

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

The Shiawassee Sanitary Landfill Group
Shiawassee Sanitary Landfill
Owosso Township
Shiawassee County, Michigan

MDEQ Reference No. AOC-RRD-13-002

Proceeding under Section 20134(1) of Part 201, Environmental Remediation, of the
Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

**ADMINISTRATIVE ORDER BY CONSENT
FOR RESPONSE ACTIVITIES AND
PAYMENT OF RESPONSE ACTIVITY COSTS**

**ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITIES
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ATTACHMENTS

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I. JURISDICTION

This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ); the Michigan Department of Attorney General (MDAG); and Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc., collectively referred to from here on as "Respondents", pursuant to the authority vested in the MDEQ and the MDAG by law, including Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This Order concerns the performance by Respondents of certain response activities at or nearby the former Shiawassee Sanitary Landfill, Owosso Township, Shiawassee County, Michigan (Landfill), and payment of response activity costs.

II. DENIAL OF LIABILITY

The execution of this Order by Respondents is neither an admission or denial of liability with respect to any issue dealt with in this Order, nor an admission or denial 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 Respondents and the State and their successors. Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc. are jointly and severally liable for the performance of all activities specified in this Order and for any penalties that may arise from violations of this Order. Any change in ownership, corporate, or legal status of any Respondent, including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter a Respondent's responsibilities under this Order. To the extent that any Respondent is, or becomes the

owner of a part or all of the Facility, such Respondent shall provide the MDEQ with written notice prior to its transfer of ownership of part or all of the Facility and shall provide a copy of this Order to any subsequent owners or successors prior to the transfer of any ownership rights. Respondents shall comply with the requirements of Section 20116 of the NREPA, MCL 324.20116; and the Part 201 Administrative Rules (Part 201 Rules) in the manner set forth in this Order.

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

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

IV. STATEMENT OF PURPOSE

In entering into this Order, it is the mutual intent of the Parties to:

- (a) To the extent it is applicable, achieve and maintain compliance with Section 20107a(1) of the NREPA, and the Part 201 Rules in the manner set forth in this Order;
- (b) Perform response activities specified in Paragraph 7.1 of this Order;
- (c) Conduct all work specified in this Order by the date specified in Paragraph 7.1 of this Order;
- (d) Minimize litigation;
- (e) Reimburse the State for Past and Future Response Activity Costs as described in Section XV (Reimbursement of Costs) of this Order;
- (f) Provide a mechanism for funding long-term O&M, monitoring, and ensuring the integrity and effectiveness of response activities.

V. DEFINITIONS

5.1 “Day” means a calendar day.

5.2 “Effective Date” means the date the RRD Chief signs this Order.

5.3 “Facility” means any area where a hazardous substance released from the Property identified in Attachment 1 of this Order, in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use, has been released, deposited, disposed of, or otherwise comes to be located.

5.4 “FAM” means financial assurance mechanism, provided by Respondents to assure the long-term operation and maintenance, monitoring, and ensuring the integrity and effectiveness of the response activities performed at the Property and Project Area.

5.5 “Future Response Activity Costs” means all costs incurred by the State that are not included in Attachment 2 of this Order, to develop this Order, oversee, enforce, monitor, and document compliance with this Order, and to perform response activities required by this Order, including, but not limited to, costs incurred to: monitor response activities at the Project Area, observe and comment on field activities, review and comment on Submissions, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, prepare and review cost reimbursement documentation, and perform response activities pursuant to Paragraph 7.6 (The MDEQ’s Performance of Response Activities) and Section XI (Emergency Response) of this Order. Contractor costs are also considered Future Response Activity Costs to the extent that they are incurred in conjunction with the above-described activities.

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

5.7 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*, criteria developed pursuant to MCL 324.20120a(1), and the Part 201 Administrative Rules.

5.8 "Party" means either Respondents or the State. "Parties" means Respondents and the State.

5.9 "Past Response Activity Costs" means response activity costs that the State incurred as set forth in the attached Cost Summary Report, Attachment 2, prior to the Effective Date of this Order that are not otherwise defined as Future Response Activity Costs in Paragraph 5.5 of this Order.

5.10 "Project Area" means the area contained within the boundaries depicted on Attachment 3 of this Order.

5.11 "Property" means the property described in the legal description provided in Attachment 1 of this Order.

5.12 "Respondent" means one of the following individual entities: Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc., and their successors. "Respondents" means all of the aforementioned entities, collectively.

5.13 "Response Activity Costs" means all costs incurred in taking or conducting a response activity, including enforcement costs.

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

5.15 "State" or "State of Michigan" means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

5.16 "Submissions" means all plans, reports, schedules, and other submissions that Respondents are required to provide to the State or the MDEQ pursuant to this Order. "Submissions" does not include the notifications set forth in Section XII (Force Majeure) of this Order.

5.17 Unless otherwise stated herein, all other terms used in this Order, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Rules, shall have the same meaning in this Order as in Part 3, Part 201 and the Part 201 Rules.

VI. FINDINGS OF FACT AND DETERMINATIONS

The State makes the following Findings of Fact and Determinations.

6.1 The Property is a former gravel pit that was licensed as a landfill under the former Garbage and Refuse Disposal Act, 1965 PA 87, as amended (Act 87) from approximately 1967 to 1973, and was owned and operated by Mr. Frank Fisher. The property on which the landfill is located is presently owned by Evergreens, Inc., a company created by Mr. Fisher in 1983.

6.2 Several substances that are "hazardous substances" as that term is defined in Section 20101(1)(x) of the NREPA, are present at and emanate from the Property in concentrations in excess of the Part 201 cleanup criteria for unrestricted residential use.

