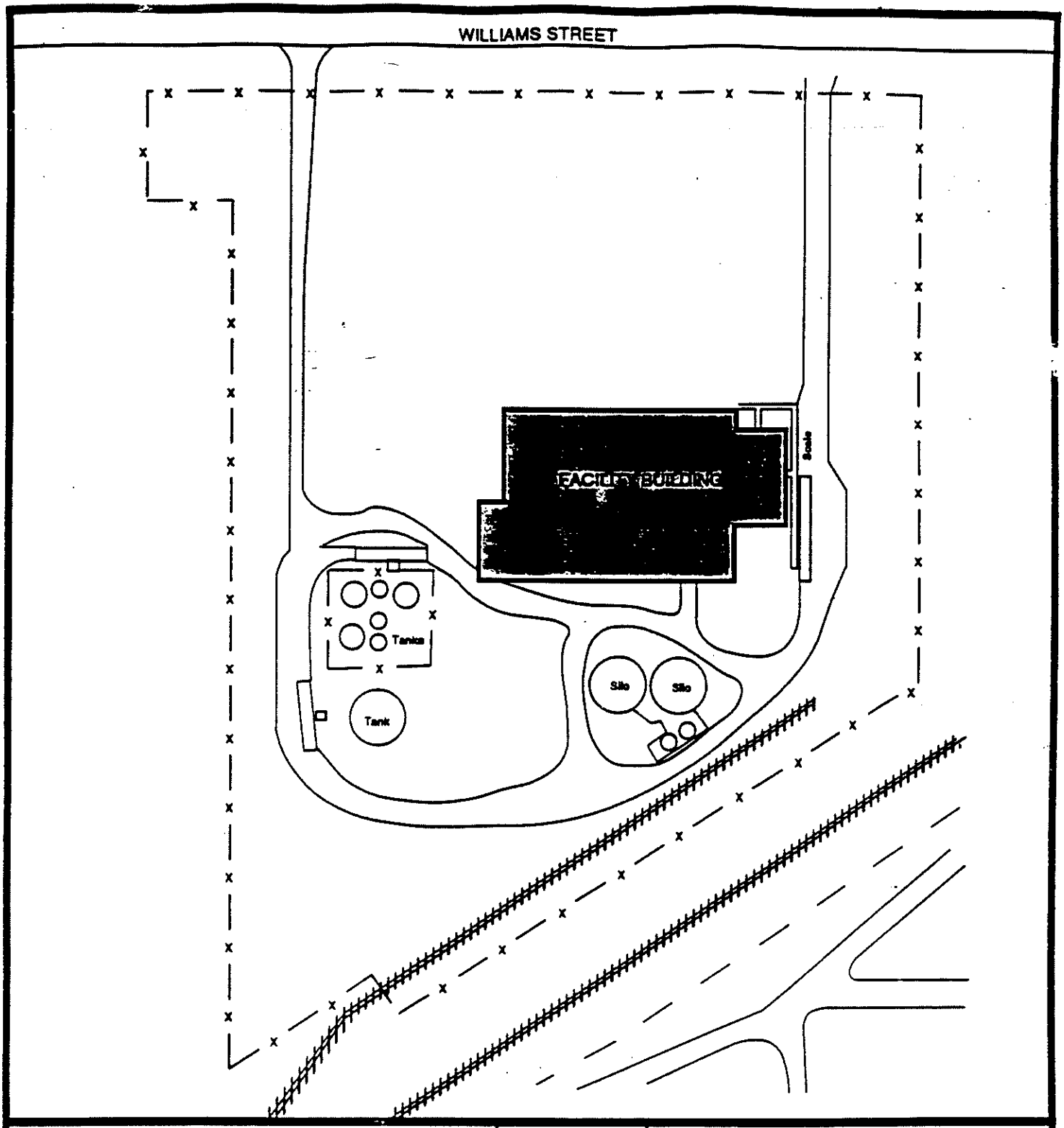
leading onto the site from the adjacent Chesapeake and Ohio Railroad Line are located on the south side of the property. Immediately south of the railroad tracks is the Total Petroleum Refinery of Alma, Michigan. North of the site are numerous small manufacturing facilities and immediately east and west of the site are vacant lots. Figure 2, Site Schematic Diagram, depicts the general site layout.

Earthfax Engineering, Inc. (Earthfax), of Okemos, Michigan was retained by Total Petroleum in 1992 to conduct a remedial investigation of ground water contamination at the Total Petroleum Refinery in Alma, Michigan. As part of this investigation, Earthfax determined that ground water flow in the area was generally to the north from the Total Petroleum property to the CA property. The direction of ground water flow appears to diverge to the northeast near the northern portion of the CA property due to ground water mounding, which occurs in this location. This information was presented in the City of Alma Property Progress Report, dated June 1, 1993, prepared for Total Petroleum by Earthfax. As part of an additional investigation for Total Petroleum, in 1993 Earthfax collected several ground water samples at the CA subject property using a Hydropunch ground water sampling device. Several Hydropunch locations revealed evidence that the ground water beneath the CA property had been impacted with BTEX constituents.

In a report by Dames and Moore of Cincinnati, Ohio, prepared for The Procter & Gamble Paper Products Company and the CA, titled Environmental Site Assessment for the Alma Ethanol Plant, dated April 7, 1989, it was reported that a possible release of materials utilized in the fermentation process occurred on the west side of the facility during decommissioning of the Michigan Agrifuels plant. Fermentation by-products typically include acetic acid, methanol and ethanol. Subsequent investigations have not confirmed the presence of alcohol indicator parameters related to this suspected release.

GRK&A prepared a Site Investigation Report, dated March 27, 1992 which investigated the current environmental conditions at the CA property. This work indicated detectable levels of nitrate and nitrite in soil samples collected in the containment areas utilized for storage of liquid nitrogen fertilizer.

Most recently, GRK&A completed a limited Phase II Real Estate Site investigation on the subject property. The findings of the investigation were presented in a report entitled Phase II Real Estate Site Investigation Report dated February 28, 1994. This investigation confirmed the presence of nitrate in the soil and water on the subject property. Figures 3 and 4, Nitrate Concentration in Soil February 1994 and Nitrate Concentrations in Ground Water at 15 Feet, February 1994, respectively, present the analytical results showing nitrate in the soil and ground water at the site.



— x — x — Fence Line

Railroad Tracks

NORTH

SITE SCHEMATIC DIAGRAM

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

SCALE: 1" = 100' DATE: 4-18-94

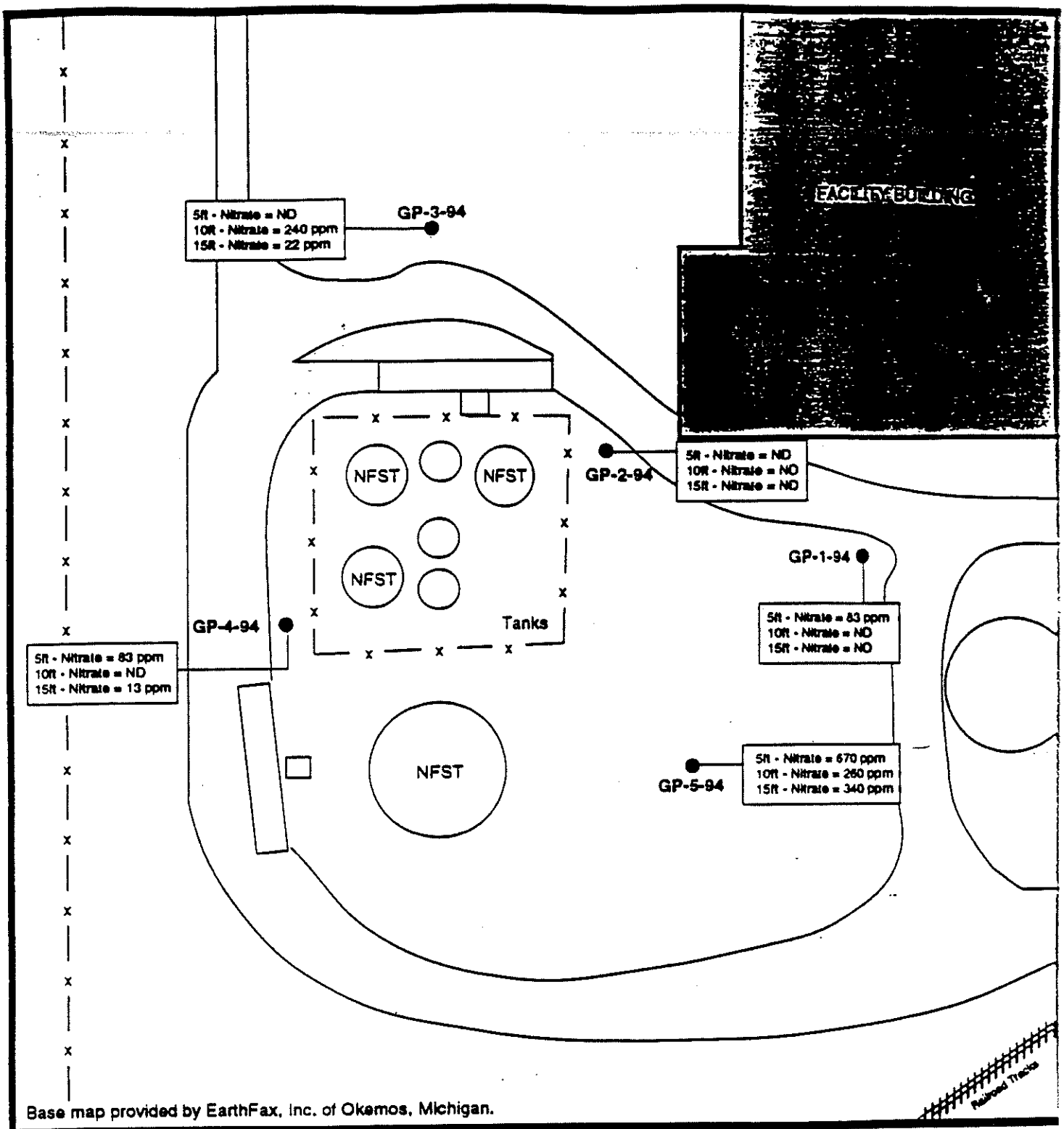
Base map provided by EarthFax, Inc. of Okemos, Michigan.

