

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

The Dow Chemical Company
Midland, Michigan, 48667,

Respondent.

-) ADMINISTRATIVE SETTLEMENT
-) AGREEMENT AND ORDER ON CONSENT
-) FOR REMEDIAL INVESTIGATION,
-) FEASIBILITY STUDY AND/OR
-) ENGINEERING EVALUATION AND COST
-) ANALYSIS, AND RESPONSE DESIGN
-)
-) U.S. EPA Region 5
-)
-) CERCLA Docket No. **V-W-10-C-942**
-)
-) The Tittabawassee River/Saginaw River & Bay
-) Site.
-)
-) Proceeding Under Sections 104, 106, 107, and
-) 122 of the Comprehensive Environmental
-) Response, Compensation, and Liability Act, as
-) amended, 42 U.S.C. §§ 9604, 9606, 9607, and
-) 9622.

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION, FEASIBILITY STUDY AND/OR ENGINEERING
EVALUATION AND COST ANALYSIS, AND RESPONSE DESIGN**

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APPENDICES

“Appendix A” is the Remedial Investigation, Feasibility Study and/or Engineering Evaluation and Cost Analysis, and Response Design SOW.

“Appendix B” is the Tittabawassee River/Saginaw River & Bay Site Superfund Memorandum of Agreement between U.S. EPA and MDEQ.

“Appendix C” is the map of the Site.

“Appendix D” is the map of Respondent’s Midland Plant.

“Appendix E” is the License Modification language.

“Appendix F” is the list of Sampling, Analysis, Studies, and Orders.

“Appendix G” is the map of the Saginaw Bay and inner Saginaw Bay areas of the Site.

“Appendix H” is the Corresponding Obligations of the License and Settlement Agreement

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION, FEASIBILITY STUDY AND/OR ENGINEERING
EVALUATION AND COST ANALYSIS, AND RESPONSE DESIGN**

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“U.S. EPA”), the State of Michigan (the “State”) and The Dow Chemical Company (“Dow” or the “Respondent”). The Settlement Agreement concerns conducting evaluations of current Site conditions and assessments of response options, the preparation and performance of any remedial investigation (“RI”), any feasibility study (“FS”) and/or any engineering evaluation and cost analysis (“EE/CA”), and performing any response design (“Response Design” or “RD”) to respond to releases or threats of releases of hazardous substances, pollutants, or contaminants from The Dow Chemical Company Midland Plant property, with an address of 1790 Building, Midland Michigan, 48667 (the “Midland Plant”) that have or may have come to be located at the Site as defined in Paragraph 12.aa. The Settlement Agreement also provides for reimbursement of U.S. EPA’s Future Response Costs, and State Future Response Costs.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator, U.S. EPA, Region 5 to the Director, Superfund Division, U.S. EPA, Region 5 by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D on May 2, 1996.

3. The State enters into this Settlement Agreement pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, the authority vested in the Michigan Department of Environmental Quality and the Michigan Department of Attorney General by Section 20134(1) of the Natural Resources and Environmental Protection Act (“NREPA”), as amended, Mich. Comp. Laws § 324.20134(1), Sections 11115a and 11151 of NREPA, Mich. Comp. Laws §§ 324.11115a and 324.11151, and the general authority of the Michigan Attorney General.

4. In accordance with Section 104(b)(2) and Section 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), on December 15, 2008, U.S. EPA notified the following Federal and State natural resource trustees of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal or State trusteeship: Michigan Department of Environmental Quality (“MDEQ”); Michigan Department of Natural Resources; the Attorney General of the State of Michigan; U.S. Department of the Interior; U.S. Department of Energy; U.S. Department of Agriculture; U.S.

Bureau of Indian Affairs; National Oceanic and Atmospheric Administration; and the Saginaw Chippewa Indian Tribe of Michigan. In accordance with Sections 106(a) and 121(f)(1)(F) of CERCLA, 42 U.S.C. §§ 9606(a), 9621(f)(1)(F), U.S. EPA notified the State of Michigan (the "State") on December 15, 2008, of negotiations with potentially responsible parties regarding the evaluation of current Site conditions and assessments of response options, and implementation of any RI, any FS and/or EE/CA, and any RD for the Site.

5. U.S. EPA, the State, and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any issue of fact, or law, or liability. Nothing in this Settlement Agreement is intended by the Parties to be, nor shall it be construed as, an admission of fact or law, or a waiver of defenses or claims by Respondent for any purpose, except as expressly provided herein. Respondent does not admit, and retains the right to controvert in any other proceedings, any of the findings of fact in Section V, and does not admit, and retains the right to controvert in any other proceedings, other than proceedings to implement or enforce this Settlement Agreement, conclusions of law and determinations in Section VI of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the jurisdictional basis or the validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon U.S. EPA, the State, and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

7. Respondent is required to carry out all activities specified in this Settlement Agreement.

8. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

10. a. In entering into this Settlement Agreement, the objectives of U.S. EPA, the State, and Respondent are: (1) to determine the nature and extent of contamination and any current or potential threat to the public health, welfare, or the environment posed by the release

or threatened release of hazardous substances, pollutants or contaminants at or from the Site (to the extent such hazardous substances, pollutants or contaminants have or may have been released from the Midland Plant) using appropriate, previously collected data and collecting sufficient additional data for developing and evaluating effective response alternatives, and by conducting, as necessary, any RI as more specifically set forth in the Statement of Work (“SOW”) attached as Appendix A to this Settlement Agreement; (2) to identify and evaluate response alternatives that protect human health and the environment by conducting any FS and/or EE/CA as more specifically set forth in the SOW in Appendix A to this Settlement Agreement; (3) to complete any RD as more specifically set forth in Paragraph 30 and the SOW found in Appendix A to this Settlement Agreement; (4) to recover U.S. EPA’s Future Response Costs, and State Future Response Costs incurred by U.S. EPA and the State with respect to this Settlement Agreement; and (5) to transition certain work currently being conducted under MDEQ oversight pursuant to the License to U.S. EPA oversight pursuant to this Settlement Agreement.

b. U.S. EPA shall ensure substantial and meaningful MDEQ involvement in the activities required under this Settlement Agreement consistent with 42 U.S.C. § 9621(f), and 40 C.F.R. §§ 300.500-300.525. U.S. EPA and MDEQ agree to work collaboratively to achieve the objectives expressed in Paragraph 10.a of this Settlement Agreement. MDEQ will provide timely, substantive and meaningful input to U.S. EPA in the review and oversight of the Work. U.S. EPA, MDEQ, and Dow intend and anticipate that the Work undertaken by Dow pursuant to and in compliance with the Settlement Agreement will meet the requirements of CERCLA, 42 U.S.C. §§ 9601-9675, applicable requirements of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992k, applicable requirements of Part 111 (Hazardous Waste Management) of NREPA, Mich. Comp. Laws §§ 324.11101-324.11153, and applicable requirements of the License. The participation of MDEQ in the oversight of the Work performed by Dow pursuant to the Settlement Agreement is to ensure that the Work performed by Dow satisfies the applicable substantive requirements of the License issued by MDEQ pursuant to RCRA and Part 111. Where compliance with applicable License obligations, subject to the terms of Sections XI and XVII of this Settlement Agreement, is not achieved by the implementation of Work undertaken by Dow pursuant to this Settlement Agreement, those obligations will remain as License obligations under RCRA and Part 111.

c. The roles and responsibilities of U.S. EPA and MDEQ are more specifically described in Sections X, XI, XVI and XVII of this Settlement Agreement and in the Tittabawassee River/Saginaw River & Bay Site Superfund Memorandum of Agreement between U.S. EPA and MDEQ (“SMOA”) attached as Appendix B to this Settlement Agreement.

d. In implementing this Settlement Agreement, U.S. EPA and the State shall seek to coordinate with the Natural Resource Trustees and shall provide the Natural Resource Trustees with substantial and meaningful opportunities to review and comment on plans, reports, or other items submitted to U.S. EPA for approval under the Settlement Agreement, in order to assure to the extent practicable: (1) that Site investigations and data collection activities undertaken pursuant to this Settlement Agreement can be coordinated with investigations undertaken or

planned by the Natural Resource Trustees as part of the natural resource damage assessment process, so that duplicative or overlapping investigation or data collection efforts can be minimized; and (2) that the development, evaluation, and selection of response action alternatives and interim response actions pursuant to this Settlement Agreement can take into consideration the anticipated effects of such response alternatives or interim actions on natural resources and, where appropriate in U.S. EPA's discretion, can take into consideration opportunities for efficient coordination of response actions and on-Site natural resource restoration measures.

11. The Work conducted under this Settlement Agreement is subject to approval by U.S. EPA in consultation with MDEQ (as provided in Sections X and XI of this Settlement Agreement) and, as provided more specifically in the SOW, shall provide all appropriate and necessary information to assess site conditions and evaluate alternatives to the extent necessary to select a response action that will be consistent with CERCLA, 42 U.S.C. §§ 9601-9675, and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. §§ 300.1-300.1105. Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable U.S. EPA guidances, policies, and procedures that are written and available, as further provided in the SOW.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "ARARs" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or more stringent state environmental or facility siting laws that are "applicable requirements" or "relevant and appropriate requirements" as defined at 40 C.F.R. § 300.5 and 42 U.S.C. § 9621(d).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day unless otherwise specified. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Dioxin" or "dioxins" or "furan" or "furans" shall mean the seventeen chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans identified by the World Health

Organization in *The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds*, and as set forth below:

Congener (Full-Name)	Congener (Abbreviation)	CAS No
Dioxins		
2,3,7,8-Tetrachlorodibenzo-p-dioxin	2,3,7,8-TCDD	1746-01-6
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	1,2,3,7,8-PCDD	40321-76-4
1,2,3,4,7,8- Hexachlorodibenzo-p-dioxin	1,4-HxCDD	39227-28-6
1,2,3,6,7,8- Hexachlorodibenzo-p-dioxin	1,6-HxCDD	57653-85-7
1,2,3,7,8,9- Hexachlorodibenzo-p-dioxin	1,9-HxCDD	19408-74-3
1,2,3,4,6,7,8- Heptachlorodibenzo-p-dioxin	1,4,8-HpCDD	35822-39-4
1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	OCDD	3268-87-9
Furans		
2,3,7,8-Tetrachlorodibenzofuran	2,3,7,8-TCDF	51207-31-9
1,2,3,7,8-Pentachlorodibenzofuran	1,2,3,7,8-PCDF	57117-41-6
2,3,4,7,8-Pentachlorodibenzofuran	2,3,4,7,8-PCDF	57117-31-4
1,2,3,4,7,8-Hexachlorodibenzofuran	1,4-HxCDF	70648-26-9
1,2,3,6,7,8- Hexachlorodibenzofuran	1,6-HxCDF	57117-44-9
1,2,3,7,8,9- Hexachlorodibenzofuran	1,9-HxCDF	72918-21-9
2,3,4,6,7,8- Hexachlorodibenzofuran	4,6-HxCDF	60851-34-5
1,2,3,4,6,7,8- Heptachlorodibenzofuran	1,4,6-HpCDF	67562-39-4
1,2,3,4,7,8,9- Heptachlorodibenzofuran	1,4,9-HpCDF	55673-89-7
1,2,3,4,6,7,8,9-Octachlorodibenzofuran	OCDF	39001-02-0

Individual dioxins and furans are assessed using a toxic equivalency factor (“TEF”), which is an estimate of the relative toxicity of the compounds to 2,3,7,8-tetrachlorodibenzo-p-dioxin (“TCDD”). These converted concentrations are then added together to determine the “toxic equivalence concentration” (“TEQ”) of the dioxin and furan compounds as a whole.

e. “Early Final Remedial Action” shall mean Remedial Actions which are limited in scope and address areas/media through a final record of decision (“ROD”) for an area/media or operable unit. Early Final Remedial Actions are taken before the RI, FS, and baseline risk assessment for the site or operable unit has been completed. Early Final Remedial Actions may be implemented for separate operable units or may be a component of a final ROD for other portions of the site. These types of actions are taken to eliminate, reduce or control the hazards posed by the site or to expedite the completion of the total site cleanup. Where an Early Final Remedial Action is selected in a ROD, U.S. EPA anticipates that the Early Final Remedial Action will not require additional response actions.