6.3 The Property is a Facility as that term is defined in Section 20101(1)(s) of the NREPA.

6.4 An investigation and periodic monitoring of private wells downgradient from the Property indicate that volatile organic compounds (VOCs) are emanating from the Property and flowing northerly and easterly towards residential private water

supplies. Analytical data obtained from at least one private drinking water well has demonstrated levels of contamination that exceed the Part 201 residential drinking water criteria. Landfill waste continues to exist at the Facility and is in contact with the water table. The continued presence of these substances at the Facility and continued migration of these substances constitutes a “release or threatened release” within the meaning of Section 20101(1)(pp) and 20101(1)(ccc) of the NREPA.

6.5 Each Respondent is a “person” as that term is defined in Section 301(h) of Part 3 of the NREPA. “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

6.6 The following persons are liable pursuant to Section 20126 of the NREPA.

(a) The State alleges that each Respondent, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport, disposal, or treatment of a hazardous substance owned or possessed by that Respondent at the Facility. Information in the MDEQ’s files indicates that each Respondent may have possessed and arranged for the transport of hazardous substances to the Facility and that hazardous substances of the same kind owned or possessed by each Respondent are present at the Facility. Therefore, the State alleges that each Respondent is a person who is liable pursuant to Section 20126(1)(d) of the NREPA.

6.7 In order to protect public health, safety, and welfare, and the environment, and to abate the danger or threat caused by the release or threat of release of hazardous substances at the Facility, it is necessary and appropriate that response activities provided in the Order be performed at the Facility.

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

BASED ON THE FOREGOING ALLEGED FACTS AND DETERMINATIONS, RESPONDENTS, WITHOUT ADMITTING THE FOREGOING ALLEGED FACTS AND DETERMINATIONS, HEREBY AGREE TO PERFORM THE RESPONSE ACTIVITIES AND PAY STATE-INCURRED RESPONSE ACTIVITY COSTS AS SPECIFIED IN THIS ORDER.

VII. PERFORMANCE OF RESPONSE ACTIVITIES

7.1 Response Activities

Respondents shall perform, at their option, all of the response activities in either subparagraph (a) or (b) and shall comply with all terms of subparagraph (c).

(a) Within two (2) years of the Effective Date, if Owosso Charter Township passes an ordinance requiring all homeowners in the Project Area to (i) connect to the municipal drinking water supply, (ii) abandon any existing groundwater wells, and (iii) not conduct future groundwater withdrawal, Respondents shall extend and connect all homes in the Project Area to a municipal drinking water supply.

(b) Within three (3) years of the Effective Date, Respondents shall perform all the following response activities at the Facility pursuant to this Order.

(i) Respondents shall extend municipal drinking water mains to points accessible to all properties within the Project Area;

(ii) Respondents shall connect municipal drinking water supply to (1) the homes at the addresses listed on Attachment 4 of this Order and (2) all homes in the Project Area where analytical data obtained from the private drinking water well collected after the Effective Date confirms, based on the results of two (2) consecutive sampling events, that a drinking water source does not meet Michigan residential drinking water criteria for VOCs. Respondents shall also be responsible for execution and filing of a restrictive covenant prohibiting future groundwater on all properties where such homes are located. For purposes of this Paragraph 7.1(b) and 7.3, a second sampling event shall be conducted within thirty (30) days of initial sampling suggesting that a drinking water source may not meet Michigan residential drinking water criteria for VOCs.

(iii) Respondents shall also connect municipal drinking water supply to all other homes in the Project Area where the property owner consents in writing within two (2) years of the Effective Date to: (1) connection to the municipal drinking water supply; (2) abandonment of any existing groundwater well, and (3) execution and filing of a restrictive covenant prohibiting future groundwater withdrawal. Respondents cannot refuse to connect any property owner to the municipal drinking water supply based upon the refusal of any such property owner to consent to commercially unreasonable conditions for connection.

(c) Respondents shall ensure that all water wells (drinking or otherwise) existing at the homes contained in the Project Area and connected to the municipal drinking water supply pursuant to Paragraph 7.1(a) and (b) are properly abandoned once the municipal drinking water supply has been extended and connected. Respondents must complete all abandonment activities within the time frames set forth in Paragraphs 7.1(a) or (b), whichever is applicable.

(d) Any delay to obtain consent to perform response activities specified in Paragraph 7.1 (a), (b) or (c) of this Order, from any owners, lessees or occupiers of the homes contained in the Project Area shall not be an excuse for any delay in completing those response activities, except to the extent they qualify as *Force Majeure* pursuant to Section XII of this Order.

(e) The response activities contained in Paragraph 7.1(a), (b) and (c) of this Order, may be performed by any or all Respondents, or by a third party. However, failure by a third party to perform these response activities shall not be an excuse for Respondents' failure to complete the response activities contained in Paragraph 7.1 of this Order.

7.2 Documentation of Compliance with Section 20107a of the NREPA.

To the extent that any Respondent(s) owns or operates a part or all of the Facility, that Respondent(s) shall maintain and upon the MDEQ's request, submit documentation to the MDEQ for review and approval that summarizes the actions Respondent(s) has taken or is taking to comply with Section 20107a(1) of the NREPA, and the related Part 201 Rules. Failure of the Respondent(s) to comply with the requirements of this Paragraph, Section 20107a of the NREPA, or the Part 201 Rules in

the manner set forth in this Order, shall constitute a violation of this Order and that Respondent(s) shall be subject to the provisions of Section XVI (Stipulated Penalties) of this Order.

