

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FRANK J. KELLEY, Attorney General
Of the State of Michigan, ex rel,
MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY, and RUSSELL J. HARDING, Director of
the Michigan Department of Environmental Quality,

Civ. Action No. 98-10368-TLL
CONSOLIDATED CASE

Plaintiffs,

vs.

GENERAL MOTORS CORPORATION, a Delaware corporation,
CITY OF BAY CITY, a Michigan municipal corporation, and
CITY OF SAGINAW, a Michigan municipal corporation,

Defendants.

AND

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION, a Delaware corporation,
CITY OF BAY CITY, a Michigan municipal corporation,
CITY OF SAGINAW, a Michigan municipal corporation, and
the MICHIGAN DEPARTMENT OF TRANSPORTATION,
a department of the State of Michigan,

Defendants.

AND

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, a
federally-recognized tribe,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION, a Delaware corporation,
CITY OF BAY CITY, a Michigan municipal corporation, and
CITY OF SAGINAW, a Michigan municipal corporation,

Defendants.

CONSENT JUDGMENT, AS MODIFIED BY THE FIRST AMENDMENT TO THE
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CONSENT JUDGMENT

These are three (3) related civil actions arising from the alleged contamination of the surface water, Sediments, and other natural resources of the Saginaw River and Saginaw Bay (the "Consolidated Actions"). Plaintiffs are Frank J. Kelley, Attorney General of the State, ex rel, MDEQ, and Russell J. Harding, Director, MDEQ, the United States, on behalf of the Federal Trustees, and the Tribal Trustee. Plaintiffs seek to recover Natural Resource Damages caused by the alleged injuries to the natural resources of the Saginaw River and Saginaw Bay pursuant to CERCLA. The State also seeks recovery pursuant to CERCLA of Response Costs caused by the alleged contamination and recovery under various provisions of NREPA.

Defendants in all three (3) Consolidated Actions are GM, Bay City, and Saginaw. The complaints in the Consolidated Actions allege that four (4) GM Facilities, the Bay City POTW, the Middlegrounds Island Landfill, and the Saginaw POTW released PCBs into the Saginaw River and Saginaw Bay. The four (4) GM Facilities identified in the complaint are the GM Powertrain Plant located in Bay City, Michigan ("GMPT Bay City"), the GM Saginaw Metal Castings Operations Foundry and former GM Nodular Iron Foundry (the "GM Foundries") located adjacent to each other along the Saginaw River in Saginaw, Michigan, and the GM Saginaw Malleable Iron Foundry located in Saginaw, Michigan ("GM Saginaw Malleable"). The State filed a prior similar action in Ingham County Circuit Court on June 29, 1994, against Defendants, being Civil Action No. 94-77853-CE (the "State Action").

In one (1) of the three (3) Consolidated Actions, the United States has also sued MDOT alleging that certain activities by MDOT in connection with the Assessment Area and the CDF have also resulted in contamination in the Assessment Area, injury to natural resources, and the incurrence of Natural Resource Damages.

Defendants and MDOT contend that COE took actions or failed to take actions that caused or substantially contributed to injuries to natural resources and resulting Natural Resource Damages or caused Response Costs

to be incurred as alleged in the complaints in the Consolidated Actions. Defendants also allege that the State and MDOT took actions or failed to take actions that caused or substantially contributed to injuries to natural resources and resulting Natural Resource Damages or caused Response Costs to be incurred as alleged in the complaints in the Consolidated Actions. On December 23, 1994, Defendants filed a verified complaint in the Court of Claims for the State of Michigan, Civil Action No. 94-15623-CM, asserting such claims against the State, MDNR (a predecessor of MDEQ), MDOT, the Natural Resources Commission, and the Director of MDNR (the "Court of Claims Action").

On February 15, 1995, the Ingham County Circuit Court, by a stipulation and order in the State Action, provided for a dismissal of the Court of Claims Action and the treatment of the complaint in the Court of Claims Action as a counterclaim in the State Action as against the original plaintiffs in the State Action and as a third party action against all other defendants named in the Court of Claims Action. Simultaneously herewith, an order for dismissal with prejudice and without costs has been entered in the State Action and the Court of Claims Action to resolve the claims asserted therein in a manner consistent with the provisions of this Consent Judgment.

This is a settlement to address Natural Resource Damages; however, provisions relating to other federal authorities have been included. Although USEPA has not performed a remedial investigation or a feasibility study of the Assessment Area, and has not selected a remedy for the Assessment Area within the meaning of Section 121 of CERCLA, 42 U.S.C. § 9621, the United States, on behalf of USEPA, has agreed to provide certain covenants in this Consent Judgment. USEPA recognizes that implementation of the dredging under this Consent Judgment will facilitate the recovery of natural resources, and, therefore, that this settlement is in the public interest.

Nothing in this Consent Judgment shall constitute or be construed as an admission by any Party of: (a) liability with respect to any issue dealt with in this Consent Judgment or any matter alleged in the complaints in

the Consolidated Actions, the State Action, or the Court of Claims Action; or (b) any factual allegations or legal conclusions stated or implied in the Consolidated Actions, the State Action, or the Court of Claims Action. This Consent Judgment settles and resolves disputed claims. This Consent Judgment may not be used by any person not a Party as evidence or for any other purpose, nor may it be used in any other action by any Party or among any Parties. The preceding sentence shall not apply to an action by a Party to enforce the terms of this Consent Judgment, to establish the existence of a right of action or defense by a Party under this Consent Judgment, or to an action regarding the May 1975 Agreement. The entry of this Consent Judgment shall not be construed as an acknowledgment by Defendants, MDOT or COE that any release or threatened release of Hazardous Substances into the Assessment Area constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

In order to effectuate and enhance the prospects for the settlement of the claims asserted in the Consolidated Actions, the State Action and the Court of Claims Action, and to evidence the Parties' good faith, in February, 1997, certain of the Parties, excluding MDOT, entered into the Agreement in Principle pursuant to which Defendants agreed to undertake certain early actions to enable restoration of natural resources. These early actions included evaluation and acquisition of title to lands to be conveyed to the Federal Trustees and the State under Paragraphs 7.2 and 7.3 and the advancement of \$230,000 through USFWS to COE for the cost of design of the dredging to be performed by the Trustees under Section VIII. Pursuant to an Amendment to the Agreement in Principle, in November, 1998, an additional Thirty Thousand Dollars (\$30,000.00) was advanced on behalf of Defendants through USFWS to COE for the cost of design of the dredging to be performed by the Trustees under Section VIII. Defendants have also completed the early actions required under the Agreement in Principle and, through September 30, 1997 (and including the additional \$30,000 paid subsequently as referenced in the preceding sentence), Defendants represent that they have expended Six Million Seven Hundred Eighty-Seven Thousand Five Hundred Ninety-Nine and 04/100 Dollars (\$6,787,599.04) in undertaking such actions under the Agreement in Principle.

In order to effectuate and enhance the prospects for settlement of the claims in the Consolidated Actions, the State Action and the Court of Claims Action, MDOT has undertaken certain actions to facilitate restoration of natural resources. MDOT has expended through July 25, 1997, Five Hundred Forty-One Thousand Seven Hundred Fifty-Four and 86/100 Dollars (\$541,754.86) in Response Costs with respect to remediation at the Zilwaukee Bridge Facility. MDOT has also expended Five Thousand Four Hundred Eighty-Six and 89/100 Dollars (\$5,486.89) in Phase I environmental assessment costs for lands to be conveyed under Paragraphs 7.2 and 7.3.

The Parties agree, and this Court finds by entering this Consent Judgment, that the dredging and restoration activities and other activities performed or to be performed by Defendants or MDOT or with funds provided by Defendants under or in connection with this Consent Judgment constitute appropriate actions to protect and restore the natural resources alleged to have been injured by Defendants in the State Action and by Defendants and MDOT in the Consolidated Actions. The Parties further agree, and this Court finds by entering this Consent Judgment, that this Consent Judgment is fair, was negotiated in good faith, expedites restoration of natural resources and achievement of other CERCLA and NREPA goals, avoids litigation, is reasonable, and is in the public interest. Except for stipulated penalties which may be assessed under Section XXIII, all payments made and activities and obligations performed by Defendants and MDOT as required by this Consent Judgment are for reimbursement of Response Costs or compensation for alleged Natural Resource Damages or are otherwise compensatory in nature, and no amounts or obligations are being paid for or performed in respect of, nor are they in lieu of, fines or penalties under any applicable law.

Before the taking of any testimony, and without this Consent Judgment constituting an admission of any of the factual or legal allegations in the Consolidated Actions, the State Action, or the Court of Claims Action, or as evidence of the same, and upon the consent of the Parties, by their attorneys,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. JURISDICTION

1.1 Consent to Jurisdiction. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court has personal jurisdiction over Defendants and MDOT. Solely for the purposes of this Consent Judgment and the complaints in the Consolidated Actions, Defendants and MDOT waive all objections and defenses that they may have to jurisdiction of this Court or to venue in this District. Nothing in this Consent Judgment shall be construed to create or authorize any cause of action or waiver of sovereign immunity or immunity under the Eleventh Amendment to the United States Constitution which does not otherwise exist.

1.2 Continuing Jurisdiction. The Court shall have and retain jurisdiction over the Parties and the subject matter of these actions to enforce this Consent Judgment and to resolve disputes arising under this Consent Judgment, including those that may be necessary for its construction, execution, or implementation.

II. PARTIES BOUND

2.1 Scope. This Consent Judgment shall apply to and be binding upon the Parties and their respective successors and assigns to the extent provided in this Consent Judgment. No change or changes in the ownership or corporate status of GM, Bay City, or Saginaw shall in any way alter Defendants' responsibilities under this Consent Judgment. Defendants shall provide a copy of this Consent Judgment to all contractors, subcontractors, laboratories, and consultants retained by them to conduct any portion of the Work to be performed after the entry of this Consent Judgment within fourteen (14) days after the latter of either the entry of this Consent Judgment or the date of such retention. Notwithstanding the terms of any contract, Defendants and MDOT are responsible for compliance with their respective obligations under this Consent Judgment and for ensuring that their employees, agents, contractors, subcontractors, laboratories, and

consultants perform all Work and their respective obligations in conformance with the terms and conditions of this Consent Judgment.

2.2 Nature of Obligations. Except as provided in Paragraphs 7.9(c) and (e) and 7.11 as to which the respective Defendants named therein shall be severally liable as provided therein, and except with respect to the obligations under Section XII (Access), Section XV (Record Retention) and Paragraph 31.9 (Facility Investigations), which obligations shall be deemed several, but not joint, obligations of each Defendant, Defendants shall be jointly and severally liable for the performance of the other obligations under this Consent Judgment and, except for stipulated penalties in respect of violations of the several obligations of Paragraphs 7.9(c) and (e) and 7.11, Section XII, Section XV, and Paragraph 31.9, as to which the respective Defendants named therein or subject thereto shall be severally liable, for stipulated penalties arising from violations of this Consent Judgment.

2.3 Parties Bound. The undersigned representatives of Defendants, MDOT, the State, and the Tribal Trustee, and the Assistant Attorney General for Environment and Natural Resources of DOJ who represents the United States, certify that they are authorized to execute this Consent Judgment and legally bind the Parties they represent to it.

III. STATEMENT OF PURPOSE

In entering into this Consent Judgment, the mutual objectives of the Parties are, in accordance with CERCLA and NREPA, to restore, replace, or acquire the equivalent of natural resources that Plaintiffs allege were injured by Defendants, including: (a) to facilitate dredging and disposal of contaminated Sediment and related investigations in the Saginaw River near Bay City in accordance with Section VIII; (b) to conduct certain restoration projects as compensation for alleged Natural Resource Damages as more fully set forth in Section VII; (c) to reimburse certain Response Costs and Natural Resource Damage assessment costs of Plaintiffs in accordance with Section XXII; (d) to provide funding to accomplish certain of these purposes as provided in Section VI; and (e) subject to the reopener and reservation provisions of Sections XXIV, XXV, XXVII, XXVIII, XXIX, XXX,

XXXI and XXXIV, to resolve the civil liability of the Parties as alleged in the Consolidated Actions, this Consent Judgment, the State Action, and the Court of Claims Action.

IV. RESPONSE ACTIONS AT FACILITIES

The Parties recognize that Defendants may agree or have agreed in other orders or judgments to remediate and reduce sources of Hazardous Substances to the Assessment Area at certain of the Facilities. Defendants intend to continue this process in accordance with said orders and judgments, and this Consent Judgment contemplates that this remediation and source reduction shall occur, but only under such other orders and judgments and not this Consent Judgment. Except as to Natural Resource Damages, the Parties expressly acknowledge that this Consent Judgment is not intended to affect the Response Actions or other activities taken or to be taken at the Facilities under any circumstances. These Response Actions include, but are not necessarily limited to, the following ongoing activities as set forth in:

(a) A Consent Judgment entered into among the State, GM, Bay City and others, dated June 1, 1998, as amended on October 6, 1998, being Docket No. 98-3513-CEB, in the Bay County, Michigan Circuit Court, pursuant to which the defendants therein have agreed to: (i) undertake an interim response action with respect to the Middlegrounds Island Landfill Facility located in Bay City, Michigan; and (ii) perform a site-wide Remedial Investigation and Feasibility Study ("RI/FS") and develop and submit to MDEQ a Remedial Action Plan ("RAP") for remedial action, if any, that may be selected pursuant to NREPA Part 201, as amended;

(b) A Consent Judgment entered into between the State and Bay City, dated June 2, 1998, being Docket No. 98-3514-CE-5, in the Bay County, Michigan Circuit Court, pursuant to which Bay City will undertake certain actions to return the Bay City POTW to compliance with its NPDES permit pursuant to NREPA Part 31 and other requirements;

(c) An Administrative Order issued by USEPA Region V to GM, dated June 2, 1995, being USEPA Docket No. V-W-003-95, for the GM Foundries and the former GM Chevy Parts Plant Facilities located on Veteran's Memorial Parkway and Washington Avenue in Saginaw, Michigan, under the authority of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), which requires an investigation to characterize the nature and extent of releases or potential releases of hazardous waste, including hazardous constituents, if any, from those Facilities;

(d) A Consent Judgment entered into between the State and GM with respect to the GMPT Bay City Facility, dated December 14, 1992, being Docket No. 92-3740-CE, in the Bay County, Michigan Circuit Court, pursuant to which GM has agreed to: (i) conduct a remedial investigation to determine the nature and extent, if any, of releases or threatened releases of hazardous substances at the GMPT Bay City Facility; (ii) conduct a feasibility study to evaluate and select appropriate remedial alternatives, if any are necessary, for the Facility; (iii) develop and implement a RAP for any remedial action which might be selected; and (iv) undertake certain actions designed to ensure the consistent compliance of discharges of storm, noncontact cooling, process, and sanitary wastewaters with applicable requirements, as set forth under NREPA (the "GMPT Consent Judgment"); and

(e) A Consent Judgment entered into among the State, GM and Waste Management, Inc., in part with respect to the GM Saginaw Malleable Facility, dated March 16, 1998, being Docket No. 98-22686-CE-2, in the Saginaw County, Michigan Circuit Court, pursuant to which GM has agreed to: (i) conduct an RI/FS to determine the nature and extent, if any, of releases or threatened releases of hazardous substances at the Saginaw Malleable Facility and evaluate and select appropriate remedial alternatives, if any are necessary, for the Saginaw Malleable Facility; and (ii) develop and implement a RAP for any remedial action which might be selected.

With respect to the property to be conveyed by GM to Bay City under Paragraph 7.9(a), the Parties acknowledge that a remedial action has been performed thereon by GM as set forth in a draft RAP submitted to the State on June 19, 1998.

5.1 "Additional Covered Matters" shall have the meaning set forth in Paragraph 30.2.

5.2 "Agreement in Principle" means that certain Agreement in Principle entered into among the United States, including the Federal Trustees, COE and USEPA, the Tribal Trustee, the State (but not MDOT) and Defendants, and signed by the last signatory thereto on February 28, 1997, and as amended in November, 1998, pursuant to which Defendants agreed to undertake certain actions, including early actions to enable restoration of natural resources as described therein prior to the entry of this Consent Judgment.

5.3 "Applicable Governing Authority" means: (a) the Trustees for any Submission that Defendants are required to submit to the Trustees for approval pursuant to this Consent Judgment; (b) the Trustees for any dispute regarding a matter arising under any provision of this Consent Judgment except Sections XXXI or XXXIV; (c) USEPA or other applicable Response Action Agency for any Submission that is required to be submitted for approval pursuant to, or for any dispute regarding a matter arising under, Section XXXI; (d) USEPA or other applicable Response Action Agency for any Submission that the State is required to submit for approval pursuant to, or for any dispute regarding a matter arising under, Section XXXIV, except Paragraph 34.8; and (e) the Federal Trustees for any Submission that the State submits for approval pursuant to, or for any dispute regarding a matter arising under, Paragraph 34.8.

5.4 "Area of the Exceedance" means an area within the Covenant Area, horizontally bounded by Sediment equal to or exceeding the PCB Covenant Level, whether such Sediment is located at the Sediment surface or at depth. Within this area, the Area of Exceedance shall extend vertically to the Bottom of the Sediment. The Area of the Exceedance may include some sample results within its boundaries of less than 11 ppm PCBs.

5.5 "Assessment Area" means the entire Saginaw River extending from the head of the Saginaw River at the confluence of the Shiawassee and

Tittabawassee Rivers to the mouth of the Saginaw River at Bay City and all of the Saginaw Bay from the mouth of the Saginaw River to its interface with open Lake Huron at an imaginary line drawn between Au Sable Point and Point Aux Barques, including the CDF. The Saginaw River is 22 miles long. Saginaw Bay covers 1,143 square miles. The Assessment Area includes all of the Saginaw River and Saginaw Bay surface waters. In addition, the Assessment Area includes the following, below the OHWM of the relevant water body: Sediment, lands underlying the surface waters, and shores; provided, however, that the Assessment Area shall not include any part of a Facility. The Assessment Area also includes injured natural resources that:

- (a) inhabit or feed in the Assessment Area; or
- (b) are ecologically dependent, through trophic or other relationships or mechanisms, on resources in the Assessment Area to the extent that such injured resources sustained injury as a result of exposure to or in the Assessment Area.

5.6 "Bay City" means the City of Bay City, a Michigan municipal corporation, with offices at 301 Washington Avenue, Bay City, Michigan 48708.

5.7 "Bay City POTW" means the sewage treatment plant and collection system, including, but not limited to, all related sewers and pipes, interceptors, detention or retention ponds or basins, ash ponds, incinerators, outlets, equipment, land, pumping stations and combined sewer overflows, operated by Bay City for the purpose of collection or treatment of domestic sewage and industrial waste prior to discharge to the Saginaw River.

5.8 "Bottom of Sediment" shall be determined in the field by the depth achieved from a two (2) inch diameter steel gravity coring device with a blunt end which has been driven into the Sediment by applying a force of at least one hundred (100) pounds, but not more than five hundred (500) pounds.

5.9 "CDF Agreement" means that certain agreement entered into between COE and USEPA, attached as Appendix O.

5.10 "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended.

5.11 "COE" means the United States Department of Army Corps of Engineers and any successor department or agency.

5.12 "COE Covered Matters" shall have the meaning set forth in Paragraph 24.2.

5.13 "COE-Response Action Agency Covered Matters" shall have the meaning set forth in Paragraph 31.3.

5.14 "COE-State Covered Matters" shall have the meaning set forth in Paragraph 27.1.

5.15 "Confined Disposal Facility" or "CDF" means the facility located in Saginaw Bay and currently operated by COE pursuant to 33 U.S.C. § 1293a and that certain "Agreement Between the United States of America and the State of Michigan Acting Through the Michigan State Department of Natural Resources for Local Cooperation at Bay County, Michigan," dated May 6, 1975, by and between the State and the United States and attached as Appendix Q (the "May 1975 Agreement").

5.16 "Consent Judgment" means this Consent Judgment and any appendix hereto, *except for Appendix K (MOU for Trustee Council)*, including any future modifications thereof, and any reports, plans, specifications and schedules incorporated into and enforceable in accordance with this Consent Judgment.

5.17 "Corrective Action" means any action that may be required under Sections 3004(u) or 3008(h) of RCRA, 42 U.S.C. §§ 6924(u) or 6928(h), or as defined in Section 11102(3) of NREPA, M.C.L. § 324.11102(3), and as may be required under Part 111 of NREPA.

5.18 "Court of Claims Action" means that certain civil action commenced on December 23, 1994, in the Court of Claims for the State of Michigan by Defendants against the State, MDOT and others, being Civil Action No. 94-15623-CM.

5.19 "Covenant Area" means the Sediment in the Saginaw River and Saginaw Bay below the OHWM. The Saginaw River, for purposes of this definition, extends from the head of the Saginaw River at the confluence of the Shiawassee and Tittabawassee Rivers to the mouth of the Saginaw River at Bay City. The Saginaw Bay, for purposes of this definition, extends from the mouth of the Saginaw River to its interface with open Lake Huron at an imaginary line drawn between Au Sable Point and Point Aux Barques. The Saginaw River is 22 miles long. Saginaw Bay covers 1,143 square miles. The Covenant Area does not include the CDF, any Facility, or any Sediment in such areas.

5.20 "Covered Matters" shall have the meaning set forth in Paragraph 24.1.

5.21 "CWA" means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as amended.

5.22 "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal or State holiday. In computing any period of time under this Consent Judgment, where the last day falls on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next Working Day.

5.23 "Defendants" means GM, Bay City, and Saginaw.

5.24 "DOI" means the United States Department of the Interior, a department of the United States, and any successor department or agency.

5.25 "DOI Fund" means the DOI Natural Resource Damages Assessment and Restoration Fund referenced in Paragraph 6.1 and Appendix B.

5.26 "DOJ" means the United States Department of Justice, a department of the United States, and any successor department or agency.

5.27 "Dredge Area" means the areas of the Saginaw River to be dredged by the Trustees under Section VIII with funds provided by Defendants under Section VI and as shown in the Dredge Plan.

5.28 "Dredging Contractor" means the entity or person that shall perform the dredging and disposal of Sediment in accordance with Section VIII and the Dredge Plan.

5.29 "Dredge Plan" means the plans and procedures for conducting the dredging and disposal of Sediment from the Dredge Area under Section VIII and which identifies the Dredge Area. The Dredge Plan is attached as Appendix A.

5.30 "Exceedance of the PCB Covenant Level" or "exceeding the PCB Covenant Level" means any PCBs in Sediment in the Covenant Area equal to or exceeding the PCB Covenant Level, i.e., at a level of 11 ppm PCB or greater.

5.31 "Facility" or "Facilities" means, as the context may require, any one or more of the facilities set forth on Appendix C. Except at the GMPT Bay City Facility, a Facility includes areas reasonably necessary for Response Actions to prevent releases from that Facility into the environment; provided, however, that a Facility shall not extend offshore into the aquatic environment a distance of more than twenty (20) feet from the OHWM at the point where the Response Action is necessary. With respect to the GMPT Bay City Facility, the Facility includes the "perimeter banks area" which is defined in Paragraph 18(c) of the GMPT Consent Judgment as follows: "The perimeter banks area is the strip of land approximately five (5) acres in size, located outside the deep soil mixing wall surrounding the MSA [machine storage area] and the LA [lagoon area]. The perimeter banks area consists of the higher of either the river bottom or the land above the low water (chart) datum level which is at an elevation of 577.5 feet above sea level (International Great Lakes Datum, 1985, Coordinating

Committee on Great Lakes Basin Hydraulic and Hydrologic Data, January 1992)." ."

5.32 "Federal Trustees" means any department, agency, division, or instrumentality of the United States with authority now or in the future to act as a trustee for natural resources in the Assessment Area, or that is entitled to recover Natural Resource Damages with respect thereto, including, but not limited to, DOI, including USFWS, and the United States Department of Commerce, including the National Oceanic and Atmospheric Administration, and any successor departments or agencies, and which also may have Response Action authority under Executive Order 12580 (Jan. 23, 1987), as amended, including by Executive Order 13016 (August 28, 1996), but excluding COE.

5.33 "GM" means General Motors Corporation, a Delaware corporation, with its principal office at 3044 W. Grand Boulevard, Detroit, Michigan 48202.

5.34 "Hazardous Substance" means any substance defined as such under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), Section 20101(t) of NREPA, M.C.L. § 324.20101(t), or Section 3(g) of the former Michigan Environmental Response Act, M.C.L. § 299.603(p) (codified as M.C.L. § 324.20101(n) and effective on March 30, 1995, through and including June 4, 1995); a "pollutant" or "contaminant" within the meaning of Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); any injurious substance, sediment, polluting material, sewage, Sediment, waste, effluent, critical material or other material or substance subject to Part 31 of NREPA ("Water Resources Protection"), M.C.L. § 324.3101 et seq.; or "toxic pollutant" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

5.35 "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the United States Code, compounded on October First (1st) of each year, in accordance with Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

5.36 "Matters Addressed" as used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 20129(3) of Part 201 of NREPA, M.C.L. § 324.20129(3), shall have the meaning set forth in Paragraphs 32.1 and 32.2.