f. "Early Interim Remedial Action" shall mean Remedial Actions which are limited in scope and only address areas/media that will also be addressed by a final site/operable unit ROD. Early Interim Remedial Actions are taken before the RI, FS, and baseline risk assessment for the site or operable unit has been completed. Early Interim Remedial Actions may be implemented for separate operable units or may be a component of a final ROD for other portions of the site. These types of actions are taken to eliminate, reduce or control the hazards posed by the site or to expedite the completion of the total site cleanup. Where an Early Interim Remedial Action is selected in a ROD, U.S. EPA anticipates that the Early Interim Remedial Action may be followed with additional response actions, and that additional decision documents, including a final ROD, will be issued.

g. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXV.

h. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

i. "Engineering Controls" shall mean constructed containment barriers or systems to prevent or reduce the mobility and/or bioavailability of contaminants located in the river sediments, banks, or floodplain soils. Examples include caps, covers, engineered bottom barriers, bank stabilization and other immobilization processes, and vertical barriers.

j. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date of this Settlement Agreement in reviewing or developing plans, reports, technical memoranda and other items pursuant to this Settlement Agreement, conducting community relations, reviewing and overseeing the implementation of any Technical Assistance Plan, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs (including fees), travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the costs incurred pursuant to Paragraph 56 and 58 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 36 (emergency response), and Paragraph 30 (Response Design).

k. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "License" shall mean the Hazardous Waste Management Facility Operating License issued by the State of Michigan Department of Environmental Quality to The Dow Chemical Company on June 12, 2003, as renewed and/or modified by MDEQ.

m. "MDAG" shall mean the Michigan Department of Attorney General, and any successor departments or agencies of the State.

n. "MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

o. "NCP" or "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. §§ 300.1-300.1105, and any amendments thereto.

p. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral. References to paragraphs in the SOW will be so identified (for example, "SOW Paragraph 15").

q. "Part 111 of NREPA" shall mean Part 111 of the Michigan Natural Resources and Environmental Protection Act, 1994 Mich. Pub. Acts 451, Mich. Comp. Laws §§ 324.11101-324.11153.

r. "Part 201 of NREPA" shall mean Part 201 of the Michigan Natural Resources and Environmental Protection Act, 1994 Mich. Pub. Acts 451, Mich. Comp. Laws §§ 324.20101-324.20142.

s. "Parties" shall mean U.S. EPA, the State, and Respondent.

t. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992k.

u. "Remedial Action" shall mean those actions consistent with permanent remedy taken instead of, or in addition to, Removal Actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or to the environment.

v. "Response Design" or "RD" shall mean the technical analysis and procedures which follow the selection of remedial action in a ROD or a non-time critical removal action selected in an action memorandum for a site and result in a detailed set of plans and specifications for implementation of the remedial action or non-time critical removal action.

w. "Respondent" or "Dow" shall mean The Dow Chemical Company, a Delaware corporation.

x. "Saginaw Bay" means the area encompassed by an imaginary line drawn

between Au Sable Point and Point Aux Barques as depicted in Appendix G. Saginaw Bay is operationally considered to have an inner and outer Bay. The inner Bay consists of the area encompassed by an imaginary line drawn between Au Gres and Fish Point, also depicted in Appendix G.

y. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral. References to sections in the SOW will be so identified; for example as "SOW Section V."

z. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (as listed and as provided in Section XXXII) and all documents incorporated by reference into this document including without limitation U.S. EPA-approved submissions. U.S. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by U.S. EPA. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

aa. "Site" shall mean the area located in and along the Tittabawassee River and its floodplains, beginning at and including Reach A, starting upstream of the Midland Plant, and extending downstream to, and including, the Saginaw River and its floodplains, and Saginaw Bay, and any other areas in or proximate to the Tittabawassee River and its floodplains, the Saginaw River and its floodplains, and Saginaw Bay, where hazardous substances, pollutants, or contaminants from the Midland Plant have or may have come to be located, all depicted generally on the map attached as Appendix C to the Settlement Agreement. Areas that are not part of the Site include but are not limited to the City of Midland, Michigan, generally, and the Midland Plant. Limited areas of the Tittabawassee River floodplain are located within the city limits of the City of Midland and are part of the Site as depicted in Appendix C to the Settlement Agreement. The Midland Plant is depicted in Appendix D.

bb. "State" shall mean the State of Michigan.

cc. "State Future Response Costs" shall mean all costs, including direct and indirect costs, including but not limited to State employee salary and benefit costs, and travel expenses, that State employees incur in reviewing plans, reports or other items pursuant to this Settlement Agreement, verifying Work, consulting with and providing comments to U.S. EPA and Respondent in connection with the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, as set forth in the SMOA, on or after the Effective Date. However, State Future Response Costs do not include (i) costs for, in the aggregate, outside contractors and consultants during a calendar year that exceed \$50,000 (which limit shall be adjusted for inflation based on the Detroit Index), or (ii) any analytical laboratory costs, in the aggregate, during a calendar year that exceed \$25,000 (which limit shall be adjusted for inflation based on the Detroit Index). For purposes of Paragraphs 97 and 99 only, "State Future Response Costs" shall not include the limitations in the preceding sentence.

dd. "Statement of Work" or "SOW" shall mean the Statement of Work for conducting evaluations of current Site conditions and assessments of response options, the development of any RI, any FS and/or EE/CA, and for conducting any RD for the Site, as set forth in Appendix A to this Settlement Agreement. To the extent that work previously completed by Respondent meets the functional requirements of an RI, FS, EE/CA, or RD, that work, upon approval by U.S. EPA after consultation with MDEQ, may be deemed the equivalent of the relevant document. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

ee. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

ff. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any "hazardous material" under Rule 299.9203 of the Michigan Administrative Code, Mich. Admin. Code r. 299.9203; and (5) any "hazardous substance" as defined by Section 20101 of NREPA, Mich. Comp. Laws § 324.20101(1)(t).

gg. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, excluding those activities Respondent is required to perform by Section XV (Retention of Records). "Work" shall not include, without limitation, except as otherwise provided in the SOW: (1) removal actions performed pursuant to the Administrative Settlement Agreements and Orders on Consent entered in U.S. EPA Docket Nos. V-W-07-C-874, V-W-07-C-875, V-W-07-C-876, V-W-08-C-886, V-W-08-C-906, and V-W-09-C-921 and referenced in Paragraph 13.r, below; (2) any remedial response actions selected for the Site in any record of decision; (3) any removal actions selected for the Site in any action memorandum; and (4) any corrective action measures taken by Dow under its License.

V. FINDINGS OF FACT

13. Based on available information, including the administrative record in this matter, U.S. EPA and the State hereby find that:

a. The Site encompasses the area described in Paragraph 12.aa of this Settlement Agreement. The Site is the location where Respondent has disposed of hazardous substances, pollutants, or contaminants, or where such materials have or may have come to be located.

b. The Dow Chemical Company is a Delaware corporation and its registered agent is The Corporation Trust Company with an address of Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

c. The Midland Plant began operations in 1897. The Midland Plant covers approximately 1,900 acres. The majority of the Midland Plant is located on the east side of the Tittabawassee River and south of the City of Midland.

d. The Tittabawassee River is a tributary to the Saginaw River, draining 2,600 square miles of land in the Saginaw River watershed. The Tittabawassee River flows south and east for a distance of approximately 80 miles to its confluence with the Shiawassee River approximately 22 miles southeast of Midland. Upstream of the Midland Plant, the Tittabawassee River flow is regulated by the Secord, Smallwood, Edenville, and Sanford dams. The current operation of the hydroelectric station at Sanford results in water releases from Sanford Dam during peak electricity usage periods to provide peaking power to Consumer's Energy. Sanford Lake has limited flood storage capacity due to a narrow range of permitted lake levels. The Dow Dam is located adjacent to the Midland Plant. Below the Dow Dam, the river flow is free-flowing to its confluence with the Shiawassee and Saginaw Rivers. Tittabawassee River flow and water level fluctuate daily in response to releases from the Sanford Dam. The average and 100-year flood discharge for the Tittabawassee River based on data from 1937 to 1984 are approximately 1,700 cubic feet per second ("cfs") and 45,000 cfs, respectively. The relatively large ratio between the 100-year flood discharge and the long-term average discharge (26.5) indicates that the river is "flashy," or has a flow regime that is characterized by highly variable flows with a rapid rate of change.

e. The average monthly discharge from 1937 to 2003 for the Tittabawassee River 2,000 feet downstream of the Dow Dam ranged from approximately 600 cfs (in August) to 3,900 cfs (in March), with an average of 1,700 cfs. Discharge is typically highest in March and April during spring snowmelt and runoff. The maximum recorded historical crest of the Tittabawassee River occurred in 1986. A large storm in September 1986 produced up to 14 inches of rain in 12 hours. The discharge of the river near the Dow Dam reached nearly 40,000 cfs, and the river stage was 10 feet above flood stage at its crest (Deedler, Undated). Flows greater than 20,000 cfs have occurred in 22 of the 95 years between 1910 and 2004, with flows greater than 30,000 cfs occurring in 1912, 1916, 1946, 1948, and 1986. In March 2004, the river discharge reached approximately 24,000 cfs.

f. Portions of the Tittabawassee River floodplain are periodically inundated by floodwaters.

g. The Saginaw River is located within the Saginaw Bay and River watershed and drains over 6,300 square miles of land. It is formed by the confluence of the Tittabawassee River and the Shiawassee River just south of Saginaw, Michigan. The river itself is about 22.3 miles in length. Most of the Saginaw River flow originates in its major tributaries with 39 percent of flow contributed by the Tittabawassee River, 11 percent of flow contributed by the Shiawassee River, 20 percent of flow contributed by the Flint River, 14 percent of flow contributed by the Cass River and 16 percent of flow contributed by other sources. Most of the rivers in the watershed, including the Cass and Flint Rivers, indirectly discharge into the Saginaw River. The Flint River

discharges into the Shiawassee River approximately six miles upstream of the confluence of the Tittabawassee and Shiawassee Rivers. The Cass River also discharges into the Shiawassee River, approximately five miles downstream of the Flint River and about one mile upstream of the Tittabawassee/Shiawassee/Saginaw confluence.

h. The Saginaw River flows through Saginaw, Michigan and from there to Bay City, where the river discharges into Saginaw Bay in Lake Huron. Saginaw Bay water surface elevations and seiche effects (oscillations in water surface elevations caused by meteorological events) can affect Saginaw River water levels and flow rates for its entire length.

i. Over the time of its operation, the Midland Plant has produced over 1,000 different organic and inorganic chemicals. These chemicals include the manufacture of 24 chlorophenolic compounds since the 1930s.

j. Earlier in the history of the Midland Plant, wastes were discharged directly into the Tittabawassee River and, some time later, wastes were stored and partially treated in ponds prior to discharge to the River. Other wastes were disposed of at the Midland Plant either on land or by burning. Over time, changes in waste management practices included installation and operation of a modern wastewater treatment plant as well as use of incinerators instead of open burning. Changes in the wastewater treatment plant and subsequent incorporation of pollution controls into both the operations of and emissions from the incinerators have reduced or eliminated non-permitted releases and emissions from the Midland Plant.

k. Flooding of the Midland Plant property may have resulted in discharges to the Tittabawassee River of stored brines and untreated or partially treated process wastewaters. The primary source of furans and dioxins from the Midland Plant to the Tittabawassee River is believed to be historic releases of particulates in wastewaters to the River. The chlorine manufacturing process was the likely source of comparatively high furan toxicity equivalent (“TEQ”) readings in and along the Tittabawassee River. Dioxins and furans would have been discharged directly to the Tittabawassee River. Dioxins and furans found in more recent sediments may be related to chlorophenol production that began in the mid-1930s.

l. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a State to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the State program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program effective October 30, 1986. 51 Fed. Reg. 36,804 (Oct. 16, 1986). The U.S. EPA granted Michigan final

authorization to administer certain Hazardous and Solid Waste Amendments of 1984 and additional RCRA requirements effective January 23, 1990, 54 Fed. Reg. 48,608 (Nov. 24, 1989); June 24, 1991, 56 Fed. Reg. 18,517 (Apr. 23, 1991); November 30, 1993, 58 Fed. Reg. 51,244 (Oct. 1, 1993); April 8, 1996, 61 Fed. Reg. 4,742 (Feb. 8, 1996); December 28, 1998, 63 Fed. Reg. 57,912 (Oct. 29, 1998) (stayed and corrected effective June 1, 1999, 64 Fed. Reg. 10,111 (Mar. 2, 1999)); and, July 31, 2002, 67 Fed. Reg. 49,617 (Jul. 31, 2002). U.S. EPA authorized Michigan regulations are codified at Michigan Part 111 Administrative Rules, Mich. Admin. Code rr. 299.9101-299.11107. See also 40 C.F.R. §§ 272.1150-272.1151.

m. MDEQ issued to Dow its current RCRA Hazardous Waste Management Facility Operating License for the Midland Plant, with an effective date of June 12, 2003, and an expiration date of June 12, 2013 (the "License"). Under its License, Dow has been conducting corrective action work.

n. Multiple rounds of sampling have been conducted at the Site under the License, and otherwise, including extensive sampling for dioxins and furans, which has identified TEQ levels ranging from non-detect to over 100,000 ppt. A list of over 200 other contaminants of interest have been sampled for, and have also been detected at the Site. A specific list of the other contaminants of interest is contained in Attachment G to Volume 1 of Dow's December 1, 2006, "Remedial Investigation Work Plan (RIWP): Tittabawassee River and Upper Saginaw River and Floodplain Soils – Midland, Michigan."

o. Sampling conducted under the License indicates that the dioxin/furan and other contamination in the Tittabawassee River adjacent to and downstream of Dow is associated with the Midland Plant. Soil samples collected upstream of the City of Midland did not contain elevated levels of dioxins or furans. Dioxin and furan concentrations from these sample locations are consistent with statewide background concentrations. Sampling within tributaries to the Tittabawassee River has not identified any significant sources of dioxins or furans. No significant sources of dioxins or furans are known within the City of Midland other than Dow. Dioxin/furan congener profile charts for Tittabawassee River sediments and floodplain soils downstream of the Midland Plant are similar amongst themselves and very different from sample locations upstream of the Midland Plant. Contamination within the Tittabawassee River flood plain downstream of the Midland Plant has been documented.

p. U.S. EPA's and MDEQ's understanding of potential hazardous substances in soils at the Site is based on various sampling, analysis, and studies regarding dioxin/furans and other contaminants, in the Tittabawassee River, the Saginaw River, and the Saginaw Bay. The sampling, analysis, studies, and orders relied on by U.S. EPA and MDEQ include, but are not limited to, the sampling, analysis, studies, and orders listed in Appendix F to this Settlement Agreement.

q. Human access to the Site is unrestricted to people approaching the Site from the Tittabawassee River. Wildlife in the area also has unrestricted access. The Site is also subject to flooding and erosion. This is particularly true during high stream flow events. This

may result in the spread of dioxin contamination to other locations within the flood plain, as well as to downstream locations. This may also result in further contamination of fish and invertebrates within the river and at downstream locations, and contamination of animals in the floodplain.

r. On July 12, 2007, U.S. EPA and Dow entered into three separate Administrative Settlement Agreements and Orders on Consent under the authority of Sections 104, 106(a), 107, and 122 of CERCLA. On November 15, 2007, U.S. EPA and Dow entered into a fourth Administrative Settlement Agreement and Order on Consent ("AOC"). On July 15, 2008, U.S. EPA and Dow entered into a fifth AOC. The AOCs provide for CERCLA time critical removal actions to, among other things, remove certain contaminated bottom deposits, sediments, and/or soils in, or along, the Tittabawassee River in Midland County, Michigan, as well as in the Saginaw River in the City of Saginaw, Michigan. Pursuant to the above referenced Administrative Settlement Agreements and Orders, Dow has agreed to remove or has removed contaminated sediments in designated locations (including residential properties, property zoned for industrial use, and State-owned land), capped one contaminated upland area and fenced off another contaminated wetland area, and cleaned the inside of occupied homes. U.S. EPA has provided Dow with notification of the completion of the above-referenced AOCs.

s. On February 27, 2009, U.S. EPA and Dow entered into a sixth AOC. Dow has performed certain removal actions required under this AOC, identified as U.S. EPA Docket No. V-W-09-C-921, at the area known as Exposure Unit 002, which is an area along the Tittabawassee River including residential properties and West Michigan Park. Dow has removed contaminated soils in designated locations, including at residential properties and a municipal park.

t. Dioxins, furans, and certain of the contaminants identified in Paragraph 13.n are listed as hazardous constituents in Appendix VIII to Part 261 of Title 40 of the Code of Federal Regulations, 40 C.F.R. pt. 261 app. VIII, and Part 111 of NREPA, Mich. Comp. Laws §§ 324.11101-324.11153, and as hazardous substances in Part 201 of NREPA, Mich. Comp. Laws §§ 324.20101-324.20142.

u. U.S. EPA OSWER Directive 9200.4-26, April 13, 1998, has generally selected 1 ppb as a cleanup level for dioxin for direct contact threat in residential soils at Superfund and RCRA cleanup sites. MDEQ has established a residential soil direct contact cleanup criterion for dioxin of .09 ppb. The MDEQ dioxin cleanup criterion is established in Part 201, which also allows for a different cleanup number to be developed and used based on site-specific and other information.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

14. Based on the Findings of Fact set forth above, and the administrative record in this matter, U.S. EPA and the State have determined that:

15. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Portions of the Site are a “facility” as that term is defined in Section 20101(1)(o) of NREPA, Mich. Comp. Laws § 324.20101(1)(o).

16. The contamination found at the Site, as identified in the Findings of Fact above, includes a “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

18. Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622.

20. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

21. U.S. EPA and the State have determined that Respondent is qualified to conduct the evaluation of current Site conditions and assessments of response options, and implementation of any RI, any FS and/or EE/CA, and any RD within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a), 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

22. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement (as listed and as provided in Section XXXII) and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

23. Selection of Contractors, Personnel.

a. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent shall notify U.S. EPA and MDEQ in writing of the names, titles, and qualifications of the key personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any contractor proposed to be the supervising contractor or that will be collecting or analyzing environmental samples, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to U.S. EPA's and MDEQ's review, for verification that such persons meet minimum technical background and experience requirements. If Respondent fails to demonstrate to the satisfaction of U.S. EPA, in consultation with MDEQ, that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement, then U.S. EPA may take over the Work required by this Settlement Agreement.

b. If U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, disapproves in writing of the technical qualifications of any person, Respondent shall notify U.S. EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. If U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, subsequently disapproves in writing of the technical qualifications of the replacement(s), U.S. EPA reserves the right to terminate this Settlement Agreement and to evaluate the current Site conditions and assess response options and to conduct any RI, any FS and/or EE/CA, and/or any RD, and to seek reimbursement for costs and penalties from Respondent. During the course of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD, Respondent shall notify U.S. EPA and MDEQ in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

24. Respondent has designated Todd Konechne as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. In no event shall legal counsel serve as a Project Coordinator for purposes of this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present

on-site or readily available during Site Work. U.S. EPA, after consultation with MDEQ, retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator in writing, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA and MDEQ of that person's name, address, telephone number and qualifications within twenty-one (21) days following U.S. EPA's disapproval. Respondent shall have the right to change its Project Coordinator subject to U.S. EPA's right to disapprove. Respondent shall notify U.S. EPA and MDEQ fourteen (14) days before such change is made. The initial notification may be made orally, but shall be promptly followed by a written notification.

25. U.S. EPA has designated Mary Logan of the Superfund Division, Region 5 as its Project Coordinator. MDEQ has designated Allan Taylor, MDEQ Waste and Hazardous Materials Division ("WHMD"), as its Project Coordinator. U.S. EPA and MDEQ will notify Respondent and each other of any changes in their respective designations of the Project Coordinator(s). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to:

As to U.S. EPA:

Mary Logan
Remedial Project Manager
U.S. EPA, Superfund Division
Mail Code SR-6J
77 West Jackson
Chicago, IL 60604-3590

As to MDEQ:

Allan B. Taylor, Geology Specialist
Hazardous Waste Section
Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909-7760

Respondent is encouraged to make its submissions to U.S. EPA and MDEQ on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Respondent shall make submissions electronically according to U.S. EPA Region 5 specifications. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

Documents to be submitted to the Respondent shall be sent to:

Todd Konechne, Project Coordinator
The Dow Chemical Company
1790 Building
Midland, MI 48674

26. U.S. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, U.S. EPA's Project Coordinator shall have the authority consistent with the NCP to halt, conduct, or direct any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the U.S. EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

27. U.S. EPA and MDEQ shall have the right, subject to Paragraph 25, to change their RPM, OSC, and/Project Coordinators. Respondent shall have the right, subject to Paragraph 24, to change its Project Coordinator. Respondent shall notify U.S. EPA and MDEQ fourteen (14) days before such a change is made. The initial notification by a party may be made orally, but shall be promptly followed by a written notice.

28. U.S. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of any RI and any FS for the Site, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). U.S. EPA may also arrange for a qualified person to assist in its oversight and review of all other Work required under this Settlement Agreement. Such person shall have the authority to observe Work and make inquiries in the absence of U.S. EPA, but not to modify the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, or other work plans.

IX. WORK TO BE PERFORMED

29. a. Respondent shall conduct all of the tasks required by the SOW, including the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD, in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP and all applicable U.S. EPA guidance as provided in the SOW. U.S. EPA guidance related to the Work includes, but is not limited to, the guidance listed in Exhibit C to the SOW.

b. In any RI and FS Reports, Respondent shall address the factors required to be taken into account in Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430 of the NCP, 40 C.F.R. § 300.430. To the extent not previously completed, the RI shall characterize the geology and hydrogeology of the Site, determine the nature and extent of hazardous substances, pollutants or contaminants at the Site, and characterize ecological zones including terrestrial,

riparian, wetlands, aquatic, and transitional, as provided in the SOW. As provided in the SOW, Respondent shall evaluate current Site conditions and assess response options, and shall prepare a determination and report of the nature and extent of the current and potential threat to the public health or welfare or the environment posed by the release or threatened release of any hazardous substances, pollutants, or contaminants at or from the Site. In the FS Report and/or EE/CA, Respondent shall determine and evaluate (based on treatability testing, where appropriate) alternatives for response action that protect human health and the environment by recycling waste or by eliminating, reducing and/or controlling risks posed by the exposure pathways at the Site as provided in the SOW. In the FS Report, the Respondent shall evaluate a range of alternatives including but not limited to those alternatives described in 40 C.F.R. § 300.430(e) and remedial alternatives that utilize permanent solutions and alternative treatment technologies or resource recovery technologies as provided in the SOW. The FS Reports shall include a detailed analysis of individual alternatives against each of the nine evaluation criteria in 40 C.F.R. § 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against the nine criteria in 40 C.F.R. § 300.430(e)(9)(iii). Respondent shall submit to U.S. EPA and MDEQ each 5 copies (or another amount, as requested) of all plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW in accordance with the approved schedule for review and approval pursuant to Section X (U.S. EPA Approval of Plans and Other Submissions). Concurrently with the submission to U.S. EPA and MDEQ of any plan, report, submittal, or other deliverable, including, without limitation, results of all sampling, testing, modeling or other data submitted pursuant to Paragraph 50, Respondent shall also provide a copy of such plan, report, submittal or other deliverable to the Trustee Coordinator, or if not available, the Lead Administrative Trustee, at:

U.S. Fish & Wildlife Service
2651 Coolidge Road, Suite 101
East Lansing, MI 48823

Upon request by U.S. EPA and/or MDEQ, Respondent shall submit in electronic form all portions of any documents, reports, or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement, including the SOW. Upon approval by U.S. EPA, all deliverables (other than progress reports) under this Settlement Agreement, including the SOW, shall be incorporated into and become enforceable under this Settlement Agreement.