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

GRK & A

94019 / SJB

FIGURE 2



Base map provided by EarthFax, Inc. of Okemos, Michigan.

GP-1-94
5ft - Nitrate = 83 ppm
10ft - Nitrate = NO
15ft - Nitrate = NO

Probe Location with Nitrate Concentrations detected in February, 1994 at depths of 5, 10 and 15 feet below ground surface.

ppm — Parts Per Million

ND — Non-Detect

NFST — Nitrogen Fertilizer Storage Tank

— x — x — Fence Line

NORTH

NITRATE CONCENTRATION IN SOIL
FEBRUARY, 1994

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

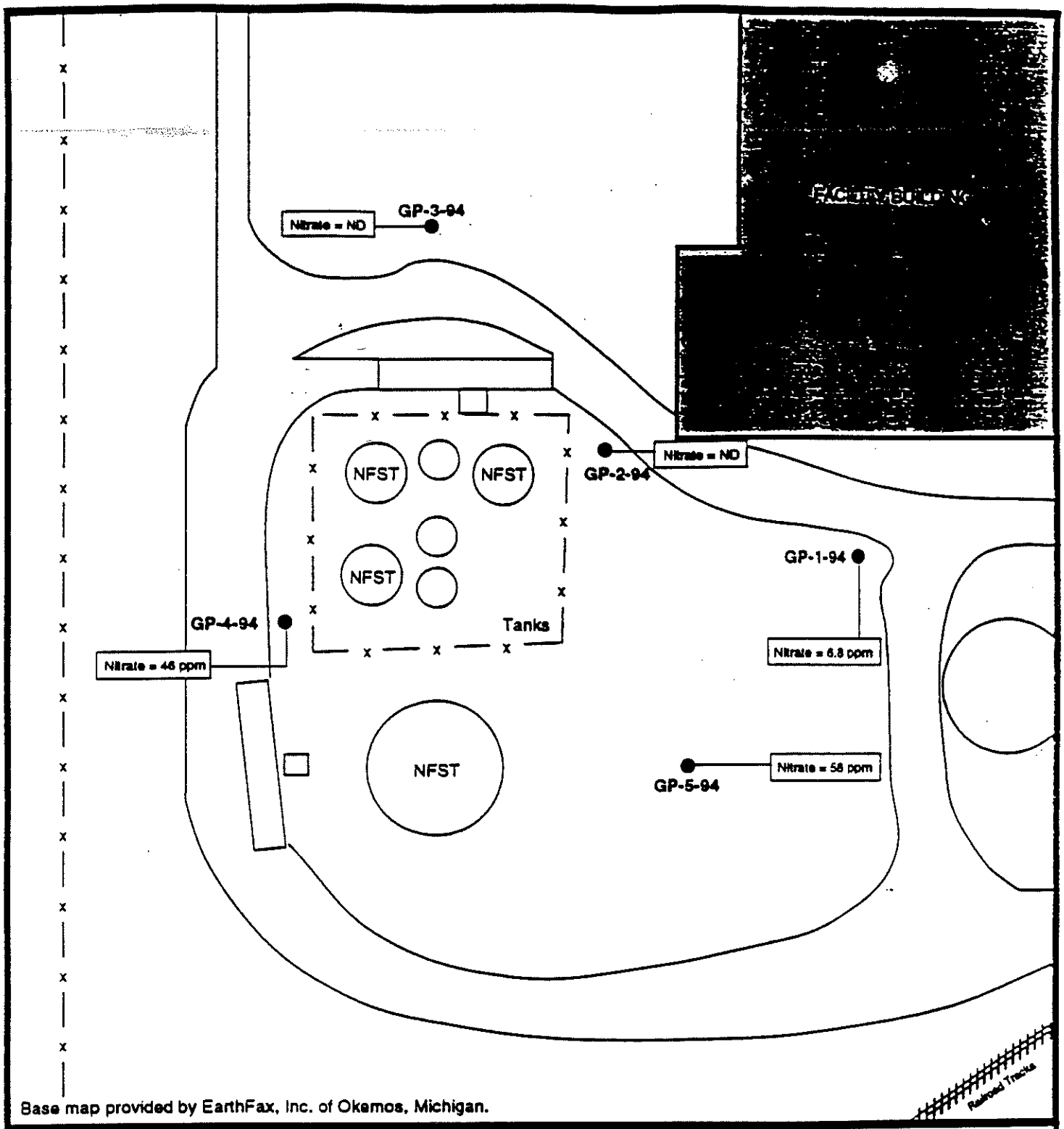
SCALE: 1" = 40' DATE: 4-18-94

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

GRK&A

94019 / SJB

FIGURE 3



Base map provided by EarthFax, Inc. of Okemos, Michigan.

GP-1-94 / Nitrate = 46 ppm	Probe Location with Nitrate Concentrations detected in February, 1994 at a depth of 15 feet
ppm	Parts Per Million
ND	Non-Detect
NFST	Nitrogen Fertilizer Storage Tank
— x — x —	Fence Line

NORTH

NITRATE CONCENTRATION IN GROUND WATER AT 15 FEET - FEBRUARY, 1994

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

SCALE: 1" = 40' DATE: 4-18-94

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

94019 / SJB

FIGURE 4

3.0 ADDITIONAL NITRATE INVESTIGATION REQUIRED AT THE SITE

The additional investigation proposed at this site, prior to finalization of a remedial action plan, is designed to determine the horizontal and vertical extent of the nitrate occurrences in the ground water, to determine the ground water flow direction and velocity in the nitrate impacted area and to confirm that a direct contact hazard above the Michigan Act 307 Type B or Generic Industrial (GI) Type C criteria does not exist at the site.