7.3 Interim Response Activities

(a) Within 15 days of the Effective Date, Respondents shall provide an alternate drinking water source to the homes at the addresses listed on Attachment 4 of this Order. Respondents' obligation as to each listed home shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or otherwise, as set forth in Paragraph 7.3(d), below.

(b) Respondents shall provide for quarterly drinking water monitoring for VOCs in January, April, July, and October of each year for the homes at the addresses listed on Attachment 4 of this Order. Respondents shall provide for annual drinking water monitoring for VOCs in July of each year for all other homes listed on Attachment 6. Respondents' obligation to monitor drinking water quality shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or after five (5) years of monitoring pursuant to this Paragraph.

(c) If the monitoring conducted pursuant to Paragraph 7.3(b) of this order confirms, based upon the results of two (2) consecutive sampling events, that a drinking water source does not meet Michigan residential drinking water criteria due to impacts from the Property, Respondents shall immediately provide an alternate water source to the homes served by those drinking water sources, and shall connect the municipal water supply to the home(s), pursuant to Paragraph 7.1(b) of this Order. Respondents shall have the burden of proving that any impact is not attributable to the Property. Respondents' obligation as to each such home shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or otherwise, as set forth in Paragraph 7.3(d), below.

(d) Respondents' obligation to provide an alternative drinking water source, or connect the municipal drinking water supply to a home within the Project Area as set forth in Paragraphs 7.1(b) and 7.3 shall terminate 5 years after Effective Date of this Order if the property owner refuses to agree to be connected to the municipal drinking water supply, or at the time the MDEQ Project Manager determines

that the drinking water sources in the Project Area are no longer being impacted by or threatened by releases attributable to the Property, whichever occurs first. Should the owner of a home subject to Paragraph 7.3(a) or (c) above refuse to agree to be connected to the municipal water supply, Respondents' obligations under Paragraphs 7.1(b) and 7.3 shall not terminate on the basis of owner refusal unless Respondents have offered the property owner an incentive to connect consisting of payment of the owner's water bills for 2 years following the connection or the monetary equivalent of such payment.

7.4 Achievement Report

(a) Once Respondents determine the response activities specified in Paragraph 7.1 and 7.3 of this Order have been completed and they have fully complied with the requirements of Section IX (Financial Assurance), Respondents agree to submit an Achievement Report to the MDEQ for review and approval.

(b) The Achievement Report shall include a summary of response activities completed to satisfy this Order, and any supporting documentation and data.

7.5 Progress Reports

(a) Respondents shall provide to the MDEQ Project Manager written Progress Reports regarding response activities and other matters related to the implementation of this Order. These Progress Reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Order during the specified reporting period.

(ii) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Order received by Respondents, their employees, or authorized representatives during the specified reporting period.

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

(iv) A description of the nature and amount of waste materials that were

generated and the name and location of the facilities that were used for the off-site transfer, storage, and treatment or disposal of those waste materials (including copies of all waste manifests).

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

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

(b) Progress Reports shall be submitted to MDEQ on a quarterly basis. The first Progress Report, which shall address activities relating to the initial ninety (90) days, shall be submitted to MDEQ within one hundred and twenty (120) days of the Effective Date of this Order. Each subsequent progress report shall be submitted within 30 days of the ending of the proceeding reporting quarter. Pursuant to Paragraph 23.1 of this Order, the MDEQ may approve modification of the schedule for the submission of Progress Reports.

(c) The obligation to submit Progress Reports under this Section shall terminate upon approval of the Achievement Report pursuant to Paragraph 7.4 of this Order.

(d) Respondents shall provide the MDEQ with the results of all environmental sampling, and other analytical data generated in the performance or monitoring of any requirement under this Order as an attachment to the Progress Reports, and thereafter within ninety (90) days of Respondents' receipt of such data.

(e) Progress Reports do not require MDEQ approval pursuant to Section XIV (Submissions and Approvals) of this Order.

7.6 The MDEQ's Performance of Response Activities

If Respondents cease to perform the response activities required by this Order; are not performing response activities in accordance with this Order; or are performing response activities in a manner that causes or may cause an endangerment to public health, safety, welfare or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to Respondents, take over the performance of those response activities. The MDEQ, however, is not required to provide thirty (30)

days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section XI (Emergency Response) of this Order. If the MDEQ finds it necessary to take over the performance of response activities that Respondents are obligated to perform under this Order, Respondents shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph shall be considered to be "Future Response Activity Costs" and Respondents shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 15.3, 15.4, and 15.5 of this Order.

VIII. COMPLIANCE WITH STATE AND FEDERAL LAWS

8.1 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 local ordinances, and state and federal laws, rules, and regulations, including, but not limited to, Part 201 and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Order.

8.2 This Order does not relieve Respondents' obligation to obtain and maintain compliance with permits including, but not limited to, a National Pollutant Discharge Elimination System (NPDES) permit, Storm Water Management permit and soil erosion and sedimentation control permit.

IX. FINANCIAL ASSURANCE

9.1 Should any of the property owners of the homes at the addresses listed on Attachment 5 of this Order refuse to connect to the municipal drinking water supply within five (5) years of the Effective Date, the Respondents shall put in place a Financial Assurance Mechanism utilizing a certificate of deposit (CD) to assure sufficient funding to connect those properties to the municipal drinking water supply and abandon any on-site water supply wells located at those properties. The CD, which shall identify MDEQ as the sole beneficiary, shall be established using the form attached to this Order as

Attachment 7. The amount of the CD shall be based on a cost estimate from a qualified contractor for an individual connection to the municipal supply and well abandonment multiplied by the number of homes on Attachment 5 that remain unconnected. The cost estimate shall be submitted for review and approval by MDEQ prior to the establishment of the CD. In the event that some or all of the funds in the CD remain after all homes in the Project Area are connected to a municipal drinking water supply or after thirty (30) years from the Effective Date, whichever is earlier, MDEQ may transfer the remaining funds from the CD to the Environmental Response Fund, or its successor.