c. Early Response Actions Under CERCLA. As the Work under this Settlement Agreement proceeds, information may be developed while the SOW tasks are being conducted, but before the tasks are completed, that support decisions to take early response actions at the Site. For example, information may be developed during the Work performed under Task 1 and Task 2 of the SOW which may lead to early response actions at the Site. The decision to undertake early response actions at the Site may be made by U.S. EPA, after consultation with MDEQ (to the extent practicable), through the issuance of an action memorandum for a time critical removal action. The decision to undertake early response actions at the Site also may be

made by U.S. EPA, after consultation with MDEQ, through the issuance of an action memorandum for a non-time critical removal action, or a ROD or RODs for taking Early Interim Remedial Action or Early Final Remedial Action.

d. Transition of Certain Response Actions. Certain monitoring and interim response actions (“IRAs”) being performed under the License by Respondent at the Site will transition from MDEQ to U.S. EPA under this Settlement Agreement as set forth in the SOW. The Parties acknowledge and agree that subsequent to the transition described in this Subparagraph 29(d), MDEQ will have such further oversight with respect to transitioned activities as is provided for in this Settlement Agreement.

e. Interim Response Actions under the License. With regard to any future early response actions or IRAs at the Site, U.S. EPA and MDEQ agree that such actions will most likely proceed under CERCLA. Subject to this Subparagraph 29(e), the MDEQ reserves its right under the License to compel an IRA at the Site. Prior to MDEQ making such a decision under the License, MDEQ and U.S. EPA agree to consult with each other. If U.S. EPA and MDEQ are not in agreement with respect to an MDEQ decision to compel an IRA at the Site, then before taking action to compel an IRA at the Site, MDEQ agrees to comply with the dispute resolution process set forth in Section XVII (Dispute Resolution Regarding Disputes Between U.S. EPA and MDEQ) of this Settlement Agreement.

30. Response Design. U.S. EPA anticipates that information may be developed while the SOW tasks are being conducted, but before they are completed, that supports issuance of a ROD or RODs for taking Early Interim Remedial Action or Early Final Remedial Action. Where an Early Interim Remedial Action is selected in a ROD, U.S. EPA anticipates that the Early Interim Remedial Action may be followed with additional response actions, and that additional decision documents, including a final ROD, will be issued. Where an Early Final Remedial Action is selected in a ROD, U.S. EPA anticipates that the Early Final Remedial Action will not require additional response actions. When U.S. EPA, after consultation with MDEQ, determines that an Early Interim Remedial Action, Early Final Remedial Action, or final Remedial Action ROD is necessary during the time that Respondent is conducting Work under this Settlement Agreement, U.S. EPA may issue a ROD requiring such Remedial Action. When U.S. EPA, after consultation with MDEQ, determines that a non-time critical removal action is necessary during the time that Respondent is conducting Work under this Settlement Agreement, U.S. EPA may issue an action memorandum requiring such non-time critical removal action. Respondent shall commence the RD of any remedial action selected in a ROD and shall commence the RD of any non-time critical removal action selected in an action memorandum in accordance with the Schedule in Exhibit B to the SOW consistent with the terms of this Settlement Agreement and the SOW attached as Appendix A.

31. Community Involvement Plan and Technical Assistance Plan. U.S. EPA will prepare a Community Involvement Plan, in accordance with U.S. EPA guidance and the NCP. As requested by U.S. EPA, Respondent shall provide information supporting U.S. EPA’s community relations programs. Notwithstanding the foregoing, any written communication by

Respondent, or its officers, employees, agents or assigns, directed at informing the public regarding Work under this Settlement Agreement that is not conducted pursuant to the EPA Community Involvement Plan for the Site shall prominently display the following disclaimer:

“This communication represents only the view of The Dow Chemical Company and not the views of U.S. EPA, MDEQ, or any other entity, agency or individual.”

When requested by U.S. EPA, Respondent also shall provide U.S. EPA with the following deliverable:

Technical Assistance Plan: Within sixty (60) days of a request by U.S. EPA, Respondent shall provide U.S. EPA with a Technical Assistance Plan (“TAP”) for providing and administering up to \$50,000 of Respondent’s funds to be used by a qualified community group to hire independent technical advisers during the Work conducted pursuant to this Settlement Agreement. The TAP shall state that Respondent will provide and administer any additional amounts needed if U.S. EPA determines that the selected community group has demonstrated such a need prior to U.S. EPA’s issuance of the response action decision documents contemplated by this Settlement Agreement. Upon its approval or modification by U.S. EPA pursuant to Section X (U.S. EPA Approval of Plans and Other Submissions), the TAP shall be incorporated into and become enforceable under this Settlement Agreement.

32. Modification of any plans.

a. As information is developed during the Work, Respondent may propose appropriate modifications to the work plans, or other plans or schedules for U.S. EPA’s review in accordance with Section X (U.S. EPA Approval of Plans and Other Submissions). In addition, if at any time during the performance of the Work under this Settlement Agreement Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the U.S. EPA and MDEQ Project Coordinators within thirty (30) days of identification. U.S. EPA, after consultation with MDEQ, will determine whether the additional data will be collected by Respondent and incorporated into reports and deliverables under this Settlement Agreement.

b. In the event of an immediate threat or unanticipated or changed circumstances at the Site that may warrant changes in any plan, Respondent shall notify the U.S. EPA and MDEQ Project Coordinators by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines, after consultation with MDEQ, that the immediate threat or the unanticipated or changed circumstances warrant changes in any of the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, U.S. EPA shall direct that Respondent modify, amend or supplement the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW in writing accordingly. Respondent shall

perform the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW as modified or amended.

c. U.S. EPA, after consultation with MDEQ, may determine that in addition to tasks defined in the initially approved plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, other additional Work may be necessary to accomplish the objectives of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD as set forth in the SOW for the evaluation of current Site conditions and the assessments of response options (attached as Appendix A). U.S. EPA may require that Respondent perform these response actions in addition to those required by the initially approved plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, including any approved modifications, if it determines that such actions are necessary to accomplish the objectives set forth in the SOW.

d. Respondent shall confirm its willingness to perform the additional evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD Work in writing to U.S. EPA within seven (7) days of receipt of the U.S. EPA request. If Respondent objects to any modification determined by U.S. EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent). The plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, or a written work plan supplement. If Respondent does not do so, U.S. EPA reserves the right to conduct the additional Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

f. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. A copy of this request shall also be submitted to MDEQ. Respondent may not proceed with the requested deviation until receiving written approval from U.S. EPA's Project Coordinator.

g. No informal advice, guidance, suggestion, or comment by the U.S. EPA Project Coordinator, MDEQ Project Coordinator, or other U.S. EPA or MDEQ representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

h. Nothing in this Paragraph shall be construed to limit U.S. EPA's or MDEQ's authority to require performance of further response actions as otherwise provided in this Settlement Agreement.

33. Off-Site Shipment of Waste Material.

a. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to U.S. EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide the information required by Subparagraph 33.b, 33.d, and 33.e as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

d. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an in-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official and to U.S. EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation.

e. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

34. Meetings. Respondent shall make presentations at, and participate in, meetings (in person, or if approved by the U.S. EPA Project Coordinator, by telephone conference) at the request of U.S. EPA during the initiation, conduct, and completion of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD. In addition to discussion of the technical aspects of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion after consultation with MDEQ.

35. Progress Reports. In addition to the deliverables set forth in this Settlement Agreement, Respondent shall provide to U.S. EPA and MDEQ progress reports in accordance with the requirements of the SOW.

36. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the U.S. EPA Project Coordinator or, in the event of his/her unavailability, the On Scene Coordinator ("OSC") or the Regional Duty Officer, U.S. EPA Region 5 Emergency Planning and Response Branch at (312) 353-2318 of the incident or Site conditions. The Respondent shall also immediately notify the MDEQ Project Manager at (517) 335-4799 or, if he is unavailable, the Pollution Emergency Alerting System (PEAS) at (800) 292-4706 (within Michigan) or at (517) 373-7660 (outside of Michigan). In its notifications, Respondent shall (1) provide to U.S. EPA the name or other contact information for the State notification recipient; (2) provide to the State the name or other contact information for the U.S. EPA notification recipient; and (3) inform both the U.S. EPA contact and the State contact of the response actions being taken by Respondent. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA and/or MDEQ takes such action instead, Respondent shall reimburse U.S. EPA and/or MDEQ all costs of the response action not inconsistent with the NCP pursuant to Section XX (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site other than a de minimis release that is incidental to the Work, Respondent shall, upon knowledge of the release, immediately notify the U.S. EPA Project Coordinator, the OSC or Regional Duty Officer at (312) 353-2318 and the National Response Center at (800) 424-8802. The Respondent shall also immediately notify the MDEQ Project Coordinator, at (517) 335-4799 or, if he is unavailable, the Pollution Emergency Alerting System (PEAS) at (800) 292-4706 (within Michigan) or (517) 373-7660 (outside of Michigan). Respondent shall submit a written report to U.S. EPA and to the MDEQ within seven (7) days after each release, setting forth the events that

occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

X. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, including the SOW, U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, shall, in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days (or such longer time as specified by U.S. EPA in writing), except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

38. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Subparagraph 37(a), (b), (c), or (e), Respondent shall proceed to take any action required by the plan, report or other item, as approved or modified by U.S. EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent) with respect to the modifications or conditions made by U.S. EPA. Following U.S. EPA approval or modification of a submittal or portion thereof, Respondent shall not thereafter alter or amend such submittal or portion thereof unless directed by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies after Respondent fails to cure after receipt of a notice pursuant to Subparagraph 37(c) and the submission had a material defect, U.S. EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties). U.S. EPA also retains the right to perform its own studies, complete all or a portion of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD pursuant to Paragraph 96 (Work Takeover), and seek reimbursement from Respondent for its costs; and/or seek any other appropriate relief.

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such longer time as specified by U.S. EPA in writing, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission that does not depend on the disapproved portion, unless otherwise directed by U.S. EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

c. Respondent shall not proceed with any activities or tasks described in, or dependent upon, U.S. EPA approval of any of the deliverables until receiving U.S. EPA approval for the pertinent deliverable consistent with Exhibit B of the SOW. While awaiting U.S. EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of the deliverables, in accordance with the schedule set forth in this Settlement Agreement, or as otherwise approved by U.S. EPA.

d. U.S. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD.

40. If U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, disapproves a resubmitted plan, report or other item, or portion thereof, U.S. EPA may direct Respondent to correct the deficiencies. U.S. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any such plan, report, or item as corrected, modified or developed by U.S. EPA, subject only to its right to invoke the procedures set forth in Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent).

41. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA, after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent) and U.S. EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by U.S. EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

42. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the RI Report, or the FS Report and/or EE/CA, or any RD deliverables, Respondent shall incorporate

and integrate information supplied by U.S. EPA into the final reports or deliverables.

43. All plans, reports, and other items submitted to U.S. EPA and MDEQ under this Settlement Agreement shall, upon approval or modification by U.S. EPA after opportunity for review and comment by MDEQ under the procedures provided in the SMOA, be incorporated into and enforceable under this Settlement Agreement. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

44. Neither failure of U.S. EPA to expressly approve or disapprove Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to U.S. EPA.

XI. MDEQ REVIEW OF SUBMISSIONS AND COORDINATION OF LICENSE PROVISIONS

45. MDEQ will review the plans, reports, and other items submitted, or determinations made, under this Settlement Agreement. Each plan, report, or other item or determination, once approved or made by U.S. EPA, after opportunity for review and comment by MDEQ, will be considered to be consistent with, and to satisfy, the corresponding obligation of Dow under the License as set forth in Appendix H unless within no more than ten (10) business days after the U.S. EPA approval of a plan, report, or other item or determination, MDEQ invokes the dispute resolution process set forth in Section XVII of this Settlement Agreement with respect to that approval or determination. If MDEQ invokes the dispute resolution process set forth in Section XVII of the Settlement Agreement with respect to an approved plan, report, or other item or determination then, notwithstanding the requirements of Section X of this Settlement Agreement, Respondent's obligations under that approved plan, report, or other item or determination shall be stayed during the dispute resolution process set forth in Section XVII, Paragraphs 67 and 68.