3.1 Horizontal and Vertical Extent of Nitrate Occurrences in Ground Water

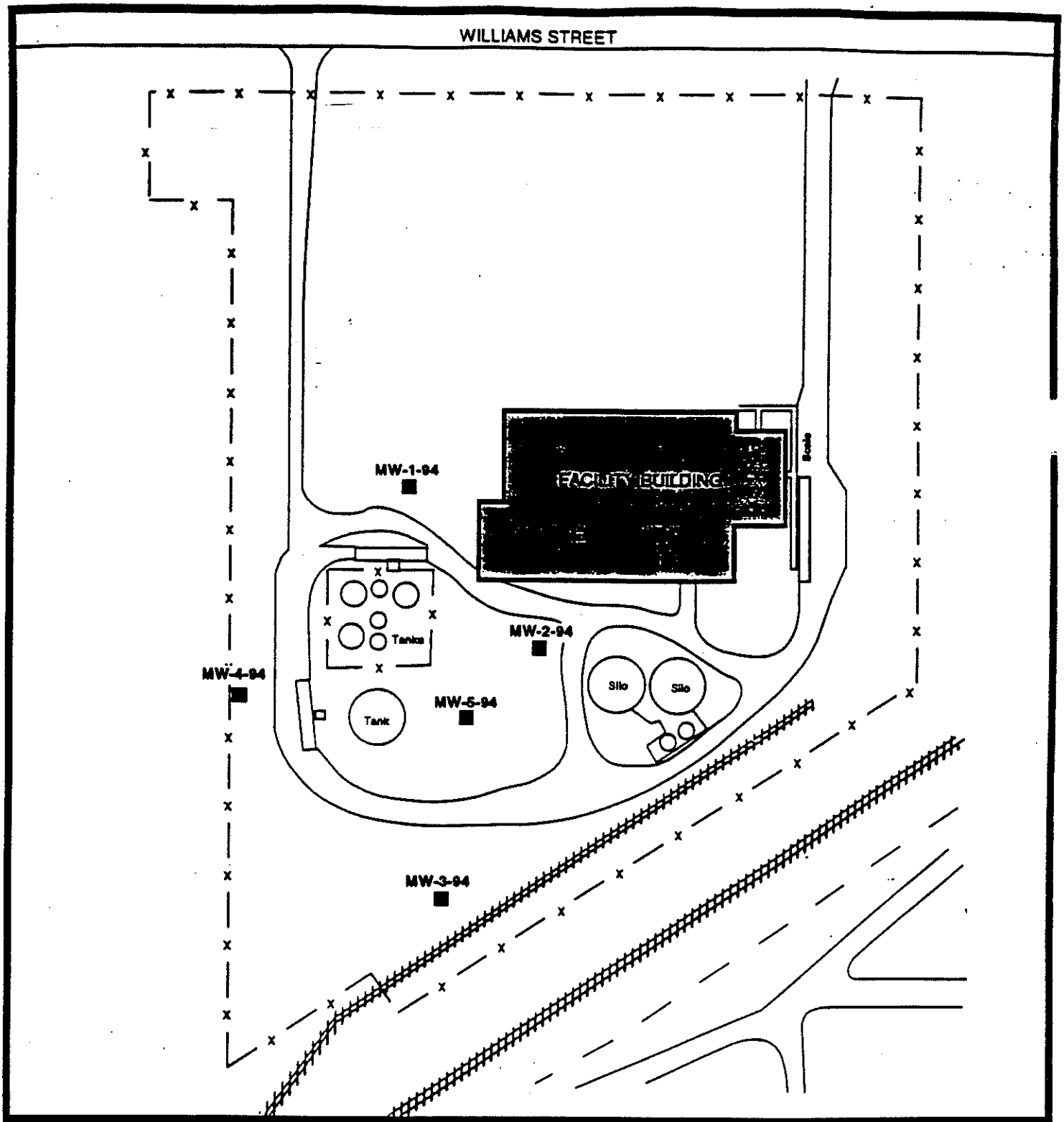
Prior to development of a final RAP, permanent monitoring wells will be installed to confirm the nitrate concentrations obtained from the ground water samples collected with the Geoprobe during the previous GRK&A Limited Phase II Real Estate Investigation. The diked area in which the liquid nitrogen tanks are located will be surrounded with wells to determine the horizontal extent of the contamination. GRK&A does not anticipate that the nitrate has migrated much beyond the diked area.

GRK&A anticipates installation of five monitoring wells will be required at the site. Four of the monitor wells will be utilized to define the horizontal extent of the nitrate occurrences and the fifth well will be placed in the area anticipated to have the highest nitrate concentration, to determine the maximum nitrate concentration which may require attenuation. Figure 5, Proposed Monitor Well Location Map, depicts the anticipated placement of the five monitoring wells in the nitrate impacted area. These monitoring wells will be utilized to confirm the ground water flow direction previously reported by Earthfax.

In addition, during the advancement of the soil borings required for installation of the monitoring wells, split spoon samples will be collected at five foot intervals for soil classification purposes. Three of the five monitor well borings will be advanced to a lower confining layer which Earthfax has indicated exists at approximately 25-30 feet beneath the site.

3.2 Hydraulic Conductivity

Determination of the hydraulic conductivity will allow calculation of the velocity of the ground water at the site and development of an appropriate monitoring plan. The hydraulic conductivity will be estimated from grain size curves and a laboratory hydraulic conductivity test from samples collected from the saturated material during the monitoring well boring advancement. GRK&A excepts that it will need grain size analyses of at least seven samples of saturated material and a single hydraulic conductivity test to estimate the hydraulic conductivity at the site.



MW-1-94 ■ Approximate Location of Proposed Monitor Well

—x—x— Fence Line

Railroad Tracks

Base map provided by EarthFax, Inc. of Okemos, Michigan.

NORTH

PROPOSED MONITOR WELL LOCATION MAP

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

SCALE: 1" = 100' DATE: 4-18-94

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

GRK & A

94019 / SJB

FIGURE 5

3.3 Surface Soil Nitrate Concentrations

The nitrate concentrations in the soil in the most recent GRK&A investigation ranged from 13 parts per million (ppm) to 670 ppm. Since this site is an industrial location and the values obtained for nitrate in the soil to date do not exceed the Michigan Act 307 Type B direct contact value of 64,000 ppm, GRK&A does not anticipate additional investigation into the vertical extent of the nitrate impacted soil will be necessary. However, additional data should be collected regarding the surface concentrations of the nitrate in the soil to confirm that a direct contact exposure hazard above Michigan Act 307 Type B or GI Type C does not exist at this location. A 40 foot grid will be developed for the nitrate impacted area which extends between GP-1-94, GP-4-94 and GP-5-94 on Figure 4 and is suspected within the diked area surrounding the liquid nitrogen storage tanks. Surface soil samples will be collected to determine the concentrations of nitrate in the impacted area. GRK&A estimates approximately sixteen surface soil samples will be collected to confirm that the surface soil nitrate concentrations are within the GI direct contact criteria.

4.0 ELIGIBILITY OF THE SITE FOR A GI TYPE C CLOSURE

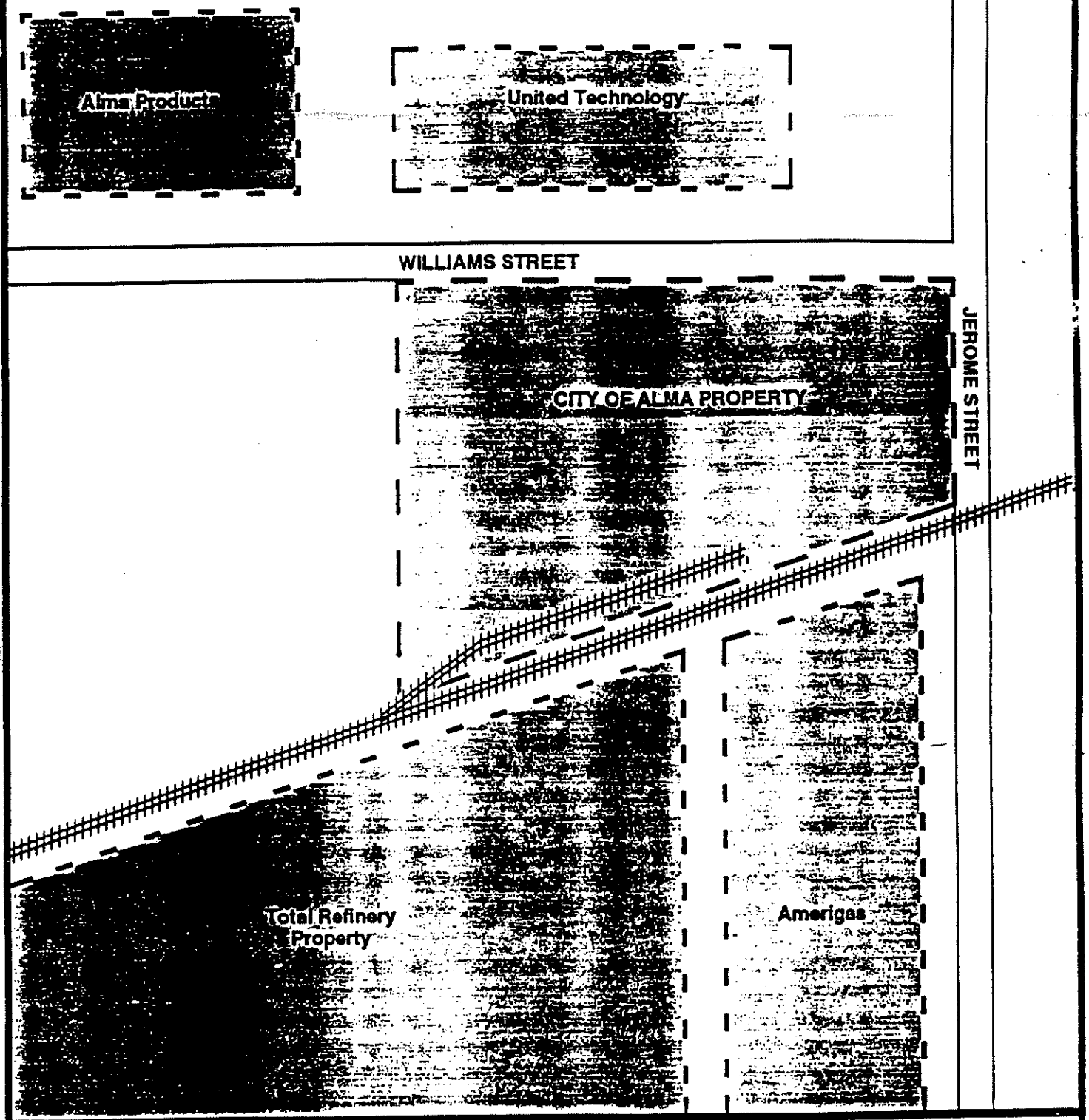
To be eligible for a GI Type C closure an applicant must demonstrate that the current and anticipated land use is in conformance with the risk assessment assumptions utilized to develop the published criteria. In addition, the applicant must be willing to implement exposure controls which will insure that exposures in excess of the GI Type C algorithm assumptions are not violated and enter into a restrictive covenant with the State of Michigan which outlines the land use and exposure restrictions agreed to upon receipt of the closure.