9.2 Within one hundred and twenty (120) days of the Effective Date of this Order, Respondents shall put in place a CD in the amount of \$100,000. The State may use the funds for the following purposes: (a) to reimburse the State for Past Response Activity Costs relating to matters covered in this Order; (b) to conduct operation and maintenance activities at the Landfill; or (c) to provide a municipal water supply connection to any home where the private water supply has been impacted by contaminants. It is the understanding of the Parties that the escrowed funds shall not be used for the construction of the new cap. In the event that after thirty (30) years some or all of the funds in the CD have not been used for the purposes set forth in (a), (b) or (c) above, the MDEQ may transfer the remaining funds from the CD to the Environmental Response Fund, or its successor.

X. ACCESS

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

following:

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

10.2 To the extent that property where the response activities are to be performed by Respondents under this Order, is owned or controlled by persons other than Respondents, Respondents agree to use best efforts to secure from such persons written access agreements or judicial orders providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Respondents shall provide the MDEQ with a copy of each written access agreement or judicial order secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration for a limited access easement acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Respondents shall provide documentation to the MDEQ that such judicial action has been filed in a court of competent authority no later than three hundred sixty-five (365) days after the Effective Date. If Respondents have not been able to obtain access within sixty (60) days after filing judicial action, Respondents shall promptly notify the MDEQ of the status of its

efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access from one property owner shall not be an excuse for delaying the performance of response activities with respect to other property owners who have consented to access, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XII (Force Majeure) of this Order.

XI. EMERGENCY RESPONSE

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

11.2 Within ten (10) days of notifying the MDEQ of such an act or event, Respondents shall submit a written report, setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether Respondents notify the MDEQ under this Section, if such act or event causes a release, threat of release, or exacerbation, the MDEQ may:

- (a) require Respondents to stop response activities for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation;
- (b) require Respondents to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or

exacerbation; or

(c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVII (Dispute Resolution) of this Order.

XII. FORCE MAJEURE

12.1 Respondents shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "*Force Majeure*." Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Order in accordance with this Section.

12.2 For the purposes of this Order, a *Force Majeure* event is defined as any event arising from causes beyond the control of and without the fault of any Respondent, of any person controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Order despite Respondents' "best efforts to fulfill the obligation." The requirement that Respondents exercise "best efforts to fulfill the obligation" includes Respondents using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Respondents minimize any delays in the performance of any obligation under this Order to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of any Respondent, such as an act of God, untimely review of permit applications or Submissions by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the diligence of Respondents and that delay the performance of an obligation under this Order. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of any Respondent. *Force Majeure* does not include failure to obtain permission to perform response activities from owners, lessees or occupiers of the homes contained in the Project Area, subject to the limitations and requirements of this Order.

12.3 Respondents shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay; the cause or causes of delay; the measures taken by Respondents to prevent or minimize the delay; and the timetable by which those measures shall be implemented. Respondents shall use their best efforts to avoid or minimize any such delay.

12.4 Failure of Respondents to comply with the notice requirements of Paragraph 12.3, above, shall render Section XII (Force Majeure) of this Order, void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 12.3 of this Order.

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

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

XIII. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES

13.1 Each Party shall designate one or more Project Managers. Respondents shall designate one or more project managers within sixty (60) days of the Effective Date, providing the information requested in Paragraph 13.1(B). Whenever notices,

progress reports, information on the collection and analysis of samples, sampling data, work plan submissions, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Order; or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Manager at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable. The Project Manager for each party shall have primary responsibility for overseeing the performance of the response activities and other requirements specified in this Order for Respondents.

For all matters pertaining to this Order:

- A. As to the MDEQ:
Eric Van Riper, Project Manager
Lansing District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
525 West Allegan St.
P.O. Box 30426
Lansing, MI 48909
Phone: 517-284-5163
Fax: 517-241-3571

E-mail Address: VANRIPERE@michigan.gov
- B. As to Respondents:
Donald Crawford, Owosso City Manager
301 W. Main St.
Owosso, MI 48867
Phone: 989-725-0599
Fax: 989-725-0526
Email Address: Donald.crawford@ci.owosso.mi.us

With a copy to:

Sharon R. Newlon, Counsel for Respondents
Dickinson Wright, PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48226
Phone: 313-223-3674
Fax: 313-223-3598
E-mail Address: snewlon@dickinsonwright.com

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

XIV. SUBMISSIONS AND APPROVALS

14.1 All Submissions required by this Order shall comply with all applicable laws and regulations and the requirements of this Order, and shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. All Submissions delivered to the MDEQ pursuant to this Order shall include a reference to the Shiawassee Sanitary Landfill and MDEQ Reference No. AOC-RRD-13-002.

14.2 Within one hundred and fifty (150) days after receipt of the Achievement Report required pursuant to Paragraph 7.4 of this Order, the MDEQ will in writing:

- (a) approve the Achievement Report;
- (b) disapprove the Achievement Report; or
- (c) shall notify Respondents that the Achievement Report does not contain sufficient information for the MDEQ to make a decision. Upon receipt of a notice of approval, Respondents shall submit a new cover page and the Submission marked "Approved".

14.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2(b) of this Order, Respondents shall correct the deficiencies and provide the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, Respondents shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period specified for Respondents to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and the MDEQ demands payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties) of this Order. Within one

hundred and fifty (150) days of submission, the MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 14.2 of this Order. If the MDEQ disapproves a revised Submission, the MDEQ will so advise Respondents and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until Respondents deliver an approvable Submission.