46. Corrective action for currently unknown releases or potential future releases by Respondent, to the Tittabawassee River and floodplain from areas outside of the Site may require actions to be taken under the License in the area defined as the Site. Upon discovery of any such release and if this Settlement Agreement is still in effect, prior to imposing any obligations upon Respondent, MDEQ and U.S. EPA will consult with each other to determine whether any response actions should be performed under the License or CERCLA. The parties agree that any such release discovered pursuant to any Work, other than Work described in SOW Task 4 related to long term monitoring, will most likely be addressed under CERCLA. Any decisions made by U.S. EPA and MDEQ as part of this consultation shall not be subject to the dispute resolution provisions of Section XVII and MDEQ reserves the right to require corrective action to address such currently unknown releases or potential future releases under the License.

47. Within fourteen (14) days after the Effective Date of this Settlement Agreement,

MDEQ shall initiate a major modification of the License pursuant to Part 111 and the Part 111 Administrative Rules by providing a draft modified License to the facility mailing list and appropriate units of State and local government for comment. The proposed major modification language is set forth in Appendix E to this Settlement Agreement. The MDEQ agrees to diligently pursue the Part 111 License modification in accordance with the procedures as provided in the Part 111 Administrative rules, including consideration of and response to public comment. MDEQ will make reasonable efforts to issue a final decision that approves the License modification set forth in Appendix E, unless alternative language is agreed to by the Parties or if public comment received and considered by MDEQ on the proposed major modification demonstrates that the proposed modification set forth in Appendix E is inconsistent with applicable law. MDEQ will notify Respondent prior to making any change(s) to the language in Appendix E as a result of such public comment. The Respondent agrees not to contest this major modification unless the language differs from that in Appendix E. The Parties agree that if the work is not disputed by MDEQ pursuant to Paragraphs 29(e), 45, or Section XVII, or the dispute is resolved pursuant to Section XVII and MDEQ does not exercise its rights under Paragraph 69, the approved CERCLA Work conducted in compliance with the AOC and SOW constitutes a substantively equivalent remedial process that meets the requirements of Part 201 and the applicable requirements of Dow's License. Except as provided in Paragraphs 29(e), 45, and Section XVII, and except for ongoing work under the License for which transition has not been initiated as set forth in Section II of the SOW and Exhibit A to the SOW, until the License modification is effective, MDEQ agrees to defer and not pursue implementation of the corrective action License requirements set forth in Appendix H.

48. Within fourteen (14) days after the License modification is issued that withdraws the Saginaw River and Bay SOW approved with modifications dated February 1, 2008: (1) MDEQ and Dow agree to file the necessary documents to dismiss the State Court actions pending in Case No. 08-2839-AA-B and Case No. 09-5801-AA-B and Respondent agrees to withdraw the following documents submitted to MDEQ: its Saginaw River/Bay Remedial Investigation Scope of Work dated October 15, 2007, the Saginaw River/Bay Remedial Investigation Scope of Work dated June 10, 2008, and the Saginaw River, Floodplain and Saginaw Bay Remedial Investigation Work Plan dated June 10, 2008.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA AVAILABILITY

49. Quality Assurance.

a. Respondent shall assure that all Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP") and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall use quality assurance, quality control, and chain of custody procedures for all samples taken, and analyses in accordance with the Uniform Federal Policy for Implementing Environmental Quality Systems (UFP-QS), the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) Manual, the Uniform Federal Policy - QAPP Workbook, and the

Uniform Federal Policy - QAPP Compendium, and subsequent amendments to such guidelines upon notification by U.S. EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain of custody procedures. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001),” or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements. The Respondents shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2C, “Tracking Superfund Non-CLP Analytical Data” (November 14, 2002).

b. Upon request by U.S. EPA or MDEQ, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA or MDEQ for QA monitoring. Respondent shall provide to U.S. EPA and the MDEQ the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

50. Sampling.

a. All results of sampling, tests, modeling or other data (including validated data, but excluding raw data unless specifically requested) generated by Respondent, or on Respondent’s behalf, under this Settlement Agreement, shall be submitted to U.S. EPA, MDEQ, and the Natural Resources Trustee coordinator or if not available the Lead Administrative Trustee (in electronic form according to U.S. EPA Region 5 specifications, and in hard copy upon request by U.S. EPA) in the next progress report as described in the SOW. U.S. EPA or MDEQ will make available to Respondent validated data generated by U.S. EPA or MDEQ unless it is exempt from disclosure by any federal or state law or regulation.

b. Except for sampling intended to occur during storm events, Respondent shall verbally notify U.S. EPA and MDEQ at least fourteen (14) days prior to conducting significant field events as described in the SOW and any work plan/field sampling plan. At U.S. EPA’s or MDEQ’s verbal or written request, or the request of U.S. EPA’s or MDEQ’s oversight assistants, Respondent shall allow split or duplicate samples to be taken by U.S. EPA (and its authorized representatives) and MDEQ of any samples collected by Respondent in implementing this Settlement Agreement. All split samples shall be analyzed by the methods identified in a U.S. EPA-approved QAPP governing split samples.

c. Except for sampling intended to occur during storm events, emergency response actions, enforcement-related events requiring confidentiality, or compliance monitoring under the License, U.S. EPA and/or MDEQ shall verbally notify Respondent at least fourteen

(14) days prior to conducting significant field events related to overseeing this Settlement Agreement. At Respondent's written request, U.S. EPA shall allow split or duplicate samples to be taken by Respondent (and its authorized representatives) of any samples collected by U.S. EPA in overseeing this Settlement Agreement. At Respondent's written request, MDEQ shall allow split or duplicate samples to be taken by Respondent (and its authorized representatives) of any samples collected by MDEQ in overseeing this Settlement Agreement. All split samples shall be analyzed by the methods identified in a U.S. EPA-approved QAPP governing split samples.

51. Data Availability.

a. At all reasonable times, U.S. EPA, MDEQ, and their authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where Work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this Settlement Agreement; reviewing the progress of Respondent in carrying out the terms of this Settlement Agreement; conducting tests as U.S. EPA, MDEQ, or their authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA and/or MDEQ by Respondent. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Settlement Agreement, subject to Paragraphs 51(c) and 53. Nothing herein shall be interpreted as limiting or affecting U.S. EPA's right of entry or inspection authority under federal law and the State's right of entry or inspection authority under federal or state law. All persons accessing the Site under this Paragraph shall comply with all approved Health and Safety Plans.

b. Respondent shall provide to U.S. EPA and to MDEQ, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Settlement Agreement, 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. Respondent shall also make available to U.S. EPA and to MDEQ, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

c. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA and MDEQ under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), and, with respect to documents or information submitted to the MDEQ, Section 20117(10) of NREPA, Mich. Comp. Laws § 324.20117(10), and Section 11129(2) of NREPA, Mich. Comp. Laws § 324.11129(2). Documents or information determined to be confidential by U.S. EPA or the MDEQ will be afforded the protection specified in 40 C.F.R. §§ 2.201-2.311, Mich. Comp. Laws § 324.20117(10), and/or

Mich. Comp. Laws § 324.11129(2), as applicable. If no claim of confidentiality accompanies documents or information when it is submitted to U.S. EPA or MDEQ, or if U.S. EPA or MDEQ has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 40 C.F.R. §§ 2.201-2.311, Mich. Comp. Laws § 324.20117(10), or Mich. Comp. Laws § 324.11129(2) as applicable, the public may be given access to such documents or information without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims. Documents or information generated or submitted under this Settlement Agreement shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the Mich. Comp. Laws §§ 324.14801-324.14810.

52. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or evaluated by U.S. EPA, the State, or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any U.S. EPA-approved work plans or sampling and analysis plans under this Settlement Agreement. If Respondent objects to any other data relating to any plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, Respondent shall submit to U.S. EPA and MDEQ a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to U.S. EPA and MDEQ within fifteen (15) days of the monthly progress report containing the data.

53. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide U.S. EPA and MDEQ with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged. Additionally, no claim of privilege or confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

54. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their information-gathering authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, Part 201 and/or Part 111 of NREPA, and any other applicable statutes or regulations.

XIII. SITE ACCESS

55. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide U.S. EPA, MDEQ, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

56. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within no fewer than ninety (90) days before access to such property is needed pursuant to the work plans or other approved plans specified in the SOW, or as otherwise specified in writing by the U.S. EPA Project Coordinator. Respondent shall immediately notify U.S. EPA and MDEQ if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XX (Payment of Response Costs).

57. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and MDEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

58. If Respondent cannot obtain access agreements, U.S. EPA may obtain access for Respondent, perform those tasks or activities with U.S. EPA contractors, or terminate the obligations under the Settlement Agreement that requires the access agreements in question. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other activities not requiring access to that property, and shall reimburse U.S. EPA for the costs incurred in performing such activities in accordance with Section XX (Payment of Response Costs). Respondent shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables.

XIV. COMPLIANCE WITH OTHER LAWS

59. Respondent shall comply with all applicable local, state and federal laws and regulations when performing the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit

or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. RETENTION OF RECORDS

60. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after commencement of construction of the last remedial action which is based on the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD developed under this Settlement Agreement, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of the last remedial action based on the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD developed under this Settlement Agreement, Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work. All records required to be retained under this Paragraph may be retained in electronic rather than hard copy form. If Respondent elects to retain any records required to be retained under this Paragraph in electronic rather than hard copy form, then Respondent shall obtain the approval of U.S. EPA and MDEQ prior to use of that electronic form.

61. At the conclusion of this document retention period, Respondent shall notify U.S. EPA and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by U.S. EPA or the State, Respondent shall deliver any such records or documents to U.S. EPA and/or the State. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide U.S. EPA and the State with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

62. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA under CERCLA and that it has fully complied or is in the process of complying with any and all U.S. EPA

requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. DISPUTE RESOLUTION REGARDING DISPUTES BETWEEN U.S. EPA AND RESPONDENT

63. Subject to Section XVII (Dispute Resolution Regarding Disputes Between U.S. EPA and MDEQ), and unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. U.S. EPA, Respondent, and (if appropriate) MDEQ shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

64. If Respondent objects to any U.S. EPA and/or MDEQ action taken pursuant to this Settlement Agreement, including billings for Future Response Costs (which shall be addressed pursuant to Paragraph 89), it shall notify U.S. EPA and MDEQ in writing of its objection(s) within fourteen (14) days of such action (unless a longer time period is provided in or pursuant to this Settlement Agreement), unless the objection(s) has/have been resolved informally. U.S. EPA (in consultation with MDEQ) and Respondent shall have fourteen (14) days from U.S. EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of U.S. EPA (in consultation with MDEQ). Such extension may be granted verbally but must be confirmed in writing to be effective.

65. Any agreement reached between U.S. EPA (in consultation with MDEQ) and Respondent pursuant to this Section shall be in writing and, upon signature by U.S. EPA and Respondent, shall be incorporated into and become an enforceable part of this Settlement Agreement. If U.S. EPA (in consultation with MDEQ) and Respondent are unable to reach an agreement within the Negotiation Period, U.S. EPA (in consultation with MDEQ) shall provide its Statement of Position, including supporting documentation, no later than thirty-one (31) days after receipt of the written notice of dispute. Respondent may submit a response to the U.S. EPA Statement of Position within seven (7) days after receipt of the Statement. In the event that these time periods for exchange of written documents may cause an unacceptable delay in the Work, they shall be shortened upon, and in accordance with, notice by U.S. EPA (with the time to be reduced equally for each Party). The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, the Statement of Position and any response served pursuant to this Paragraph, and all other materials exchanged during dispute resolution and designated as submitted as part of such dispute resolution. Based upon the administrative record, the Director of the Superfund Division, U.S. EPA Region 5 (or, in the event of his or her unavailability, the next higher ranking U.S. EPA Region 5 official), in consultation with MDEQ, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement. The Superfund Division Director (or, due to unavailability, the higher

ranking official) will issue a written decision resolving the dispute. The Director of the Superfund Division (or, due to unavailability, the next higher ranking official) shall, upon request, meet with the Parties before resolving the dispute. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. Respondent shall proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the Work in accordance with U.S. EPA's final decision, then U.S. EPA reserves the right in its sole discretion, after consultation with MDEQ, to conduct the subject Work itself, to seek reimbursement from Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief. MDEQ may dispute any agreement between U.S. EPA and Respondent pursuant to Section XVII.