5.37 "MDEQ" means the Michigan Department of Environmental Quality, the governmental department of the State created by Executive Order 1995-18 issued by Michigan Governor John Engler and any successor department or agency.

5.38 "MDNR" means the Michigan Department of Natural Resources, the governmental department of the State created by Executive Order 1991-31 issued by Governor John Engler and as reorganized under Executive Order 1995-18 issued by Governor John Engler and any successor department or agency.

5.39 "MDOT" means the Michigan Department of Transportation, a governmental department of the State, and includes the Michigan Transportation Commission and MDOT's director, as established under the authority of Michigan Const. 1963, Art. 5, § 2, and M.C.L. § 16.450 *et seq.*, and any successor department or agency.

5.40 "NREPA" means the Natural Resources and Environmental Protection Act, M.C.L. § 324.101 *et seq.*, as amended.

5.41 "Natural Resource Damages" means any and all civil relief recoverable under federal, state, tribal, or common law by the State, the United States, or the Tribal Trustee in their respective capacities as trustee or owner of any natural resources for any injury to, destruction of, or loss, impairment or diminution in value of any natural resources arising from or relating to a release or threatened release of a Hazardous Substance into the environment, including, but not limited to, costs of assessment, costs of restoration, rehabilitation, or replacement of injured natural resources or acquisition of equivalent resources, and compensation for loss, injury, impairment, destruction or diminution in value of natural resources, whether temporary or permanent, including, but not limited to, loss, diminution or impairment of use value, loss, diminution or impairment

of nonuse or passive use value, and loss, diminution or impairment of any other value of natural resources. By way of example, Natural Resource Damages shall include, but not be limited to, "damages" as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6); those damages described in Section 20126(2)(c) of NREPA, M.C.L. § 324.20126(2)(c) (repealed), which was in effect on and prior to March 1, 1995 and saved by Section 20104 of NREPA, M.C.L. § 324.20104; and those which may be recoverable under or described in Section 311(f) of the CWA; Section 1002(b)(2) of the Oil Pollution Act, 33 U.S.C. § 2702(b)(2); Section 3115(2) of NREPA, M.C.L. § 324.3115(2); Section 5530(3) of NREPA, M.C.L. § 324.5530(3); Section 11151(9) of NREPA, M.C.L. § 324.11151(9); Section 11546(3) of NREPA, M.C.L. § 324.11546(3); Section 12115(1) of NREPA, M.C.L. § 324.12115(1); Sections 20126a(1)(c) and (4) of NREPA, M.C.L. §§ 324.20126a(1) and (4); and Section 20137(1)(c) of NREPA, M.C.L. § 324.20137(1)(c).

For purposes of this Consent Judgment only, and without any admission by Defendants as to the characterization and recoverability of such relief by the United States under Paragraph 24.9 or otherwise, Natural Resource Damages shall also include any and all civil relief which may be or could have been sought by the United States on behalf of COE regarding dredging and disposal activities associated with Sediment from the Assessment Area shown to contain Hazardous Substances or the ownership, operation, maintenance, use, or condition of the CDF. Such claims include, but are not limited to, claims for reimbursement of Sediment dredging or disposal costs associated with Sediment from the Assessment Area shown to contain Hazardous Substances, and CDF construction, operation, management, remediation or closure costs. Such claims shall also include claims for Sediment dredging, management or disposal costs incurred after the entry of this Consent Judgment to the extent such costs were incurred under or as a result of this Consent Judgment.

5.42 "OHWM" means the ordinary high water mark of the Saginaw River and the Saginaw Bay, as the case may be, and shall be the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the

upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

5.43 "Party" or "Parties" means, as the context may require, any one or more of Plaintiffs, COE, Defendants, and MDOT.

5.44 "PCB Covenant Level" shall mean an 11 ppm concentration of PCBs in Sediment in the Covenant Area. This PCB Covenant Level is a site-specific, statistically-based level, which may indicate the presence of a PCB hot-spot in the vicinity of a sample. The PCB Covenant Level does not constitute a human health, welfare or ecological standard of protection, but has been determined by USEPA to be appropriate for the covenants provided in Section XXXI, considering factors, including, but not limited to, the distribution of PCB-contaminated Sediment throughout the Covenant Area, costs related to removal of PCB-contaminated Sediment in the Covenant Area, current technology, and USEPA's knowledge regarding the effect of PCBs on human health and the environment.

5.45 "Plaintiffs" means the State, the United States (excluding COE), and the Tribal Trustee.

5.46 "Polychlorinated Biphenyls" or "PCBs" shall have the meaning set forth in 40 C.F.R. § 761.3 (1997).

5.47 "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended.

5.48 "Response Action" or "Response Actions" means Corrective Action or any other activity covered by CERCLA's definition of "remove" or "removal," 42 U.S.C. § 9601(23), "remedy" or "remedial," 42 U.S.C. § 9601(24), or "response," 42 U.S.C. § 9601(25), or "Response Activity" as defined in Section 20101(ee) of NREPA, M.C.L. § 324.20101(ee), whether or not such activity is undertaken under CERCLA, NREPA, RCRA, or other federal, state, tribal, or common law.

5.49 "Response Action Agency" or "Response Action Agencies" shall mean, as the context may require, USEPA, USCG, and any other department, agency, division or instrumentality of the United States with authority now or in the future to undertake or require Response Actions within the Covenant Area or at, on or within the CDF or which is or may be entitled to recover Response Costs in connection therewith, but excluding the Federal Trustees and COE.

5.50 "Response Action Agency Covered Matters" shall have the meaning set forth in Paragraph 31.2.

5.51 "Response Costs" means any cost recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, those costs falling within the definition at Section 20101(ff) of NREPA, M.C.L. § 324.20101(ff), or any cost which may be recoverable under any applicable law or the common law in connection with any Response Action.

5.52 "Restoration Account" means the interest-bearing court registry account created under Paragraph 6.2 and Appendix D.

5.53 "Saginaw" means the City of Saginaw, a Michigan municipal corporation, with offices at 1315 South Washington Avenue, Saginaw, Michigan 48601.

5.54 "Saginaw POTW" means the sewage treatment plant and collection system, including, but not limited to, all related sewers and pipes, interceptors, detention or retention ponds or basins, ash ponds, incinerators, outlets, equipment, land, pumping stations and combined sewer overflows, operated by Saginaw for the purpose of collection or treatment of domestic sewage and industrial waste prior to discharge to the Saginaw River.

5.55 "Sediment" shall mean soils, sand, organic matter, and/or minerals that wash from the land and accumulate on the bottom of a water body.

5.56 "SFO Agreement" means the Support for Others Program Agreement that will be entered into among the Trustees and COE pursuant to COE's Support for Others Program, attached as Appendix L.

5.57 "State" means the State of Michigan and all of its departments, agencies, divisions and instrumentalities.

5.58 "State Action" means the civil action commenced on June 29, 1994 by the State against Defendants in Ingham County Circuit Court, being Civil Action No. 94-77853-CE.

5.59 "State Covered Matters" shall have the meaning set forth in Paragraph 25.1.

5.60 "Submission" means any plan, report or other document required to be delivered by the Defendants or the State to the Trustees, Federal Trustees or any Response Action Agency in accordance with this Consent Judgment.

5.61 "Tribal Resources" means natural resources of the Tribal Trustee in the Assessment Area secured by treaty with the United States.

5.62 "Tribal Trustee" means the Saginaw Chippewa Indian Tribe of Michigan, a federally-recognized tribe.

5.63 "Trustees" shall mean, on behalf of the United States, DOI; the Tribal Trustee; on behalf of the State, the Director of ~~MDEQ~~EGLE, the Director of MDNR, and the Attorney General of the State.

5.64 "United States" means the United States of America, including all of its departments, agencies, divisions and instrumentalities.

5.65 "USCG" means the United States Coast Guard, an agency of the United States within the Department of Transportation, and any successor department or agency.

5.66 "USEPA" means the United States Environmental Protection Agency, an agency of the United States, and any successor department or agency.

5.67 "USFWS" means the United States Fish and Wildlife Service, an agency of the United States within the DOI, and any successor department or agency.

5.68 "Work" means all activities performed or to be performed by Defendants or MDOT, as the case may be, under Section VII.

5.69 "Zilwaukee Bridge Facility" means the MDOT lands contaminated by PCBs in and around the MDOT M-13 Ramps which was a former Saginaw landfill, including, but not limited to, lands located east of the west limited access right-of-way line of the Zilwaukee Bridge ramps, as more fully described in Appendix C.

5.70 Other Definitions. In addition to the definitions of terms set forth in Paragraphs 5.1 through 5.69, terms defined elsewhere in the text of and used throughout this Consent Judgment shall have the meaning ascribed to them in such text. All other terms used in this Consent Judgment (whether or not capitalized as used herein) which are defined in NREPA, CERCLA, and the CWA, and which are not otherwise defined in this Consent Judgment, shall have the same meaning as in NREPA, CERCLA, and the CWA, and their implementing regulations.

5.71 Captions and Headings. The captions and headings contained in this Consent Judgment have been inserted for convenience of reference only and shall not be used for the interpretation of any provision of this Consent Judgment.

VI. FUNDING OF DREDGING AND RESTORATION ACTIVITIES

6.1 Dredging Funds. Within seven (7) days after receiving actual notice of the entry of this Consent Judgment from the United States, Defendants shall pay Ten Million Six Hundred Forty Thousand Dollars (\$10,640,000) into the DOI Fund. Such payment shall be made by Electronic

Funds Transfer (FedWire) into the DOI Fund in accordance with Appendix B. The Trustees shall use these funds, any other funds deposited into the DOI Fund under Paragraph 6.7, and the interest thereon, to pay costs incurred for the Sediment dredging and disposal activities performed under Paragraphs 8.2 through 8.4 and the Dredge Plan. Such costs shall include, but not be limited to, any and all required payments due to COE or its contractor(s) for dredging under the SFO Agreement and the Dredge Plan, the actual cost of insurance and bonds which are required for the dredging and related activities under Paragraph 8.2(b), the actual cost of obtaining any and all necessary permits, licenses or approvals, the actual cost of sampling and analyses relating thereto, and the actual cost of transportation and disposal of any Sediment dredged under the Dredge Plan; provided, however, that in the event that such costs are less than Seven Million Dollars (\$7,000,000), the Trustees shall promptly refund to GM one-half (1/2) of the amount by which such costs are less than Seven Million Dollars (\$7,000,000), but greater than Five Million Dollars (\$5,000,000). Upon request, the Trustees shall provide Defendants with a detailed accounting regarding such costs.

6.2 Restoration Funds Within thirty (30) days after the entry of this Consent Judgment, Defendants shall pay into the Restoration Account Ninety Four Thousand Nine Hundred Seventy Four and 74/100 Dollars (\$94,974.74), which is One Hundred Thousand Dollars (\$100,000) less certain immunoassay sampling costs paid for by Defendants for Sediment samples taken by the Trustees from the Saginaw River prior to the entry of this Consent Judgment in the amount of \$5,025.26. The Trustees shall use these funds and any additional funds deposited into the Restoration Account under this Consent Judgment, including Appendix K and the interest thereon, in accordance with Paragraph 8.6.

6.3 Additional Funds for Restoration. Within thirty (30) days after each of the fourth (4th), fifth (5th) and sixth (6th) anniversaries of the entry of this Consent Judgment, Defendants shall pay an additional One Million Dollars (\$1,000,000), for a total of three (3) annual One Million Dollar (\$1,000,000) payments into the Restoration Account established under Paragraph 6.2.

6.4 Funds for Green Point Environmental Learning Center. Within thirty (30) days after the third (3rd) anniversary of the entry of this Consent Judgment, Defendants shall pay into the DOI Fund an additional amount of Five Hundred Twenty Thousand Dollars (\$520,000). This payment for the Green Point Environmental Learning Center is made without apportionment or division among the Trustees. The Trustees have jointly determined to undertake this restoration activity, which represents restoration of injured natural resources under the joint trusteeship of the Trustees. The Federal Trustees shall use these funds and the interest thereon at the Green Point Environmental Learning Center to restore, replace or acquire equivalent resources consistent with CERCLA and applicable regulations.

6.5 No Further Obligation for Funding. Except as provided in Paragraph 6.1, after the Restoration Account and DOI Fund are funded, Defendants and MDOT shall have no further responsibilities for or obligations in respect of, liability for, or rights to such accounts or the funds therein. In the event that the costs and expenses associated with dredging, disposal, restoration or other activities performed by the Trustees pursuant to Section VIII exceed the funds available under this Section VI, Defendants and MDOT shall have no obligation with respect to such excess and such excess shall be paid by the Trustees from other funds available to the Trustees or Plaintiffs.

6.6 Establishment of Accounts. The Parties hereby stipulate to the entry of the order regarding the Restoration Account, attached as Appendix D, simultaneously with the entry of this Consent Judgment. Information regarding deposit procedures into the existing DOI Fund are attached as Appendix B.

6.7 Payment by the United States. As soon as reasonably practicable after the entry of this Consent Judgment, the United States shall pay the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to the United States Department of Interior Natural Resource Damages Assessment and Restoration Fund. This payment shall be made by OPAC transfer to the Department of

Interior, Natural Resource Damage Assessment and Restoration Account, Agency Location Code 14010001, Account No. 14X5198 (NRDAR). In the event that this payment is not made within one hundred twenty (120) days after the entry of this Consent Judgment, Interest on the unpaid balance shall be paid commencing on the one hundred twenty-first (121st) day after the entry of this Consent Judgment and accruing through the date of the payment. The Parties recognize and acknowledge that the payment under this Paragraph 6.7 can only be made from appropriated funds legally available for such purpose. Nothing in this Consent Judgment shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VII. DEFENDANTS' WORK OBLIGATIONS

7.1 Consistency With Law. The activities to be undertaken by Defendants under or in connection with this Consent Judgment shall be consistent with NREPA and CERCLA and other applicable federal and state laws, including, but not limited to, any law or regulation administered by COE, and in accordance with plans that have been approved by the Trustees under this Consent Judgment.

7.2 Conveyances to United States and Tribal Trustee. Within sixty (60) days after the entry of this Consent Judgment (or such longer period upon mutual agreement of the Parties), Defendants shall convey, or cause to be conveyed, to the United States in accordance with applicable law each of the properties listed in Appendix E, and the United States shall accept such conveyances subject to any necessary approvals as required by law. As to the Roney property, the conveyance shall be to the Tribal Trustee which shall attempt promptly to reconvey to the United States pursuant to 25 C.F.R. Part 151 (1997) to be held in trust for the Tribal Trustee.

7.3 Conveyances to State. Within sixty (60) days after the entry of this Consent Judgment (or such longer period upon mutual agreement of the Parties), Defendants shall convey, or cause to be conveyed, to the State

in accordance with applicable law each of the properties listed in Appendix F and the State shall accept such conveyances subject to any necessary approvals as required by law.

7.4 Acceptance and Uses of Properties. (a) In the event that a Trustee cannot accept conveyance of any property referred to in Paragraphs 7.2 or 7.3 pursuant to applicable statutory, regulatory or administrative requirements and within the time specified in such paragraphs, the Trustees may direct conveyance of such property to one of the other Trustees or to another entity or entities designated by the Trustees, subject to the limitations for use of the property as specified in Paragraph 7.4(b). In the event that such property is not accepted by the other Trustee or designated entity within thirty (30) days thereafter (or such longer period upon mutual agreement of the Parties), the Trustees shall have the right and authority to require the sale of the property in a commercially reasonable manner and time. After such sale, Defendants shall pay all net proceeds from the sale into the Restoration Account in accordance with Paragraph 8.6. Such sale and receipt of proceeds shall be the sole remedy of the United States, the State and the Tribal Trustee in the event that they or their designees are unable to accept the conveyance of any such property. In computing the net proceeds, any costs with respect to the property eligible for credit under Paragraph 7.13 shall be deducted in addition to any other costs relating to the sale.

(b) The properties to be conveyed under Paragraphs 7.2 and 7.3 shall be used in perpetuity and consistent with CERCLA and NREPA and other applicable federal and state laws to:

(i) preserve, protect and restore current or potential habitat for fish and wildlife;

(ii) preserve, protect and restore current or potential habitat for endangered and threatened species and species of special concern, including, but not limited to, bald eagles, migratory waterfowl, colonial water birds, fish, and certain endangered or threatened orchids and other plant species;

(iii) preserve, protect and restore existing lakeplain prairie and coastal wetlands; or

(iv) otherwise restore, replace, or acquire the equivalent of any natural resources that have been alleged to have been injured by releases of Hazardous Substances into the Assessment Area in connection with the Consolidated Actions.

7.5 Property Acquisition and Restoration Evaluation Services. Defendants and, to the extent provided in the next sentence, MDOT have provided the property acquisition and restoration evaluation services (including those of real estate agents, consultants, and contractors, etc.) required to identify, evaluate, and acquire the properties to be conveyed under Paragraphs 7.2 and 7.3. The evaluation included an inspection conducted by MDOT, at its sole cost and expense of properties to be conveyed under Paragraphs 7.2 and 7.3. MDOT's inspections were completed prior to the entry of this Consent Judgment. In connection with such property acquisition and restoration evaluation services, Defendants represent that they have expended under the Agreement in Principle, as of September 30, 1997, Three Hundred Thirty-Seven Thousand Eight Hundred Fifty and 85/100 Dollars (\$337,850.85).

7.6 Property Holding and Carrying Costs. Defendants represent that under the Agreement in Principle, they have expended, through September 30, 1997, Six Million Five Hundred Twenty-Seven Thousand Five Hundred Ninety-Nine and 04/100 Dollars (\$6,527,599.04) (including the amount referenced in Paragraph 7.5) and have also agreed to incur certain additional evaluation and other costs to hold and manage such lands prior to the time of transfer under Paragraphs 7.2, 7.3 and 7.4(a) for a total expenditure of Six Million Seven Hundred Thousand Dollars (\$6,700,000). To the extent that such Six Million Seven Hundred Thousand Dollars (\$6,700,000), after deducting the amount already expended as referred to in the first sentence of this Paragraph 7.6, but determined in accordance with Paragraphs 7.13 and 7.14, is not sufficient to cover any additional or subsequent property evaluation and holding and carrying costs or any costs reasonably and necessarily

incurred by Defendants to clear or remove any defects in title in order to satisfy any title conveyance criteria of the Federal Trustees or the State in order to make the conveyances required under Paragraphs 7.2 and 7.3, such additional costs shall be paid by Defendants and shall be subtracted either from the amounts otherwise required to be paid into the Restoration Account or from the sale proceeds of property as provided in Paragraph 7.4(a). If the amount required to be expended by Defendants with respect to such land evaluation, holding, carrying and title clearing costs is less than Six Million Seven Hundred Thousand Dollars (\$6,700,000), the amount of such surplus shall be paid into the Restoration Account within thirty (30) days after the Trustees' approval of the Defendants' cost accounting pursuant to Paragraph 7.14.

7.7 Restoration to Wetland or Lakeplain Prairie. Within thirty (30) days after the first (1st) anniversary of the entry of this Consent Judgment, Defendants shall submit to the Trustees for approval an initial plan to restore, and thereafter restore in accordance with the approved final plan, a portion of the properties (approximately 200-400 acres) to be conveyed under Paragraph 7.3 to coastal wetland or lakeplain prairie conditions, including the demolition of any structures located on such lands and removal and disposal of any resulting debris. Defendants shall not be obligated to expend more than One Million Dollars (\$1,000,000) under this Paragraph 7.7 and the approved plan hereunder.

7.8 Resource Restoration - Fisheries Habitat Improvement. To enhance fishery resources of Saginaw Bay and Tobico Marsh (part of the Bay City State Recreation Area), Defendants shall submit within thirty (30) days after the third (3rd) anniversary of the entry of this Consent Judgment to the Trustees for approval an initial plan to restore and thereafter restore, in accordance with the approved final plan, fisheries habitat in the Tobico Marsh and to increase the recreational fishing opportunities provided by the Tobico Marsh. Defendants shall not be obligated to expend more than Five Hundred Thousand Dollars (\$500,000) under this Paragraph 7.8 and the approved plan hereunder.

7.9 Enhancement of Resource Use and Public Education and Outreach.

As compensation for natural resource damage claims under Part 201 of NREPA, and to enhance public recreational opportunities on the Saginaw River and Saginaw Bay and increase public education about Saginaw River environmental resource issues, Defendants shall perform the following activities:

(a) Within thirty (30) days after the second (2nd) anniversary of the entry of this Consent Judgment, Defendants shall submit to the Trustees for approval an initial plan to create, and thereafter create in accordance with the approved final plan, a recreation area on existing Bay City property and property to be conveyed by GM to Bay City by the second (2nd) anniversary of the entry of this Consent Judgment (approximately forty (40) acres and as described on Appendix G) to be dedicated to public uses. The public uses shall include a new boat launch facility and parking, and may include picnic areas, public education facilities (which may include nature trails or kiosks with interpretive signboards), and potential restoration or enhancement of the wetland on this property.

(b) Within thirty (30) days after the second (2nd) anniversary of the entry of this Consent Judgment, Defendants shall submit to the Trustees for approval an initial plan to create, and thereafter create in accordance with the approved final plan, a recreational area on Bay City property on Cass Avenue (approximately four (4) acres and as described on Appendix H) to be dedicated to public uses. The public uses shall include a new boat launch facility and parking, and may include picnic areas, public education facilities (which may include nature trails or kiosks with interpretive signboards), and potential restoration or enhancement of the wetland on this property.

(c) Bay City shall own, operate, and maintain, at its sole cost and expense, the facilities and properties described in Paragraphs 7.9 (a) and (b) for at least ninety-nine (99) years.

(d) Within thirty (30) days after the second (2nd) anniversary of the entry of this Consent Judgment, Defendants shall submit to the Trustees for approval an initial plan to create, and thereafter create in accordance

with the approved final plan, a recreational area on MDNR land at the north termination of Jones Road in Bay County as described in Appendix I. The public uses shall include an improved boat launch facility and parking, any may include interpretive signage, and the design thereof shall minimize impacts on existing wetlands at the site. This facility shall be owned, operated and maintained by MDNR or its designee at its sole cost and expense.

(e) Except with respect to Bay City as provided in Paragraph 7.9(c) and the last sentence of this Paragraph 7.9(e), Defendants shall not be obligated to pay in the aggregate more than Two Million Five Hundred Thousand Dollars (\$2,500,000) under this Paragraph 7.9 and the approved plans hereunder. It is presently estimated that in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000) will be necessary to construct the boat launch facilities at the properties described in Paragraphs 7.9(a), (b) and (d). Bay City shall be severally liable for providing any additional funds to construct the boat launch facility at the Cass Avenue property in excess of the funds that would have been necessary to build the boat launch facility at the so-called Skull Island site and as set forth in the plan therefor required under Paragraph 7.9(b).

7.10 Submission of Additional Plans. For the projects required by Paragraphs 7.7, 7.8 and 7.9(a), (b), and (d), in addition to the initial plans required therein, Defendants shall also provide draft fifty (50) percent, draft ninety (90) percent, and draft final plans for the Trustees' approval. The draft fifty (50) percent plan for a project shall be due sixty (60) days after the Trustees' approval of the initial plan for such project. The draft ninety (90) percent plan shall be due sixty (60) days after the Trustees' approval of the draft fifty (50) percent plan for such project. The draft final plan shall be due thirty (30) days after the Trustees' approval of the draft ninety (90) percent plan for such project. The Trustees shall make reasonable efforts to complete their review of all plans expeditiously.

7.11 Green Point Environmental Learning Center Lease. Within thirty (30) days after the entry of this Consent Judgment, Saginaw shall provide to the USFWS a ninety-nine (99) year lease, rent-free, with an option to

renew rent-free for the same period, on the eighty (80) acre parcel of land on the Tittabawassee River comprising the Green Point Environmental Learning Center and its associated wildlife habitat under the lease attached as Appendix J.

7.12 Permits, Licenses and Approvals. (a) Defendants shall obtain all necessary permits, licenses and approvals for the Work; provided, however, that Defendants may seek relief under the provisions of Section XX for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work. The cost of obtaining, complying with and maintaining any such permits, licenses and approvals shall be an eligible cost under Paragraph 7.13.

(b) Where any portion of the Work does require a federal, state or local permit, license, or approval, the Parties shall cooperate with one another in applying for and obtaining any such permit, license, or approval to the maximum extent practicable and only consistent with the requirements of applicable law.