4.1 Zoning and Land Use

Figure 6, Surrounding Land Use-Former Michigan Agrifuels Site, indicates the subject property is located in an industrial area. The current zoning of the property is industrial, and the current as well as anticipated use of the property is also industrial.

4.2 Validity of the GI Type C Exposure Assumptions

A GI Type C request allows the applicant to forego the site specific risk assessment typically required for a Type C application. However, in foregoing the site specific risk assessment, the applicant must confirm that the exposure assumptions utilized in the ground water and direct contact algorithms are valid for the proposed activities at the site.



— — — Approximate Property Boundary

Railroad Tracks

NORTH

SURROUNDING LAND USE
FORMER MICHIGAN AGRIFUELS SITE

CITY OF ALMA
1950 WILLIAMS STREET
ALMA, MICHIGAN

SCALE: Not to Scale DATE: 4-18-94

G.R. KUNKLE AND ASSOCIATES, INC.
2209 EULER ROAD, SUITE 1
BRIGHTON, MICHIGAN 48116

GRK & A

94019 / SJB

FIGURE 6

4.2.1 Ground Water

The water impacted by nitrates on the subject property is not the source of the potable water supply on the subject property. The subject property is serviced by a municipal water and sewer supply. Therefore, the exposure assumptions in the ground water algorithm are not valid. Instead, in accordance with Rule 709 of Michigan Act 307, the water beneath the site, which may not be in an aquifer, may be addressed by application of Type B soil criteria or by a Type C remedial action. Additional investigation into the geology at this site will determine the applicability of the ground water criterion in evaluating the nitrate concentrations present in the water.

Due to the presence of the water at approximately 15 feet beneath the site, exposure to the elevated nitrate concentrations via direct contact or inhalation are not realistic exposure pathways.

4.2.2 Soil

The nitrate concentrations in the soil samples collected at the site to date, do not exceed the GI Type C direct contact criteria. The current and proposed manufacturing processes at the site do not involve excavation or other activities which would result in direct contact exposure which would violate the GI Type C exposure assumptions.

Although the surface soils may contain elevated concentrations of nitrates, inhalation is not anticipated to be a major exposure pathway, due to the non-volatile properties of nitrate and the absence of earth moving activities which would create dust in this area.

4.3 Exposure Controls

A combination of natural and zoning controls are proposed to limit human exposure to elevated nitrate concentrations at this location.

4.3.1 Ingestion

The ground water impacted at the site is not utilized as a drinking water supply for this facility. The area is serviced by municipal water and sewer service. However, CA proposes to eliminate ingestion of the water as a potential exposure pathway by restricting any type of private well installation on the subject property. As site plans must be submitted prior to construction or a change in occupancy in this area, the CA Zoning Administrator will have direct control over enforcement of this restriction, thereby insuring the reliability of the exposure control method.

Soil ingestion is generally associated with occupancy of the site by children. Ingestion as an exposure pathway at the site will be limited by maintaining the current industrial zoning of the site. The CA Zoning Administrator will effectively control the reliability of this exposure control.

4.3.2 Direct Contact

To date, nitrate concentrations in excess of the GI Type C criteria have not been encountered at the site. Therefore, direct contact exposure controls should not be necessary for the impacted water or soil at the site. To insure that the direct contact assumptions for the soil maintain validity, the CA Zoning Administrator will make an annual inspection of the subject property to verify that the nitrate impacted soils have not been disturbed.

4.3.3 Inhalation

Due to the non-volatile nature of nitrate, inhalation of the nitrate from the undisturbed soil as it currently exists at the site is not an exposure pathway of concern at this site. If the soil is excavated and dust is generated in this process, an inhalation hazard could develop. The Restrictive Covenant for the property will include conditions which control the excavation of the soil in the nitrate impacted area to prevent creation of an inhalation hazard and to control off-site transport of the nitrate impacted soil. The CA as well as the MDNR will have control over the reliability of this exposure control.

4.4 Restrictive Covenant

The CA is prepared to enter into a restrictive covenant for the subject property which will be prepared by the CA legal counsel with input from the CA and MDNR. The restriction described in the restrictive covenant shall run with the land and shall be binding upon all heirs, successors, lessees or assigns. The restrictions shall continue into perpetuity or until it is documented that the site meets acceptable cleanup standards. Currently CA intends on incorporating the following elements into a restrictive covenant.

1. All activities which interfere with the proposed remedial action, long term monitoring or other measures necessary to assure the effectiveness and integrity of the remedial action will be prohibited.

2. Consumptive or other use of the impacted ground water underlying the property shall be prohibited.

3. Owner shall be required to provide a written notice to the MDNR of the intent to transfer any interest in the property.

4. Excavation and removal of soils in the nitrate impacted area shall be subject to supervision and regulation by the CA and MDNR to prevent creation of an inhalation hazard.

5. Owner shall grant the MDNR and its designated representatives the right to enter the property at reasonable times upon advance notice for the purpose of monitoring compliance with the remedial action plan, including the right to take samples and determine the effectiveness of remedial action measures.

6. Owner shall agree that the State may enforce the restrictions set forth in this covenant by legal action in a court of appropriate jurisdiction.

5.0 CONCEPTUAL REMEDIAL ACTION PLAN

Several remedial alternatives are available for the site at this time, the CA only intends to seek a GI Type C closure for the nitrate contamination at the site. A detailed feasibility will be prepared as part of the final Type C application.

All soil data collected to date has been within the GI Type C criteria. One ground water data point collected in GRK&A's most recent investigation did exceed the Michigan Act 307 Generic Industrial Type C health based ground water criteria. However, since deed restrictions will not allow use of the water beneath the site as a potable source the health based ground water criteria may not be applicable. Following installation of the ground water monitoring wells at this location and additional data evaluation activities, GRK&A will determine the criteria applicable to the water unit present beneath this site.

Following completion of the remedial investigation at this facility, GRK&A will prepare and submit a GI Type C application which includes the pertinent elements described in Rule 299.5717 (3) and Rule 299.5719 for the MDNR consideration. The RAP to be submitted will attempt to satisfy the requirements of Rules 299.5601, 299.5603, 299.5717 and 299.5719.

5.1 Soil

Any water soluble nitrate present in the soil on the site will be flushed by natural precipitation through the soils to the water beneath the site where it is expected to achieve the objectives discussed in Section 5.2 below.

The soil data collected to date does not indicate that soil concentrations exceed the Michigan Act 307 GI Type C direct contact criteria. Therefore, the presence of nitrate in the soil at the site does not present a dermal or ingestion hazard and additional remediation for the soil is not proposed at this time. If additional testing indicates a

direct contact hazard may be present, a barrier to exposure may be devised to eliminate direct contact exposures.

5.2 Water

Through natural attenuation and/or biodegradation the nitrate concentrations present in the ground water are expected to be found at or removed to achieve levels at or below Michigan Act 307 Type B concentration criteria prior to movement off-site.