XVII. DISPUTE RESOLUTION REGARDING DISPUTES BETWEEN U.S. EPA AND MDEQ

66. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes between U.S. EPA and MDEQ arising under this Settlement Agreement. U.S. EPA and MDEQ shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

67. If a dispute arises between MDEQ and U.S. EPA concerning the Site, then:

a. As appropriate, factors that may be considered in resolving a dispute under this Section will include but not be limited to the following:

- (i) The degree to which a particular outcome of the disputed issue would be necessary to protect human health and the environment;
- (ii) Potential for the outcome of the disputed issue to delay the Work;
- (iii) Potential for the outcome of the disputed issue to conflict or interfere with Work;
- (iv) Potential for the outcome of the disputed issue to cause or prevent the repetition of Work;
- (v) Whether the need can be met at another point in the performance of the Work or through a different mechanism under the Settlement Agreement;
- (vi) Significance of the outcome relative to the purpose of this Settlement Agreement;
- (vii) Practicability of implementing the outcome of the dispute; and/or

(viii) Impact on the broader regulatory programs administered by U.S. EPA and MDEQ.

b. The U.S. EPA Remedial Project Manager and the MDEQ Project Coordinator shall attempt to resolve the dispute informally within ten (10) business days. With respect to disputes arising under Paragraph 45 of this Settlement Agreement, if MDEQ disputes U.S. EPA's approval of a plan, report, or other item or determination, then MDEQ shall send a written notice of dispute to U.S. EPA's Project Manager within no more than ten (10) business days after the U.S. EPA approval of the plan, report, or other item, with a copy to Respondent if the dispute concerns a Respondent obligation. If the dispute cannot be resolved at this level within this time frame, the dispute will be elevated for resolution to the U.S. EPA Chief of the Remedial Response Branch and the MDEQ Chief of the Waste and Hazardous Materials Division.

c. If a dispute cannot be resolved and Dow has not been so notified under Paragraph 67.b, above, then Dow will be notified of the pending dispute between U.S. EPA and MDEQ within two (2) days of the completion of the Paragraph 67.b process. Dow may provide a written position on the disputed issue within ten (10) business days after being notified pursuant to Paragraph 67.b or 67.c, as applicable. U.S. EPA and MDEQ may invite further participation by Dow in the dispute resolution if jointly agreed to by U.S. EPA and MDEQ.

d. The U.S. EPA Chief of the Remedial Response Branch and the MDEQ Chief of the Waste and Hazardous Materials Division, shall attempt to resolve the dispute informally within fifteen (15) business days from the date of notification to the Respondent as provided by Paragraph 67.c above. If the dispute still cannot be resolved within fifteen (15) business days, then the dispute will be elevated for resolution to the U.S. EPA Director of the Superfund Division and the appropriate MDEQ Deputy Director.

e. The U.S. EPA Director of the Superfund Division and the appropriate MDEQ Deputy Director shall attempt to resolve the dispute informally within ten (10) business days after the expiration of the period described in Paragraph 67.d above. If the dispute still cannot be resolved within ten (10) business days, the dispute will be elevated to the Regional Administrator of U.S. EPA Region 5 and the Director of the MDEQ.

f. The Regional Administrator of U.S. EPA Region 5 and the Director of the MDEQ shall attempt to formally resolve the dispute via mutual agreement within ten (10) business days after the exchange of written Statements of Position by the governmental parties pursuant to Paragraph 68. If the dispute still cannot be resolved within ten (10) business days, then, except for the matters set forth in Paragraph 69, below, the U.S. EPA Region 5 Regional Administrator shall finally resolve the dispute.

68. With respect to disputes that rise to the formal dispute resolution level (Paragraph 67.f, above), U.S. EPA and MDEQ shall exchange their written Statement of Position, including supporting documentation, no later than twenty (20) business days after their failure to resolve the dispute informally pursuant to Paragraph 67.e. An administrative record of any formal

dispute under this Section shall be maintained by U.S. EPA. The administrative record shall include the Statements of Position of the governmental parties, any written position on the disputed issue submitted by Respondent, and any other written materials relied upon in considering the dispute pursuant to Paragraph 67.f. Based upon the administrative record, the Regional Administrator of U.S. EPA Region 5 shall resolve the dispute, subject to Paragraph 69 of this Settlement Agreement. The Regional Administrator of U.S. EPA Region 5 will issue a written decision resolving the dispute and will provide a copy of the written decision to Respondent.

69. If after a decision of the U.S. EPA Region 5 Regional Administrator (Paragraph 67.f) a dispute still exists between U.S. EPA and MDEQ, MDEQ reserves the right to require Dow to perform under the License all or part of the disputed work that is not being performed, or will not be performed, under this Settlement Agreement, including Interim Response Activities disputed pursuant to Paragraph 29.e if:

a. such work is necessary to meet the substantive corrective action requirements of the License; and

b. compliance with such substantive corrective action requirements under the License will not be achieved by the implementation of the Work taken or to be taken by Respondent pursuant to this Settlement Agreement.

70. In order to require work under the License MDEQ shall provide to Respondent a written notice as described in Appendix E. After the License is modified, the written notice shall be in the form set forth in the License as amended.

XVIII. STIPULATED PENALTIES

71. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 72, 73, 74, and 75, for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XIX (Force Majeure) or as otherwise approved by U.S. EPA, and Respondent shall be liable to the MDEQ for stipulated penalties in the amounts set forth in Paragraph 72 for failure to comply with its obligations under Paragraphs 90 and 91 (Payment of State Future Response Costs) of this Settlement Agreement. "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any of the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by U.S. EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

72. Stipulated Penalty Amounts - Payments and Progress Reports. The following stipulated penalties shall accrue per day for any noncompliance with the following milestones:

failure to meet due dates for payments of U.S. EPA’s Future Response Costs and/or State Future Response Costs; failure to establish escrow accounts in the event of disputes; failure to timely submit Monthly and Annual Reports required under Section V/Task 6 of the SOW attached as Appendix A.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$ 1,000	15 th through 30 th day
\$ 2,000	31 st day and beyond

73. Stipulated Penalty Amounts - Planning Documents, Reports and Technical Memoranda. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate plans, reports, technical memoranda or other written documents required by Section V/Tasks 1 through 5, Section VI/Tasks 7 through 10 Section VII/Tasks 11, 12, and 14 through 17 of the SOW attached as Appendix A and in accordance with the Schedule in Exhibit B of the SOW.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$ 1,000	15 th through 30 th day
\$ 2,500	31 st day and beyond

74. Stipulated Penalty Amounts – Work. The following stipulated penalties shall accrue per day for any noncompliance with the following required items of Work: failure to timely or adequately implement Work as prescribed in Section V/Tasks 1 through 5, Section VI/Tasks 7.2., 8.1.3, and 9 (if pre-design work is required), and Section VII/Tasks 13 and 17 (if pre-design Work is required) of the SOW attached as Appendix A and in accordance with the Schedule in Exhibit B of the SOW, and all approved work plans:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$ 1,000	15 th through 30 th day
\$ 2,500	31 st day and beyond

75. Respondent shall be liable for stipulated penalties in the amount of \$500 per day for

the first two weeks or parts thereof and \$1,000 per day for each week or part thereof thereafter for failure to meet any other obligation under this Settlement Agreement including the SOW. U.S. EPA shall use good faith efforts to identify as soon as practicable a failure by Respondent to meet any other obligation under this Settlement Agreement, including the SOW, addressed by this Paragraph 75. U.S. EPA shall use best efforts to notify Respondent as soon as practicable of such a failure.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (U.S. EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the Superfund Division Director (or, in the event of his or her unavailability, the next higher ranking U.S. EPA Region 5 official) under Paragraph 65 of Section XVI (Dispute Resolution Regarding Disputes Between EPA and Respondent), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Superfund Division Director (or, due to unavailability, the higher ranking official) issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. U.S. EPA shall consider Respondent's good faith and best efforts in seeking to meet the terms and conditions of this Settlement Agreement and associated work plans and schedules.

77. Following U.S. EPA's determination, after consultation with MDEQ, that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the same and describe the noncompliance. U.S. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

78. All penalties accruing under this Section shall be due and payable to U.S. EPA within thirty (30) days of Respondent's receipt from U.S. EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, Mo. 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID Number B5KF, U.S. EPA's docket number for this Settlement Agreement, and the name and address of the party making payment. Copies of

check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to:

Jeffrey A. Cahn
Associate Regional Counsel
Office of Regional Counsel
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Catherine Garypie
Associate Regional Counsel
Office of Regional Counsel
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Mary Logan
Remedial Project Manager
Superfund Division
Mail Code SR-6J
77 West Jackson Blvd.
Chicago, IL 60604-3590

79. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

80. Penalties shall continue to accrue as provided in Paragraph 76 during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

81. In the event that U.S. EPA assumes performance of a portion or all of the Work pursuant to Paragraph 96 of Section XXII (Reservation of Rights by U.S. EPA), Respondent shall be liable for a stipulated penalty in the amount of \$600,000.

82. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78.

83. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), or punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that U.S. EPA assumes performance of a portion or all of the Work pursuant to Section XXII (Reservation of Rights by U.S. EPA), Paragraph 96. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. FORCE MAJEURE

84. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed

by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

85. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within three (3) working days of when Respondent first knew that the event was likely to cause a delay. Within ten (10) days thereafter, Respondent shall provide the following to U.S. EPA and MDEQ in writing, with a copy to MDEQ: (1) an explanation and description of the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and (6) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

86. If U.S. EPA, after consultation with MDEQ, agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA, after consultation with MDEQ, does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA, after consultation with MDEQ, agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XX. PAYMENT OF RESPONSE COSTS

87. Payment of Future Response Costs.

a. Within thirty (30) days of the Effective Date, Respondent shall pay to U.S. EPA \$450,000 in prepayment of Future Response Costs. The total amount paid shall be deposited by U.S. EPA in Tittabawassee River/Saginaw River & Bay Site Future Response Costs Special Account, within the U.S. EPA Hazardous Substance Superfund. These funds shall be retained and used by U.S. EPA to conduct or finance response actions. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with Subparagraph 87.c.(i), and

shall be accompanied by a statement identifying the name and address of the party making payment, the site name (Tittabawassee River/Saginaw River & Bay Site), U.S. EPA Region 5, and the Site/Spill ID Number B5KF, and the U.S. EPA docket number for this action. Any amounts received under this Subparagraph will be credited to Respondent in the final accounting pursuant to Subparagraph 87.e.

b. Respondent shall pay to U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that includes Region 5's Itemized Cost Summary and, upon request by Respondent, U.S. EPA will provide evidence supporting the costs described in the Itemized Cost Summary which includes direct and indirect costs incurred by U.S. EPA and its contractors. Respondent shall make all payments within forty-five (45) days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 89. Respondent shall make all payments required by this Paragraph in the manner required by Subparagraph 87.c, with notice as required by Subparagraph 87.d. The total amount paid will be deposited by U.S. EPA in the Tittabawassee River/Saginaw River & Bay Site Future Response Costs Special Account within the U.S. EPA Hazardous Substance Superfund. These funds will be retained and used by U.S. EPA to conduct or finance Future Response Costs. Any amounts remaining in the Tittabawassee River/Saginaw River & Bay Site Future Response Costs Special Account, will be remitted and returned in accordance with Subparagraph 87.e.

c. Respondent shall make all payments within forty-five (45) days of receipt of each bill requiring payment, except as otherwise provided in Paragraphs 87.b and 89 of this Settlement Agreement, according to the following procedures:

(i) If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with the EFT procedures described below, and with updated EFT procedures to be provided to Respondent by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5KF, and the U.S. EPA docket number for this action. As of the date of this agreement, payment by EFT shall be made in accordance with the following:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

(ii) If the amount demanded in the bill is less than \$10,000, the Respondent may in lieu of the EFT procedures in Subparagraph 87.c.(i) make all payments

required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and the EPA Site/Spill ID Number B5KF. Respondent shall send the check(s) to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

d. At the time of payment, Respondent shall send notice that payment has been made to:

Jeffrey A. Cahn
Associate Regional Counsel
Office of Regional Counsel
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Catherine Garypie
Associate Regional Counsel
Office of Regional Counsel
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Mary Logan
Remedial Project Manager
Superfund Division
Mail Code SR-6J
77 West Jackson Blvd.
Chicago, IL 60604-3590

e. After U.S. EPA issues its written Certification of Completion of Work and U.S. EPA has performed a final accounting of Future Response Costs, U.S. EPA shall remit and return to Respondent any unused amount of the funds paid by Respondent pursuant to Subparagraph 87.a.