7.13 Documentation and Eligibility of Costs. In computing costs eligible to be counted against the pertinent dollar limitations or amounts set forth in Paragraphs 7.6 through 7.9, eligible costs shall mean costs reasonably and necessarily incurred or to be incurred for the following, whether incurred before or after entry of this Consent Judgment, except as provided in Paragraph 7.13(c):

(a) (i) any real estate option price; (ii) real estate purchase price; (iii) closing adjustments relating to prepaid or unpaid items and allocations (such as for real estate taxes and assessments) for the transfer of the properties described in Paragraphs 7.2 and 7.3 to effectuate the purposes of this Consent Judgment; (iv) surveys, title insurance, deed restrictions, deed recordation, preparation of title, deed and closing documents, tax or parcel splits; (v) legal fees normally incident to the closing of real estate transactions and paid or incurred by a buyer of real estate; (vi) legal fees associated with the closing of such transactions and conveyances in connection

therewith both to a Defendant or its designee or from a Defendant or its designee to the Trustees or a Plaintiff; (vii) any other amounts required to be paid under the applicable real estate option or purchase agreement by the optionee or buyer thereunder; (viii) clearing or removal of any defects in title in order to satisfy title criteria of the United States or the State for the conveyances required under Paragraphs 7.2 and 7.3; and (ix) holding and other carrying costs with respect to the lands acquired under the Agreement in Principle and to be conveyed under Paragraphs 7.2 and 7.3, including, but not limited to, the following: (1) all real estate taxes and special and general assessments, including for conveyances to the State under Paragraph 7.3 two (2) years of taxes and all general and special assessments for tax years after the date of conveyance, and, if applicable, any real estate transfer taxes with respect to the properties referred to in Paragraphs 7.2(a) and 7.3; (2) costs relating to liability, property and casualty insurance; (3) costs incurred for maintenance, repair, property management and utilities; and (4) costs incurred for compliance with any legal requirements arising from or incidental to ownership of such lands, but not including any liability arising from any conditions on lands acquired under the Agreement in Principle that resulted from the acts or omissions of Defendants or their agents;

(b) (i) withdrawing lands presently enrolled in the Michigan Farmland and Open Space Preservation Program under Part 361 of NREPA, M.C.L. § 324.36101 *et seq.* (formerly M.C.L. § 554.701 *et seq.*); (ii) for the restoration and construction components of the Work under Paragraphs 7.7, 7.8, and 7.9(a), (b) and (d), 7.10 and 7.12; (iii) real estate brokers, appraisers, engineering design and evaluation consultants, and environmental consultants retained by any one of Defendants to provide property acquisition and engineering and environmental and restoration consultant services under this Section VII; and (iv) any necessary permit, license, or approval, or other fees incurred to accomplish the Work; and

(c) after entry of this Consent Judgment, Defendants' own personnel in conducting the Work, and the reasonably allocable direct

and indirect costs thereof to the pertinent employer; provided, however, that such employment of Defendants' own personnel to conduct the Work shall be subject to the approval of the Trustees, and provided further that Defendants shall be given credit as an eligible cost only for that portion of Defendants' cost of employing any such personnel not in excess of the prevailing rate for hiring similar personnel in the State.

7.14 Cost Accounting. (a) After Defendants have completed a Work component required by this Section VII for which a dollar limitation is specified or after the conveyance of the properties pursuant to Paragraphs 7.2 through 7.4(a), they shall submit to the Trustees a detailed accounting of such costs to complete that component. The objective of the cost accounting shall be to assure the Trustees that Defendants have incurred eligible costs in connection with a particular Work component and that such costs are consistent with any approved plan therefor. Eligibility of costs shall be determined as specified in Paragraph 7.13. The Trustees shall approve or object to such cost accounting within a reasonable time.

7.15 Surplus and Insufficient Funds. (a) If Defendants complete the Work components set forth respectively in Paragraphs 7.7 through 7.9 at a total cost less than the total of the applicable dollar limits or amounts set forth in the pertinent paragraph for such activities, Defendants shall deposit the difference into the Restoration Account established pursuant to Paragraph 6.2 within thirty (30) days after providing the accounting required under Paragraph 7.14(a) or as otherwise provided in Paragraph 7.6.

(b) If any dollar limit set forth in Paragraphs 7.7 through 7.9 is insufficient to fund the component of Work involved, any amount in excess of such dollar limit necessary to complete such Work shall be the responsibility of the Trustees and Plaintiffs and shall be paid from the Restoration Account or other funds available to the Trustees or Plaintiffs; provided, however, that if the Trustees or Plaintiffs make the necessary funds available within a reasonable time, Defendants shall complete performance of the pertinent Work component in accordance with any approved plan for such Work. If additional amounts in excess of such dollar

limitations are necessary to complete the Work required by such paragraph, but have not been approved by the Trustees or have not been made available by the Trustees to Defendants within a reasonable time, Defendants shall not have any obligation to complete such component of the Work.

(c) Notwithstanding the provisions of Paragraph 7.15(b) and notwithstanding any approval of any Submission in accordance with Paragraph 16.3, if the Trustees determine that a dollar limit set forth in Paragraphs 7.7 through 7.9 is insufficient to fund the component of Work involved, and the substantial cause of such deficiency is Defendants' failure to follow the approved Work Plan or failure to use best professional judgment in the preparation of the Work Plan or implementation of the Work, then Defendants shall be responsible to fund the additional costs necessary to complete that component of the Work. Any decision by the Trustees under this Paragraph 7.15(c) shall be subject to dispute resolution under Section XXI.

VIII. IMPLEMENTATION OF DREDGING AND RESTORATION ACTIVITIES BY TRUSTEES

8.1 Establishment of Trustee Council. A Trustee Council has been established in accordance with the Trustee Council Memorandum of Understanding attached as Appendix K, and all decisions to be made or actions taken by the Trustees collectively under this Consent Judgment shall be in accordance therewith.

8.2 Dredging, SFO Agreement and Dredging Contractor Insurance Requirements.

(a) The State and Federal Trustees shall implement and oversee implementation of the Dredge Plan. In order to accomplish this, the State and Federal Trustees will enter into the SFO Agreement with COE pursuant to COE's Support for Others Program. Under the SFO Agreement, at the direction of the State and Federal Trustees, COE and the Dredging Contractor will dredge contaminated Sediment from the Saginaw River and dispose of and contain such Sediment within the CDF in accordance with the Dredge Plan. This Consent Judgment does not confer rights on any person or Party to enforce the SFO Agreement.

(b) The State and Federal Trustees will ensure that COE will require that the Dredging Contractor obtains comprehensive general liability, pollution legal liability and other insurances against claims for personal injury, property damage and any environmental impairment or pollution caused by the Dredging Contractor in the course of performance of the dredging as set forth on Appendix R. Such insurance will name the Trustees and Defendants as additional insureds thereunder. The State and Federal Trustees will also ensure that COE will also require the Dredging Contractor to post a performance bond and a payment bond in the maximum amounts authorized under the Federal Acquisition Regulations, 48 C.F.R. § 28.102-2 (1997).

(c) In the event that COE performs the Dredge Plan on behalf of the Trustees under the SFO Agreement, notwithstanding any other provision in this Consent Judgment, COE shall be treated in the same manner as a response action contractor within the meaning of section 119 of CERCLA, 42 U.S.C. § 9619, for any act or omission in implementing the Dredge Plan under Section VIII.

8.3 Authorization for Dredging Activities. The Trustees have acquired or shall acquire or cause to be acquired all necessary permits or other authorizations pertaining to the dredging activities, including disposal of dredged materials, to be undertaken with the funds provided by Defendants under Paragraphs 6.1 and 6.3. Subject to Section XII, the Trustees shall also acquire or cause to be acquired all consents or approvals required for access to any property required for the performance of such dredging. In furtherance of this objective, under the Agreement in Principle, Defendants have advanced to USFWS the sum of Two Hundred Sixty Thousand Dollars (\$260,000) for the cost of design of the dredging to be undertaken under this Section VIII.

8.4 Dredging Completion Notice. When the Trustees have determined that the requirements of the Dredge Plan have been satisfactorily implemented, they shall send a notice of completion of the Dredge Plan ("Dredging Completion Notice") to COE, Defendants, MDOT, USEPA, and DOJ.

8.5 Transfer of Unused Funds in DOI Fund to Restoration Account.

After all necessary and appropriate payments to COE and others in accordance with the SFO Agreement for the dredging under the Dredge Plan and Paragraph 6.1, and after issuance of the Dredging Completion Notice, ~~DOI shall transfer any funds then remaining~~ funds in the DOI Fund (not including those funds designated for the Green Point Environmental Learning Center under Paragraph 6.4 or for natural resource implementation costs under Paragraph 22.1) shall remain in the DOI Fund ~~to the Restoration Account established under Paragraph 6.2. These funds shall then~~ to be managed by the Trustees in accordance with Paragraph 8.6.

8.6 Uses of the Restoration Account

(a) Designated Uses. To the extent necessary, the Trustees shall use Three Million Dollars (\$3,000,000) of the Restoration Account, established and funded under Paragraphs 6.2 and 6.3, for future monitoring, modeling, and studies of the Assessment Area to determine the effectiveness of the dredging, restoration and other activities performed pursuant to this Consent Judgment and to identify the need, if any, for further remedial or restoration efforts; provided, however, that no more than Two Hundred Thousand Dollars (\$200,000) may be spent on modeling efforts without the approval of the Trustees. Ten (10) years after the Trustees have provided the Dredging Completion Notice in accordance with Paragraph 8.4, and biennially thereafter, the Trustees shall reassess the monitoring and modeling efforts to date. To the extent the Trustees determine that funds designated under this Paragraph 8.6(a) are no longer needed for monitoring and/or modeling activities, the remaining funds shall be considered surplus funds under Paragraph 8.6(c).

(b) Priority of Other Uses. The payment of One Hundred Thousand Dollars (\$100,000), subject to adjustment as provided in Paragraphs 6.2 and 7.6, to be made by Defendants to the Restoration Account within thirty (30) days after the entry of this Consent Judgment under Paragraph 6.2 may be used by the Trustees for miscellaneous purposes consistent with Paragraph 8.6(d). Payments made or funds transferred into the Restoration Account thereafter shall be used first, to the extent necessary, to fund the monitoring and modeling activities described in Paragraph 8.6(a) and

any funds remaining thereafter shall be considered surplus funds in accordance with Paragraph 8.6(c).

(c) Surplus Funds. (i) If the Trustees complete the activities described in Paragraph 8.6(a) at a total cost of less than Three Million Dollars (\$3,000,000), any balance remaining in the Restoration Account shall be used in accordance with Paragraph 8.6(d).

(ii) Any accumulated interest on the funds in the Restoration Account shall remain in the Restoration Account and shall be used in accordance with Paragraph 8.6(d).

(d) Additional Uses of the Restoration Account. If surplus funds remain in the Restoration Account in accordance with Paragraph 8.6(c), or if funds are transferred into the Restoration Account under Paragraph 7.15 or 8.5 or through other means consistent with this Consent Judgment and applicable law, the surplus funds or other funds plus 100% of the accrued interest shall be transferred forthwith from the Restoration Account to the DOI Fund. ~~7-t~~The Trustees shall use such funds in the Assessment Area and/or its watershed for any other purpose consistent with NREPA and CERCLA, including, but not limited to:

(i) Additional activities associated with dredging or disposal of contaminated Sediment. Such activities may include dredging of other contaminated areas in the Assessment Area, investigations of other sources of contamination affecting the Assessment Area, and activities that may be undertaken to enhance the containment within the CDF of Sediment dredged pursuant to this Consent Judgment; provided, however, that such activities are undertaken in cooperation with and/or with the permission of COE or any entity subsequently responsible for the management of the CDF;

(ii) Continued or additional activities of the type, or consistent with the type, described in Paragraph 8.6(a);

(iii) Purchase and restoration of lands within the Saginaw River and Saginaw Bay watershed;

(iv) Activities to enhance the containment within the CDF of contaminated Sediment or to otherwise enhance the environmental value of the CDF; provided, however, that such activities are undertaken in cooperation with and/or with the permission of COE or any entity subsequently responsible for the management of the CDF; and

(v) Other natural resource restoration projects designed to protect, restore, replace, enhance or acquire equivalent natural resources, including, but not limited to, Tribal Resources in and near the Assessment Area.

8.7 Trustees' Activities / Consistency with Law. The dredging and other activities, including restoration, replacement, or acquisition of natural resources to be undertaken by the Trustees with the funds provided by Defendants under this Consent Judgment shall be consistent with NREPA and CERCLA and other applicable federal and state laws, including, but not limited to, any law or regulation administered by COE, and in accordance with plans that have been approved or prepared by the Trustees under this Consent Judgment. It is understood and agreed to by the Parties that the Sediment dredging and disposal activities to be undertaken pursuant to or otherwise referenced in this Consent Judgment are intended for environmental remediation and natural resource restoration purposes.

8.8 Trustees' Responsibility. Subject to the requirements of any law or regulation administered by COE, the Trustees shall be solely responsible for the planning, management, control, supervision, conduct and implementation of any Sediment dredging, disposal and restoration activities undertaken pursuant to this Section VIII, the SFO Agreement and the Dredge Plan with funds provided by Defendants pursuant to Section VI, and Defendants and MDOT shall have no responsibility or liability or rights (including any rights of enforcement) for or in connection therewith except to fund such activities as provided in Sections VI and VII. For purposes of this Consent Judgment, the Sediment dredging, disposal and restoration activities to be

performed under this Section VIII or otherwise for or on behalf of the Trustees and any necessary and related investigations of the Assessment Area with respect to Sediment shall not be deemed to be an activity performed by Defendants or MDOT or at their direction under this Consent Judgment or as part of the Work.

8.9 Dredging and Samples. The dredging to be performed under this Consent Judgment will remove a large mass of the PCBs located in the Saginaw River and Bay in an environmentally sound manner. The Parties recognize that some PCBs will nevertheless remain in the Saginaw River and Bay after the dredging. The collection of additional sample results in the Assessment Area after the entry of this Consent Judgment showing PCB Sediment contamination may not be utilized to reopen under Paragraphs 24.8, 25.7 or 27.3(a) unless such contamination is substantially inconsistent in nature, scope, depth, location and extent with that known to exist based upon the information and conditions described in Paragraphs 24.10, 25.9 or 27.3(b).

IX. ENGAGEMENT OF CONTRACTORS

9.1 Engagement of Principal Contractor. Defendants shall retain the necessary, qualified, and experienced principal contractor(s) to be employed for the purpose of performing their respective activities and obligations under Paragraphs 7.7, 7.8, 7.9(a), (b) and (d), 7.10 and 7.12. The identity of the principal contractor(s), statements of qualifications and identification of personnel designated for the applicable Work component shall be provided to the Trustees at least thirty (30) days prior to the commencement of the Work involved. The Trustees shall have the right to disapprove, within twenty (20) days after such notification, based on professional qualifications, conflicts of interest, deficiencies in previous similar work or other reasonable basis, any such contractor; provided, however, that if the Trustees fail to act within such time period without a mutual agreement of the Parties to extend such time period, the Trustees shall be deemed to have approved such principal contractor(s). If the Trustees disapprove any such person(s), the Trustees shall provide Defendants with written notice thereof, including the specific reasons for

the disapproval, and Defendants shall have thirty (30) days thereafter to identify and select any replacement(s).

9.2 Change of Contractor. Any principal contractor retained under this Consent Judgment may be changed by Defendants, but in the event of any such change, Defendants shall provide the Trustees with written notice of such intended change at least seven (7) days in advance thereof and the Trustees shall have the right to disapprove of such change under the conditions and time limitations specified in Paragraph 9.1.

X. QUALITY ASSURANCE/SAMPLING

10.1 Use of Accepted USEPA Methods. Defendants shall ensure that the Trustees and their authorized representatives are allowed access to any laboratory utilized by Defendants under this Consent Judgment for quality assurance monitoring upon reasonable notice. Defendants shall use recognized and accepted quality assurance, quality control, and chain of custody procedures for all samples generated by them pursuant to this Consent Judgment. Prior to the commencement of any sampling or monitoring under this Consent Judgment by Defendants, Defendants shall submit to the Trustees their Quality Assurance Project Plan ("QAPP") for approval which shall be prepared using applicable guidance under CERCLA and Part 201 of NREPA provided to Defendants by Plaintiffs. All laboratories used by Defendants shall analyze all samples submitted pursuant to the QAPP for quality assurance monitoring and utilize for the analysis of samples taken pursuant to this Consent Judgment accepted USEPA methods. Accepted USEPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," being Document OLM 03.1, dated August, 1994, and the "Contract Lab Program Statement of Work for Organics Analysis Multimedia Multiconcentration," being Document OLM 03.2, dated August, 1994, and any amendments made thereto during the course of the implementation of this Consent Judgment and provided to Defendants by Plaintiffs. All laboratories used for analysis of samples taken by Defendants pursuant to this Consent Judgment shall participate in an USEPA or USEPA-equivalent QA/QC program. All field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Judgment

shall be conducted in accordance with the procedures set forth in the approved QAPP.

10.2 Submission of Monthly Sampling Results By Parties. By the tenth (10th) day of each month, the Party undertaking sampling or tests shall submit to the other Parties the results of all sampling or tests and all other data received during the previous month in the course of implementing this Consent Judgment. Sampling or test data generated under this Consent Judgment shall be admissible in evidence without waiver of any objection as to weight or relevance.

10.3 Split/Duplicate Samples. Each Party shall allow the other Parties to take split and/or duplicate samples of any samples collected pursuant to this Consent Judgment. Except for emergency situations, all Parties shall be notified not less than seven (7) days in advance of any scheduled sample collection activity. In addition, any Party shall have the right to take any additional samples that it deems necessary, subject to any other applicable requirements of law.

10.4 Submission of Sampling Results by Defendants. Until the tenth (10th) anniversary of the issuance of the Dredging Completion Notice in accordance with Paragraph 8.4, each Defendant shall submit to the Trustees copies of the results of all sampling and/or tests or other data (other than results of routine intake water, effluent or other sampling or monitoring required by NPDES or other permits and which have been transmitted to MDEQ), conducted or generated by that Defendant after the entry of this Consent Judgment with respect to surface water or Sediment in the Assessment Area and/or the implementation of this Consent Judgment, unless the Trustees agree otherwise. This Paragraph 10.4 shall not apply to the results of any sampling or tests or other data entitled to confidentiality in accordance with Paragraph 15.3.

10.5 Retention by Plaintiffs of Authority. Notwithstanding any provision of this Consent Judgment, Plaintiffs shall retain all of their information gathering and inspection authorities, including enforcement actions related thereto, under CERCLA, NREPA, and any other applicable law.

Nothing in this Paragraph 10.5 modifies or affects in any way any covenants by any Party in this Consent Judgment.

XI. PROJECT COORDINATORS

11.1 Defendants' Project Coordinators. Defendants' Principal Project Coordinator shall be:

Joseph B. Medved
General Motors Corporation / Worldwide Facilities Group
Environmental & Regulatory Support Remediation Team
Mail Code 482-310-004
Argonaut A 10th Floor
485 West Milwaukee Ave.
Detroit, MI 48202
Phone: (313) 556-0813

Each of the Defendants shall have a Project Coordinator as follows:

GM: Joseph B. Medved
General Motors Corporation / Worldwide Facilities Group
Environmental & Regulatory Support Remediation Team
Mail Code 482-310-004
Argonaut A 10th Floor
485 West Milwaukee Ave.
Detroit, MI 48202
Phone: (313) 556-0813

Bay City: Edward Golson
Environmental Coordinator
City of Bay City
301 Washington Ave.
Bay City, MI 48708
Phone: (517) 894-8205

Saginaw: Reed D. Phillips
City Manager
City of Saginaw
1701 S. Jefferson
Saginaw, MI 48601
Phone: (517) 759-1611

The role of the Project Coordinator of each Defendant shall be to coordinate with and provide information to Defendants' Principal Project Coordinator to enable Defendants' Principal Project Coordinator to fulfill the role described in this Paragraph 11.1 and in Paragraph 11.3. Defendants' Principal Project Coordinator shall have primary responsibility for coordinating the Work and shall have the technical expertise sufficient to oversee adequately all aspects of the Work. This subsection does not relieve Defendants from other reporting obligations under applicable law.

11.2 Trustees' Project Coordinators. The Trustees' Principal Project Coordinator shall be:

Lisa L. Williams, NRDA Specialist
U.S. Fish and Wildlife Service
East Lansing Field Office
2651 Coolidge Rd.
East Lansing, MI 48823
Phone: (517) 351-2555
Fax: (517) 351-1443

Each Trustee shall have a Project Coordinator as follows:
Coordinator for MDEQ and Attorney General of Michigan:

William Creal
Surface Water Quality Division
Michigan Dept. of Environmental Quality
P.O. Box 30273
Lansing, MI 48909-7713
Phone: (517) 335-4181

Federal Trustees Coordinator:

Lisa L. Williams, NRDA Specialist
U.S. Fish and Wildlife Service
East Lansing Field Office
2651 Coolidge Rd.
East Lansing, MI 48823
Phone: (517) 351-2555
Fax: (517) 351-1443

Tribal Trustee Coordinator:

William C. Snowden
7070 East Broadway

Mt. Pleasant, MI 48858
Phone: (517) 775-4000, ext. 54016

The role of the Project Coordinator of each Trustee shall be to coordinate with and provide information to the Trustees' Principal Project Coordinator to enable the Trustees' Principal Project Coordinator to fulfill its role described in Paragraph 11.3.

11.3 Coordination of Communication Between Principal Project Coordinators. The communications between Defendants and the Trustees with respect to matters involving implementation of the Work shall, to the maximum extent practicable, be between Defendants' Principal Project Coordinator and the Trustees' Principal Project Coordinator, and the Trustees' Principal Project Coordinator shall be the designated administrative representative for the Trustees in the Assessment Area. All communications between Defendants and the Trustees and all documents, reports, approvals, and other submissions and correspondence concerning the activities performed pursuant to this Consent Judgment shall be directed through the Principal Project Coordinators. If a Project Coordinator is changed, whether Principal or otherwise, the identity of the successor shall be given to Defendants and the Trustees by the Party changing the Project Coordinator at least five (5) Working Days before the change occurs, unless it is impracticable to do so, but in no event later than the actual day the change is made.

XII. ACCESS

12.1 Access Controlled by Defendants or MDOT. To the extent that a Defendant or MDOT owns or controls access after the effective date of this Consent Judgment to any Facility or to any area in which activities are to be performed under this Consent Judgment or with funds provided by Defendants under this Consent Judgment, and to the extent reasonable notice is given to such Defendant or MDOT, the Trustees, the Response Action Agencies, and COE with respect to Paragraph 12.1(g) only, and their authorized employees and representatives, upon presentation of credentials, shall have access at all reasonable times to the areas where activities are to be performed under this Consent Judgment or with funds provided by Defendants under this Consent

Judgment, and to the Facilities, but only as provided in Paragraph 12.1(c), for relevant purposes hereunder, including, but not limited to:

(a) Monitoring the Work;

(b) Verifying any data or information submitted to the Trustees or a Response Action Agency;

(c) Conducting investigations and sampling relating to contamination in the Assessment Area, but as to any Facility such access shall be limited to visiting any Facility for exterior walk-throughs and conducting sampling of the area of a Facility landward of the OHWM a distance of twenty (20) feet; provided, however, that such access authority with respect to any Facility owned or controlled by a Defendant or MDOT shall terminate on the seventh (7th) anniversary of the entry of this Consent Judgment;

(d) Obtaining samples;

(e) Assessing the need for or planning and implementing activities in or near the Assessment Area;

(f) Inspecting and copying Defendants' or MDOT's non-privileged records, operating logs, contracts, or other documents required to assess Defendants' or MDOT's compliance with this Consent Judgment; and

(g) Performing activities associated with any dredging activities undertaken with funds provided by Defendants under this Consent Judgment, including carrying out the Dredge Plan and conducting any sampling in connection therewith.

12.2 Access Controlled by Others. To the extent that persons other than Defendants or MDOT own or control access to the Assessment Area or any other area where the Work is to be performed or where activities are to be performed by or on behalf of the Trustees with funds provided by Defendants

under this Consent Judgment, the Trustees or Plaintiffs shall be responsible for obtaining such access as is necessary for the performance of such activities.

12.3 Compliance with Law. All persons granted access pursuant to this Consent Judgment shall comply with all applicable health and safety laws and regulations and Facility or facility requirements.

12.4 Retention by Plaintiffs and COE of Authority. Notwithstanding any provision of this Consent Judgment, Plaintiffs and COE shall retain all of their inspection and access authorities under any applicable statute or regulation. Nothing in this Paragraph 12.4 modifies or affects in any way any covenants by any Party in this Consent Judgment.

XIII. CREATION OF DANGER

13.1 Defendants' Actions. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a Hazardous Substance in or into the Assessment Area that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendants shall, subject to Paragraph 13.2, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Trustees' Principal Project Coordinator, or, if unavailable, the Michigan Pollution Emergency Alerting System (PEAS, 1-800-292-4706); and the National Response Center (1-800-424-8802) or USEPA Region V, Waste Management Division, Office of Superfund, Emergency and Enforcement Response Branch (1-800-312-353-2318) (twenty-four hours a day). Defendants shall take such actions in consultation with the Trustees' Principal Project Coordinator or other available authorized person and in accordance with all applicable provisions of law.