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

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

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

14.7 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Respondents shall not be construed as relieving Respondents of their obligation to obtain any formal approval required under this Order.

XV. REIMBURSEMENT OF PAST AND FUTURE RESPONSE ACTIVITY COSTS

15.1 Respondents shall pay the MDEQ Three Hundred Thousand Dollars (\$300,000.00) to resolve all State claims for Past Response Activity Costs relating to

matters covered in this Order.

15.2 Respondents' payment of the first One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs shall be made within thirty (30) days after the Effective Date of this Order. Respondents' payment of the second One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs shall be made within one year of the Effective Date of this Order. Respondents' payment of the third One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs shall be made within two years of the Effective Date of this Order. Payment shall be made pursuant to the provisions of Paragraph 15.5 of this Order as of the Effective Date of this Order.

15.3 Respondents shall reimburse the State for all Future Response Activity Costs incurred by the State. Following the Effective Date of this Order, the MDEQ will periodically provide an invoice for Future Response Activity Costs incurred through the dates specified in the invoice. Any such invoice(s) will set forth, with reasonable specificity, the nature of the costs incurred and the party(ies) who performed the work that caused the cost(s) to be incurred. Upon receipt of a written request from Respondents, MDEQ shall provide available documentation further supporting any such invoice. Except as provided by Section XVII (Dispute Resolution) of this Order, Respondents shall reimburse the MDEQ for such costs within thirty (30) days of Respondents' receipt of an invoice from the MDEQ.

15.4 Respondents shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Respondents may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the invoice for payment of Future Response Activity Costs.

15.5 All payments made pursuant to this Paragraph shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the address listed in this Paragraph. The Shiawassee

Sanitary Landfill, the MDEQ Reference No. AOC-RRD-13-002, and the RRD Account Number RRD50067 shall be designated on each check.

or all payments pursuant to this Paragraph:

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

Via courier:

MDOT- Accounting Services Division
Cashier's Office for MDEQ
Van Wagoner Building, 1st Floor West
425 W. Ottawa Street
Lansing, MI 48933

A copy of all correspondence that is sent to the Cashier's Office for MDEQ shall also be provided to the MDEQ Project Manager designated in Paragraph 13.1A, and the MDAG Assistant in Charge:

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

Costs recovered pursuant to this Section and payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties) of this Order shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

15.6 If Respondents fail to make full payment to the MDEQ for Past and Future Response Activity Costs as specified in Paragraph 15.2 and 15.3 of this Order, interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the

unpaid balance on the day after payment was due, until the date upon which Respondents make full payment of those costs and the accrued interest to the MDEQ. In any challenge by Respondents to an MDEQ demand for reimbursement of Future Response Activity Costs, Respondents shall have the burden of establishing that the MDEQ did not lawfully incur those Future Response Activity Costs in accordance with Paragraph 5.5 of this Order or Section 20126a(1)(a) of the NREPA.

XVI. STIPULATED PENALTIES

16.1 Respondents shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 of this Order, for failure to comply with the requirements of this Order, unless excused under Section XII (Force Majeure) of this Order. "Failure to Comply" by Respondents shall include failure to complete Submissions and notifications as required by this Order, and failure to perform response activities in accordance with this Order within the specified implementation schedules established by or approved under this Order. For purposes of this Paragraph 16.1, "Failure to Comply" by Respondents shall not include the following, where Respondents have sought access pursuant to Paragraph 10.2: (a) the refusal of an owner, lessee or occupier of a home listed on Attachment 4 to be connected to the municipal water supply if Respondents are providing an alternate drinking water source, (b) the refusal of an owner, lessee or occupier of any home listed on Attachment 6 to provide access for monitoring pursuant to Paragraph 7.3(b) of this Order if impacts from the Facility have not been detected in analytical data obtained from the private water well, or (c) the refusal of a court to order access following Respondent's filing of a judicial action pursuant to Paragraph 10.2.

16.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VII (Performance of Response Activities) of this Order:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$250.00 | 1 st through 14 th day |
| \$500.00 | 15 th through 30 th day |

\$1000.00

31st day and beyond

16.3 Except as provided in Paragraph 12.2, and Section XVII (Dispute Resolution) of this Order, if Respondents fail or refuse to comply with any other term or condition of this Order, Respondents shall pay the MDEQ stipulated penalties of One Hundred Dollars (\$100.00) per day for each and every failure or refusal to comply.

16.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

16.5 Except as provided in Section XVII (Dispute Resolution) of this Order, Respondents shall pay stipulated penalties owed to the State no later than thirty (30) days after Respondents' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 15.5 of this Order. Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period, on the day after payment was due until the date upon which Respondents make full payment of those stipulated penalties and the accrued interest to the MDEQ.

16.6 The payment of stipulated penalties shall not alter in any way Respondents' obligation to perform the response activities required by this Order.

16.7 If Respondents fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Respondents violate this Order. For any failure or refusal of Respondents to comply with the requirements of this Order, the State reserves the right alternately to pursue any other remedies to which it is entitled under this Order or any applicable law including, but not limited to, seeking civil fines, injunctive relief, and the specific performance of response activities and reimbursement of costs.

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

XVII. DISPUTE RESOLUTION

17.1 Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order, including review and approval of an Achievement Report, except for Section XI (Emergency Response) of this Order, which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Respondents' obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for Respondents to delay the performance of any response activity required under this Order.

17.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Respondents provide to the State under Paragraphs 17.3 through 17.5 of this Order, and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 17.3 through 17.5 of this Order.