88. If Respondent does not pay Future Response Costs within forty-five (45) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If U.S. EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVIII. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 87.

89. Respondent may contest payment of any Future Response Costs under Paragraph 87 if it determines that U.S. EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes that a cost item was incurred inconsistent with the NCP. Such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the U.S. EPA Project Coordinator; provided, however U.S. EPA shall grant a request for a reasonable extension of time for the payment of the bill in connection with a request by Respondent for evidence documenting certain costs in the Itemized Cost Summary. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the forty-

five (45) day period pay all uncontested Future Response Costs to U.S. EPA in the manner described in Paragraph 87. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the U.S. EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent). If U.S. EPA prevails in the dispute, within fifteen (15) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to U.S. EPA in the manner described in Paragraph 87. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to U.S. EPA in the manner described in Paragraph 87. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse U.S. EPA for its Future Response Costs.

90. Payment of State Future Response Costs.

a. Within thirty (30) days after the Effective Date, Respondents shall pay to the State \$200,000 in prepayment of State Future Response Costs. These funds shall be retained and used by MDEQ to expend as State Future Response Costs, and shall be applied to the first invoice(s) under Subparagraph 90.b. Payment shall be made by certified check, made payable to the "State of Michigan-Environmental Pollution Prevention Fund" and shall be sent by first class mail to:

MDEQ Revenue Control Unit
Financial and Business Services Division
P.O. Box 30657
Lansing, MI 48909-8157

If the payment is to be submitted via courier, the payment shall be delivered to:

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

To ensure proper credit, all payments shall include the Tittabawassee River/Saginaw River & Bay Site name and Project Number 470915 00.

b. Respondent shall pay State Future Response Costs. On a periodic basis, the MDEQ will send Respondent an invoice requiring payment that consists of a cost summary that sets forth with reasonable specificity, the nature of the costs incurred and the dates the costs were incurred. Except as provided by Paragraph 92, Respondent shall make all payments within forty-five (45) calendar days of receipt of each invoice requiring payment according to the procedures provided in Subparagraphs 90.a and c.

c. A copy of the transmittal letter and any check submitted under Paragraphs 90.a and 90.b., shall be provided simultaneously to the MDEQ Project Coordinators at the address listed in Paragraph 25; and the MDAG, Attention: Kathleen Cavanaugh, Assistant Attorney General, ENRA Division, Michigan Department of Attorney General, PO Box 39755, Lansing, MI 48909.

d. Costs recovered pursuant to this Paragraph shall be deposited into the Environmental Pollution Prevention Fund.

91. If Respondent does not pay the prepayment of State Future Response Costs within thirty (30) days after the Effective Date, or does not pay State Future Response Costs within forty-five (45) days of Respondent's receipt of a bill, Respondent shall pay interest on the unpaid balance. This interest shall be calculated at the rate specified in Mich. Comp. Laws § 324.20126a(3). The interest on unpaid prepayment of State Future Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The interest on unpaid State Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If the MDEQ receives a partial payment, interest shall accrue on any unpaid balance. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the State by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Subparagraphs 90.a. and c.

92. Dispute Resolution for State Future Response Costs.

a. Respondent may dispute all or part of an invoice for State Future Response Costs submitted under this Settlement Agreement for review and oversight of work conducted pursuant to this Settlement Agreement, only if Respondent alleges that i) the MDEQ has made an accounting error, ii) a cost item was not included in the definition of State Future Response Costs, or iii) a cost item was not lawfully incurred. In any challenge to a MDEQ invoice for payment of the State's Future Response Costs, Respondent shall have the burden of establishing that one or more of the allegations in the preceding sentence is true, in which case the cost shall not be recoverable against Respondent. A dispute shall be considered to have arisen on the date the MDEQ receives written notification from the Respondent invoking dispute resolution as set forth in Subparagraph 92.b. Simultaneously with invoking a dispute, Respondent shall establish

an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested State Future Response Costs. Respondent shall send to the MDEQ Project Coordinators a copy of the transmittal letter and check paying the uncontested State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. The dispute resolution process set forth in this Paragraph 92 shall be the exclusive mechanism for resolving disputes concerning payment of the State Future Response Costs. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of any uncontested costs to the MDEQ as specified in Subparagraph 90.b on or before the due date. Interest shall not accrue on any contested costs that are resolved in Respondent's favor. Payment of the unpaid contested costs, including all accrued interest, shall be made within thirty (30) days after the dispute is resolved.

b. Respondent shall notify the MDEQ in writing within thirty (30) calendar days of receipt of MDEQ's invoice, unless the objection(s) has/have been resolved informally. The written notice shall be sent to the MDEQ Project Coordinators and shall identify the specific costs in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies. MDEQ shall provide its Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the written notice of dispute. The time periods for the exchange of written documents relating to the dispute(s) may be modified by written agreement between MDEQ and Respondent. An administrative record of any dispute under this Section shall be maintained by MDEQ. The record shall include the Respondent's written notification of dispute, including any supporting documentation, and the MDEQ's Statement of Position. Upon review of the administrative record, the MDEQ's Deputy-Director shall resolve the dispute consistent with the terms of this Settlement Agreement. If MDEQ prevails in the dispute, within fifteen (15) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to MDEQ in the manner described in Subparagraphs 90.a and c. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the MDEQ in the manner described in Subparagraphs 90.a and c. Respondent shall be disbursed any balance of the escrow account.

XXI. COVENANT NOT TO SUE BY U.S. EPA

93. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), for the Work and Future Response Costs. This covenant not to sue is conditioned upon the complete and

satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XX. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXII. RESERVATION OF RIGHTS BY U.S. EPA

94. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

95. The covenant not to sue set forth in Section XXI above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site;
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- h. liability for costs incurred if U.S. EPA assumes the performance of the Work pursuant to Paragraph 96.

96. Work Takeover. In the event U.S. EPA determines, after consultation with MDEQ, that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly

deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portion of the Work as U.S. EPA determines necessary (“Work Takeover”). Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent) to dispute U.S. EPA’s determination that takeover of the Work is warranted under this Paragraph. After commencement and for the duration of any Work Takeover, U.S. EPA shall have immediate access to and benefit of any financial assurance mechanism provided pursuant to Section XXXI of this Settlement Agreement, in accordance with the provisions of Paragraph 123 of that Section. If and to the extent that U.S. EPA is unable to secure the resources guaranteed under any such financial assurance mechanism(s) in accordance with the provisions of Paragraph 123, any unreimbursed costs incurred by U.S. EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XX (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANT NOT TO SUE BY THE STATE

97. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, including the right to enforce Respondent’s obligations under the License, MDEQ covenants not to sue or to take administrative action against Respondent pursuant to Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a), 9613; Part 111 of NREPA, Mich. Comp. Laws §§ 324.11101-324.11153; Part 201 of NREPA, Mich. Comp. Laws §§ 324.20101–324.20142; and Section 7002 of RCRA, 42 U.S.C. § 6972, for the Work and State Future Response Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of State Future Response Costs pursuant to Section XX. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXIV. RESERVATION OF RIGHTS BY THE STATE

98. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as provided in this Settlement Agreement, nothing in this Settlement Agreement shall prevent the State from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to RCRA, Parts 201 and 111 of the NREPA, or any other federal or State applicable law.

99. The covenant not to sue set forth in Section XXIII above does not pertain to any matters other than those expressly identified therein. The State reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of State Future Response Costs;
- c. except as provided in Sections XI and XVII of this Settlement Agreement, liability for performance of response activity as defined under Part 201, or corrective action, other than the Work, including but not limited to Respondent's obligations and performance of corrective action under its License, RCRA, and Part 111 of NREPA, other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for currently unknown releases and potential future releases as set forth in Paragraph 46.

XXV. COVENANT NOT TO SUE BY RESPONDENT

100. Covenant Not to Sue the United States by Respondent. Except as specifically provided in this Settlement Agreement, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, State Future Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the Work or arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*, relating to the Work or Future Response Costs or State Future Response Costs.

The covenant not to sue in this Paragraph 100 does not include, and Dow specifically reserves, its right to assert claims pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*, relating to the Work or Future Response Costs or State Future Response Costs against the Department of Defense, the Department of Commerce, and/or the General Services Administration, and their components, and the predecessors, successors and assigns of the foregoing, provided that the Department of Defense, the Department of Commerce, and/or the General Services Administration, and their components, and the predecessors, successors and assigns of the foregoing, have not each resolved their liability at the Site with U.S. EPA as of the time Respondent asserts such claims.

101. Covenant Not to Sue the State by Respondent. Except as specifically provided in this Settlement Agreement, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the State, its agencies, departments, boards, commissions, or its contractors or employees, (but excluding political subdivisions) with respect to the Work, State Future Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of NREPA, Mich. Comp. Laws § 324.20119(5), or any other provision of law;

b. any claim arising out of the Work or arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, or at common law;

c. any claim against the State pursuant to Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; Section 20126a(1)(b) or 20126a(1)(c) of NREPA, Mich. Comp. Laws §§ 324.20126a(1)(b) or (c); or Section 20129(3) of NREPA Mich. Comp. Laws § 324.20129(3) relating to the Site, except to the extent that the State is a responsible or liable party at the Site.

102. a. With respect to the United States, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 95(b), (c), and (e)-(g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

b. With respect to the State, these covenants not to sue shall not apply in the event the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 99(b), (c), (e)-(g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the State is seeking pursuant to the applicable reservation.

103. Nothing in this Agreement shall be deemed to constitute approval or

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

104. Respondent agrees not to seek judicial review of a decision to list the Site on the NPL at any time after the Effective Date of this Settlement Agreement based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

105. Notwithstanding any other provision of this Settlement Agreement, Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

106. The waiver in Paragraph 105 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA determines:

a. that such person has failed to comply with any U.S. EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

107. For the purposes of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), the parties agree that as of the Effective Date of this Settlement Agreement, remedial action under CERCLA for the Site shall be deemed to be scheduled and any action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) for the final operable unit at the Site. Notwithstanding the foregoing agreement with respect to the prospective application of Section 113(g)(1), this Settlement Agreement is without prejudice to Dow's right to contend that damages claims or portions thereof were barred before the Effective Date of this Settlement

Agreement due to expiration of the applicable statute of limitations and are not revived by the prospective application of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), and the United States, the State of Michigan, and the Saginaw Chippewa Indian Tribe of Michigan reserve the right to contest any such argument.

108. Respondent has separately entered into a Tolling Agreement with the asserted Federal, State, and Tribal natural resource trustees dated February 19, 2007, as amended on September 25, 2008, regarding the statute of limitations under Section 113(g)(1) of CERCLA for an action for damages (as defined in 42 U.S.C. § 9601(6)).