13.2 Other Actions. Subject to Sections XXIV, XXV, XXVII, XXVIII, XXIX, XXX, XXXI and XXXIV, nothing in the preceding paragraph or in this Consent Judgment shall be deemed to limit any authority the United States, the State or the Tribal Trustee may otherwise have under applicable law to:

(a) take all appropriate action to protect human health and the environment or prevent, abate, respond to, or minimize an actual or threatened release of a Hazardous Substance in or into the Assessment Area, including at, on, within or from the CDF; (b) recover any Response Costs incurred in connection with any such action; or (c) direct or order such action or seek an order from the Court to protect human health and the environment or prevent, abate, respond to, or minimize an actual or threatened release of a Hazardous Substance in or into the Assessment Area, including at, on, within or from the CDF.

XIV. COMPLIANCE WITH LAWS

All actions required to be taken by Defendants pursuant to this Consent Judgment shall be undertaken in accordance with the requirements of all applicable federal and state laws and regulations.

XV. RECORD RETENTION/ACCESS TO INFORMATION

15.1 Defendants and MDOT Record Retention. Defendants, MDOT, and their respective representatives, consultants, and contractors shall preserve and retain until ten (10) years after the entry of this Consent Judgment all records, sampling or test results, charts, and other documents: (a) maintained or generated pursuant to any requirement of this Consent Judgment; (b) that relate in any manner to the performance of the Work; or (c) that relate to the release of any Hazardous Substance by a Defendant or MDOT into the Assessment Area from a Facility. After the document retention period, Defendants, MDOT and/or their respective successors shall notify Plaintiffs in writing ninety (90) days prior to the destruction of such documents and, upon request, Defendants, MDOT and/or their successors shall relinquish custody of all documents to the requesting Plaintiff or, if a request is made by more than one Plaintiff, to the Trustees. Any request for documents pursuant to this Paragraph 15.1 shall be accompanied by a copy of this Consent Judgment and be sent to Defendants' Principal Project Coordinator or to MDOT if the request pertains to MDOT.

15.2 Requests for Documents. Defendants shall, upon request by any Plaintiff, provide to the requesting Plaintiff or to the Trustees, if there is more than one requesting Plaintiff, all documents and information within their possession or control or that of their employees or authorized representatives relating to the Work, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports and correspondence. Defendants shall also, upon request and reasonable notice, utilize their best efforts to make available to Plaintiffs, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

15.3 Assertion of Confidentiality or Privilege Claims. Defendants and MDOT may assert a confidentiality or privilege claim, including any privilege or protection provided under the attorney-client privilege or work product doctrine, if available under applicable law, covering all or part of the information requested or required to be maintained or provided under this Consent Judgment. Such an assertion shall be adequately substantiated when it is made. If Defendants or MDOT assert such a privilege, they shall provide to each Party to whom such information is required to be submitted the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a general description of the subject matter of such document; and (f) the privilege asserted. No analytical data and no documents, reports or other information created or generated pursuant to this Consent Judgment shall be withheld on the grounds that they are privileged. If no such claim accompanies the information when it is submitted, it may be made available to the public without further notice to Defendants or MDOT.

XVI. SUBMISSIONS AND APPROVALS

16.1 Draft Submissions. All Submissions shall be delivered to the Applicable Governing Authority in accordance with the schedule set forth in this Consent Judgment. Prior to receipt of the approval, all such

Submissions shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer:

"Disclaimer: This document is a DRAFT document prepared by [Defendants/State] pursuant to a Consent Judgment entered into in Civil Actions Nos. _____, United States District Court, Eastern District of Michigan, Northern Division, and has not received final acceptance from the [Applicable Governing Authority]. The opinions, findings, and conclusions expressed are those of the authors and not those of the [Applicable Governing Authority]."

16.2 Schedules for Completion. All plans that Defendants, or the State under Section XXXIV, are required to submit under this Consent Judgment shall include schedules for completion within a reasonable time and cost estimates with respect to the activities to which they relate. Such cost estimates shall be based upon best professional judgment.

16.3 Procedure for Approval. Upon receipt of any Submission that is required to be submitted by Defendants, or the State under Section XXXIV, for approval under this Consent Judgment, the Applicable Governing Authority shall in writing: (a) approve the Submission; (b) disapprove the Submission, notifying Defendants or the State, as applicable, of any deficiencies; or (c) approve the Submission upon specified conditions, notifying Defendants or the State, as applicable, of the basis for any such conditions. Upon receipt of a notice of approval or approval upon specified conditions from the Applicable Governing Authority, Defendants or the State, as applicable, shall proceed to take any action required by the Submission in accordance with the requirements of this Consent Judgment and the schedules and other terms of the approved Submission, and shall submit a new cover page marked "Final," unless such approval with specified conditions has been disputed by Defendants or the State, as applicable, under Section XXI or XXXIV.

16.4 Notice of Disapproval. Notice of any disapproval shall specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the Applicable Governing Authority, Defendants or the State, as applicable, shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the Submission for approval. Notwithstanding a notice of

disapproval, Defendants or the State, as applicable, shall proceed to take any action not directly related to the deficient portion of the Submission. If, upon resubmission, the Submission is not approved due to a material defect, the Applicable Governing Authority shall so advise Defendants or the State, as applicable, and may consider Defendants or the State to have failed to complete the Submission in a timely manner or failed to have provided a Submission of acceptable quality.

16.5 Obligation to Obtain Other Formal Approvals. A notice of approval or an approval upon specified conditions of any Submission shall not be construed to mean that the Applicable Governing Authority warrants that the Submission comports with law except to the extent stated therein. No informal advice, guidance, suggestions, or comments by the Applicable Governing Authority regarding any Submissions by Defendants or the State, as applicable, shall be construed as relieving Defendants or the State, as applicable, of any obligation to obtain such formal approval as may be required by this Consent Judgment.

16.6 Enforceability of Approved Submissions. All Submissions under this Consent Judgment shall, upon approval or approval upon specified conditions by the Applicable Governing Authority, be enforceable under this Consent Judgment, unless such approval is an approval with specified conditions which has been disputed under Section XXI or XXXIV and such dispute has not been finally resolved.

16.7 Modification of Submissions After Dispute Resolution. If Defendants or the State, as applicable, invoke the procedures set forth in Sections XXI or XXXIV to dispute any determination of an Applicable Governing Authority, then upon resolution of such dispute, Defendants or the State, as applicable, shall proceed to take action consistent with the resolution of the dispute and shall modify the Submission to conform to the resolution of the dispute. The Submission, including any modifications necessary to conform to the resolution of the dispute, shall be enforceable under this Consent Judgment.

XVII. PROGRESS REPORTS

17.1 Defendants' Progress Reports. Defendants shall provide to the Trustees written semi-annual progress reports relating to the Work that shall: (a) describe the actions that have been taken toward completing such Work during the previous period; (b) describe any activities scheduled for the next period; and (c) include all results of sampling and tests and other data received by Defendants, their employees or authorized representatives during the previous period relating to the Work. Defendants shall submit each semi-annual report by July 31st and February 28th of the applicable year and shall submit the first report by July 31, 1999. Semi-annual reports shall continue until the issuance of the Certificate of Completion as provided in Section XXXIII.

17.2 Briefings to Trustees. If requested by the Trustees, Defendants shall also provide briefings to discuss the progress of the Work.

17.3 Progress Reports by Trustees. If requested by Defendants, the Trustees shall provide information on the progress of the activities conducted on behalf of the Trustees with funds provided by Defendants under this Consent Judgment, but the Trustees shall not be obligated to provide any such information any more frequently than semi-annually.

XVIII. INDEMNIFICATION

18.1 Indemnification Against Acts or Omissions of Defendants. Except as provided in Paragraph 18.4, Defendants shall indemnify and save and hold harmless Plaintiffs and COE, and their respective departments, agencies, officials, agents, employees, contractors, 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 Defendants, their officers, employees, agents, and any persons acting on their behalf or under their control in carrying out activities under this Consent Judgment. Neither Plaintiffs nor COE, nor their respective departments, agencies, officials, agents, employees, contractors, and representatives, shall be held out as a party to any contract entered into by or on behalf of Defendants in carrying out actions under this Consent Judgment. Neither Defendants nor

any contractor of Defendants shall be considered an agent of Plaintiffs or COE. COE and Plaintiffs shall give Defendants written notice of any claim for which any of them seeks indemnification pursuant to this Section XVIII, and shall consult with Defendants prior to settling such claim.

18.2 Waiver of Certain Claims Except as provided in Paragraphs 6.1 and 18.4, Defendants waive any and all claims or causes of action against Plaintiffs, COE, and their respective departments, agencies, officials, agents, employees, and representatives, for damages, reimbursement, or set-off of any payments made or to be made under this Consent Judgment that arise from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of the Work, including claims on account of construction delays.

18.3 Indemnification Against Certain Other Claims. Except as provided in Paragraph 18.4, Defendants shall indemnify and hold harmless Plaintiffs and COE, and their respective departments, agencies, officials, agents, employees, contractors, and representatives, from any and all claims or causes of action for damages or reimbursement from Plaintiffs and COE arising from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of the Work, including claims on account of construction delays.

18.4 Waiver and Indemnification Limitations. Nothing in this Consent Judgment shall require indemnification or, except to the extent provided in Paragraphs 28.1, 29.1 or 32.9(a), a waiver by Defendants with respect to any claims or causes of action to the extent caused by acts or omissions of Plaintiffs, COE, or their respective departments, agencies, officials, agents, employees, contractors, and authorized representatives.

IX. MODIFICATION/INCORPORATION BY REFERENCE

19.1 Modification of Consent Judgment. With the exception of submissions, which are governed by Paragraph 19.2, the terms of this Consent Judgment, including any attached appendices, except Appendix K (MOU for Trustee Council), may be modified only by a subsequent written agreement

signed by Plaintiffs and Bay City. Where the modification constitutes a material change to this Consent Judgment, it shall be effective only upon approval by the Court. Nothing in this Paragraph 19.1 allows the Plaintiffs or Bay City to modify the Consent Judgment to alter or expand obligations of those Parties to the Consent Judgment whose agreement is not required for a modification. Modifications to Appendix K (whether a material change or not) may be made by a written agreement signed by the Trustees. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment. ~~No Modification Unless in Writing and Approved by the Court. This Consent Judgment, with the exception of Submissions which are governed by Paragraph 19.2, may be modified only upon the written agreement of the Parties and approval by the Court; provided, however, that nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.~~

19.2 Modification of Submissions. Submissions under this Consent Judgment may be modified upon written agreement of the Applicable Governing Authority and Defendants or the State, as applicable.

19.3 Incorporation of Submissions. Any Submission and attachments to Submissions required by this Consent Judgment which have been approved by an Applicable Governing Authority are incorporated into this Consent Judgment. Any delay in complying with a schedule in or noncompliance with such Submissions or attachments to a Submission shall be considered delay in compliance with or noncompliance with the requirements of this Consent Judgment and shall subject Defendants to stipulated penalties under Section XXIII.

XX. DELAYS IN PERFORMANCE

20.1 Force Majeure. Any delay attributable to a Force Majeure shall not be deemed a violation of Defendants' or, with respect to Section XXXIV, the State's obligations under this Consent Judgment in accordance with this Section XX. When the provisions of this Section XX are applied to the State

as an obligor under this Consent Judgment, the term "Plaintiffs" shall be deemed to not include the State for purposes of such application.

20.2 Definition. Defendants or the State, as applicable, shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure." "Force Majeure" is defined as an occurrence or nonoccurrence arising from causes beyond the control of Defendants or the State, as applicable, and which could not be avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy by a Defendant, contractual disputes (excluding disputes arising under collective bargaining agreements or property purchase agreements, options or instruments of conveyance), or failure to obtain a permit or license if such failure is due to the applicant's act or omission.

20.3 Notice of Force Majeure. When circumstances occur that Defendants or the State, as applicable, believe constitute a Force Majeure, Defendants or the State, as applicable, shall notify Plaintiffs by telephone or telefax of the circumstances within forty-eight (48) hours after they first become aware of such circumstances. Within seven (7) days after such awareness by Defendants or the State, Defendants shall send Plaintiffs, or the State shall send Plaintiffs, with a copy to Defendants, as applicable, a written explanation of the cause(s) of any actual or expected delay; the anticipated duration of the delay; the measures taken, and to be taken, by Defendants or the State to avoid, minimize, or overcome the delay; and the timetable for implementation of such measures. Failure of Defendants or the State to comply with the written notice provision of this Paragraph 20.3 shall constitute a waiver of Defendants' or the State's right, as applicable, to assert a claim of Force Majeure with respect to the circumstances in question unless such failure is caused by the same or another Force Majeure or is excused by Plaintiffs.

20.4 Additional Time to Perform. If Plaintiffs agree that a delay is or was caused by Force Majeure, Defendants' or the State's delay, as applicable, shall be excused and Defendants or the State, as applicable,

shall be provided with such additional time as is necessary to compensate for the Force Majeure event. Defendants or the State shall have the burden of demonstrating: (a) that the delay is or was caused by a Force Majeure event; and (b) that the amount of additional time requested is necessary to compensate for that event. Plaintiffs shall notify Defendants or the State, as applicable, with a copy to Defendants, in writing, if Plaintiffs agree that the delay is or was caused by Force Majeure.

20.5 Scope of Extension. An extension of one compliance date based upon a particular "Force Majeure" event does not mean that Defendants or the State automatically qualify for an extension of a subsequent compliance date without independently qualifying for Force Majeure relief as to such subsequent compliance date, unless and to the extent such subsequent compliance date is necessarily dependent upon the compliance date initially excused under this Section XX.

XXI. DISPUTE RESOLUTION

21.1 Exclusive Mechanism. Except as otherwise provided in this Consent Judgment and Appendix K, the dispute resolution procedures of this Section XXI shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment. However, the procedures set forth in this Section XXI shall not prohibit an action by a Party to enforce an obligation of another Party that has not been disputed in accordance with this Section XXI. This Section XXI does not apply to disputes between COE and any department, agency or instrumentality of the United States.

21.2 Informal Dispute Resolution. Any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations among the Parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any Party that a dispute has arisen, unless it is extended by agreement among the Parties. Except as provided in Paragraph 21.3, if the Parties fail to resolve the dispute by informal negotiations within such period, the Applicable Governing Authority shall provide a written statement setting forth its proposed resolution of the dispute to all other potentially interested Parties

("Parties To The Dispute") and to DOJ as expeditiously as practicable. The dispute shall be resolved in accordance with the resolution proposed by the Applicable Governing Authority unless, within thirty (30) days after receipt of the proposed resolution, any Party To The Dispute initiates judicial dispute resolution under Paragraph 21.4.

21.3 Disputes Involving Rebuttable Presumption. In the case of disputes concerning the rebuttable presumption set forth in Paragraphs 31.11 and 34.4, Parties To The Dispute shall include, but not be limited to, the United States, including relevant Response Action Agencies, the State, Defendants, and MDOT. If the Parties To The Dispute fail to resolve the dispute by informal negotiations, any Party To The Dispute may initiate judicial dispute resolution under Paragraph 21.4.

21.4 Judicial Dispute Resolution. Judicial dispute resolution shall commence when any Party To The Dispute files with the Court and serves on the other Parties To The Dispute and DOJ, a motion for resolution setting forth the matter in dispute, any supporting documentation, the efforts made by the Parties to resolve it, and the relief requested. Within thirty (30) days after receipt of a motion, the Applicable Governing Authority and/or other Parties To The Dispute may file with the Court and serve on the other Parties To The Dispute and DOJ a response to this motion, including any supporting documentation. Within fourteen (14) days after receipt of the response, the moving Party To The Dispute may submit a reply.

21.5 Standards for Judicial Review.

(a) Disputes Concerning State Obligations Under Section XXXIV.

(i) Except for disputes concerning whether a release or threatened release is from the CDF in accordance with Paragraphs 31.11 and 34.4, the standard of review for judicial dispute resolution for disputes concerning the State's obligations under Section XXXIV shall be as follows: (A) the State shall have the burden of demonstrating that the decision of the Response Action Agencies or the Federal Trustees, as applicable, is arbitrary and capricious or otherwise not

in accordance with law; and (B) judicial review shall be on the administrative record compiled pursuant to Paragraph 21.5(a)(ii).

(ii) The Response Action Agencies or the Federal Trustees, as applicable, shall compile and maintain an administrative record for the dispute. Parties To The Dispute shall have the right, consistent with applicable principles of administrative law, to provide documents to argue that the administrative record needs to be supplemented.

(b) Disputes Concerning the Rebuttable Presumption. For disputes concerning whether a release or threatened release of a Hazardous Substance or contamination in the Covenant Area is "from the CDF" in accordance with Paragraphs 31.11 and 34.4, the Party To The Dispute initiating the dispute shall have the burden of rebutting the presumption by a preponderance of the evidence.

(c) Standard of Review. Except as otherwise provided in Paragraph 21.5(a) or (b) or 21.9, judicial review of any dispute under this Section XXI shall be governed by applicable principles of law, including applicable principles of administrative law, and each of the Parties To The Dispute reserves the right to argue to the Court which particular standard of review should apply under applicable principles of law to a particular dispute under this Section XXI.

21.6 Stipulated Penalty Stay. Payment of stipulated penalties shall be stayed pending resolution of any dispute. Notwithstanding this Paragraph 21.6, Defendants shall pay that portion of a demand for payment of stipulated penalties that is not subject to a good faith dispute in accordance with and in the manner provided in Section XXIII. Any stipulated penalty which is stayed under this Paragraph 21.6 shall continue to accrue during the pendency of any dispute, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision that is not appealed to this Court, accrued penalties determined to be owing shall be paid within thirty (30) days after the agreement or the receipt of the decision or order;

(b) If the dispute is appealed to this Court and Plaintiff(s) prevail, in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing within thirty (30) days after receipt of the Court's decision or order, except as provided in Paragraph 21.6(c); or

(c) If the Court's decision is appealed by any Party To The Dispute, Defendants shall pay all accrued penalties determined by the Court to be owing within thirty (30) days after receipt of a final and non-appealable decision or order.

21.7 Delay Due to Plaintiffs' Dispute Inter Se. Defendants shall not be liable for penalties accruing during a period of delay to the extent attributable to Plaintiffs' efforts to resolve a dispute among themselves.

21.8 Effect on Other Obligations. Except as otherwise provided in this Consent Judgment, the invocation of dispute resolution procedures under this Section XXI shall not extend, postpone or affect in any way any obligation of Defendants and MDOT under this Consent Judgment, not directly in dispute, unless Plaintiffs or the Court agree otherwise.

21.9 Notification of Disputes Among Trustees. Any Trustee initiating dispute resolution under the procedures in Appendix K shall also simultaneously notify Defendants, MDOT and COE in writing of the commencement of such dispute resolution proceeding and the nature of such dispute.

XXII. REIMBURSEMENT OF COSTS

22.1 Payments to Federal Trustees and the State. Within ninety (90) days after the entry of this Consent Judgment, Defendants shall pay Two Million Dollars (\$2,000,000) in the aggregate to the State and the Federal Trustees for past and future Response Costs and past and future Natural Resource Damage assessment and restoration costs with respect to the Assessment Area. Of such amount, One Million Two Hundred Thousand Dollars

(\$1,200,000) shall be paid to the State. The remaining amount shall be paid to the Federal Trustees, of which Two Hundred Thirty Thousand Dollars (\$230,000) is for natural resource restoration implementation costs and Five Hundred Seventy Thousand Dollars (\$570,000) is for past Natural Resource Damage assessment costs. The payment for natural resource restoration implementation is made without apportionment or division of such amount among the Trustees. Payment of the restoration implementation costs was determined jointly by the Trustees and represents an activity necessary for the restoration of injured resources under the joint trusteeship of the Trustees.

22.2 Manner of Payment. (a) Natural resource restoration implementation costs paid to the Federal Trustees pursuant to this Section XXII (Two Hundred Thirty Thousand Dollars (\$230,000)) shall be deposited into the DOI Natural Resource Damages Assessment and Restoration Fund by Electronic Funds Transfer (FedWire) in accordance with the "DOI NRDAR Settlement Deposit Remittance Procedures" attached as Appendix B. Past Natural Resource Damage assessment costs paid to the Federal Trustees pursuant to this Section XXII (Five Hundred Seventy Thousand Dollars (\$570,000)) shall be to DOJ in accordance with current electronic funds transfer procedures to be provided by the United States at least five (5) business days before such payment is due.

(b) Costs paid to the State pursuant to this Section XXII shall be deposited into the Environmental Response Fund in accordance with Section 20108(3) of NREPA, M.C.L. § 324.20108(3). The check shall be made payable to "State of Michigan" and shall be sent by first class mail to the following address:

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
300 S. Washington Square, Ste. 457
Lansing, MI 48909-8157

To ensure proper credit, all payments to the State of cost reimbursement pursuant to this Consent Judgment must include Payment Identification Number SWQ2002.

22.3 Copies of Payment Documents. With respect to all payments made under this Section XXII, a copy of the transmittal letter and the check, if applicable, shall be provided simultaneously to the Parties' Principal Project Coordinators and counsel for each of the Parties.

XXIII. STIPULATED PENALTIES

23.1 Amount for Section VII Violations. Except as otherwise provided in this Consent Judgment, if Defendants fail or refuse to comply with any term or condition in Section VII, Defendants shall be liable to Plaintiffs for stipulated penalties in the following amounts for each day of every such failure or refusal to comply:

Period of Delay Penalty Per Violation Per Day

1st through 15th Day	\$1,000
16th through 30th Day	\$3,000
Beyond 30 Days	\$5,000

23.2 Amount for Other Violations. Except as otherwise provided in this Consent Judgment, if Defendants fail or refuse to comply with any other term or condition of this Consent Judgment (except for Section XIV, Section XVIII, this Section XXIII and Paragraphs 32.6 and 32.7), Defendants shall be liable to Plaintiffs for stipulated penalties of \$500 a day for each and every failure or refusal to comply.

23.3 Accrual in the Event of Takeover. In the event that the Trustees assume performance of a portion or all of the Work under Section XXVI, stipulated penalties with respect to the violation which gave rise to such assumption shall cease to accrue as of the date of such takeover; provided, however, that Defendants shall be liable for any incremental costs incurred by the Trustees as a result of such takeover determined by the Court to be owing by Defendants to the Trustees. Defendants reserve the right to contest the amount of the incremental costs on the basis of reasonableness or that they were incurred in the performance of the relevant Work component in a manner inconsistent with the approved plan, if any, therefor.

23.4 Accrual. Stipulated penalties shall begin to accrue on the day after complete performance was due, or other failure or refusal to comply occurred, and shall continue to accrue until the final day of correction of the noncompliance; provided, however, that stipulated penalties shall not accrue during the period, if any, beginning on the eighth (8th) day after Plaintiffs' receipt of written notice of a proposed Force Majeure event, under Paragraph 20.3 until the date, if any, that Plaintiffs have notified Defendants that the event in question does not constitute a Force Majeure event. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment.

23.5 Payment. Except as provided in Paragraphs 21.6 and 23.4, stipulated penalties owed to Plaintiffs shall be paid no later than thirty (30) days after receiving a written demand from Plaintiff(s) specifically describing the alleged noncompliance for which stipulated penalties are demanded. If stipulated penalties are not timely paid, interest shall begin to accrue on the unpaid amount at the end of the thirty (30) day period from the date initially assessed at the highest rate of interest provided by either Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), or Section 20126a(3) of NREPA, M.C.L. § 324.20126a(3). Stipulated penalties shall be paid as follows:

- (a) Fifty percent (50%) to the State, by check made payable and sent as described in Paragraph 22.2(b).
- (b) Twenty-five percent (25%) to the United States in accordance with electronic funds transfer instructions to be provided by the United States contemporaneously with or soon after the demand for penalties, but in no event later than five (5) business days before such payment is due.
- (c) Twenty-five percent (25%) to the Saginaw Chippewa Tribes, by check made payable to the "Saginaw Chippewa Tribe of Michigan" and mailed to 7070 East Broadway, Mt. Pleasant, MI 48858.

With respect to all payments made under this Section XXIII, a copy of the transmittal letter and the check shall be provided to the Parties' Principal Project Coordinators and counsel for each of the Parties. Notwithstanding

any other provision of this Consent Judgment, Defendants shall not be subject to payment of more than one (1) stipulated penalty with respect to the same violation in the event that multiple demands for a stipulated penalty in respect of such violation are made by Plaintiffs.

23.6 Other Remedies. Nothing in this Consent Judgment shall be construed as prohibiting, altering, or in any way limiting the ability of Plaintiffs to seek remedies or other sanctions available by virtue of Defendants' violations of this Consent Judgment or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), and Section 324.20137 of NREPA, M.C.L. § 324.20137; provided, however, that the amount of any stipulated penalties assessed under this Consent Judgment shall be credited against the amount of any fine or penalty which may be recovered against Defendants for such violation.