17.3 Except for undisputable matters identified in Paragraph 17.1 of this Order, any dispute that arises under this Order with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of this Order, shall in the first instance, be the subject of informal negotiations between the district staff representing the MDEQ and Respondents. A dispute shall be considered to have arisen on the date that a Party to this Order receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event, Respondents object to any MDEQ notice of disapproval, modification, or decision concerning the requirements of this Order that is subject to dispute under this Section,

Respondents shall submit the Notice of Dispute within ten (10) days of receipt of the MDEQ's notice of disapproval, modification, or decision. The period of informal negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to Respondents. In the absence of initiation of formal dispute resolution by Respondents under Paragraph 17.4 of this Order, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

17.4 If Respondents and the MDEQ cannot informally resolve a dispute under Paragraph 17.3 of this Order, Respondents may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of Respondents' receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 17.3 of this Order. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within twenty (20) days of the RRD Chief's receipt of Respondents' Request for Review, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to Respondents, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Statement of Decision shall be binding on the Parties.

17.5 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Respondents' failure or refusal to comply with any term or condition of this Order, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Respondents do not

prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Respondents shall pay stipulated penalties as set forth in Paragraph 16.5 of Section XVI (Stipulated Penalties) of this Order. Respondents shall not be assessed stipulated penalties for disputes that are resolved in their favor. The MDAG, on behalf of the MDEQ, may take civil enforcement action against Respondents to seek the assessment of civil penalties or damages, pursuant to Section 20137(1) of the NREPA, or other statutory and equitable authorities.

17.6 Notwithstanding the provisions of this Section and in accordance with Section XV (Reimbursement of Past and Future Response Activity Costs) and Section XVI (Stipulated Penalties) of this Order, Respondents shall pay to the MDEQ that portion of the invoice for reimbursement of costs or demand for payment of stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

17.7 As provided for in Section 20137(6) of the NREPA, no action or decision of the MDEQ or the MDAG shall constitute a final agency action giving rise to any rights of judicial review prior to the MDAG's initiation of judicial action to compel Respondents to comply with this Order or to enforce a term, condition, or other action required by this Order. Nothing in this Order shall expand Respondents' ability to obtain pre-enforcement review of this Order.

XVIII. INDEMNIFICATION AND INSURANCE

18.1 The State of Michigan does not assume any liability by entering into this Order. This Order shall not be construed to be an indemnity by the State for the benefit of Respondents or any other person.

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

18.3 Respondents shall indemnify and hold harmless the State and its

departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Respondents and any person for the performance of response activities, including any claims on account of construction delays.

18.4 The State shall provide Respondents notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 18.2 or 18.3 of this Order.

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

18.6 Respondents waive all claims or causes of action against the State 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 Respondents and any other person for the performance of response activities, including any claims on account of construction delays.

18.7 Prior to commencing any response activities pursuant to this Order, and for the duration of this Order, Respondents shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00) of combined single limit, which names the MDEQ, the MDAG, and the State of Michigan as additional insured parties. If Respondents demonstrate by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Respondents need to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Respondents and prior to commencement of response activities pursuant to this Order, Respondents shall provide the MDEQ Project Manager and the MDAG with

certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the Shiawassee Sanitary Landfill, the MDEQ Reference No. AOC-RRD-13-002 and the Remediation and Redevelopment Division.

XIX. COVENANTS NOT TO SUE BY THE STATE

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

- (a) Response activities related to the release of hazardous substances at the Facility, and
- (b) Recovery of Past and Future Response Activity Costs associated with the Facility.

19.2 The covenants not to sue shall take effect under this Order as follows:

- (a) With respect to Respondents' liability for response activities performed related to the release of hazardous substances at the Facility, the covenant not to sue shall take effect upon approval of the Achievement Report pursuant to Paragraph 7.4 of this Order, and
- (b) With respect to Respondents' liability for Past Response Activity Costs and Future Response Activity Costs incurred and paid by the State, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs, including any applicable interest that has accrued pursuant to this Order.

19.3 The covenants not to sue extend only to the Respondents and do not extend to any other person.

XX. RESERVATION OF RIGHTS BY THE STATE

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1 of this Order. The State expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to

any applicable authority against Respondents with respect to the following:

- (a) The performance of response activities that are specified in Paragraph 7.1 and 7.3 of this Order.
- (b) Response activity costs required by this Order that Respondents have not paid.
- (c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility.
- (d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility.
- (e) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.
- (f) Criminal acts.
- (g) Any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance) of this Order.
- (h) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Order or any other violations of state or federal law for which Respondents have not received a covenant not to sue.

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

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

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

20.5 In addition to, and not as a limitation of any provision of this Order, the

MDEQ and the MDAG retain all of their information-gathering, inspection, access, and enforcement authorities and rights under Part 201, and any other applicable statute or regulation.

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

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

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

20.7 This Order does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Respondents as required by this Order will result in the achievement of the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

20.8 Except as provided in Paragraph 19.1 of this Order, nothing in this Order shall limit the power and authority of the MDEQ or the State, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

21.1 Respondents hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA, or any other provision of law.

21.2 After the Effective Date of this Order, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Respondents agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting; or that are based upon a defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by the State) of this Order.

XXII. CONTRIBUTION

Pursuant to Section 20129(5) of the NREPA, and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XIX (Covenants Not to Sue by the State) of this Order, Respondents shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of this Order, to the extent allowable by law. The Parties agree that entry of this Order constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the MDEQ for the matters set forth in Paragraph 19.1 of this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by Respondents for contribution from any person that is not a Party to this Order shall be subordinate to the rights of the State of Michigan, if the State files an action pursuant to the NREPA or other applicable state or federal law.