6.0 MONITORING PLAN

Following determination of the direction and velocity of ground water flow on the site, GRK&A will install two additional monitor wells in the downgradient direction of the nitrate plume. These wells will be utilized to confirm that nitrate concentrations in the ground water in excess of Type B concentrations are not migrating off site. GRK&A will determine the frequency with which samples should be collected from the monitor wells following calculation of the ground water flow velocity at the site. For estimating purposes, GRK&A has assumed annual sample collection from four designated existing monitor wells for the first five years and sample collection from these same wells at five year intervals thereafter.

Following completion of the remedial investigation at the site, a monitoring plan will be prepared in conformance with Rule 519 (2) of Michigan Act 307 and will include the following:

(a) Location of monitoring points.
(b) Environmental media to be monitored, such as soil, air, water or biota.
(c) Monitoring schedule
(d) Monitoring methodology, including sample collection procedures
(e) Substances to be monitored,including an explanation for the selection of any indicator chemicals to be used.
(f) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits and practical quantitation levels.
(g) Quality control/quality assurance plan
(h) Data presentation and evaluation plan.
(i) Contingency plan to address ineffective monitoring.
(j) Operation and maintenance plan for monitoring
(k) How monitoring data will be used to demonstrate effectiveness of response activities.

7.0 REMEDIAL SYSTEM OPERATION AND MAINTENANCE PLAN

An operation and maintenance plan is not required for this site, assuming a Generic Industrial Type C closure.

8.0 ESTIMATED COSTS OF IMPLEMENTATION

GRK&A has prepared some preliminary cost estimates for completion of the work required to address the nitrate contamination at the CA site. The costs are based on the projection of the anticipated costs at the site, based on the data collected to date. It is assumed that the BTEX contamination present at the site will be addressed by the party responsible for the impact. The CA currently plans on working cooperatively with the BTEX PRP to limit total expenditures at the site. Therefore, the cost estimates are presented as a range, with the low end reflecting cost sharing between the CA and the BTEX PRP during performance of the field investigation, data collection and document preparation activities. In this scenario, GRK&A's role would be primarily as a reviewer and advisor, with respect to documents prepared by the BTEX PRP. The high end of the cost estimate represents the anticipated costs for GRK&A to perform all of the investigation and document preparation proposed for the site.

8.1 Completion of the Remedial Investigation $28,000-28,000

GRK&A anticipates installation of five monitoring wells, collection of water samples from the five wells following installation for nitrate analysis, collection of samples of the aquifer material to determine the hydraulic conductivity and collection and laboratory analysis of surface soil samples to determine nitrate concentrations

8.2 Preparation of GI Type C RAP $15,000-25,000

Utilizing the GI Type C criteria, GRK&A will prepare the final RAP submittal, which will include a feasibility study.

8.3 Monitoring Plan Preparation $3,000-10,000

GRK&A will prepare a monitoring plan per Rule 519 (2) of Michigan Act 307 for this site.

8.4 Installation of Additional Monitoring Wells $3,000-5,000

Following review and approval of the monitoring plan by the MDNR, two additional wells may need to be installed for compliance with the proposed monitoring plan.

8.5. System Monitoring (25 years) $4,500-18,000

Following approval of the monitoring plan and issuance of the Type C closure, monitoring will be required at the site to demonstrate compliance with Type C criteria. GRK&A has assumed annual monitoring for the first five years and sample collection every five years following. The costs of CA performing the monitoring is approximately $2,000 per annum. If CA develops a relationship with the BTEX responsible party, these costs could drop to approximately $500 per annum.

8.6 Contingency (10%) $5,350-8,600

Total Estimated Remedial Action Costs **$58,850-94,600**

STATE OF MICHIGAN

JOHN ENGLER, Governor

DEPARTMENT OF NATURAL RESOURCES

ROLAND HARMES, Director

Shiawassee District Office
10650 S. Bennett Drive
Morrice, Michigan 48857

May 17, 1994

Mr. Doug Thomas
City of Alma
525 E. Superior St.
Alma, MI 48801

Dear Mr. Thomas:

SUBJECT: City of Alma (Former Agri-Fuels Property), 1950 Williams St., Alma, Gratiot County, Michigan

The Michigan Department of Natural Resources (MDNR) has reviewed the "Proposed Remedial Investigation and Conceptual Remedial Action Plan" (PRI/CRAP), dated April 22, 1994, for the above referenced site. The proposed remedial investigation (RI) work plan was reviewed for compliance with regards to Rule 511(3) of the Michigan Environmental Response Act (MERA), P.A. 307 of 1982, as amended. The conceptual remedial action plan was reviewed for its concept only. The following comments stem from the review of the PRI/CRAP:

1. The proposal to install five (5) monitoring wells at the site at this time is acceptable, however, a contingency proposal should be submitted for additional monitoring wells should the proposed wells not adequately define the extent of contamination. The remedial investigation (RI) work plan should also include a proposal to define the vertical extent of contamination at the site.

2. The proposal to use a 40 foot grid across the area of known contamination to determine the potential direct contract threat of nitrates is acceptable, however, a contingency proposal should be included for additional sampling points should the initial sampling points not adequately define the extent of contamination. In addition, the horizontal and vertical extent of contamination must be defined in the subsurface soils.

3. The April 12, 1994 "Property Inspection Report," prepared by G.R. Kunkle and Associates, Inc. indicates an area of stained soil in a "grated area" inside the facility. This area must also be evaluated as part of the RI for the site.

4. The work plan should also address all other factors as appropriate to the site with respect to Rule 511(3) of MERA.

In regards to the conceptual remedial action plan, the MDNR is unable to comment on details of the plan until the RI is complete with respect to Rule 511(3) of MERA, however, the MDNR is in agreement with the concept of a Type C cleanup at the site. Please be advised that any Type C remedial action plan must demonstrate that it satisfies all the requirements of MERA and its Administrative Rules, including applicable or relevant and appropriate requirements (ARARs) from other environmental laws. You should refer to MERA Operational Memorandum #14, dated September 23, 1993, and to Rules 717 and 719 of MERA which contain requirements applicable specifically to Type C cleanups.

Please submit a revised RI work plan that incorporates the above listed comments by June 1, 1994. Based on the schedule submitted in the PRI/CRAP, a final RI report should be submitted by December 31, 1994 and a remedial action plan should be submitted by June 30, 1995.

If you have any questions or would like to discuss this matter further, feel free to contact me.

Sincerely,

Eric L. Van Riper
Geologist
Environmental Response Division
517-625-4621

EV:ck

cc: Mr. Gary Finkbeiner, MDAG
Ms. Pat McKay, MDNR
Ms. Kathy Shirey, MDNR
Ms. Nanette Leemon, MDNR
Mr. George Kunkle, G.R. Kunkle and Associates, Inc.
Mr. Charles Barbieri, Esq.

CITY OF ALMA, MICHIGAN

525 E. Superior, P.O. Box 278 Alma, MI 48801-0278

EXCERPT OF MINUTES

The Williams Street Property Economic Development Plan was presented to the City Commission by City Manager Thomas. This economic development plan laid out the city's efforts to market the facility since the city obtained it from the State of Michigan in 1986.

Motion by Commissioner Nyman as supported by Commissioner Gallagher to adopt the economic development plan for the Williams Street property as presented by the City Manger.

YES: Gallagher, Lyon, McDonald, Moore, Nyman, Riemersma & Stone.
NO: None.

MOTION DECLARED ADOPTED.

CERTIFICATE

I, William M. Stuckey, Clerk of the City of Alma, do hereby certify that the above resolution is a true and exact copy adopted at a special meeting of the Alma City Commission held on Monday, March 28, 1994 at 5:30 p.m.

William M. Stuckey

William M. Stuckey, City Clerk

CITY OF ALMA
WILLIAMS STREET PROPERTY
ECONOMIC DEVELOPMENT PLAN

BACKGROUND

The former Michigan Agri Fuels, Inc. facility was originally constructed in 1980-81 for the purpose of manufacturing ethanol as an alternative fuel product and utilizing the mash byproduct for agriculture feed. Unfortunately, the company was unable to complete a full production test run due to their inability to adequately resolve the dissipation of heat in the production process. As such, the proprietors were not able to fully access available financing sources and ultimately the facility was closed later in 1981.

The approximately 34,000 square foot facility with 20.04 acres of property located at 1950 Williams Street was deeded to the State of Michigan for non-payment of the 1981 real property taxes, as a result of the May 1, 1984 tax sale. Subsequently, the Michigan Department of Natural Resources, Real Estate Division issued a quit claim deed for the property to the City of Alma on August 14, 1986.