23.7 Attorneys' Fees and Costs. Defendants shall pay to Plaintiffs reasonable attorneys' fees and costs incurred by them in obtaining stipulated penalties and interest due to Plaintiffs under this Section XXIII or in enforcing any provision of this Consent Judgment.

23.8 Waiver of Penalties. Notwithstanding any other provision of this Section XXIII, Plaintiffs may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Judgment.

XXIV. FEDERAL TRUSTEES', COE'S AND TRIBAL TRUSTEE'S
COVENANTS TO DEFENDANTS AND MDOT
AND FEDERAL TRUSTEES AND TRIBAL TRUSTEES
COVENANTS TO COE
AND RESERVATIONS OF RIGHTS

24.1 Covenants to Defendants and MDOT. In consideration of the actions that have been performed and will be performed and the payments made and that will be made by Defendants and/or MDOT under the terms of this Consent Judgment, and except as specifically provided in this Section XXIV, the United States, on behalf of the Federal Trustees and COE, and the Tribal

Trustee covenant not to sue or to take administrative action against, Defendants and MDOT and, to the extent that the following acted or act within the scope of their employment or authority, officials, officers, directors, and/or employees of Defendants and MDOT, as applicable, and their respective successors and assigns, for Covered Matters. "Covered Matters" shall mean claims arising from:

(a) Performance of the Work under this Consent Judgment in accordance with the approved plan(s) therefor.

(b) Payment of Response Costs and Natural Resource Damages assessment costs as described in Paragraph 22.1.

(c) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief in the Assessment Area, including the CDF, arising from or relating to a release or threatened release of a Hazardous Substance prior to the entry of this Consent Judgment.

(d) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief in the Assessment Area, including the CDF, arising from a release or threatened release of a Hazardous Substance from any existing source at any Facility on or after the entry of this Consent Judgment to the extent that such release or threatened release is caused by or arises from any condition existing at, on, within or from any Facility prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by a Defendant or MDOT if in control of such Facility to use best efforts to prevent or control the release or threatened release.

(e) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief at, on or within, or relating to releases or threatened releases from, the CDF of any Hazardous Substance at any time.

(f) Any release or threatened release of any Hazardous Substance to the extent such release or threatened release is caused by any act or

omission of Plaintiffs, COE, or of persons acting on their behalf or at their direction in connection with the dredging or related activities in the Assessment Area under Section VIII.

(g) The condition of any properties transferred or acquired under Paragraph 7.2 or 7.3 except for: (i) the Green Point Environmental Learning Center property described in Appendix J; (ii) any liability of Defendants and MDOT for failure to perform any of the Work under Paragraph 7.5 or 7.7; and (iii) any liability for any Hazardous Substance contamination on any such property for which a Defendant or MDOT would otherwise be liable under Section 107(a)(3) of CERCLA or Section 20126(1)(d) of NREPA.

(h) Natural Resource Damages at, on, or within any Facility arising from or relating to:

(i) any release or threatened release of any Hazardous Substance at, on or within any Facility prior to the entry of this Consent Judgment; or

(ii) any release or threatened release of any Hazardous Substance at, on or within any Facility on or after the entry of this Consent Judgment if and to the extent such release or threatened release is caused by or arises from any condition existing at, on or within any Facility prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by a Defendant or MDOT in control of such Facility to use best efforts to prevent or control the release or threatened release.

(i) Natural Resource Damages in the Assessment Area that arise from or relate to Sediment dredged from and deposited by, on behalf of, at the direction of, or pursuant to any authorization of COE at: (a) any location set forth on Appendix P; or (b) any location adjacent to the Assessment Area resulting from or in connection with any navigational dredging or navigational maintenance or improvement project.

(j) Any Hazardous Substance that has been removed from the Assessment Area, including from the CDF, by anyone (including in connection with the dredging and related activities to be performed under Section VIII) other than by Defendants or MDOT or persons acting on their behalf or at their direction; provided, however, that this Paragraph 24.1(j) shall not apply to any release or threatened release of any Hazardous Substance at a location outside the Assessment Area caused by the disposal of Sediment removed by the State or the United States from the CDF to a location outside the Assessment Area as a result of a catastrophic failure of the CDF occurring after the entry of this Consent Judgment.

24.2 Covenants to COE. In consideration of the payment to be made by the United States under Paragraph 6.7, and COE's agreement to enter into the SFO Agreement to allow the disposal in the CDF of Sediment from the Dredge Area dredged under Section VIII and to enter into these covenants in favor of Defendants and MDOT, and except as specifically provided in this Section XXIV, the United States, on behalf of the Federal Trustees, covenants not to take administrative action against, and the Tribal Trustee covenants not to sue or to take administrative action against, COE and, to the extent that the following acted or act within the scope of their employment or authority, officials and employees of COE and its successors and assigns, for COE Covered Matters. "COE Covered Matters" shall mean claims arising from:

(a) Performance of the Work under this Consent Judgment in accordance with the approved plan(s) therefor.

(b) Payment of Response Costs and Natural Resource Damages assessment costs as described in Paragraph 22.1.

(c) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief in the Assessment Area, including the CDF, arising from or relating to a release or threatened release of a Hazardous Substance prior to the entry of this Consent Judgment.

(d) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief in the Assessment Area, including the CDF, arising from a release or threatened release of a Hazardous Substance from any existing source at any Facility on or after the entry of this Consent Judgment to the extent that such release or threatened release is caused by or arises from any condition existing at, on, within or from any Facility prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by COE to use best efforts to prevent or control the release or threatened release for a Facility at which COE has jurisdiction, custody or control.

(e) Any release or threatened release of any Hazardous Substance arising from any act or omission of COE or its contractors in implementing the Dredge Plan under Section VIII, except in the case of a release or threatened release that is caused by conduct of COE or its contractors that is negligent, grossly negligent, or that constitutes intentional misconduct.

(f) Any release or threatened release of any Hazardous Substance to the extent such release or threatened release is caused by any act or omission of Plaintiffs or of persons acting on their behalf or at their direction in connection with the dredging or related activities in the Assessment Area under Section VIII.

(g) Natural Resource Damages at, on, within or from the CDF arising from Hazardous Substances in the dredged Sediment disposed in the CDF under Section VIII, provided that COE maintains the CDF consistent with the CDF's then applicable management guidelines and legal requirements.

(h) Natural Resource Damages, Response Costs, and claims for Response Action, or injunctive relief at, on, within, or relating to releases or threatened releases from, the CDF after the period referred to in Paragraph 34.1.

(i) The condition of any properties transferred or acquired under Paragraph 7.2 or 7.3 except for any liability of COE for any Hazardous

Substance contamination on any such property for which COE would otherwise be liable under Section 107(a)(3) of CERCLA or Section 20126(1)(d) of NREPA.

(j) Natural Resource Damages at, on, or within any Facility or the CDF arising from or relating to:

(i) any release or threatened release of any Hazardous Substance at, on or within any Facility or the CDF prior to the entry of this Consent Judgment; or

(ii) any release or threatened release of any Hazardous Substance at, on or within any Facility or the CDF on or after the entry of this Consent Judgment if and to the extent such release or threatened release is caused by or arises from any condition existing at, on or within any Facility or the CDF prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by COE to use best efforts to prevent or control the release or threatened release for a Facility at which COE has jurisdiction, custody or control.

(k) Natural Resource Damages in the Assessment Area that arise from or relate to Sediment dredged from and deposited prior to entry of this Consent Judgment by, on behalf of, at the direction of, or pursuant to any authorization of COE at: (a) any location set forth on Appendix P; or (b) any location adjacent to the Assessment Area resulting from or in connection with any navigational dredging or navigational maintenance or improvement project.

(l) Any Hazardous Substance that has been removed from the Assessment Area, including from the CDF, by anyone (including in connection with the dredging and related activities to be performed under Section VIII) other than by COE or persons acting with its concurrence; provided, however, that this Paragraph 24.2(1) shall not apply to any release or threatened release of any Hazardous Substance at a location outside the Assessment Area caused by the disposal of Sediment removed by the State or the United States from the CDF to a location outside the Assessment Area as a result of a

catastrophic failure of the CDF occurring after the entry of this Consent Judgment.

24.3 Effectiveness of Covenants.

(a) The covenants in Paragraph 24.1 shall take effect upon the receipt of the payments required under Paragraphs 6.1, 6.2 and 22.1. The continued effectiveness of the covenants in Paragraph 24.1 as to any Defendant or MDOT is contingent upon the subsequent performance by Defendants or MDOT of their respective obligations under this Consent Judgment, including, as applicable, the Work, and receipt of the other payments required by Section VI. The covenants in Paragraph 24.1 extend only to Defendants and MDOT and do not extend to any other person except as expressly stated in Paragraph 24.1.

(b) The covenants in Paragraph 24.2 shall take effect upon the entry of this Consent Judgment. The covenants in Paragraph 24.2 extend only to COE and do not extend to any other person except as expressly stated in Paragraph 24.2.

24.4 General Reservations. The United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee reserve against Defendants and MDOT, and the United States, on behalf of the Federal Trustees, and the Tribal Trustee reserve against COE the following:

(a) the right to take action under federal and state law for any matters that are not set forth in Paragraph 24.1, as to Defendants and MDOT, and Paragraph 24.2, as to COE;

(b) the right to take action against Defendants, MDOT and/or COE if it is discovered that any information provided by Defendants, MDOT and/or COE, respectively, was intentionally false or intentionally misleading and such information was material to the United States' or the Tribal Trustee's decision to enter into this Consent Judgment; and

(c) any and all rights and defenses pursuant to any available legal authority that they may have to enforce this Consent Judgment against Defendants and MDOT, including the Federal and Tribal Trustees' rights, in accordance with this Consent Judgment and applicable law, to disapprove of response or restoration activities performed by Defendants.

24.5 Retention of Authority. Notwithstanding any other provision of this Consent Judgment, the United States, on behalf of the Federal Trustees and COE, retains all authority and reserves all rights to take any and all response activities authorized by law. This Paragraph 24.5 shall not affect the covenants given to Defendants, MDOT or COE in Paragraphs 24.1 and 24.2.

24.6 Failure to Enforce. Failure by the Federal Trustees or the Tribal Trustee to timely enforce any term, condition or requirement of this Consent Judgment shall not:

(a) Provide or be construed to provide a defense for noncompliance with any such term, condition or requirement of this Consent Judgment; or

(b) Estop or limit the authority of the Federal Trustees or the Tribal Trustee to enforce any such term, condition or requirement of this Consent Judgment or seek any other remedy provided by law.

24.7 Specific Reservations. The covenants set forth in Paragraphs 24.1 and 24.2 do not pertain to any matters other than those expressly specified therein. The United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee reserve, and this Consent Judgment is without prejudice to, all rights against Defendants and MDOT with respect to all other matters; and the United States, on behalf of the Federal Trustees, and the Tribal Trustee, reserve, and this Consent Judgment is without prejudice to, all rights against COE with respect to all other matters. Such other matters include, but are not limited to, the following:

(a) Liability arising from a violation of a requirement of this Consent Judgment, including conditions of an approved Submission required herein.

(b) Liability for any Response Costs, Response Action, injunctive relief, penalties, permit requirements, or other remedial, compliance or regulatory action:

(i) at, on or within any Facility, or

(ii) at, on or within any facility as defined by NREPA or CERCLA (but not including the CDF); provided that such a facility shall not extend into the Assessment Area waterward beyond the OHWM more than the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the facility and in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the facility where the Response Action is necessary.

(c) Liability for Natural Resource Damages arising from any release or threatened release first occurring after the entry of this Consent Judgment (but as to Defendants and MDOT, excluding liability for Natural Resource Damages covered by Paragraphs 24.1(d), (e), (f), (h), (i) and (j); and as to COE, excluding liability for Natural Resource Damages covered by Paragraph 24.2(d)-(h) and (k)):

(i) at, on or within any Facility, or

(ii) at, on or within any facility as defined by NREPA or CERCLA (but not including the CDF); provided that such a facility shall not extend into the Assessment Area waterward beyond the OHWM more than the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the facility and in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the facility where the Response Action is necessary.

(d) As to COE only, liability for Natural Resource Damages at, on, or within the CDF during the period referred to in Paragraph 34.1 arising from any release or threatened release first occurring after the entry of

this Consent Judgment (but excluding liability for Natural Resource Damages covered by Paragraph 24.2(f)-(h) and (j)).

(e) As to COE only, liability for Response Costs and claims for Response Action during the period referred to in Paragraph 34.1, at, on, or within, or relating to releases or threatened releases from, the CDF.

(f) Liability for future releases of Hazardous Substances into the Assessment Area except as provided in Paragraphs 24.1 and 24.2.

(g) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of a Hazardous Substance outside of the Assessment Area or of a Hazardous Substance taken from the Assessment Area, including liability outside the Assessment Area from the past, present or future treatment, handling, disposal, release or threat of release of a Hazardous Substance taken from the CDF to a place outside the Assessment Area; provided, however, that, except as provided in the proviso in Paragraph 24.1(j) and 24.2(l) with respect to a catastrophic failure of the CDF as to which the United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee have reserved their rights:

(i) Defendants and MDOT shall not be liable for any Sediment that has been removed from the Assessment Area, including from the CDF, by anyone other than Defendants or MDOT, and if any Defendant or MDOT removed such Sediment from the Assessment Area, including the CDF, the other Defendants or MDOT, as the case may be, shall not be liable solely because of the action of such other Defendant or MDOT; and

(ii) COE shall not be liable for any Sediment that has been removed from the Assessment Area, including from the CDF, by anyone other than by COE or persons acting with its concurrence.

(h) Liability for damages for injury to, destruction of, or loss of natural resources outside the Assessment Area, including liability outside the Assessment Area arising from releases of Hazardous Substances at, on,

within or from the CDF, but only to the extent not subject to the covenants in Paragraphs 24.1 and 24.2.

(i) Liability for criminal acts.

(j) Any matters for which the United States or the Tribal Trustee is owed indemnification under Section XVIII (Indemnification and Insurance), of this Consent Judgment.

(k) With respect to Defendants and MDOT only, liability arising from releases of Hazardous Substances or violations of applicable law which occur during implementation of the Work, but only to the extent not subject to the covenants in Paragraph 24.1.

(l) With respect to COE only, liability arising from releases of Hazardous Substances or violations of applicable law which occur during implementation of the dredging and related activities under Section VIII, but only to the extent not subject to the covenants in Paragraph 24.2.

(m) As to a particular Defendant or MDOT, all claims, counterclaims and defenses by COE regarding and limited to the subject matter of and in response to the claim or counterclaim brought by that Defendant and/or MDOT pursuant to Section XXVIII; provided, however, this reservation does not include any defense based upon contribution protection, consistent with Section XXXII, or any claim regarding the release or threatened release of a Hazardous Substance at, on, within or from the CDF, except for releases or threatened releases of any Hazardous Substance at a location outside of the Assessment Area caused by the disposal of Sediment removed by the State or the United States from the CDF to a location outside of the Assessment Area as a result of a catastrophic failure of the CDF occurring after the entry of this Consent Judgment.

(n) All claims by COE, which claims are not in respect of a Covered Matter or a matter excluded from a reopener under Paragraph 8.9 or Section XXIV, regarding and limited to the subject matter of any claim or claims

brought against COE by the State, the Tribal Trustee, or any person not a Party to this Consent Judgment.

(o) The right to require further investigation under CERCLA, RCRA or other law of: (i) the areal extent of the Middlegrounds Landfill; and (ii) Sediment contamination in the West Channel of the Saginaw River at Middlegrounds Island, as defined in Appendix M, and which arises from or relates to any release or threatened release of any Hazardous Substance from said landfill.

24.8 United States' Reopener for Response Actions and Response Costs.

(a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 8.9, 24.8(b) and (c), and Paragraphs 24.10 through 24.13, the United States, on behalf of the Federal Trustees and COE, reserves, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendants, MDOT or COE: (a) to perform further Response Actions relating to the Assessment Area; or (b) to reimburse the United States, on behalf of the Federal Trustees and COE, for additional Response Costs in the Assessment Area if, subsequent to the entry of this Consent Judgment:

(i) conditions in the Assessment Area, previously unknown, are discovered, or

(ii) information, previously unknown, is received, in whole or in part,

and such previously unknown conditions or information, together with other relevant information, indicate that the activities undertaken pursuant to this Consent Judgment are not protective of the public health, safety and welfare or the environment.

(b) As to Defendants and MDOT, this Paragraph 24.8 shall not apply to any claims for Response Actions or Response Costs relating to any release

or threatened release of Hazardous Substances at, on, within or from the CDF at any time.

(c) As to COE, this Paragraph 24.8 shall not apply to any claims for Response Actions or Response Costs relating to any release or threatened release of Hazardous Substances at, on, within or from the CDF after the period referred to in Paragraph 34.1.

24.9 United States' and Tribal Trustee's Reopener for Natural Resource Damages. (a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 24.9(b) through (e) and Paragraphs 24.10 through 24.13, the United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee reserve at all times, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action seeking recovery of Natural Resource Damages from Defendants, MDOT or COE if: (i) conditions in the Assessment Area or at, on or within a Facility, previously unknown ("Unknown Federal NRD Conditions") are discovered after the entry of this Consent Judgment and such conditions contribute to injury to, destruction of, or loss of natural resources; or (ii) information is received by the United States, on behalf of the Federal Trustees, or the Tribal Trustee after the entry of this Consent Judgment, and this information indicates that there is injury to, destruction of, or loss of natural resources in the Assessment Area, or at, on or within a Facility, of a type unknown as of the date of entry of this Consent Judgment ("New Federal NRD Information").

(b) As to Defendants and MDOT, this Paragraph 24.9 shall not apply to any claims for Natural Resource Damages attributable to exposures at any time at, on, or within the CDF.

(c) As to COE, this Paragraph 24.9 shall not apply to any Natural Resource Damages attributable to exposures at, on, or within the CDF after the period referred to in Paragraph 34.1.

(d) An increase solely in the State's, the Federal Trustees', COE's, any Response Action Agency's, or the Tribal Trustee's assessment of the

magnitude of the injury, destruction of or loss to natural resources, or in the estimated or actual Natural Resource Damages, shall not be considered to be Unknown Federal NRD Conditions or New Federal NRD Information within the meaning of Paragraphs 24.9(a)(i) or (ii), nor shall a determination by the State, the Federal Trustees, COE, any Response Action Agency, or the Tribal Trustee that a previously known injury was caused by a release into the Assessment Area of a Hazardous Substance other than PCBs be considered Unknown Federal NRD Conditions or New Federal NRD Information.

(e) In any subsequent action or proceeding regarding matters reserved under this Paragraph 24.9, the United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee, as applicable, shall have the burden of establishing that the conditions for applicability of this Paragraph 24.9 have been satisfied, including the burden of establishing that injuries to, destruction of, or loss of natural resources are attributable partly to exposures occurring at locations other than the CDF. In any subsequent action or proceeding regarding matters reserved under this Paragraph 24.9, apportionment of Natural Resource Damages shall be permitted if injuries to, destruction of, or loss of natural resources are attributable partly to exposures occurring at locations other than the CDF and partly to exposures at, on, or within the CDF, and Defendants, MDOT and COE shall not be liable for that portion of Natural Resource Damages that is determined to be attributable to exposures at, on, or within the CDF.

24.10 Previously Known Information. For purposes of Paragraphs 24.8 and 24.9, the information previously received by and the conditions previously known to the United States, on behalf of the Federal Trustees and/or COE, and the Tribal Trustee, shall include any information or conditions: (a) set forth in the records produced in response to discovery in the State Action; (b) of which the State, the Federal Trustees or the Tribal Trustee had actual knowledge prior to the entry of this Consent Judgment; or (c) set forth in the EPA Administrative Record.

24.11 Inapplicability of Paragraphs 24.8 and 24.9 to Properties. Paragraphs 24.8 and 24.9 do not apply to the properties transferred or acquired under Paragraph 7.2 or 7.3 except for: (i) the Green Point

Environmental Learning Center property described in Appendix J; (ii) any liability of Defendants for failure to perform any of the Work under Paragraph 7.5 or 7.7; and (iii) any liability for any Hazardous Substance contamination on any such property for which a Defendant, MDOT or COE would otherwise be liable under Section 107(a) (3) of CERCLA or Section 20126(1) (d) of NREPA.

24.12 Inapplicability of Paragraphs 24.8 and 24.9 to Acts or Omissions of Trustees. (a) As to Defendants and MDOT, Paragraphs 24.8 and 24.9 do not apply to claims to the extent caused by acts or omissions of Plaintiffs, COE or of persons acting on their behalf or at their direction in connection with any release or threatened release of any Hazardous Substance associated with the dredging or related activities in the Assessment Area under Section VIII.

(b) As to COE, Paragraphs 24.8 and 24.9 do not apply to claims to the extent caused by acts or omissions of Plaintiffs or of persons acting on their behalf or at their direction in connection with any release or threatened release of any Hazardous Substance associated with the dredging or related activities in the Assessment Area under Section VIII.

24.13 Moratorium. Until two (2) years after the Dredging Completion Notice is issued in accordance with Paragraph 8.4, the United States, on behalf of the Federal Trustees and COE, and the Tribal Trustee may not seek to compel action by Defendants, MDOT and/or COE under Paragraphs 24.8 or 24.9; nor may these Parties seek to recover under Paragraphs 24.8 or 24.9 any Response Costs or Natural Resource Damages incurred during the two (2) year period after the Dredging Completion Notice is issued in accordance with Paragraph 8.4.

24.14 Retention of Authority. Notwithstanding any provision of this Consent Judgment, the United States retains all of its information gathering, inspection, access and enforcement authorities and rights under any applicable statutes or regulations. Nothing in this Section XXIV shall limit the power and authority of the United States or this Court to take, direct, or order all appropriate action to protect public health, safety

and welfare, or the environment, or to prevent, abate, or minimize an actual or threatened release of Hazardous Substances, pollutants or contaminants in, at, or from the Assessment Area. Nothing in this Paragraph 24.14 modifies or affects in any way the covenants given to Defendants, MDOT or COE by the United States in this Consent Judgment.

**XXV. STATE'S COVENANT TO DEFENDANTS AND MDOT
AND RESERVATIONS OF RIGHTS**

25.1 Covenant. In consideration of the actions that have been performed and will be performed and the payments made and that will be made by Defendants and/or MDOT under the terms of this Consent Judgment, and except as specifically provided in this Section XXV, the State covenants not to sue or to take administrative action against Defendants and MDOT and, to the extent that the following acted or act within the scope of their employment or authority, officials, officers, directors, and employees of Defendants and MDOT, as applicable, and their respective successors and assigns, for State Covered Matters. State Covered Matters shall mean claims arising from:

(a) Performance of the Work under this Consent Judgment in accordance with the approved plan(s) therefor.

(b) Payment of Response Costs and Natural Resource Damages assessment costs described in Paragraph 22.1.

(c) Natural Resource Damages, Response Costs, and claims for Response Action or injunctive relief in the Assessment Area, including the CDF, arising from or relating to a release or threatened release of a Hazardous Substance prior to the entry of this Consent Judgment.

(d) Natural Resource Damages, Response Costs, and claims for Response Action or injunctive relief in the Assessment Area, including the CDF, arising from a release or threatened release of a Hazardous Substance from any existing source at any Facility on or after the entry of this Consent Judgment to the extent that such release or threatened release is

caused by or arises from any condition existing at, on, within or from any Facility prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by a Defendant or MDOT if in control of such Facility to use best efforts to prevent or control the release or threatened release.

(e) Natural Resource Damages, Response Costs, and claims for Response Action or injunctive relief at, on, within or from the CDF in response to the release or threatened release of any Hazardous Substance at any time.

(f) Any release or threatened release of any Hazardous Substance to the extent such release or threatened release is caused by any act or omission of Plaintiffs, COE, or of persons acting on their behalf or at their direction in connection with the dredging or related activities in the Assessment Area under Section VIII.

(g) The condition of any properties transferred or acquired under Paragraph 7.2 or 7.3 except for: (i) the Green Point Environmental Learning Center property described in Appendix J; (ii) any liability of Defendants and MDOT for failure to perform any of the Work under Paragraph 7.5 or 7.7; and (iii) any liability for any Hazardous Substance contamination on any such property for which a Defendant or MDOT would otherwise be liable under Section 107(a)(3) of CERCLA or Section 20126(1)(d) of NREPA.

(h) Natural Resource Damages at, on, or within any Facility arising from or relating to:

(i) any release or threatened release of any Hazardous Substance at, on or within any Facility prior to the entry of this Consent Judgment; or

(ii) any release or threatened release of any Hazardous Substance at, on or within any Facility on or after the entry of this Consent Judgment if and to the extent such release or threatened release is caused by or arises from any condition existing at, on or

within any Facility prior to the entry of this Consent Judgment and such release or threatened release is not due to a failure by a Defendant or MDOT in control of such Facility to use best efforts to prevent or control the release or threatened release.