XXIII. MODIFICATIONS

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

23.2 Modification of any other provision of this Order shall be made only by written agreement between Respondents' Project Manager, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG.

XXIV. SEPARATE DOCUMENTS

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

XXV. SEVERABILITY

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

IT IS SO AGREED TO AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



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

9/23/15

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



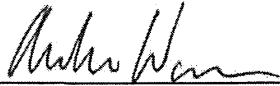
Richard Kuhl (P42042)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

9/22/15

Date

IT IS SO AGREED BY:

Johnson Controls, Inc.



Andrew Warren
Vice President + General Counsel,
Power Solutions, Components +
Integrated Supply Chain

9.15.2015

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Wolverine Sign Works

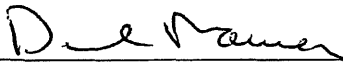
A handwritten signature in black ink, appearing to read 'Paul Cook', is written over a horizontal line.

Paul Cook
President

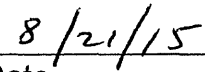
Aug. 20, 2015
Date

IT IS SO AGREED BY:

Maurer's Heating and Cooling Co.



David Maurer
President



Date


MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Consumers Energy Company



Heather Prentice
Director of Environmental Compliance,
Risk Management and Governance

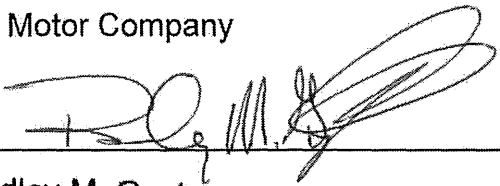


Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Ford Motor Company

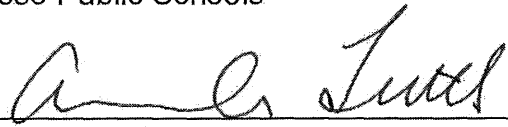


Bradley M. Gayton
Secretary


September 1, 2015
Date

IT IS SO AGREED BY:

Owosso Public Schools



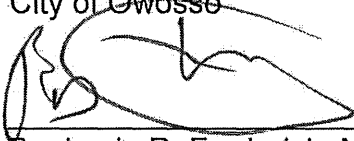
Dr. Andrea Tuttle
Superintendent



Date

IT IS SO AGREED BY:

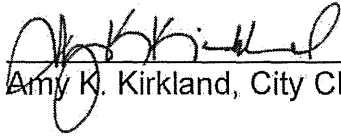
City of Owosso



Benjamin R. Frederick, Mayor

09/08/15
Date

ATTEST:



Amy K. Kirkland, City Clerk

09/08/15
Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Shiawassee County Road Commission

Brent P. Friess 9/2/2015
Brent Friess Date
Managing Director

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Shiawassee County Courthouse

Hartmann Aue
Hartmann Aue
Chairman, Shiawassee County Board
Of Commissioners

Date 08/20/15


MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

The Argus-Press Company

A handwritten signature in black ink, appearing to read 'Tom Campbell', written over a horizontal line.

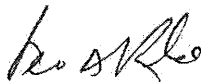
Tom Campbell
President and Publisher

A handwritten date '8/20/15' in black ink, written over a horizontal line.

Date

IT IS SO AGREED BY:

ConAgra Foods, Inc.



Leo Knowles
Senior Vice President and
Chief Litigation Counsel

8/20/15

Date

ATTACHMENT 1

Property Description

Lot(s) 50 and 51, SUPERVISOR'S PLAT OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 11 of Plats, Page 193.

AND ALSO:

Lot 1 and Lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of ROBY'S SUBDIVISION OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 12 of Plats, page 205.

ATTACHMENT 2

Cost Summary Report

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

Date: 04/29/2015

Source: ERNIE

Cost Recovery Summary Report - Combined

Page: 1 of 1

Site Name: Shiawassee Sanitary Landfill

County: Shiawassee

Site ID: 78000071

Packages: 455660-00 Shiawassee Sanitary Landfill: Original, Update 1, update 2, update 3, update 4

| | | |
|--|--------------|----------------|
| Total for Employee Salaries and Wages | | |
| Period Covered: 04/01/2001 - 04/11/2015 | \$273,386.38 | |
| Indirect Dollars | \$41,321.19 | |
| Sub-Total | | \$314,707.57 |
| Total for Employee Travel Expenses | | |
| Period Covered: 04/29/2001 - 02/14/2015 | | \$5,932.31 |
| Contractual Expenses | | |
| AECOM (Earth Tech) (State) (P1001485) | | |
| Period Covered: 10/01/2000 - 01/31/2003 | \$199,246.00 | |
| Malcolm Pirnie, Inc. (LOE #2005) (P5201009) | | |
| Period Covered: 02/26/2005 - 02/08/2008 | \$199,993.55 | |
| Trace Analytical Laboratories, Inc. (Y03088) | | |
| Period Covered: 08/04/2006 - 01/11/2007 | \$2,875.00 | |
| Malcolm Pirnie, Inc. (LOE 2005-2009) (P8200311) | | |
| Period Covered: 11/24/2007 - 07/28/2009 | \$114,114.07 | |
| Trace Analytical Laboratories, Inc. (Y08044) | | |
| Period Covered: 08/22/2008 - 08/25/2008 | \$3,233.40 | |
| Contract Sub-Total | | \$519,462.02 |
| Total for Miscellaneous Expenses | | |
| Period Covered: 03/18/2005 - 08/24/2007 | | \$1,644.15 |
| MDNR/MDEQ Lab | | |
| Period Covered: 02/22/2002 - 10/31/2008 | | \$195,225.20 |
| Total for MDPH/Community Health Expenses | | |
| Alternate Water Supply | | |
| Period Covered: | \$0.00 | |
| Bottled Water | | |
| Period Covered: | \$0.00 | |
| MDPH/MDCH Lab | | |
| Period Covered: | \$0.00 | |
| Sub-Total | | \$0.00 |
| Attorney General Expenses | | |
| Period Covered: 01/31/2014 - 03/31/2015 | | \$8,668.75 |
| Other Expenses | | |
| Period Covered: | | \$0.00 |
| Sub-Total | | \$1,045,640.00 |
| Interest Calculated from through | | \$0.00 |
| Total Combined Expenses for Site and Interest | | \$1,045,640.00 |