CITY EFFORTS TO MARKET FACILITY

The original intent of the City was to market the facility for industrial development purposes which would result in new investment, create employment opportunities and provide additional property tax revenue for the community. The site is located adjacent to one of the City's industrial parks in an area zoned G-1 (General Industrial) and includes industrial amenities such as a rail spur, fencing and truck scales. Unfortunately, the site also has many drawbacks including a deteriorated 100 foot tower section, large tanks and related concrete foundations within a portion of the enclosed building, a lack of HVAC equipment, poor site layout for alternative industrial uses and multiple levels within the buildings resulting in obstacles for moving product within the facility.

Given the origins of the facility, the City's initial marketing efforts centered on ethanol production opportunities. Several contacts and inquiries were made to firms specializing in such operations from 1986 to 1989, however no significant interest resulted from these discussions. Based upon three years of directed marketing and numerous contacts with industries in the field of alternative fuels, the City reached the conclusion that it was unlikely the facility would ever reopen as an ethanol production plant.

In 1989, the City was approached by the Procter & Gamble Company (P & G) of Cincinnati, Ohio concerning the prospective purchase of the facility. Subsequently, on June 5, 1989, P & G and the City agreed to the sale of the personal property on the site for the price of $220,000. P & G planned to remove the production equipment for use in a manufacturing facility in Mehoopany, Pennsylvania. The removal project was completed in the fall of 1990. Additionally, on March 14, 1990 the City sold the western 4.34 acres of property to Total Petroleum, Inc. for the refinery's long term needs at a price of $22,463.84.

With the removal of the personal property, the City redirected the marketing of the facility for general industrial use. However, the overall size and layout of the facility (as identified above) continued to present significant obstacles for all of the companies which had expressed interest in the property. In August, 1990, the City was successful in negotiating a lease with William Mueller & Son, Inc. for the use of the following items on the site: one 500,000 gallon tank, two 75,000 gallon tanks, access/use of the rail spur serving the site and the ability to repair and utilize the existing truck scales. (This lease was renegotiated in March, 1992 to allow the additional use of a 75,000 gallon tank, two 10,000 gallon tanks and 850 square feet of office space within the facility. The successor lease remains in effect through June 30, 1997.) On December 3, 1990 the City also leased two grain storage bins at the site to Heritage Bean & Grain Company for short-term storage of grain products. (Subsequent short term leases for these bins were also entered on October 12, 1991 and again on November 23, 1993.)

Although much economic development activity had taken place concerning the site, the long term goal of the City to secure an industrial client to invest in the property, create employment opportunities for the area and restore the facility to the tax rolls had not materialized.

DISCUSSIONS WITH TERRY INDUSTRIES, INC.

In November 1993, the City commenced negotiations with Terry Industries, Inc. of Hamilton, Ohio concerning the possible lease/purchase of the Williams Street site. Terry Industries, Inc. is a holding company with divisions of Slurry Seal of Southern Ohio, Inc., Terry Materials, Inc. and T.M. Rand, Inc. Terry Industries manufactures asphalt emulsion products for use in street sealant and construction projects. Additionally, the company has divisions for the application of their products for roadway and hard surface projects along with construction material testing services. Terry Industries is desirous of expanding their market share throughout Michigan and Alma represents an ideal location for their operation due to the community's strategic location in the center of the lower peninsula. Furthermore, the configuration of the site is well suited to their proposed development. Following a significant negotiation process, the City and Terry Industries consummated a "Letter of Intent" on February 22, 1994 which contemplated a lease/purchase of the property. When completed, Terry Industries anticipates a total investment of approximately $2 million and the creation of forty-five new jobs in the community.

CONCLUSION

Since acquiring the facility in 1986, the City of Alma has endeavored to market the Williams Street property with the goal of encouraging industrial development for job creation, new investment and restoring the property to productive status on the tax rolls. Although several limited successes were accomplished in the nine years of this effort, it has become obvious that the facility in its present configuration presents many obstacles to overcome. Terry Industries' interests in the site represents the most likely opportunity the City has encountered which may lead to the achievement of the organization's economic development goals for this property.

February 21, 1994

City of Alma, Michigan
P.O. Box 275
Alma, Michigan 48801

Re: Letter of Intent

Dear Sirs:

We understand that the City of Alma ("Lessor") would like to sell the "Agr-Fuels" property which it owns on Williams Road in Alma, Michigan and we are willing to spend the time and effect to formulate and complete a lease and option to purchase as follows:

1. Lessee: Terry Industries, Incorporated, an Ohio corporation.

2. Premises: The real estate (known as the Agri-Fuel facility) consisting of approximately 15.71 acres of land located on Williams Road in Gratiot County, Michigan ("Premises") together with all improvements and equipment located thereon. Lessee shall rent the Premises subject to a Lease Agreement ("Mueller Lease") between the Mueller Bean Company ("Mueller") and Lessor dated March 24, 1992 under the terms of which Mueller has the non-exclusive right to use the truck scale, the railroad spur servicing the Premises, all roadways and the restrooms (all of which are collectively hereinafter referred to as the "Common Areas") and leases certain storage tanks and office space. Decisions regarding termination of the Mueller Lease in the event of breach of contract and/or the renewal of the Mueller Lease shall be made by Lessee.

Except as set forth herein, Lessor Shall retain all its duties and obligations under the Mueller Lease.

3. Term: The initial term of the Lease shall commence upon the execution of the Lease by the Lessor and the Lessee and shall terminate five (5) years after the Lessee opens the plant which it intends to operate on the Premises for business ("Rent commencement Date").

4. Rent: Beginning on the Rent Commencement Date, Lessee shall be obligated to Lessor for rent in the amount of Two Thousand ($2,000) Dollars per month. Payment shall be in the manner hereinafter set forth.

5. Utilities: Lessee shall pay for all utilities which it consumes on the Premises, including but not limited to gas, electricity, water, sewer and telephone charges. It is understood that utilities consumed by Mueller shall be paid for by Mueller and Mueller is responsible to pay all charges for its use of the railroad spur.

6. Triple Net Lease. The Lease entered into between the parties shall be in the form of a "Triple Net" Lease with the Lessee being responsible for taxes, insurance and maintenance of the premises. Real estate taxes shall be assessed by the Lessor only upon that portion of the real property actually occupied and used by the Lessee, the remaining portion being understood to be free from tax obligation while titled in the name of the Lessor.

7. Insurance: Lessee, at its expense, shall maintain Commercial General Liability Insurance on the Premises with Lessor named as an additional insured. The Lessor shall, if possible, cause Mueller to amend its insurance coverage to provide Lessee as an additional insured on its policy with respect to the common areas shared by Mueller and Lessee. In such event Lessee shall also name Mueller as an additional insured upon its liability coverage. All such liability insurance shall be in an amount of not less than One Million ($1,000,000.00) Dollars.

Lessee, at its expense, shall keep the Premises insured against loss by fire or other casualty with extended coverage in an amount not less than one hundred (100%) percent of the market value and Lessor shall be named as an additional insured thereon.

8. Use of the Premises: Lessee may use and occupy the Premises for any lawful purpose. Lessor will warrant and represent to the Lessee that the Premises are zoned for use by Lessee for the manufacturing, processing, sales and office activities which Lessee has disclosed it intends to conduct thereon.

9. Lessee's Indemnification: Lessee shall save the Lessor harmless from any claims, costs, and expenses arising directly or indirectly out of any breach on the part of the Lessee of any of its duties or obligations or covenants to be performed by Lessee under the terms of the Lease or any act or omission of Lessee or its agent or contractors occurring on or about the Premises. Upon the expiration or earlier termination of the Lease, Lessee shall remove any "hazardous substance" or petroleum (including crude oil or any derivative thereof) that it brought onto the Premises, shall

complete any remediation that is required, and shall indemnify, defend and hold Lessor harmless from any claims, damages, expenses (including consultant and attorney fees), or fines arising out of Lessee's breach of these obligations. These indemnification obligations of the Lessee shall survive the expiration or earlier termination of the Lessee or the Closing, in the event of the sale of the Premises to Lessee.