(i) Natural Resource Damages in the Assessment Area that arise from or relate to Sediment dredged from and deposited by, on behalf of, at the direction of, or pursuant to any authorization of COE at: (a) any location set forth on Appendix P; or (b) any location adjacent to the Assessment Area resulting from or in connection with any navigational dredging or navigational maintenance or improvement project.

(j) Any Hazardous Substance that has been removed from the Assessment Area, including from the CDF, by anyone (including in connection with the dredging and related activities to be performed under Section VIII) other than by Defendants or MDOT or persons acting on their behalf or at their direction; provided, however, that this Paragraph 25.1(j) shall not apply to any release or threatened release of any Hazardous Substance at a location outside the Assessment Area caused by the disposal of Sediment removed by the State or the United States from the CDF to a location outside the Assessment Area as a result of a catastrophic failure of the CDF occurring after the entry of this Consent Judgment.

25.2 Effectiveness of Covenants. The covenants in Paragraph 25.1 shall take effect upon the receipt of the payments required under Paragraphs 6.1, 6.2, and 22.1. The covenants' continued effectiveness is contingent upon the subsequent performance by Defendants and MDOT of their respective obligations under this Consent Judgment, including, as applicable, the Work, and receipt of the other payments required by Section VI. The covenants extend only to Defendants and MDOT and do not extend to any other person except as expressly stated in Paragraph 25.1.

25.3 Reservations of Rights. The State reserves against Defendants and MDOT the following:

(a) the right to take action under federal and state law for any matters that are not set forth in Paragraph 25.1;

(b) the right to take action against Defendants or MDOT if it is discovered that any information provided by Defendants or MDOT was intentionally false or intentionally misleading and such information was material to the State's decision to enter into this Consent Judgment; and

(c) any and all rights and defenses pursuant to any available legal authority that it may have to enforce this Consent Judgment against Defendants or MDOT, including the MDEQ's right, in accordance with this Consent Judgment and applicable law, to disapprove of response or restoration activities performed by Defendants or MDOT.

25.4 Retention of Authority. Notwithstanding any other provision of this Consent Judgment, the MDEQ retains all authority and reserves all rights to take any and all response activities authorized by law. This Paragraph 25.4 shall not affect the covenants given to Defendants and MDOT in Paragraph 25.1.

25.5 Failure to Enforce. Failure by the State to timely enforce any term, condition or requirement of this Consent Judgment shall not:

(a) Provide or be construed to provide a defense for Defendants' or MDOT's noncompliance with any such term, condition or requirement of this Consent Judgment; or

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

25.6 Specific Reservations. The covenants set forth in this Section XXV do not pertain to any matters other than those expressly specified in Paragraph 25.1. The State reserves, and this Consent Judgment is without

prejudice to, all rights against Defendants and MDOT with respect to all other matters, including, but not limited to, the following:

(a) Liability arising from a violation by Defendants or MDOT of a requirement of this Consent Judgment, including conditions of an approved Submission required herein.

(b) Liability for any Response Costs, Response Action, injunctive relief, penalties, permit requirements, or other remedial, compliance or regulatory action:

(i) at, on or within any Facility, or

(ii) at, on or within any facility as defined by NREPA or CERCLA but not including the CDF; provided that such a facility shall not extend into the Assessment Area waterward beyond the OHWM more than the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the facility and in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the facility where the Response Action is necessary.

(c) Liability for Natural Resource Damages arising from any release or threatened release first occurring after the entry of this Consent Judgment (but excluding liability for Natural Resource Damages covered by Paragraphs 25.1(d), (e), (f), (h), (i) and (j)):

(i) at, on or within any Facility, or

(ii) at, on or within any facility as defined by NREPA or CERCLA but not including the CDF; provided that such a facility shall not extend into the Assessment Area waterward beyond the OHWM more than the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the facility and in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the facility where the Response Action is necessary.

(d) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of a Hazardous Substance outside of the Assessment Area or of a Hazardous Substance taken from the Assessment Area, including liability outside the Assessment Area from the past, present or future treatment, handling, disposal, release or threat of release of a Hazardous Substance taken from the CDF to a place outside the Assessment Area; provided, however, that, except as provided in the proviso in Paragraph 25.1(j) with respect to a catastrophic failure of the CDF as to which the State has reserved its rights, Defendants and MDOT shall not be liable for any Sediment that has been removed from the Assessment Area, including from the CDF, by anyone other than Defendants, and if any Defendant removed such Sediment from the Assessment Area, including the CDF, the other Defendants shall not be liable solely because of the action of such other Defendant.

(e) Liability for damages for injury to, destruction of, or loss of natural resources outside the Assessment Area, including liability outside the Assessment Area arising from releases of Hazardous Substances at, on, within or from the CDF, but only to the extent not subject to the covenants in this Section XXV.

(f) Liability for criminal acts.

(g) Any matters for which the State is owed indemnification under Section XVIII (Indemnification and Insurance), of this Consent Judgment.

(h) Liability arising from releases of Hazardous Substances or violations of applicable law which occur during implementation of the Work, but only to the extent not subject to the covenants in Paragraph 25.1.

(i) Any defenses and claims, whether by counterclaim or otherwise, regarding and limited to the subject matter of the claim giving rise to the claim brought by Defendant(s) or MDOT pursuant to Section XXIX, except that the State shall not be entitled to assert any defense based on contribution protection in response to a claim or counterclaim asserted by Defendants under Paragraph 29.3.

(j) The right to require further investigation under NREPA or other law of: (i) the areal extent of the Middlegrounds Landfill; and (ii) Sediment contamination in the West Channel of the Saginaw River at Middlegrounds Island, as defined in Appendix M, and which arises from or relates to any release or threatened release of any Hazardous Substance from said landfill.

(k) Liability for future releases of Hazardous Substances into the Assessment Area except as provided in Paragraph 25.1.

25.7 State's Reopener for Response Actions and Response Costs. (a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 8.9, 25.7(b) and 25.9 through 25.12, the State reserves, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendants and MDOT: (1) to perform further Response Actions relating to the Assessment Area; or (2) to reimburse the State for additional Response Costs in the Assessment Area if, subsequent to the entry of this Consent Judgment:

(i) conditions in the Assessment Area, not including at, on, within or from the CDF, previously unknown, are discovered, or

(ii) information, previously unknown to the State, is received, in whole or in part,

and such previously unknown conditions or information, together with other relevant information, indicate that the activities undertaken pursuant to this Consent Judgment are not protective of the public health, safety and welfare or the environment.

(b) This Paragraph 25.7 shall not apply to any claims for Response Actions or Response Costs relating to any release or threatened release of Hazardous Substances at, on, within or from the CDF at any time.

25.8 State's Reopener for Natural Resource Damages. (a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 25.8(b) through (d) and Paragraphs 25.9 through 25.12, the State reserves at all times, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action seeking recovery of Natural Resource Damages from Defendants if: (i) conditions in the Assessment Area or at, on or within a Facility, previously unknown to the State, the Federal Trustees and each Response Action Agency ("Unknown State NRD Conditions") are discovered after the entry of this Consent Judgment and such conditions contribute to injury to, destruction of, or loss of natural resources; or (ii) information is received by the State, the Federal Trustees, each Response Action Agency and the Tribal Trustee after the entry of this Consent Judgment, and this information indicates that there is injury to, destruction of, or loss of natural resources in the Assessment Area, or at, on or within a Facility, of a type unknown to the State, the Federal Trustees, each Response Action Agency and the Tribal Trustee as of the date of entry of this Consent Judgment ("New State NRD Information").

(b) This Paragraph 25.8 shall not apply to any claims for Natural Resource Damages attributable to exposures at any time at, on, or within the CDF.

(c) An increase solely in the State's, the Federal Trustees', COE's, any Response Action Agency's, or the Tribal Trustee's assessment of the magnitude of the injury, destruction of or loss to natural resources, or in the estimated or actual Natural Resource Damages, shall not be considered to be Unknown State NRD Conditions or New State NRD Information within the meaning of Paragraphs 25.8(a)(i) or (ii), nor shall a determination by the State, the Federal Trustees, COE, any Response Action Agency, or the Tribal Trustee that a previously known injury was caused by a release into the Assessment Area of a Hazardous Substance other than PCBs be considered Unknown State NRD Conditions or New State NRD Information.

(d) In any subsequent action or proceeding regarding matters reserved under this Paragraph 25.8, the State shall have the burden of

establishing that the conditions for applicability of this Paragraph 25.8 have been satisfied, including the burden of establishing that injuries to, destruction of, or loss of natural resources resulting from exposure to PCBs are attributable partly to exposures occurring at locations other than the CDF. In any subsequent action or proceeding regarding matters reserved under this Paragraph 25.8, apportionment of Natural Resource Damages shall be permitted if injuries to, destruction of, or loss of natural resources are attributable partly to PCB exposures occurring at locations other than the CDF and partly to PCB exposures at, on, within or from the CDF, and Defendants and MDOT shall not be liable for that portion of Natural Resource Damages that is determined to be attributable to exposure to PCBs at, on or within the CDF.

25.9 Previously Known Information. For purposes of Paragraphs 25.7 and 25.8, the information previously received by and the conditions previously known shall include any information or conditions: (a) set forth in the records produced in response to discovery in the State Action; (b) of which the State, the Federal Trustees or the Tribal Trustee had actual knowledge prior to the entry of this Consent Judgment; or (c) set forth in the EPA Administrative Record.

25.10 Inapplicability of Paragraphs 25.7 and 25.8 to Properties. Paragraphs 25.7 and 25.8 do not apply to the properties transferred or acquired under Paragraph 7.2 or 7.3 except for: (i) the Green Point Environmental Learning Center property described in Appendix J; (ii) any liability of Defendants and MDOT for failure to perform any of the Work under Paragraph 7.5 or 7.7; and (iii) any liability for any Hazardous Substance contamination on any such property for which a Defendant or MDOT would otherwise be liable under Section 107(a)(3) of CERCLA or Section 20126(1)(d) of NREPA.

25.11 Inapplicability of Paragraphs 25.7 and 25.8 to Acts or Omissions of Trustees. Paragraphs 25.7 and 25.8 do not apply to claims to the extent caused by acts or omissions of Plaintiffs, COE, or of persons acting on their behalf or at their direction in connection with any release or

threatened release of any Hazardous Substance associated with the dredging or related activities in the Assessment Area under Section VIII.

25.12 Moratorium. Until two (2) years after the Dredging Completion Notice is issued in accordance with Paragraph 8.4, the State may not seek to compel action by Defendants or MDOT under Paragraphs 25.7 or 25.8; nor may the State seek to recover under Paragraphs 25.7 or 25.8 any Response Costs or Natural Resource Damages incurred during the two (2) year period after the Dredging Completion Notice is issued in accordance with Paragraph 8.4.

25.13 No Warranty or Representation. The Parties acknowledge and agree that this Consent Judgment does not constitute a warranty or representation of any kind by the MDEQ that the Work performed in accordance therewith will result in the achievement of the remedial criteria as established by law.

25.14 Retention of Authority. Notwithstanding any provision of this Consent Judgment, the State retains all of its information gathering, inspection, access and enforcement authorities and rights under Part 201 of NREPA and any other applicable statute or regulation. Nothing in this Section XXV shall limit the power and authority of the MDEQ, the State, or this Court to take, direct, or order all appropriate action to protect public health, safety and welfare, or the environment, or to prevent, abate, or minimize an actual or threatened release of Hazardous Substances, pollutants or contaminants in, at, or from the Assessment Area. This Paragraph 25.14 shall not affect the covenants given to Defendants or MDOT by the State under Sections XXV or XXX.

XXVI. TAKEOVER OF WORK BY TRUSTEES

In the event the Trustees determine that Defendants have ceased implementation of any portion of the Work in violation of this Consent Judgment, are seriously or repeatedly deficient or late in their performance of the Work in violation of this Consent Judgment, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, the Trustees may perform, or contract to have performed, such

portion of the Work so affected as the Trustees determine necessary, but only after written notice to Defendants describing in detail the basis for the proposed action and an opportunity, reasonable under the circumstances, for Defendants to cure the conditions complained of in such notice. Defendants may invoke the procedures set forth in Section XXI to dispute the determination that takeover of the Work is warranted under this Section XXVI and such invocation shall stay takeover of the Work pending resolution of the dispute unless there is an immediate endangerment to human health or the environment.

**XXVII. MUTUAL COVENANTS BETWEEN THE STATE AND COE
AND RESERVATIONS OF RIGHTS AND DEFENSES**

27.1 Covenants. (a) Except as specifically provided in Paragraphs 27.2 and 27.3, the State covenants not to sue or to take administrative action against COE, and, to the extent the following acted or act within the scope of their employment or authority, their respective agents (if and to the extent that any liability an agent would have could be asserted against or become the obligation of COE), officials and employees, and their respective successors and assigns, for COE-State Covered Matters.

(b) Except as specifically provided in Paragraphs 27.2 and 27.3, COE covenants not to sue or to take administrative action against the State, and to the extent the following acted or act within the scope of their employment or authority, their respective agents (if and to the extent that any liability an agent would have could be asserted against or become the obligation of the State), officials and employees, and their respective successors and assigns, for COE-State Covered Matters.

(c) Except as limited by Paragraphs 27.2 and 27.3 of this Consent Judgment, "COE-State Covered Matters" shall mean any and all civil liability, including Natural Resource Damages, whether past, present, or future, known or unknown to the State or COE under federal, state, or local law, statutory or common law for any and all releases or threatened releases of Hazardous Substances into and/or within the Assessment Area, including the CDF.

27.2 Reservation of Rights. The covenants set forth in this Section XXVII do not pertain to any matters other than "COE-State Covered Matters." The State and COE reserve at all times, and this Consent Judgment is without prejudice to, all rights against each other with respect to all other matters, including, but not limited to, the following:

(a) The failure of either the State or COE to perform satisfactorily an obligation under this Consent Judgment owed to each other;

(b) The May 1975 Agreement;

(c) Future civil violations of applicable law, including violations of permit conditions;

(d) The State's ability, as allowed by applicable law, to seek administrative or judicial review of actions taken by COE with respect to activities proposed to be undertaken in the Assessment Area or at, on or within the CDF and requiring prior COE authorization, unrelated to COE activities under (or in furtherance of) this Consent Judgment;

(e) Liability arising from the past, present, or future treatment, handling, disposal, release or threat of release of Hazardous Substances at a location outside of the Assessment Area and not attributable to either the CDF or COE activities in the Assessment Area;

(f) Any criminal liability; and

(g) COE's ability, as allowed by applicable law, to seek administrative or judicial review of actions taken by the State with respect to COE activities proposed to be undertaken in the Assessment Area or at, on or within the CDF.

27.3 State's Reopener for Response Actions and Response Costs. (a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 8.9, 27.3(b), 27.3(c), 27.3(d), 27.3(e), and 27.3(f), the

State reserves at all times, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel COE to: (1) perform further Response Actions relating to the Assessment Area, or (2) reimburse the State for the additional cost of such Response Actions if:

(i) Conditions in the Assessment Area, previously unknown to the State, are discovered; or

(ii) Information, previously unknown to the State, is received; and the unknown State conditions or the new State information, together with all other relevant information, indicate that the activities undertaken pursuant to this Consent Judgment are not protective of the public health, safety, or welfare or the environment.

(b) For purposes of Paragraph 27.3(a), the information previously received by and the conditions previously known shall include any information or conditions: (i) set forth in the records produced in response to discovery in the State Action; (ii) of which the State, the Federal Trustees or the Tribal Trustee had actual knowledge prior to the entry of this Consent Judgment; or (iii) set forth in the EPA Administrative Record.

(c) This Paragraph 27.3 does not apply to any claim for Response Actions or Response Costs relating to any release or threatened release of Hazardous Substances at, on, within or from the CDF after the period referred to in Paragraph 34.1.

(d) Paragraph 27.3 does not apply to the properties transferred or acquired under Paragraph 7.2 or 7.3 except for any liability for any Hazardous Substance contamination on any such property for which COE would otherwise be liable under Section 107(a)(3) of CERCLA or Section 20126(1) of NREPA.

(e) Paragraphs 27.3 does not apply to claims to the extent caused by acts or omissions of Plaintiffs or of persons acting on their behalf or at their direction in connection with any release or threatened release of any Hazardous Substance associated with the dredging or related activities in the Assessment Area under Section VIII.

(f) Until two (2) years after the Dredging Completion Notice is issued in accordance with Paragraph 8.4, the State may not seek to compel action by COE under Paragraph 27.3; nor may the State seek to recover under Paragraph 27.3 any Response Costs incurred during the two (2) year period after the Dredging Completion Notice is issued in accordance with Paragraph 8.4.

27.4 Reservation of Defenses. With respect to matters in Paragraphs 27.2, 27.3, or this Paragraph 27.4, COE reserves all defenses in fact and/or law, including, without limitation, jurisdictional defenses. With respect to matters in Paragraphs 27.2, 27.3, or this Paragraph 27.4, the State reserves all defenses in fact and/or law, including without limitation, jurisdictional defenses.

27.5 May 1975 Agreement. (a) The United States and the State agree and recognize that, under 33 U.S.C. § 1293a(c), COE was authorized to construct, operate, and maintain the CDF. Furthermore, prior to construction of the CDF by COE, under 33 U.S.C. § 1293a, the State was required to enter into the May 1975 Agreement.

(b) On May 6, 1975, pursuant to 33 U.S.C. § 1293a(c), the United States and the State entered into the May 1975 Agreement which is attached as Appendix Q and is specifically incorporated by reference herein.

(c) Notwithstanding any other provision in this Consent Judgment, the May 1975 Agreement remains in full force and effect, and applies to and covers: (1) the conditions at the CDF on the entry of this Consent Judgment; (2) the addition or disposal of Sediment in the CDF in accordance with Section VIII; and (3) the conditions at the CDF after the entry of this Consent Judgment.

27.6 Effectiveness of Covenants. The covenants in this Section XXVII shall take effect upon entry of the Consent Judgment. Except as provided in Paragraphs 27.1(a) and (b), the covenants extend only to COE and State and do not extend to Defendants, MDOT or any other person.

**XXVIII. DEFENDANTS COVENANTS TO UNITED STATES AND TRIBAL TRUSTEE
AND RESPONSE ACTION AGENCIES AND RESERVATION OF RIGHTS**

28.1 Covenant. Subject only to the reservations in Paragraphs 28.2 through 28.4, and except as otherwise expressly provided in this Consent Judgment, Defendants covenant and agree not to assert any claims or causes of action, whether judicial or administrative, past, present, or future, and known or unknown, against the United States or the Tribal Trustee and, to the extent the following acted or act within the scope of their employment or authority, their respective agent(s) (if and to the extent that any liability an agent would have could be asserted against or become an obligation of the United States or the Tribal Trustee), officers, directors, employees, and the respective successors and assigns of each of the foregoing, relating in any way to: (a) the CDF; (b) Natural Resource Damages, Response Actions, or Response Costs relating to direct or indirect releases or threatened releases of a Hazardous Substance within, into, or from the Assessment Area; (c) actions undertaken by or at the direction of the Federal Trustees and/or the Tribal Trustee in the Assessment Area pursuant to this Consent Judgment; or (d) Natural Resource Damages at, on, or within, arising from, or relating to any Facility. Such claims or causes of action include without limitation any claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), for contribution and any other claim under CERCLA Sections §§ 106(b)(2), 107, 111, 112, 113, indemnity, contract, tort, or any other provision of law relating to matters described in clauses (a) through (d), above.

28.2 Effect on Other Provisions. Nothing in Paragraph 28.1 shall affect the enforceability of either the covenants set forth in Sections XXIV, XXVII, XXVIII, XIX, XXX and XXXI, or any obligations of the Federal Trustees, the Tribal Trustee, or any Response Action Agency to Defendants under this Consent Judgment.

28.3 Reservations In Connection With Certain Actions.

(a) In any proceeding initiated by the United States, the Tribal Trustee, or the State for injunctive relief, performance of Response

Actions, recovery of Response Costs or Natural Resource Damages, or other relief relating to the Assessment Area, including the CDF, or to any of the Facilities or any facility, whether or not pursuant to any reservation or reopener contained in this Consent Judgment, except an action to enforce Defendants' obligations under Paragraphs 6.1, 6.2, 6.3 and 6.4 and Sections VII and XXII, Defendants reserve, and Paragraph 28.1 is without prejudice to, any defenses and any claims, whether by counterclaim or otherwise, regarding and limited to the subject matter of and in response to the claim or claims brought in such a proceeding, except as otherwise provided in Paragraph 32.9(a).

(b) In an action against any one or more of Defendants initiated by any person not a Party and relating to the Assessment Area, including the CDF, or any of the Facilities or any facility, Defendants reserve, and Paragraph 28.1 is without prejudice to, claims regarding and limited to the subject matter of the claim or claims brought in that action; provided, however, that the reservation in this sentence shall not be effective unless and until there is first a ruling in that action, whether or not such ruling is immediately appealable as of right, that the subject matter of the claim or claims brought in that action is outside of the Matters Addressed as defined in Paragraphs 32.1 and 32.2, such that Defendants are not entitled to complete contribution protection under CERCLA and Part 201 of NREPA regarding such claim or claims. The preceding proviso shall not apply if any one or more of Defendants and either the United States, the Tribal Trustee and/or the State is or are named as defendants in such an action. The preceding proviso shall also not apply if a Defendant, after first requesting within a reasonable time and being unable to obtain within a reasonable time an acceptable tolling agreement with respect to any applicable statute of limitations, reasonably believes that there is imminent risk of its claims becoming time barred. Notwithstanding the foregoing, if the Court subsequently determines that contribution protection exists for the claim asserted against a Defendant or MDOT, as the case may be, which gave rise to the claim or counterclaim asserted against the United States or the Tribal Trustee under this Paragraph 28.3(b), then the Defendant or MDOT, as the case may be, shall voluntarily dismiss, without prejudice and without costs, that portion of its claim against the United States or the Tribal Trustee for which it has contribution protection. In addition,

if the United States or the Tribal Trustee has asserted a claim or counterclaim against such Defendant or MDOT, as the case may be, in response to such Defendant's or MDOT's claim or counterclaim, then the United States or the Tribal Trustee, as the case may be, shall promptly dismiss, without prejudice and without costs, that portion of its claim or counterclaim against such Defendant(s) or MDOT.

28.4 Reservations In Connection With Employees And Other Actions. Defendants reserve, and this Consent Judgment is without prejudice to: (a) any 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; and (b) any claims against the Tribal Trustee 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 Tribal Trustee, while acting within the scope of his office and employment. However, any such claim against the United States 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 Defendants be entitled to assert a claim against the United States or the Tribal Trustee challenging the selection and/or performance under this Consent Judgment of Response Actions or activities authorized under Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), or any oversight of Defendants, Response Actions or other activities or approval of Defendants' plans therefor under this Consent Judgment. The reservation in this Paragraph 28.4 applies only to claims which are brought pursuant to any statute other than CERCLA and for which an applicable waiver of sovereign immunity is shown by Defendants to be found in a statute other than CERCLA.

28.5 No Claim Preauthorization. Nothing in this Consent Judgment shall be deemed to constitute 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).

28.6 Effectiveness of Covenants. The covenants set forth in Paragraph 28.1 shall take effect upon the entry of this Consent Judgment.

XXIX. DEFENDANTS' COVENANTS TO STATE AND RESERVATIONS OF RIGHTS

29.1 Covenants. Defendants hereby covenant not to sue or to take any administrative action against the State of Michigan, its agencies or their authorized representatives for any claim or cause of action against the State with respect to any State Covered Matters, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of NREPA, for contribution or other claim under CERCLA, or any similar claim under any other provision of law relating to any State Covered Matters.

29.2 Effect on Other Matters. Defendants' covenant set forth in this Section XXIX (Covenant by Defendants) does not pertain to any matters other than those expressly specified in Paragraph 29.1. Defendants reserve, and this Consent Judgment is without prejudice to, all rights or defenses against the State with respect to any matter not set forth in Paragraph 29.1 and the matters set forth in Paragraphs 29.3.

29.3 Additional Reservations. In addition to the reservations contained in Paragraph 29.2, Defendants also reserve the right to bring an action against the State as follows:

(a) In any proceeding initiated by the United States, the Tribal Trustee, or the State for injunctive relief, performance of Response Actions, recovery of Response Costs or Natural Resource Damages, or other relief relating to the Assessment Area, including the CDF, or to any of the Facilities or any facility, whether or not pursuant to any reservation or reopener contained in this Consent Judgment, except an action solely to enforce Defendants' obligations under Paragraphs 6.1, 6.2, 6.3 and 6.4 and Sections VII and XXII, Defendants reserve, and Paragraph 29.1 is without prejudice to, any defenses and any claims, whether by counterclaim or otherwise, regarding and limited to the subject matter of and in response to the claim or claims brought in such a proceeding, except as otherwise

provided in Paragraph 32.9(a) and further except that Defendants shall not be entitled to any defense based on contribution protection in response to a claim or counterclaim asserted by the State in response to a claim or counterclaim asserted by Defendants under this Paragraph 27.3(a).