ATTACHMENT 3

Map depicting the Project Area

Attachment 3 - Project Area Section 23 Owosso Township, Michigan



— Municipal Water Extension Project Area

ATTACHMENT 4

List of Homes with Drinking Water Criteria Exceedances:

1010 Helena

ATTACHMENT 5

List of Homes with Detections Alleged to Originate from the Landfill:

1975 Bock

1977 Bock

1989 Bock

1993 Bock

1175 Etta

1950 Frederick

1955 Frederick

1970 Frederick

1980 Frederick

1010 Helena

1020 Helena

1035 Helena

1109 Helena

1112 Helena

1116 Helena

1119 Helena

1180 Helena

ATTACHMENT 6

List of Homes Subject to Drinking Water Monitoring Requirements:

| | |
|----------------|-------------|
| 1945 Bock | 1150 Helena |
| 1951 Bock | 1151 Helena |
| 1969 Bock | 1170 Helena |
| 1973 Bock | 1180 Helena |
| 1975 Bock | |
| 1977 Bock | |
| 1987 Bock | |
| 1989 Bock | |
| 1991 Bock | |
| 1993 Bock | |
| 1998 Bock | |
| 1175 Etta | |
| 1940 Frederick | |
| 1950 Frederick | |
| 1955 Frederick | |
| 1970 Frederick | |
| 1980 Frederick | |
| 1010 Helena | |
| 1020 Helena | |
| 1035 Helena | |
| 1109 Helena | |
| 1112 Helena | |
| 1116 Helena | |
| 1119 Helena | |
| 1120 Helena | |
| 1129 Helena | |

ATTACHMENT 7
Certificate of Deposit

ATTACHMENT 7

AGREEMENT AND ACCEPTANCE OF CERTIFICATE OF DEPOSIT

Name of Designated Party: ***[insert name of Designated Party]***

Designated Party's Address: c/o Sharon Newlon, Dickinson Wright PLLC
500 Woodward Ave, Suite 1000
Detroit, MI

Name of Facility: Former Shiawassee Sanitary Landfill

Address of Facility: Owosso Township, Shiawassee County, MI

MDEQ Site ID No.: 78000071

State of Michigan Federal Tax Identification No.: 38-6000134

It is agreed between the Michigan Department of Environmental Quality (MDEQ), and the Shiawassee Landfill Group or its Designee (Designated Party) that the attached **Certificate of Deposit (Certificate *[insert Certificate or Account reference number]*, in the amount of \$*[insert numeric amount] [(insert amount in written text)]*, issued by *[insert name of issuing financial institution and address]* on *[insert effective date]*, in the name of and for the sole benefit of the MDEQ, is accepted as financial assurance for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action documented in the Administrative Order by Consent for Response Activities and Payment of Response Activity Costs between the MDEQ and the Designated Party referenced above on *[insert effective date of Order]* pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("Order").**

1. This Certificate will mature on ***[insert date]*** and will renew automatically.
2. All interest accruing to the Certificate shall be maintained as part of Certificate.
3. The MDEQ's Authorized Representative (Part 201 implementing Division Chief) is the only person who may cash the Certificate. The MDEQ's Authorized Representative may cash some or all of the Certificate as follows:

[With respect to a Certificate established pursuant to Paragraph 9.1 of the Order, if any:

- (a) to provide a municipal water supply connection to and to abandon any onsite water wells at any home listed on Attachment 5 of the Order where the property owner of the home has refused to connect to the municipal drinking water supply within five (5) years of the Effective Date of the Order; or

- (b) in the event that some or all of the funds in the Certificate remain after all homes in the Project Area are connected to a municipal drinking water supply or after thirty (30) years from the Effective Date of the Order, whichever is earlier, to transfer the remaining funds from the Certificate to the Environmental Response Fund, or its successor.】

[With respect to a Certificate established pursuant to Paragraph 9.2 of the Order:

- (a) to reimburse the State for Past Response Activity Costs relating to matters covered in the Order;
 - (b) to conduct operation and maintenance activities at the former Shiawassee Landfill located at the Facility, but not for the construction of the new cap over the Landfill;
 - (c) to provide a municipal water supply connection to any home where the private water supply has been impacted by contaminants; or
 - (d) in the event that some or all of the funds in the Certificate remain after thirty (30) years from the Effective Date of the Order, to transfer the remaining funds from the Certificate to the Environmental Response Fund, or its successor.】
4. If the Certificate is cashed by the MDEQ Authorized Representative, all accrued interest shall be paid to the MDEQ Authorized Representative.
 5. If cashing the Certificate results in a surplus of funds determined to be necessary by the MDEQ for one or more of the purposes noted in Section 3 above, the surplus funds will be held by the State in the Environmental Response Fund, trust, or escrow to be invested at a rate or rates of interest to be determined at the State's sole discretion. These funds will be used solely for the purposes noted in Section 3.

Michigan Department of Environmental Quality:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

[insert name of Designated Party], Designated Party:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

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

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____