10. Lessor's Indemnification: Lessor shall indemnify Lessee, its officers, employees, directors and shareholders from any and all claims, costs and expense arising directly or indirectly out of any breach on the part of the Lessor of any of its duties or obligations or covenants to be performed by the Lessor pursuant to the terms of the Lease or any act or omission of Lessor or any of its employees, agents or contractors. In addition, Lessor shall hold each harmless from any claims, costs or expenses (including actual consultant or attorney fees), incidental or consequential damages, or fines directly or indirectly arising out of any currently existing release of any "hazardous substance" or petroleum (including crude oil or any derivative thereof) discharged, dumped, spilled, leaked, or placed into, under, on or around the Premises by any person or entity and any such loss, damage, etc. that may in the future arise from such existing conditions including continued migration of hazardous substances onto the Premises. These indemnification obligations of the Lessor shall survive the expiration or earlier termination of the Lease or the Closing, in the event of the sale of the Premises to the Lessee.

11. Lessee's responsibility with respect to existing contamination of the Premises. The Lessee and Lessor acknowledge that preliminary testing of the Premises has disclosed the existence of certain ground water contamination which is believed to be entering the Premises from adjacent land owned by Total Petroleum Corporation. Lessee's interest in development and possible purchase of these Premises is specifically contingent upon Lessor providing adequate security that the Lessee shall not be responsible for any cleanup costs or expenses for problems that may already exist upon the Premises or may continue to enter the Premises through no fault or contribution by the Lessee. Contamination levels of the Premises shall initially be established by an Initial Environmental Audit conducted for the purpose of establishing the current condition of the Premises. The Lessor and Lessee shall select environmental experts that are acceptable to both and arrange for the completion of such audit. The Environmental Audit and all costs related thereto shall be born by the Lessor. If the estimated costs of such audit exceed $10,000, plus the salvage value of the silos as provided in paragraph 17, and the parties are not able to agree upon the method of

payment for such excess, the Lessor may elect to withdraw from this agreement in its entirety. The scope of the Environmental Audit shall be sufficient, when added to information already available, to establish as far as reasonably possible, the nature and extent of any current contamination of the Premises and to satisfy the requirements of the Department of Natural Resources of the State of Michigan in granting a "Covenant Not to Sue" or other similar protective order from the State of Michigan hereinafter referenced. To that end, the Lessor and Lessee shall immediately cooperate and make application to the Department of Natural Resources of the State of Michigan for a "Covenant Not to Sue", or other similar protective order from the State of Michigan, the terms of which will be in favor of the Lessee and shall be assignable to future owners or lessees of the property by Lessee and which shall in substance verify that no regulatory agency of the State of Michigan may at any time pursue the Lessee for damages, expenses or similar contributions toward the cleanup of the existing contamination, or any exacerbation thereof that is caused by third parties or activities unrelated to Lessee's business actions. The closing of this transaction is specifically contingent upon the ability of the Lessor and Lessee to obtain such "Covenant Not to Sue", or other similar protective order from the State of Michigan. In addition, and separate from said Covenant, the Lessor shall provide to the Lessee written indemnification requiring the City of Alma to indemnify and hold the Lessee, its officers, agents, employees, directors and shareholders, fully and completely harmless from any and all claims or damages, including incidental or consequential damages, and actual consultant fees and attorney fees that the Lessee may at any time encounter due to the existing contamination and/or exacerbation thereof resulting from actions or circumstances of parties or elements other than the Lessee.

12. Repair the Premises: During the term of the Lease, Lessee will keep the Premises in a clean, safe, orderly and sanitary condition. In addition, Lessee shall be responsible for performing such routine maintenance and repairs it deems necessary. Lessee shall have the benefit of the terms of the Mueller Lease with respect to maintenance of areas of the Premises leased to Mueller.

13. Signs: Lessee may erect signs on the Premises provided the same comply with the applicable zoning ordinance or resolution. Any sign installed by the Lessee shall be removed at the expiration of the Lease or last extension thereof.

14. Assignment and Subletting: Lessee shall be permitted to assign or sublet all or any part of the leased Premises on such terms and subject to

such conditions as are acceptable to the Lessee in its sole discretion. During the term of the Lease, and any extension thereof, the Lessor shall not assign the Lease or transfer any ownership interest in the Premises to any third party without the prior written consent of Lessee.

15. Fire or Other Casualty or Eminent Domain: If any substantial part of the Premises is taken by any public authority under the power of eminent domain or is destroyed by fire or other casualty, and/or there is damage to the businesses of the Lessee, Lessee shall have the right to terminate the Lease. There shall be an equitable abatement or rent during the period that the Premises is wholly or partially unavailable for use by the Lessee and the Lessee shall be entitled to all condemnation fees paid related to loss of use of the Premises or loss of business by Lessee.

16. Landscaping and Garbage Removal: Lessee shall be responsible for the removal of its garbage and shall landscape and maintain the grass areas on the Premises.

17. Fixtures and Alterations: Lessee shall have the right to make such improvements or alterations to the Premises as Lessee deems necessary for the operation of its business; provided that such improvements are first submitted to the Lessor for approval and are done in compliance with all existing laws, rules and regulations. Lessee may attach such trade fixtures to the Premises as Lessee deems necessary for the operation of its business thereon. At the termination of this Lease, Lessee shall have the right to remove any above ground fixture attached to the Premises or above ground improvement made to the Premises; provided that Lessee shall repair any damage caused by such removal.

During the first 36 months of the Lease, Lessee shall make the following improvements (collectively, hereinafter referred to as "Improvements") to the Premises which shall remain upon termination of the Lease. Improvements shall be made in the priority hereinafter set forth and Lessee's obligation to complete same shall be limited as set forth in paragraph 18.

A. Remove concrete structures and site preparation as remains from removal of grain silos.

B. Install overhead doors in locations (South side of building) acceptable to Lessee.

C. Remove concrete foundations as exists on the floors in the sections known as boiler room and mezzanine area.

D. Perform minor repairs as may exist to the roof, windows, doors, and siding on the building that will affect immediate occupancy.

E. Install an automobile parking area (to be used as construction staging area) and improve roadways by grading and adding aggregate.

F. Remove the existing tower or reduce it to the level of the remaining structure.

G. Prepare and paint existing tanks.

H. Hard surface roadways and parking areas.

I. Install landscaping, perform any necessary grading and seeding of existing grounds such that only general maintenance (grass cutting) will be necessary, except for those areas to be maintained by Mueller.

J. Repair existing problems with roof, windows, doors, and siding on the building which comprise the premises.

K. Repair or improve the plumbing at the existing tank farm.

All of the Improvements shall be completed by Lessee no later than 36 months after the Term Commencement Date. Any salvage value realized as a result of any Improvement or alterations done to the Premises, other than the removal of existing silos and grain handling equipment, shall remain Lessee's. Lessee shall be solely responsible for scheduling the sequencing and completion dates of all Improvements. The Lessor shall be responsible to make arrangements for the removal of the existing silos and grain handling equipment upon the property and the termination of any lease obligations associated therewith. The Lessor shall be entitled to any proceeds or salvage from such removal but same shall be conducted in an orderly fashion and in such a manner as to leave the Premises in a neat and orderly condition. The removal of said silos and grain handling equipment shall be conducted pursuant to a timetable established by the Lessee and in a manner not to interfere with Lessee's efforts to prepare the Premises for its business use.

18. Payment for Improvements: For the first 24 months following the Rent Commencement Date, Lessee shall accrue its rent and use the same to

pay for the cost of the Improvements. On the 30th month following the Rent Commencement Date, Lessee shall submit evidence to Lessor of the cost of the Improvements that were paid for by Lessee. The Lessee shall be entitled to deduct the cost of said Improvements from the accrued rent. If the cost of the Improvements is less than $48,000.00, Lessee shall pay the difference to the Lessor as rent.

In addition, rent paid by Mueller from the Term Commencement Date until the expiration of the existing Mueller Lease in a total amount not to exceed $83,000 shall be held in an escrow account by the Lessor and may be used by the Lessee for the purposes of paying for the costs of the Improvements. Provided, however, that in the event that City is able to obtain funding from grants or other sources to accomplish the improvements required by Lessee, then Mueller lease rentals will be released to the City to the extent that such rentals are replaced by grant or other funding. The Lessee shall provide Lessor verification of incurred expenses on a monthly basis and the Lessor shall reimburse the Lessee for such expenses from the Mueller Lease funds. It is understood and agreed that in the event the Mueller Lease is terminated and as a result thereof the lease payments are no longer available to the Lessor the Lessor's responsibility hereunder shall be limited to the total amount of lease payments actually received from Mueller. In that event the Lessee's responsibility for completion of the Improvements shall likewise be limited to an amount not to exceed its accrued rent plus the Mueller Lease funds actually received by Lessor.