(b) In an action against any one or more of Defendants initiated by any person not a Party and relating to the Assessment Area, including the CDF, or any of the Facilities or any facility, Defendants reserve, and Paragraph 29.1 is without prejudice to, claims regarding and limited to the subject matter of the claim or claims brought in that action; provided, however, that the reservation in this sentence shall not be effective unless and until there is first a ruling in that action, whether or not such ruling is immediately appealable as of right, that the subject matter of the claim or claims brought in that action is outside of Matters Addressed as defined in Paragraphs 32.1 and 32.2 such that Defendants are not entitled to complete contribution protection under CERCLA and Part 201 of NREPA regarding such claim or claims. The preceding proviso shall not apply if either any one or more of Defendants and the United States, the Tribal Trustee and/or the State are named as defendants in such an action. The preceding provision shall also not apply if a Defendant, after first requesting within a reasonable time and being unable to obtain within a reasonable time an acceptable tolling agreement with respect to any applicable statute of limitations, reasonably believes that there is imminent risk of its claims becoming time barred. Notwithstanding the foregoing, if the Court subsequently determines that contribution protection exists for the claim asserted against a Defendant or MDOT, as the case may be, which gave rise to the claim or counterclaim asserted against the State under this Paragraph 29.3(b), then the Defendant(s) or MDOT, as the case may be, shall voluntarily dismiss, without prejudice and without costs, that portion of its claim against the State for which it has contribution protection. In addition, if the State has asserted a claim or counterclaim against such Defendant or MDOT, as the case may be, in response to such Defendant's or MDOT's claim or counterclaim, then the State shall promptly dismiss, without prejudice and without costs, that portion of its claim or counterclaim against such Defendant(s) or MDOT. Defendants shall not be entitled to assert any defense based on contribution protection in response to a claim or counterclaim

asserted by the State in response to a claim or counterclaim asserted by Defendants under this Paragraph 29.3(b).

29.4 Effectiveness of Covenants. The covenant set forth in this Section XXIX shall take effect upon the entry of this Consent Judgment.

**XXX. ADDITIONAL COVENANTS BY THE STATE DEFENDANTS AND MDOT
AND RESERVATIONS OF RIGHTS**

30.1 Covenants. Subject to Paragraph 30.3, in consideration of the actions that have been performed and that will be performed by MDOT and Defendants and the payments made and that will be made by Defendants under this Consent Judgment, and in addition to the covenant set forth in Section XXV, Defendants and the State, covenant not to sue or to take administrative action against each other, and, to the extent the following acted or act within the scope of their employment or authority, their respective agents (if and to the extent that any liability an agent would have could be asserted against or become an obligation of any of them), officers, directors, and employees, and the respective successors and assigns of each of the foregoing, for Additional Covered Matters. The State also agrees to covenant not to sue or to take administrative action against MDOT for Additional Covered Matters, except to the extent provided in Paragraph 30.3.

30.2 Additional Covered Matters. "Additional Covered Matters" shall mean any and all civil liability, whether past, present or future, known or unknown, under federal, state, local statutory or common law for Natural Resource Damages, Response Costs, or claims for Response Actions, or injunctive or other relief required at or relating to the Zilwaukee Bridge Facility, including any liability for disposal of Hazardous Substances at, on or within the CDF from the Zilwaukee Bridge Facility, and alleged in the Court of Claims Action to give rise to liability of the State and MDOT, except for any claim or counterclaim asserted by Defendants as described in Paragraph 29.3 and, with respect to any such claim or counterclaim, MDOT shall not be entitled to assert any defense based on contribution protection.

30.3 Reservation of Rights. The State (but not MDOT) also reserves, and the covenant in Paragraph 30.1 is subject to, all rights against MDOT and Defendants as described in Paragraph 25.6, all rights to reopen as described in Paragraph 25.7, and all liability arising from the future treatment, disposal, release or threatened release of a Hazardous Substance at the Zilwaukee Bridge Facility.

XXXI. COVENANTS AND RESERVATIONS OF RIGHTS
BY UNITED STATES ON BEHALF OF RESPONSE ACTION AGENCIES

31.1 Applicability. The covenants in this Section XXXI, including such conditions thereon and each of the reservations of rights in this Section XXXI, are only given on behalf of the Response Action Agencies, and the United States insofar as it is acting on behalf of the Response Action Agencies, and shall not be deemed to be covenants given by the Federal Trustees or COE, or the United States insofar as it is acting on behalf of the Federal Trustees or COE.

31.2 Covenants to Defendants and MDOT. In consideration of the actions performed and to be performed by Defendants and MDOT and the payments made and that will be made by Defendants under the terms of this Consent Judgment, the United States, on behalf of the Response Action Agencies, covenants not to sue or to take administrative action against Defendants and MDOT for "Response Action Agency Covered Matters." "Response Action Agency Covered Matters" shall mean civil liability pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607; Sections 3004(u), 3004(v), 3008(h), 3013 and 7003 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928(h), 6934, 6973; Sections 7, 16, and 17 of the Toxic Substances Control Act, 15 U.S.C. §§ 2606, 2615, and 2616; Sections 309, 311, and 504 of the CWA, 33 U.S.C. §§ 1319, 1321, 1364; and Sections 13 and 17 of the Rivers and Harbors Act, 33 U.S.C. §§ 407 and 413, for:

- (a) PCB contamination of Sediment within the Covenant Area;
- (b) Hazardous Substances at, on, within or from the CDF; and

(c) liability solely and directly attributable to the acts or omissions of Plaintiffs, COE, or of persons acting at their direction, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under this Consent Judgment.

31.3 Covenants to COE. In consideration of the payment to be made by the United States pursuant to Paragraph 6.7, and COE's agreement to enter into the SFO Agreement to allow the disposal in the CDF of Sediment from the Dredge Area dredged under Section VIII and to enter into the covenants in favor of Defendants and MDOT under Section XXIV, the United States, on behalf of the Response Action Agencies, covenants not to take administrative action against COE for "COE-Response Action Agency Covered Matters." "COE-Response Action Agency Covered Matters" shall mean civil liability pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607; Sections 3004(u), 3004(v), 3008(h), 3013 and 7003 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928(h), 6934 and 6973; Sections 7, 16, and 17 of the Toxic Substances Control Act, 15 U.S.C. §§ 2606, 2615, and 2616; Sections 309, 311, and 504 of the CWA, 33 U.S.C. §§ 1319, 1321, 1364; and Sections 13 and 17 of the Rivers and Harbors Act, 33 U.S.C. §§ 407 and 413, for:

(a) PCB contamination of Sediment within the Covenant Area;

(b) Hazardous Substances at, on, within, or from the CDF after the period referred to in Paragraph 34.1; and

(c) Any release or threatened release of any Hazardous Substance arising from any act or omission of COE or its contractors in implementing the Dredge Plan under Section VIII, except in the case of a release or threatened release that is caused by conduct of COE or its contractors that is negligent, grossly negligent, or that constitutes intentional misconduct.

(d) Liability solely and directly attributable to the acts or omissions of the Plaintiffs or of persons acting at their direction, in performance of dredging and/or disposal of PCB-contaminated Sediment within

or from the Covenant Area or at, on or within the CDF under this Consent Judgment.

31.4 Applicability of Covenants to Officers and Directors. The covenants in Paragraphs 31.2 shall also apply to each of Defendants' and MDOT's officials, officers and/or directors, as applicable, but only to the extent that such person's liability is based solely on his or her status and capacity as an official, officer or director of one of the Defendants or MDOT, as the case may be. The covenants in Paragraph 31.3 shall also apply to each of COE's officials acting within the scope of their authority. The covenants in Paragraphs 31.2 and 31.3 do not extend to any other person.

31.5 Effectiveness of Covenants. The covenants in Paragraphs 31.2 and 31.3, shall take effect upon entry of this Consent Judgment. The continued effectiveness of the covenants in Paragraph 31.2 with respect to any Defendant or MDOT is contingent upon the subsequent satisfactory performance of all obligations of such Party under this Consent Judgment, whether several or joint and several, including any obligations of such Party concerning the Work, and upon receipt by the Trustees of the payments required under Section VI.

31.6 Reopeners for Actions Concerning Sediment Contamination Below the PCB Covenant Level in the Covenant Area. (a) Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 31.6(b) through (d) and 31.8(a), the United States, on behalf of the Response Action Agencies, reserves, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendants, MDOT, and/or COE, as the case may be, in accordance with applicable law: (i) to perform further Response Actions relating to Sediment concentrations below the PCB Covenant Level in the Covenant Area; or (ii) to reimburse the United States for additional Response Costs for actions taken by the United States relating to Sediment concentrations below the PCB Covenant Level in the Covenant Area if, subsequent to lodging of this Consent Judgment:

(i) conditions in the Covenant Area, previously unknown to the Response Action Agencies, are discovered, or

(ii) information, previously unknown to the Response Action Agencies, is received, in whole or in part,

and these previously unknown conditions or information, together with any other relevant information, indicates that the PCB Covenant Level is no longer appropriate, and that the dredging and other activities undertaken in accordance with this Consent Judgment are not protective of human health or the environment.

(b) As to Defendants and MDOT, this Paragraph 31.6 shall not apply to any PCB contamination in the Covenant Area from the CDF. As to COE, this Paragraph 31.6 shall not apply to any PCB contamination in the Covenant Area from the CDF after the period referred to in Paragraph 34.1.

(c) Except as provided in this Paragraph 31.6(c), for purposes of Paragraph 31.6(a), the information and the conditions known to the Response Action Agencies shall include only that information and those conditions set forth in the USEPA administrative record supporting this Consent Judgment, the contents of which are listed in Appendix P.

(d) For purposes of Paragraph 31.6(a), with respect to any proceedings against Defendants, MDOT or COE, conditions previously unknown to the Response Action Agencies shall not include conditions that are solely and directly attributable to acts or omissions of Plaintiffs, COE, or of persons acting at their direction, as applicable, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under Section VIII.

(e) In any subsequent action or proceeding regarding claims referred to in Paragraph 31.6(a), Defendants, MDOT and/or COE, as the case may be, shall have the burden of proof with respect to any issue concerning whether conditions in the Covenant Area are solely and directly attributable to acts or omissions of Plaintiffs, COE, or persons acting at their direction, in

performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under this Consent Judgment; provided, however, that, solely for purposes of this Paragraph 31.6(e), the mere presence of PCBs in the Covenant Area on the date of entry of this Consent Judgment, regardless of the source of such PCBs, shall not preclude a determination that conditions in the Covenant Area are solely and directly attributable to acts or omissions of Plaintiffs, COE, or persons acting at their direction, as applicable, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under Section VIII.

31.7 Procedures for Investigations and Reopeners for Actions Concerning Sediment PCB Contamination At or Above the PCB Covenant Level in the Covenant Area.

(a) Further Investigation.

(i) Subject to Paragraph 31.8(b), if any Response Action Agency receives sampling data from any person that has been taken in accordance with applicable USEPA QA/QC procedures that show an Exceedance of the PCB Covenant Level in the Covenant Area, Defendants shall investigate the Exceedance of the PCB Covenant Level in accordance with Paragraph 31.7(a)(ii), in order to define the Area of the Exceedance and the PCB concentrations therein if requested in writing by the Response Action Agency.

(ii) Within forty-five (45) days after such a request, Defendants shall submit a sampling plan and implementation schedule to the Federal Trustees, the Tribal Trustee, COE and the State for review and comment, and to the requesting Response Action Agency for review and approval in accordance with Section XVI (Submissions and Approvals). Such plan shall provide for sampling of Sediment by core samples taken to the Bottom of the Sediment, unless the requesting Response Action Agency determines that shallower Sediment sampling is appropriate. The requesting Response Action Agency shall not require any investigative activity under this Paragraph 31.7(a) which is not reasonable in nature and geographic scope. Any disputes concerning

the sampling plan shall be resolved in accordance with Section XXI (Dispute Resolution).

(iii) After approval of the sampling plan and implementation schedule by the requesting Response Action Agency, Defendants shall implement the plan in accordance with the approved schedule.

(iv) After implementation of the approved sampling plan, Defendants shall submit the results in report form to the requesting Response Action Agency, the Federal Trustees, the Tribal Trustee, COE and the State in accordance with the approved sampling plan. The report shall include all relevant sampling and analytical information and data (which have been reviewed for compliance with QA/QC procedures), including a proposed Area of the Exceedance. Defendants shall also submit the data in an electronic form compatible with the Arcview or Arcinfo programs or in such other form as the Defendants and the requesting Response Action Agency may agree in the future.

(v) This Paragraph 31.7(a) shall expire on the thirtieth (30th) anniversary of the entry of this Consent Judgment. Except to the extent provided in Paragraph 31.9, nothing in this Consent Judgment shall be construed to limit or affect any authority of any Response Action Agency, under any applicable statutes or regulations, to require Defendants and/or MDOT, as the case may be, to perform sampling, monitoring or other investigations relating to an Exceedance of the PCB Covenant Level, after expiration of this Paragraph 31.7(a).

(vi) This Paragraph 31.7(a) shall not apply to any PCB contamination in the Covenant Area from the CDF.

(b) United States' Reopeners for Additional Action. Notwithstanding any other provision of this Consent Judgment, but subject to Paragraphs 31.7(c) through 31.7(e) and 31.8(b), the United States, on behalf of the Response Action Agencies, reserves, and this Consent Judgment is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendants,

MDOT, and/or COE, as the case may be, in accordance with applicable law (1) to perform further Response Actions in the Covenant Area relating to any Area of the Exceedance; or (2) to reimburse the United States for additional Response Costs for Response Actions taken by the United States relating to any Area of the Exceedance in the Covenant Area if, subsequent to lodging of this Consent Judgment, information, previously unknown to the Response Action Agencies, is received, in whole or in part, including information resulting from any investigation conducted by Defendants under Paragraph 31.7(a), and this information, together with any other relevant information, indicates that PCB contamination in the Area of the Exceedance either:

- (i) has an adverse effect on human health or the environment, or
- (ii) is a significant source of PCB contamination to the Saginaw River or the Saginaw Bay.

(c) Inapplicability of Paragraph 31.7(b). As to Defendants and MDOT, this Paragraph 31.7(b) shall not apply to any PCB contamination in the Covenant Area from the CDF. As to COE, this Paragraph 31.7(a) shall not apply to any PCB contamination in the Covenant Area from the CDF after the period referred to in Paragraph 34.1.

(d) USEPA Administrative Record. Except as provided in this Paragraph 31.7(d), for purposes of Paragraph 31.7(b), the information known to the Response Action Agencies shall include only that information set forth in the USEPA administrative record supporting this Consent Judgment, the contents of which are listed in Appendix P. For purposes of Paragraph 31.7(b), with respect to any proceedings against Defendants, MDOT or COE, conditions previously unknown to the Response Action Agencies shall not include conditions that are solely and directly attributable to acts or omissions of Plaintiffs, COE, or persons acting at their direction, as applicable, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under this Consent Judgment.

(e) Burden of Proof. In any subsequent action or proceeding regarding claims referred to in Paragraph 31.7(b), Defendants, MDOT and/or

COE, as the case may be, shall have the burden of proof with respect to any issue concerning whether an Exceedance of the PCB Covenant Level is solely and directly attributable to acts or omissions of Plaintiffs or COE, or persons acting at their direction, as applicable, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under this Consent Judgment; provided, however, that, solely for purposes of this Paragraph 31.7(e), the mere presence of PCBs in the Covenant Area on the date of entry of this Consent Judgment shall not preclude a determination that an Exceedance of the PCB Covenant Level is solely and directly attributable to acts or omissions of Plaintiffs, COE, or of persons acting at their direction, as applicable, in performance of dredging and/or disposal of PCB-contaminated Sediment within or from the Covenant Area or at, on or within the CDF under this Consent Judgment.

31.8 Moratorium on Reopeners in the Dredge Area. (a) With respect to the reopeners in Paragraph 31.6, the United States, on behalf of the Response Action Agencies, may not seek to compel action by Defendants, MDOT, and/or COE, as the case may be, pursuant to that reopener for PCB contamination in the Dredge Area until five (5) years after the Dredging Completion Notice is issued in accordance with Paragraph 8.4, or at any time recover from Defendants, MDOT, and/or COE, as the case may be, any Response Costs incurred during such period with respect to the Dredge Area.

(b) With respect to the reopeners in Paragraph 31.7, including the procedures for investigations in Paragraph 31.7(a), the United States, on behalf the Response Action Agencies, may not seek to compel action by Defendants, MDOT, and/or COE, as the case may be, pursuant to that reopener for PCB contamination in the Dredge Area until two years after the Dredging Completion Notice is issued in accordance with Paragraph 8.4, or at any time recover from Defendants, MDOT, and/or COE, as the case may be, any Response Costs incurred during such period with respect to the Dredge Area.

31.9 Reservation for Facility Investigations. Except as expressly provided in this Paragraph 31.9, the United States, on behalf of the Response Action Agencies, reserves, and this Consent Judgment is without prejudice

to, all rights and authorities to order or otherwise require any Defendant, MDOT, and/or COE, as the case may be, to conduct investigations at any Facility (including developing studies and preparing reports) regarding the past, present and future disposal, release or threat of release of Hazardous Substances at, on or within or from a Facility for which it may be liable. The United States, on behalf of the Response Action Agencies, also reserves, and this Consent Judgment is without prejudice to, all rights and authorities to require any Defendant, MDOT, and/or COE, as the case may be, to extend any investigation referred to in the preceding sentence beyond the boundaries of that Facility, into the Covenant Area; provided, however, that in any case where an investigation initiated at a Facility extends into the Covenant Area, then, notwithstanding any other provision of this Consent Judgment, the Response Action Agencies' authorities to require any Defendant, MDOT, or COE, as the case may be, to investigate PCBs in Sediment in that portion of the Covenant Area are limited as follows:

(a) Any order directing a Defendant, MDOT, and/or COE, as the case may be, to conduct an investigation at, on or within a Facility may include a requirement to conduct an initial phase of PCB Sediment investigation in the Covenant Area, in accordance with the issuing Response Action Agency's authorities or orders relating to that Facility. Such investigation shall be reasonable in nature and geographic scope.

(b) After the issuing Response Action Agency's review of the information developed from the initial phase of the PCB Sediment investigation, and considering any other relevant information, the Response Action Agency reserves the right to issue an order to any Defendant, COE, or MDOT, as the case may be, in accordance with the Response Action Agency's authorities or orders relating to that Facility, to perform within the Covenant Area subsequent PCB Sediment investigation(s) or phase(s) of investigation relating to disposal, releases, or threat of releases of PCBs at, on or within or from that Facility; provided, however, that a Defendant, MDOT or COE may not be required to carry out such subsequent PCB Sediment investigation(s) if the Defendant, MDOT or COE demonstrates that the PCB contamination at issue: (i) is not reasonably related to a release from that Facility; or (ii) is de minimis in relation to the PCB Covenant Level.

Any such investigation(s) shall be reasonable in nature and geographic scope.

31.10 Response Action Agency Reservation of Rights. The covenants in Paragraphs 31.2 and 31.3, do not pertain to any matters other than those expressly specified respectively in Paragraphs 31.2 and 31.3 as Response Action Agency Covered Matters as to Defendants and MDOT and COE-Response Action Agency Covered Matters as to COE. The United States, on behalf of the Response Action Agencies, reserves, and this Consent Judgment is without prejudice to, all rights of the Response Action Agencies against Defendants, MDOT, and COE with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Defendants and/or MDOT, as the case may be, to meet an applicable requirement of this Consent Judgment;

(b) liability arising from the past, present, or future disposal, release, or threat of release of a Hazardous Substance other than PCBs except for (i) with respect to Defendants and MDOT, Hazardous Substances at, on, within or from the CDF; and (ii) with respect to COE, Hazardous Substances at, on, within or from the CDF after the period referred to in Paragraph 34.1;

(c) liability arising from the past, present, or future disposal, release, or threat of release of PCBs, including PCB-contaminated Sediment, at, on or within or from the Facilities or facilities (but not including the CDF), to the extent such disposal, release or threat of release is outside of the Covenant Area;

(d) liability arising from a Defendant's, MDOT's or COE's respective future disposal, release or threat of release of Hazardous Substances, including PCBs, from a Facility into the Covenant Area; provided, however, that the reservation in this Paragraph 31.10(d) shall not apply to liability arising from PCB-contaminated Sediment within the Covenant Area to the extent that a Defendant, MDOT or COE demonstrates that such disposal, release or threat of release arises solely from condition(s)

existing at, on or within any Facility prior to the entry of this Consent Judgment;

(e) liability arising from a Defendant's, MDOT's or COE's future disposal, release or threatened release of Hazardous Substances, including PCBs, from a facility (but not including the CDF), into the Covenant Area; provided, however, that such a facility shall not extend into the Covenant Area waterward beyond the OHWM more than the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the facility and in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the facility where the Response Action is necessary.

(f) liability arising from a Defendant's, MDOT's or COE's future disposal, release or threatened release from a vessel or off-shore structure or equipment (not including the CDF) into the Covenant Area of Hazardous Substances, including PCBs, but excluding PCBs existing in the Sediment prior to entry of this Consent Judgment.

(g) liability arising from the past, present, or future disposal, release, or threat of release of Hazardous Substances, including PCBs, taken from the CDF to a facility outside the Covenant Area or to another confined disposal facility within the Covenant Area;

(h) with respect to GM, liability pursuant to EPA Administrative Order No. V-W-003-95, dated June 2, 1995, for the GM Foundries and the former GM Chevy Parts Plant Facilities, under the authority of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), which requires an investigation to characterize the nature and extent of releases or potential releases of hazardous waste, including hazardous constituents, if any, from those Facilities;

(i) criminal liability;

(j) liability for any required Response Actions or other cleanup or regulatory action, or any related wetland restoration work

required pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, at, on or within any of the Facilities, or at any properties (but not including the CDF) affected by releases or threatened releases of Hazardous Substances from the Facilities, excluding liability for any such actions in the Covenant Area concerning PCBs; provided, however, that any such actions for a property affected by releases from a Facility may extend into the Covenant Area waterward beyond the OHWM to the extent necessary to prevent or control continuing releases and migration of Hazardous Substances at or from the property, but in no event more than a distance of twenty (20) feet waterward from the OHWM at the point at the property where the Response Action is necessary.

(k) with respect to COE, liability for any required Response Actions or other cleanup or regulatory action, or any related wetland restoration work required pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, at, on or within the CDF during the period referred to in Paragraph 34.1; and

(l) with respect to COE, liability arising from a future disposal, release or threatened release of a Hazardous Substance, including PCBs, from the CDF into the Covenant Area during the period referred to in Paragraph 34.1.

31.11 Rebuttable Presumption. In determining whether contamination in the Covenant Area is from the CDF, it shall be rebuttably presumed that: (i) any contamination of Sediment at or within Eleven Hundred (1100) feet of the perimeter of the CDF is from the CDF; and (ii) any contamination of Sediment more than Eleven Hundred (1100) feet from the perimeter of the CDF is not from the CDF. Any Party who wishes to rebut the foregoing presumption, in whole or in part, in any action or proceeding, shall do so by initiation of dispute resolution under Section XXI or other available legal procedure.

31.12 Response Action Agency Discretion and Authority. Notwithstanding any other provision of this Consent Judgment, the Response Action Agencies retain their discretion and authorities to: (a) assess

risks to human health or the environment related to the past, present or future disposal, release or threat of release of PCBs outside of the Covenant Area, including potential risks within the Covenant Area from such PCBs in accordance with applicable rules and guidance; (b) evaluate the risk at, on or within or from a Facility, the CDF, or any other facility, or within an Area of the Exceedance, and to select an appropriate Response Action or permit requirement at, on or within a Facility, the CDF, or any other facility without regard to the PCB Covenant Level; and (c) select a cleanup level other than the PCB Covenant Level at, on or within any Facility, the CDF, any other facility, or the Covenant Area. Nothing in this Paragraph 31.12 shall affect the applicability or the enforceability of any other provision of this Consent Judgment, including the rights and obligations of any Party provided elsewhere in this Consent Judgment, including the covenants granted in this Consent Judgment.

31.13 Retention of Authority. Notwithstanding any other provision of this Consent Judgment, the United States retains, on behalf of the Response Action Agencies, all authority and reserves all rights to take any and all response actions authorized by law. Nothing in this Paragraph 31.13 shall affect the covenants in this Consent Judgment.

XXXII. CONTRIBUTION PROTECTION AND RESERVATIONS OF RIGHTS

32.1 Matters Addressed. Pursuant to Section 20129 of NREPA, M.C.L. § 324.20129, Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and to the extent provided by other applicable law, Defendants, MDOT, and the United States on behalf of COE shall not be liable for claims for contribution and shall be entitled to contribution protection regarding Matters Addressed. For such purposes, "Matters Addressed" shall mean:

(a) with respect to the Defendants and MDOT: liability to the United States, on behalf of the Federal Trustees and COE, for "Covered Matters" as described in Paragraph 24.1; liability to the United States, on behalf of the Response Action Agencies, for "Response Action Agency Covered Matters" as described in Paragraph 31.2; liability to the State for "Additional Covered Matters" as described in Paragraph 30.2; and liability

to the State for "State Covered Matters" as described in Paragraph 25.1; in all cases including claims by third parties in respect of all such matters.