XXVI. RESERVATION OF RIGHTS BY RESPONDENT

109. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall prevent Respondent from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. Except as specifically provided in this Settlement Agreement, Respondent reserves, and this Settlement Agreement is without prejudice to:

a. Respondent's rights under the License, Mich. Comp. Laws § 600.631 or any other applicable provision of law to seek judicial or administrative review of any MDEQ decision made pursuant or related to Paragraph 69;

b. Respondent's rights to assert any claim based on a failure of U.S. EPA, MDEQ or the State to meet a requirement of this Settlement Agreement;

c. any rights Respondent has to (i) decline to undertake response actions requested by U.S. EPA beyond those actions expressly agreed to in this Settlement Agreement, (ii) respond, consistent with Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), to any unilateral administrative order issued by U.S. EPA under Section 106 of CERCLA, 42 U.S.C. § 9606, directing Respondent to undertake response actions beyond those actions expressly agreed to in this Settlement Agreement, (iii) dispute, consistent with Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), any response actions selected by U.S. EPA, and (iv) dispute U.S. EPA and State response costs sought from Respondent beyond those Future Response Costs and those State Future Response Costs expressly agreed to in this Settlement Agreement, and those response costs expressly agreed to in any other settlement agreements with U.S. EPA or the State;

d. Respondent's rights or defenses under any prior written agreement between Respondent and the State (including, without limitation, the Saginaw Bay Boat Launch Facility Conveyance Closing Agreement, dated as of May 22, 1985) or between Respondent and U.S. EPA, except that no prior written agreement shall diminish or affect Respondent's obligations to perform Work or pay Future Response Costs, State Future Response Costs, or penalties under this Settlement Agreement; and

e. Respondent's claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of

property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which waiver of sovereign immunity is found in a statute other than CERCLA.

XXVII. OTHER CLAIMS

110. By issuance of this Settlement Agreement, the United States, U.S. EPA, and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States, U.S. EPA, or the State shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

111. Except as expressly provided in Section XI (MDEQ Review of Submissions and Coordination of License Provisions), Section XVII (Dispute Resolution regarding Disputes Between U.S. EPA and MDEQ), Section XXV, Paragraph 105 (Non-Exempt De Micromis Waivers), Section XXI (Covenant Not to Sue by U.S. EPA), and Section XXIII (Covenant Not to Sue by the State) nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and claims or causes of action by the State, including but not limited to, for costs, damages and interest under Sections 107 of CERCLA, 42 U.S.C. § 9607, and Parts 201 and 111 of NREPA, Mich. Comp. Laws §§ 324.11101-324.11153, 324.20101-324.20142

112. No action or decision by U.S. EPA or the State pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), or as specified or reserved in this Settlement Agreement.

XXVIII. CONTRIBUTION

113. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), and Section 20129(5) of NREPA, Mich. Comp. Laws § 324.20129(5), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2),

9622(h)(4), and Section 20129(5) of NREPA, Mich. Comp. Law § 324.20129(5), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Future Response Costs and State Future Response Costs, or matters otherwise resolved through dispute resolution.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9113(f)(3)(B), pursuant to which the Respondent has, as of the Effective Date, resolved its liability to the United States and the MDEQ for the Work, Future Response Costs and State Future Response Costs, or otherwise resolved through dispute resolution.

c. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within twenty-one (21) days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within twenty-one (21) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

d. Except as provided in Section XXV, Paragraph 105 of this Settlement Agreement (Non-Exempt De Micromis Waivers), nothing in this Settlement Agreement precludes the United States, the State, or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and, with respect to the State, from asserting any claims under Parts 201 and 111 of NREPA, Mich. Comp. Laws §§ 324.11101-324.11153, 324.20101-324.20142, or any other applicable state law.

XXIX. INDEMNIFICATION

114. Respondent shall indemnify, save and hold harmless the United States, the State, their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay (1) the United States all costs incurred by the United States, including but not limited to attorneys’ fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement; and (2) the State all costs incurred by the State, including but not

limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the State based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States or of the State. The Federal Tort Claims Act, 28 U.S.C. §§ 2671- 2680, provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

115. The United States and the State shall, respectively, give Respondent notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

116. Respondent waives all claims against the United States or against the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or to the State, arising from or on account of any contract, agreement, or arrangement by Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement by Respondent and any person for performance of Work on or relating to the Site.

XXX. INSURANCE

117. At least thirty (30) days prior to commencing any On-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of \$2,000,000, combined single limit, naming U.S. EPA and MDEQ as additional insureds. Within the same period, Respondent shall provide U.S. EPA and MDEQ with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to U.S. EPA and MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXXI. FINANCIAL ASSURANCE

118. Within thirty (30) days after the Effective Date, Respondent shall establish and maintain financial security for the benefit of U.S. EPA in the amount of \$15,000,000 (hereinafter "Estimated Cost of Work"), in order to secure the full and final completion of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD Work by Respondent. Respondent shall establish and maintain all financial security required by this Settlement Agreement in one or more of the following forms:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of U.S. EPA, issued by financial institution(s) acceptable in all respects to U.S. EPA equaling the total Estimated Cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to U.S. EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to U.S. EPA, which ensures the payment and/or performance of the Work;
- e. a written corporate guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfied the financial test requirements of 40 C.F.R. § 264.143(f); and/or
- f. documentation of sufficient financial resources to pay for the Work made by the Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

119. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to U.S. EPA, determined in U.S. EPA's sole discretion. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 118, above. In addition, if at any time U.S. EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to U.S. EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

120. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 118.e or 118.f. of this Settlement Agreement, Respondent shall (i) demonstrate to U.S. EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date, or such other date as agreed to by U.S. EPA, to U.S. EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculation shall be the current cost estimate of \$15,000,000 for the Work at the Site, plus any other RCRA, CERCLA, TSCA or other federal environmental obligations financially assured by the Respondent or guarantor to U.S. EPA by means of passing a financial test.

121. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work had diminished below the amount set forth in Paragraph 118 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from U.S. EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution Regarding Disputes Between EPA and Respondent) and may reduce the amount of security in accordance with U.S. EPA's written decision resolving the dispute.

122. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by U.S. EPA, provided that U.S. EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

123. The commencement of any Work Takeover pursuant to Paragraph 96 of this Settlement Agreement shall trigger U.S. EPA's right to receive the benefit of any financial assurance mechanism provided pursuant to this Section, and at such time U.S. EPA shall have immediate access to resources guaranteed under any such financial assurance mechanism(s), whether in cash or in kind, as needed to continue and complete the Work assumed by U.S. EPA under the Work Takeover. If for any reason U.S. EPA is unable to promptly secure the resources guaranteed under any such financial assurance mechanism(s), whether in cash or in kind, necessary to continue and complete the Work assumed by U.S. EPA under the Work Takeover, or in the event that the financial assurance mechanism involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 118.f, Respondent shall immediately upon written demand from U.S. EPA deposit into an account specified by U.S. EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by U.S. EPA. In addition, if at any time U.S. EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance

mechanism it has issued, then, unless Respondent provides a substitute Performance Guarantee mechanism in accordance with this Section XXXI no later than thirty (30) days prior to the impending cancellation date, U.S. EPA shall be entitled (as of and after the date that is thirty (30) days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance mechanism.

XXXII. SEVERABILITY/INTEGRATION/APPENDICES

124. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

125. This Settlement Agreement, including its appendices (with the exception of Appendix B), and all deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. Appendix B is an attachment to this Settlement Agreement and is included to describe the respective roles and responsibilities of U.S. EPA and MDEQ. Notwithstanding the foregoing, the parties acknowledge that Appendix E shall not be considered an effective License modification as of the Effective Date, but is attached hereto as the License modification MDEQ will provide to the public for comment and will make reasonable efforts to issue as a final decision modifying the License in accordance with Paragraph 47 of this Settlement Agreement. Appendix B is not legally binding nor is it incorporated into this Settlement Agreement, however, Appendix B shall guide the interpretation of State Future Response Costs in any dispute under Paragraph 92. Nothing in Appendix B is intended to either create any right in or grant any cause of action to any person not a Party to Appendix B, including Respondent, or to release or waive any claim, cause of action, demand, or defense in law or equity that any Party to Appendix B may have against any person(s) or entity that is or is not a party to Appendix B. Appendix B may be modified from time to time by U.S. EPA and MDEQ in accordance with Section 7 of the SMOA. Appendices A, C, D, E, F, G, and H are attached to and incorporated into this Settlement Agreement. Appendix B is attached to this Settlement Agreement. The following are the appendices to this Settlement Agreement:

“Appendix A” is the Remedial Investigation, Feasibility Study and/or Engineering Evaluation and Cost Analysis, and Response Design SOW.

“Appendix B” is the Tittabawassee River/Saginaw River & Bay Site Superfund Memorandum of Agreement between U.S. EPA and MDEQ.

“Appendix C” is the map of the Site.

“Appendix D” is the map of Respondent’s Midland Plant.

“Appendix E” is the License Modification language.

“Appendix F” is the list of Prior Sampling, Analysis, Studies, and Orders.

“Appendix G” is the map of the Saginaw Bay and inner Saginaw Bay areas of the Site.

“Appendix H” is the Corresponding Obligations of the License and Settlement Agreement

XXXIII. PUBLIC COMMENT

126. Final acceptance of this Settlement Agreement by U.S. EPA and/or the State shall be subject to U.S. EPA publishing notice of the proposed settlement and providing persons who are not parties to the proposed settlement an opportunity to comment on the terms of settlement, and after consideration by U.S. EPA and the State of submitted comments in determining whether to consent to the proposed settlement. U.S. EPA and/or the State may withhold consent from, or seek to modify, all or part of this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, this Settlement Agreement shall become effective as provided in Paragraph 128. The procedures in this Paragraph applicable to U.S. EPA are in accordance with the requirements of Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

XXXIV. ADMINISTRATIVE RECORD

127. Consistent with CERCLA and the NCP, U.S. EPA will determine the contents of the administrative record file for selection of the response actions. Respondent shall submit to U.S. EPA documents developed during the course of the evaluation of current Site conditions and the assessments of response options, any RI, any FS and/or EE/CA, and any RD upon which selection of the response action may be based. Upon request of U.S. EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of U.S. EPA, Respondent shall additionally submit any previous studies it conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local or other federal authorities concerning selection of the response action. At U.S. EPA’s discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

128. This Settlement Agreement shall be effective seven (7) days after the Settlement Agreement is signed by the Director of the Superfund Division or his/her delegate. U.S. EPA

shall promptly transmit the signed Settlement Agreement to the State and to the Respondent.

129. This Settlement Agreement may be amended in writing by mutual agreement of U.S. EPA, the State, and Respondent. Amendments shall be effective when signed by U.S. EPA. U.S. EPA Project Coordinators or OSCs do not have the authority to sign amendments to the Settlement Agreement.

XXXVI. NOTICE OF COMPLETION OF WORK

130. When U.S. EPA, after consultation with MDEQ, determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA, after consultation with MDEQ, determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, and shall submit the required deliverable(s) in accordance with the U.S. EPA notice. Subject to its right to seek dispute resolution under Section XVI (Dispute Resolution Regarding Disputes Between U.S. EPA and Respondent), failure by Respondent to implement the approved modified plans, reports, submittals and other deliverables required under this Settlement Agreement, the SOW, and the documents approved under the SOW, or other work plan shall be a violation of this Settlement Agreement.

IN THE MATTER OF:

The Dow Chemical Company
Midland, Michigan, 48667

The Undersigned Party enters into this Administrative Settlement Agreement and Order on Consent in the matter of Tittabawassee River/Saginaw River & Bay Site.

Agreed this 15 day of October, 2009.

For Respondent: The Dow Chemical Company

By:



David Dupre
Vice President
Michigan Operations

IN THE MATTER OF:

The Dow Chemical Company
Midland, Michigan, 48667

The Undersigned Party enters into this Administrative Settlement Agreement and Order on Consent in the matter of Tittabawassee River/Saginaw River & Bay Site.

For the Michigan Department of Attorney General:

By: Kathleen L. Cavanaugh Agreed this 13th day of January, 2010.
Kathleen L. Cavanaugh
Assistant Attorney General

For the Michigan Department of Environmental Quality:

By: Jim Sygo Agreed this 13 day of JANUARY, 2010.
Jim Sygo
Interim Director

IN THE MATTER OF:

The Dow Chemical Company
Midland, Michigan, 48667

It is so ORDERED AND AGREED this 14TH day of JANUARY, 2010.

By: Richard C Karl
Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

EFFECTIVE DATE: January 21, 2010