In the event that total Improvement costs exceed the rent withheld by the Lessee and the Mueller rent held by the Lessor ($131,000), Lessee shall be responsible for the payment of all such additional costs. Any Mueller rent payments not used by Lessee to pay for the cost of the Improvements shall be paid over to Lessor.

19. Option to Purchase: During the term of this Lease or any renewal term, Lessee shall be given the option to purchase ("Option") the Premises for the sum of $200,000.00 Dollars ("Option Price"). Lessee shall be given a credit against the Option Price equal to 70% of the rent paid by it from the 25th month through the 60th month of the initial lease term. Lessor shall convey title to the Premises by means of a General Warranty Deed and shall be responsible for any transfer tax due as a result of the transaction. At the time of the Closing, the Premises shall be free, clear and unencumbered except for such easements, conditions and restrictions (collectively hereinafter referred to as "Permitted Encumbrances") which affect the Premises and which are approved by the Lessee prior to the

Term Commencement Date. Real estate taxes and assessments shall be prorated to the date of the Closing based on the most recent tax bill that is available prior to the Closing. All representations and warranties made by the Lessor in the Lease shall survive the Closing. Lessor shall be responsible for: (a) the cost of compliance with any law that requires a disclosure to a governmental agency as a result of the sale of the Premises to the Lessee; and (b) the cost of bringing the Premises into compliance with applicable laws, rules and regulations so that it can be conveyed to Lessee as provided by the terms of the Option, unless the reason for the non-compliance is the result of Lessee's sole negligence.

20. Option to Renew: Provided Lessee is not otherwise in default under the terms of the lease, Lessee shall be given the option to renew the Lease for 10 consecutive terms of 5 years each of the same terms and conditions as are set forth in the Lease except for rent. Rent for each renewal term shall be adjusted to account for percentage changes in the CPI Index that occur between the commencement date of the previous term and the commencement date of the renewal term. However, in no event shall the rental rate increase by more than 15% of the rental rate paid during the immediate preceding term.

21. Conditions to Lessee's Obligations Under the Lease: Lessee's obligation under the Lease shall be subject to the following conditions, any or all of which may be waived by the Lessee:

A. To the extent permitted by applicable State statute, and subject to the ability of Lessee to meet the municipal policy and qualifications, Lessor agrees to grant Lessee any allowable tax abatements for improvements or equipment which Lessee intends to install on the premises.

B. Lessee shall have received evidence that title to the Premises is vested in the Lessor and is subject only to those Permitted Encumbrances which have been approved by the Lessee.

C Lessee shall have received an acceptable covenant from the Michigan Department of Natural Resources that will not sue Lessee to seek to hold Lessee responsible for any liability or cost associated with any contamination on the Premises which is not caused by Lessee.

D. Lessor, Lessee and Mueller have worked out the terms and conditions of any agreement under the terms of which Mueller agrees to waive its right of first refusal to purchase the Premises contained in the Mueller Lease in exchange for Lessee's agreement not to lease or sell any

part of the Premises to a competitor of Mueller for period of 5 years after the Mueller Lease ends if Lessee elects not to renew the Mueller Lease.

22. Title Insurance: Prior to the Term Commencement Date, Lessor, at it sole cost and expense, shall provide Lessee with commitment for Lessee's policy of title insurance so that the Permitted Encumbrances affecting the Premises can be identified. In addition, Lessor shall, on Term Commencement Date, at Lessor's cost, provide Lessee with a Lessee's title policy ("Title Policy") insuring Lessee's right to occupy and purchase the Premises pursuant to the terms of the Lease and the Option, subject only to Permitted Encumbrances. All standard exceptions shall be deleted from the Title Policy in a manner satisfactory to Lessee.

23. Termination: Lessee shall have the right to terminate the Lease at any time upon 180 days prior written notice to Lessor. Thereafter, Lessee shall have 60 days to remove its fixtures, equipment and other personal property from he Premises.

24. Quite Enjoyment: Provided Lessee keeps and performs all it performs all its covenants under the Lease, Lessor will warrant that Lessee shall peacefully and quietly hold, occupy and enjoy the Premises during the term of the Lease and nay renewal term without any hindrance or molestation by Lessor or any persons lawfully claiming under Lessor.

25. Right of Entry: Lessee and its consultants and contractors shall, upon the execution of this Letter of Intent, have the right to enter upon the Premises for purposes of conducting such tests and studies of the Premises as Lessee deems necessary for its intended use of the Premises.

26. Lease Agreement: The terms of this Letter of Intent shall be incorporated into a more comprehensive Lease Agreement ("Lease") by and between the parties hereto. The obligations of the Lessee shall be subject to the conditions set forth in this Letter of Intent and also the satisfactory completion of Lessee's due diligence revue of the Premises, the receipt of the Title Policy, and the receipt of satisfactory representations and warranties from the Lessor concerning the Premises and the binding effect of the Lease and Option. Lessor's representations and warranties shall survive the expiration or earlier termination of the Lease or the sale of the Premises to Lessee. The initial draft of the Lease shall be prepared by Lessee's attorney.

27. Duration: The terms of this Letter of Intent are open for acceptance by you until noon, February 15, 1994. If you have not accepted this Letter of Intent by that date, this Letter of Intent shall be null and void.

Lessor and Lessee acknowledge that none of the above terms are binding upon any party until they are more fully developed and agreed upon in writing. In order to induce us to proceed with the foregoing, we understand that Lessor hereby agrees not to sell, lease or offer to sell or lease the Premises or any part of it to any third party until after March 1, 1994.

If the foregoing is acceptable to you, please sign and return a copy to us. We look forward to the completion of this transaction for the mutual benefit and prosperity of all concerned.

TERRY INDUSTRIES, INCORPORATED

BY: _____
William E. Goggin, attorney
for Terry Industries, Inc.

The undersigned Lessor hereby accepts the terms and conditions set forth in this Letter of Intent.

CITY OF ALMA, MICHIGAN

BY: _____
City Clerk
City Commissioner 7-22-94

Dated:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Agri-Fuels, Inc.

MDNR Docket No.:
AOC-ERD-94-013

Williams Road
Alma, Michigan

Proceeding Under Section 10f and 14b(1) of the Michigan Environmental Response Act, Act 307 of 1982, as amended, MCL 299.610f and 299.614b(1).

AFFIDAVIT OF TRANSFEREE MICHIGAN PAVING & MATERIALS COMPANY IN SUPPORT OF TRANSFER OF COVENANT NOT TO SUE PROVIDED BY ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY

STATE OF MICHIGAN)
)ss
COUNTY OF Wayne)

I, Gregg Campbell, being first duly sworn, deposes and states as follows:

1. I am the President of Michigan Paving & Materials Company, a Michigan corporation.

2. Michigan Paving & Materials Company is in the process of acquiring free title to the former Agri-Fuels property as referenced in Administrative Order of Consent for Response Activity, AOC-ERD-94-013 (AOC), from Terry Asphalt, Inc.

3. In order to obtain the Covenant Not to Sue provided in that AOC, Michigan Paving & Materials Company, as the transferee, attests to the following:

(a) That Michigan Paving & Materials Company is financially capable of developing and reusing the property in accordance with the Covenant Not to Sue as set forth

in Section XXVII of the AOC and attests that it will be conducting the same type of asphalt operations as Terry Asphalt Materials, Inc.;

(b) That Michigan Paving & Materials Company is not affiliated in any way with any person that may be liable under former Section 12 of the Michigan Environmental Response Act for Existing Contamination at the Facility as the terms "Existing Contamination" and "Facility" are defined by the AOC; and

(c) That the redevelopment and reuse of the former Agri-Fuels property by Michigan Paving & Materials Company will not (1) exacerbate or contribute to Existing Contamination or cause new contamination; (2) interfere with implementation of response activities, or (3) pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the Facility.

4. By making the above sworn statements, Michigan Paving & Materials Company submits that it is entitled to the State's approval of the transfer of the Covenant Not to Sue as provided by Section 27.5 of the AOC. Michigan Paving & Materials Company confirms that upon consummation or approval of such transfer, it will abide by and assume responsibility for the obligations of Terry Asphalt Materials, Inc. as set forth in the AOC.

5. If sworn as a witness, I can competently testify to the above information.

Print Name: Gregg Campbell
Title: President, Michigan Paving & Materials Company

Subscribed and sworn to before me, this 1st day of December, 2014.

Toni L. Strong
Notary Public
Wayne County, Michigan
Acting in Wayne County, Michigan
My commission expires: 11/30/18

TONI L STRONG
Notary Public, State of Michigan
County of Wayne
My Commission Expires 11-30-2018
Acting in the County of Wayne

32128:00001:2082383-2