(b) with respect to the United States, on behalf of COE: liability to the United States, on behalf of the Federal Trustees, for "COE Covered Matters" as described in Paragraph 24.2; liability to the United States, on behalf of the Response Action Agencies, for "COE-Response Action Agencies Covered Matters" as described in Paragraph 31.3; and liability to the State for COE-State Covered Matters as described in Paragraph 27.1; in all cases including claims by third parties in respect of all such matters.

32.2 Reservation of Rights. Matters Addressed do not include those Response Costs, Response Actions or Natural Resource Damages as to which the United States or the State has reserved its rights under this Consent Judgment (except for claims for failure to comply with this Consent Decree); provided, however, that as to a particular Defendant, MDOT or COE, Matters Addressed do not include those Response Costs, Response Actions or Natural Resource Damages as to which the United States or the State has reserved its rights in the reopeners under Paragraphs 24.8, 24.9, 25.7, 25.8, 27.3, 31.6, and 31.7, only in the event that the United States and/or the State assert rights against such Defendant(s), MDOT, and/or COE coming within the scope of such reopeners.

32.3 Contribution Protection Regarding Claims Asserted by a Governmental Entity. With respect to matters for which the covenants provided by the State and the United States are not co-extensive, contribution protection associated with a covenant given by one of these governmental entities shall not serve to protect a Party from contribution claims by a third party concerning matters arising from a claim, judicial or otherwise, asserted by the other governmental entity against such third party and falling outside the covenants provided by such other governmental entity.

32.4 Contribution Protection Regarding Claims That Are Not Asserted by a Governmental Entity. Except as provided in the last sentence of this Paragraph 32.4, with respect to a claim for contribution asserted

by a third party wholly independent of a claim, judicial or otherwise, asserted by a governmental entity against such third party, Defendants, MDOT, and/or COE shall have protection from such a claim to the extent the claim concerns PCBs and falls within the covenant of any Plaintiff or COE. With respect to the CDF, contribution protection described in this Section XXXII shall include all Hazardous Substances.

32.5 Claim Subordination. In any action by Defendants or MDOT for contribution from any person not a Party, Defendants' cause of action shall be subordinate to the rights of the State or the United States, as the case may be, to the extent provided for in Section 20129(9) of NREPA, M.C.L. § 324.20129(9), and Section 113(f)(3)(c) of CERCLA, 42 U.S.C. § 9613(f)(3)(c).

32.6 Notice of Contribution Suits. Defendants and MDOT agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Judgment they shall notify the United States, the State, and the Tribal Trustee in writing no later than sixty (60) days prior to the initiation of such suit or claim. Plaintiffs agree that, with respect to any suit or claim for Response Actions, Response Costs or Natural Resource Damages with respect to the Assessment Area that they initiate, they shall notify Defendants and MDOT promptly after the initiation of such suit or claim.

32.7 Additional Notice. Defendants and MDOT also agree that, with respect to any suit or claim brought against them for contribution for Matters Addressed, they shall notify the United States, the State, and the Tribal Trustee in writing within ten (10) days after service of the complaint, within ten (10) days after service or receipt of any motion for summary judgment, and within ten (10) days after receipt of any order from a court setting a case for trial.

32.8 Preservation of Claims Against Third Parties. Defendants, MDOT and COE do not waive and expressly reserve any claims, rights, or causes of action they may have, including, but not limited to, any claims for contribution, against any person not a Party, and expressly reserve the

right to assert any and all defenses they may have against any claim or cause of action asserted against them by any person not a Party.

32.9 (a) Waiver of Claims by Defendants, MDOT and COE. In any subsequent administrative or judicial proceeding initiated by the United States, the Tribal Trustee, or the State for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Assessment Area, Covenant Area, any Facility or any facility, Defendants, MDOT and COE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the Tribal Trustee, or the State in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph 32.7(a) shall affect the enforceability of the covenants in Sections XXIV, XXV, XXVII, XXVIII, XXIX, XXX and XXXI.

(b) Waiver of Certain Defenses By the United States, the Tribal Trustee and the State. In any subsequent administrative or judicial proceeding initiated by Defendants, MDOT or COE pursuant to any reservation or reopener in their favor under this Consent Judgment for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Assessment Area, Covenant Area, any Facility or any facility, the United States, the Tribal Trustee and the State shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by Defendants in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph 32.7(b) shall affect the enforceability of the covenants in Sections XXIV, XXV, XXVII, XXVIII, XXIX, XXX and XXXI.

XXXIII. CERTIFICATION OF COMPLETION

33.1 Submission. When Defendants determine that they have completed all the Work (except for the Work described in Paragraphs 7.9(c)

and 7.11) and performed all obligations required by this Consent Judgment to be performed by them, they shall submit to the Trustees a notification of completion of the Work and a final report on the completion of the Work ("Notification of Completion"). The final report shall summarize all activities or obligations performed by Defendants under this Consent Judgment. The final report shall include or reference any supporting documentation.

33.2 Review. Upon receipt of the Notification of Completion, the Trustees shall review the Notification of Completion, any supporting documentation, and the Work. The Trustees shall determine whether Defendants have satisfactorily completed all requirements of this Consent Judgment, including, but not limited to, completing the Work, complying with all terms and conditions of this Consent Judgment, and paying any and all amounts owed pursuant to this Consent Judgment, including any stipulated penalties payable hereunder. If the Trustees determine that all requirements have been satisfied, the Trustees shall so notify Defendants and issue a certificate of completion of the Work ("Certificate of Completion") to them. In any case, the Trustees shall notify Defendants of their decision within a reasonable time after receipt of the Notification of Completion. The Certificate of Completion shall not be withheld or delayed unreasonably.

33.3 Report Certification. The final report shall contain one of the following statements, signed by a responsible official of each Defendant or Defendants' Principal Project Coordinator, as applicable:

For a responsible official of a Defendant: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

For a Principal Project Coordinator: "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

33.4 Additional Activities. If the Trustees determine that the Work required or any portion thereof has not been completed in accordance with this Consent Judgment, the Trustees shall notify Defendants in writing of the activities that must be undertaken by Defendants pursuant to this Consent Judgment to complete such Work. The Trustees shall set forth in the notice a reasonable schedule for performance of such activities consistent with this Consent Judgment or require Defendants to submit a schedule to the Trustees for approval under Section XVI. Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established under this Paragraph 33.4, subject to their right to invoke the dispute resolution procedures set forth in Section XXI and shall thereafter reapply for a Certificate of Completion under this Section XXXIII.

XXXIV. FUTURE RESPONSIBILITY FOR THE CDF

34.1 COE Responsibility for Response Actions Relating to the CDF. COE and USEPA have entered into the CDF Agreement concerning COE's responsibility for Response Actions concerning the CDF during the period prior to COE providing notice to the other Parties that COE has completed use of the CDF for disposal purposes pursuant to 33 U.S.C. § 1293a. Nothing in the CDF Agreement shall: (a) be enforceable by any person except the United States in accordance with the terms of the CDF Agreement; or (b) affect the rights and obligations of COE and the State inter se arising under the May 1975 Agreement or under this Section XXXIV or (c) affect any statutory right, duty or obligation of any Party.

34.2 State Responsibility for Response Actions and Response Costs Relating to the CDF. For a period of thirty (30) years after completion of use of the CDF for disposal purposes pursuant to 33 U.S.C.

§ 1293a, and notification of such completion of use by COE to the other Parties in accordance with Section XXXV, the State will be responsible under this Section 34 for implementing Response Actions at, on or within, or relating to releases or threatened releases of a Hazardous Substance from, the CDF, and for reimbursing Response Costs incurred in connection with releases or threatened releases of a Hazardous Substance at, on, within or from the CDF, in the event that a Response Action Agency or the Federal Trustees determine, consistent with its/their authorities, that:

(a) Response Actions, including further sampling and/or investigations, are appropriate to assess, abate, prevent, minimize, stabilize, mitigate or eliminate a release or threatened release of a Hazardous Substance at, on or within, or relating to releases or threatened releases of a Hazardous Substance, from the CDF; or

(b) there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a Hazardous Substance at, on, within, or relating to releases or threatened releases of a Hazardous Substance from, the CDF, and Response Actions, including further sampling and/or investigations, are necessary to abate such danger or threat; or

(c) any other Response Actions are or may be necessary at, on, within, or relating to releases or threatened releases of a Hazardous Substance from, the CDF.

34.3 Admission in Certain Future Actions. In any future action brought by the United States, on behalf of the Response Action Agencies or the Federal Trustees or by the Tribal Trustee, during the period specified in Paragraph 34.2 or thereafter to compel Response Actions at, on, within, or relating to releases or threatened releases of a Hazardous Substance from, the CDF, or to seek reimbursement for Response Costs incurred in connection with releases or threatened releases of a Hazardous Substance at, on, within or from the CDF, or to recover Natural Resource Damages at, on, or within, or relating to releases from, the CDF, the State admits that it is the owner and operator of the CDF within the meaning of CERCLA, the

CWA, RCRA and NREPA. Further, in any such action, the State agrees not to assert a defense that the release or threatened release that gave rise to such Response Costs, Response Actions or Natural Resource Damages was caused by the acts or omissions of a third party, except for an act of war or sabotage. This admission and agreement are not valid as to any other person or Party or in any other forum or action or for any other purpose than that described in this Paragraph 34.3. This admission and agreement do not limit or otherwise alter the responsibilities of the State under this Section XXXIV. Nothing in this Paragraph 34.3 modifies or affects in any way any covenants by the United States in this Consent Judgment.

34.4 Rebuttable Presumption. In determining whether a release or threatened release of a Hazardous Substance is "from the CDF," for purposes of Section XXXIV, it shall be rebuttably presumed that: (i) any contamination of Sediment at or within Eleven Hundred (1100) feet of the perimeter of the CDF is from the CDF; and (ii) any contamination of Sediment more than Eleven Hundred (1100) feet from the perimeter of the CDF is not from the CDF.

(a) During the period referred to in Paragraph 34.2, any Party who wishes to rebut the foregoing presumption, in whole or in part, shall do so by initiation of dispute resolution under Section XXI.

(b) After the period referred to in Paragraph 34.2, any Party who wishes to rebut the foregoing presumption, in whole or in part, in any action or proceeding, shall do so by initiation of dispute resolution under Section XXI or other available legal procedure.

34.5 Implementation Procedures for Response Actions. During the period specified in Paragraph 34.2, the Response Action Agencies, the Federal Trustees and the State shall comply with the following provisions in implementing any Response Actions under Paragraph 34.2:

(a) After consultation and coordination with COE, the Response Action Agency or the Federal Trustees, as applicable, shall notify the State in writing of any determination referred to in Paragraph 34.2, and shall

provide a copy of such notice to the Trustees, any other Response Action Agencies, COE and Defendants.

(b) Within thirty (30) days after receipt of notice from the Response Action Agency or the Federal Trustees under Paragraph 34.5(a), or such longer time as the Response Action Agency or the Federal Trustees, as applicable, may provide, the State shall submit to the Response Action Agency or the Federal Trustees, as applicable, for review and approval a work plan which shall set forth plans and schedules for implementing all Response Actions referred to in the notice. The State shall simultaneously submit a copy of such work plan to any other Response Action Agencies, the Trustees, COE and Defendants. In reviewing the work plan, the Response Action Agency or the Federal Trustees, as applicable, shall consult and coordinate with the Trustees, any other Response Action Agencies, and COE.

(c) Upon approval of the work plan by the Response Action Agency or the Federal Trustees, as applicable, in accordance with Section XVI (Submissions and Approvals), the State shall implement the approved work plan for Response Actions in accordance with the schedules contained therein.

(d) If the State fails to comply with an obligation in this Paragraph 34.5 that is not being, or has not been, disputed under Paragraph 34.7, the Response Action Agency or the Federal Trustees, as applicable, will send the State a notice, with a copy to Defendants, that the State is in default and the reasons therefor, and the State will be given a period reasonable under the circumstances to cure the default.

34.6 Implementation Procedures for Response Costs. During the period specified in Paragraph 34.2, the Response Action Agencies and the Federal Trustees shall comply with the following provisions for reimbursement of Response Costs under Paragraph 34.2:

(a) The United States will send the State a bill requiring payment that includes a summary of the Response Costs incurred and an address and any relevant instructions for payment. The State shall make all payments

within sixty (60) days after the State's receipt of each bill requiring payment, except for any costs disputed in accordance with Paragraph 34.7(c). The State shall make all payments required by this Paragraph 34.6(a) in the form of a certified or cashier's check or checks. The State shall send copies of the check(s) to the Response Action Agency or Federal Trustees, as appropriate, to DOJ, and to any other entities specified in the payment instructions.

(b) In the event that the payments required by Paragraph 34.6(a) are not made within sixty (60) days after the State's receipt of the bill, the State shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill. Payment of Interest shall be in addition to such other remedies or sanctions available to the United States by virtue of the State's failure to make timely payments under this Paragraph 34.6. The State shall make all Interest payments required by this Paragraph 34.6 in the manner described in Paragraph 34.6(a) and any payment instructions accompanying the bill.

(c) If the State fails to comply with an obligation in this Paragraph 34.6 that is not being, or has not been, disputed under Paragraph 34.7, the Response Action Agency or the Federal Trustees, as applicable, will send the State a notice, with a copy to Defendants, that the State is in default and the reasons therefor, and the State will be given a period reasonable under the circumstances to cure the default.

34.7 Dispute Resolution. (a) The dispute resolution procedures of Section XXI, in conjunction with this Paragraph 34.7, shall be the exclusive mechanism to resolve disputes concerning the State's obligations under this Section XXXIV.

(b) The State may dispute determinations by the Response Action Agency or the Federal Trustees, as applicable, relating to the selection or adequacy of Response Actions to address releases or threatened releases of a Hazardous Substance at, on, within or from the CDF, including: (i) any determination in a notice issued under Paragraph 34.5(a); (ii) any determination concerning the adequacy or appropriateness of work plans

submitted by the State under Paragraph 35.5(b); or (iii) any issues concerning the performance of Response Actions by the State under this Section XXXIV, including, but not limited to, the assertion of Force Majeure under Section XX. The State may also invoke dispute resolution procedures to rebut the presumption made, in accordance with Paragraph 34.4, that a release or threatened release of a Hazardous Substance is from the CDF.

(c) The State may also contest payment of any Response Costs or Interest demanded under Paragraph 34.6 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP.

(i) Such objection shall be made in writing within sixty (60) days after receipt of the bill and must be sent to the Response Action Agency or Federal Trustees, as applicable, with a copy to DOJ and Defendants. Any such objection shall specifically identify the contested Response Costs and/or Interest and the basis for the objection. Receipt of the objection by the Response Action Agency or Federal Trustees, as applicable, shall commence the informal dispute resolution period under Paragraph 21.2.

(ii) In the event of an objection, the State shall, within the sixty (60) day period, pay all uncontested Response Costs and Interest to the United States in the manner, and with copies, described in Paragraph 34.6(a) and any payment instructions accompanying the bill.

(iii) If the United States prevails in the dispute, within sixty (60) days after the resolution of the dispute, the State shall pay the sums due (with Interest accrued from the date of the bill, in accordance with Paragraph 34.6(b)) to the United States in the manner, and with copies, described in Paragraph 34.6(a) and any payment instructions accompanying the bill.

(iv) If the State prevails concerning any aspect of the contested costs, within sixty (60) days after the resolution of the dispute, the State shall pay that portion of the costs, if any, (plus associated accrued Interest) for which the State did not prevail to the United States in the manner, and with copies, described in Paragraph 34.6(a) and any payment instructions accompanying the bill.

(d) Parties Bound. Except as provided in Paragraph 34.4, only the State may initiate dispute resolution concerning any obligation of the State under this Section XXXIV. However, once initiated, any potentially interested Party may participate in informal or judicial dispute resolution proceedings; provided, however, that, regardless of whether a Party, in fact, participates, it shall be bound by the outcome of any judicial dispute resolution process and shall not seek to relitigate issues that were resolved by the Court through the judicial dispute resolution process.

34.8 State Responsibility for Natural Resource Damages Associated with the CDF. During the period referred to in Paragraph 34.2, in any future action by the United States, on behalf of the Federal Trustees for Natural Resource Damages described in Paragraph 34.3, the United States, on behalf of the Federal Trustees, agrees to approach the State to obtain the requested relief in accordance with the procedures in this Paragraph 34.8:

(a) The United States shall notify the State in writing, with a copy to COE and Defendants, of the basis for its claim and, as applicable, of the extent of the Natural Resource Damages (including assessment costs, if any), and any actions the Federal Trustees deem necessary or appropriate to restore, replace, or acquire the equivalent of the injured resources. The Federal Trustees agree to coordinate with COE and the appropriate Response Action Agencies concerning any actions that the Federal Trustees deem necessary or appropriate at, on, within, or relating to releases or threatened releases from, the CDF prior to requesting the State to perform such actions.

(b) Within thirty (30) days after receipt of such notice, the State shall inform the United States, in writing with a copy to Defendants, whether it intends to enter into good faith negotiations for the performance of the requested relief and/or for reimbursement of damages, as applicable. If the State agrees to such good faith negotiations, the Parties shall enter into a ninety (90) day negotiation period, which period may be extended by agreement of such Parties.

(c) If the State does not agree to such negotiations within the thirty (30) day period referred to in Paragraph 34.8(b), or if the Parties involved in such negotiations are unable to reach an agreement after the negotiation period has ended, the United States, on behalf of the Federal Trustees, may take any action it deems necessary against the State or any other person except the Defendants, COE or MDOT.

34.9 Intent of the Parties Regarding the CDF. It is the intent of the United States and the State that after the period referred to in Paragraph 34.1, the State will be responsible for the CDF. During the period referred to in Paragraph 34.2, the State is obligated to be responsible for the CDF as set forth in Paragraphs 34.2, 34.5, 34.6 and 34.8. The State and United States intend that the State shall comply with these provisions, and that if it does not, the United States may enforce these provisions against the State. After the period specified in Paragraph 34.2, the State's responsibilities under Paragraphs 34.2, 34.5, 34.6, and 34.8, shall terminate. Thereafter, it is the intent of the United States and the State that the State remain responsible for the CDF, but that the United States shall seek Response Actions, Response Costs, and/or Natural Resource Damages from the State through authorities provided by applicable law, and not pursuant to this Section XXXIV, except as to the State's admission and agreement to waive certain defenses as provided in Paragraph 34.3. The Parties have agreed that Defendants have no responsibility for Response Actions or Response Costs related to releases or threatened releases of Hazardous Substances at, on, within or from the CDF, except for releases or threatened releases of any Hazardous Substances at a location outside of the Assessment Area caused by the disposal of Sediment removed by the State or the United States from the CDF to a location outside of the

Assessment Area as a result of a catastrophic failure of the CDF occurring after the entry of this Consent Judgment.

34.10 COE and State Relationship Unaffected. Nothing in this Section XXXIV shall alter or affect: (a) the authority, duties, obligations, rights, and responsibilities of COE and the State regarding the CDF under existing law and agreements; or (b) the rights, duties, abilities, or obligations of the State and COE to petition, to bring an action, or otherwise seek redress for acts or omissions of COE or the State, respectively, with respect to the CDF or any other matter.

34.11 Rights Against Third Parties Unaffected. Nothing in this Section XXXIV shall alter or affect the authority of the United States or any other Party to pursue any other person not a Party for Response Actions, Response Costs, Natural Resource Damages or any other relief associated with the Assessment Area, including the CDF, or any area outside of the Assessment Area.

34.12 Constitutional Prohibitions. Nothing in this Section XXXIV or any other section of the Consent Judgment is intended to require, or shall be interpreted as requiring, an expenditure of monies from the State treasury without an appropriation of the Michigan Legislature in violation of Article IX, § 17, of the 1963 Michigan Constitution or an extension of the credit of the State in violation of Article IX, § 18, of the 1963 Michigan Constitution.

34.13 No Agreement to Indemnify by State. Subject to Section XXVII, the Parties agree that this Section XXXIV is not an agreement by the State to indemnify or hold harmless Defendants or any other Party.

34.14 No Enforcement Against State. This Section XXXIV is not enforceable against the State by Defendants, MDOT, COE or by any one else other than a Response Action Agency, the Federal Trustees or the Tribal Trustee.

XXXV. NOTICES

In addition to any other notice provisions in this Consent Judgment, whenever, under the terms of this Consent Judgment, notice is required to be or may be given or a report, sampling data, analysis or other document is required to or may be forwarded by one Party to one or more of the other Parties, such notice or other document shall be directed to the following individuals at the specified address or to or at such other individual or address as may subsequently be designated by them under this Section XXXV. All notices and submissions shall be considered effective upon receipt, unless otherwise provided under this Consent Judgment. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Judgment with respect to any of the Parties.

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~~Washington, D.C. 20005~~

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XXXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36.1 Comment Process. This Consent Judgment shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. In addition, after lodging of the Consent Judgment, Plaintiffs will provide a notice and comment period for several other permits or other approvals relating to the dredging to be performed under Section VIII. The United States, the State and the Tribal Trustee reserve the right to withdraw or withhold their consent if the comments regarding this Consent Judgment or such permits or other approvals disclose facts or considerations which indicate that this Consent Judgment is inappropriate, improper, or inadequate or that granting the relevant permits or approvals is inappropriate or improper. Defendants consent to the entry of this Consent Judgment without further notice.

36.2 Failure to Approve Consent Judgment. If for any reason the Court should decline to approve this Consent Judgment in the form and substance presented, the agreement reflected herein is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between or among the Parties or otherwise.

XXXVII. SEPARATE DOCUMENTS

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

XXXVIII. EFFECTIVE DATE AND TERMINATION OF AGREEMENT IN PRINCIPLE

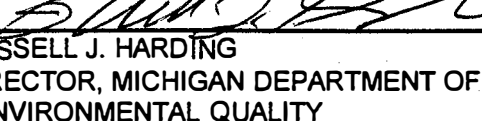
38.1 Effective Date. This Consent Judgment shall be effective upon the date of its entry by this Court. Except as otherwise provided in this Consent Judgment, all times for performance of activities under this Consent Judgment shall be calculated from that date.

38.2 Termination of Agreement in Principle. Except as provided in Paragraph 7.6 with respect to costs incurred and to be incurred and credit therefor, upon the entry of this Consent Judgment, the Agreement in Principle shall terminate and be of no further force or effect. If the United States, the State or the Tribal Trustee withhold their consent to the Consent Judgment pursuant to Paragraph 36.1 or the Court declines to approve the Consent Judgment pursuant to Paragraph 36.2, the Agreement in Principle shall remain in effect as an agreement among the signatory parties thereto.

Kelley v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
United States v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
Saginaw Chippewa Tribe v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
CONSENT JUDGMENT SIGNATURE PAGE


APPROVED AS TO FORM AND SUBSTANCE:

FOR THE STATE OF MICHIGAN:

By: 
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DIRECTOR, MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

FRANK J. KELLEY
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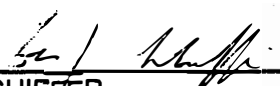
FOR THE MICHIGAN DEPARTMENT OF TRANSPORTATION,

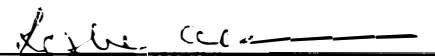
By: James R. Desana
JAMES DESANA
DIRECTOR, MICHIGAN DEPARTMENT OF TRANSPORTATION

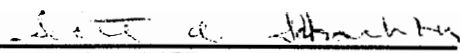
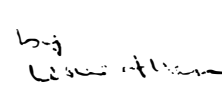
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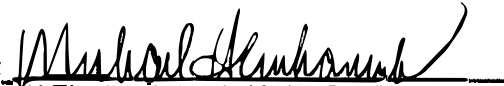
FOR THE UNITED STATES:

By:  11/19/98
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By: 
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Kelley v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
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CONSENT JUDGMENT SIGNATURE PAGE

**FOR THE SAGINAW CHIPPEWA INDIAN
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Kelley v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
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Kelley v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
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CONSENT JUDGMENT SIGNATURE PAGE

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Kelley v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
United States v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
Saginaw Chippewa Tribe, et al v. General Motors Corporation, et al, Civil Action No. _____ (E.D. Mich.)
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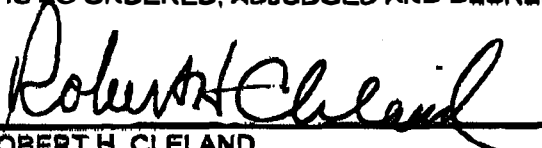
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IT IS SO ORDERED, ADJUDGED AND DECREED THIS 4 day of June, 1999.


ROBERT H. CLELAND
United States District Court Judge