



Michigan Department of Environmental Quality
Environmental Response Division

THE ATTACHED MODEL DOCUMENT ENTITLED:

**AGREEMENT FOR A LIMITED [RESIDENTIAL,
COMMERCIAL, RECREATIONAL, INDUSTRIAL, OTHER OR
SITE-SPECIFIC, CRITERIA-BASED] REMEDIAL ACTION**

IS A DRAFT DOCUMENT, WHICH IS SUBJECT TO REVISION. IT IS INTENDED TO FACILITATE THE DEVELOPMENT AND IMPLEMENTATION OF SUCH CONSENSUAL AGREEMENTS BY PROVIDING TO THE PUBLIC PRELIMINARY GUIDANCE AS TO THE CONTENT, FORMAT AND TERMS OF SUCH AGREEMENTS. IT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, BY ANY OTHER PARTY. PLEASE CONTACT THE COMPLIANCE AND ENFORCEMENT SECTION, ENVIRONMENTAL RESPONSE DIVISION, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, AT 517-373-7818 TO RECEIVE THE MOST RECENT DRAFT OF THIS DOCUMENT.

The Michigan Department of Environmental Quality (MDEQ) will not discriminate against any individual or group on the basis of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. Questions or concerns should be directed to the MDEQ Office of Personnel Services, P.O. Box 30473, Lansing, MI 48909.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

_____,
_____ County, Michigan

MDEQ Reference No.:
LANDUSE-ERD-[YR]-[Number]

DO NOT CITE OR QUOTE

DRAFT 3/1/99

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AGREEMENT FOR A LIMITED [RESIDENTIAL, COMMERCIAL, RECREATIONAL, INDUSTRIAL, OTHER OR SITE-SPECIFIC, CRITERIA-BASED] REMEDIAL ACTION

This Agreement for a Limited [**Residential, Commercial, Recreational, Industrial, Other or Site-Specific, Criteria Based**] Remedial Action (hereinafter referred to as the "Agreement") is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ), Environmental Response Division and _____ [**legal name of person proposing the cleanup plan (PPP)**] for the purpose of specifying the agreed upon conditions for a Limited [**Residential, Commercial, Recreational, Industrial, Other or Site-Specific, Criteria-Based**] based Remedial Action Plan (RAP) approval at the _____ [**location of environmental contamination**]. By execution of this Agreement, the MDEQ and _____ [**legal name of PPP**] stipulate and agree to be bound by all of the recitals, terms, and conditions herein.

RECITALS

Whereas, any remedial action undertaken pursuant to Section 20120b(3) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act , 1994 PA 451, as amended (NREPA), MCL 324.20101 et seq; or the Part 201 Rules, 1990 AACSR 299.5101 et seq, which may include land use or resource use restrictions, monitoring, operation and maintenance, installation of permanent markers, and continued financial responsibility, if determined by the MDEQ to be necessary, shall be stipulated in a legally enforceable agreement with the MDEQ; and

Whereas, this Agreement pertains to the Facility located in [City], County of [County], State of Michigan, described in Attachment A [**legal description of property comprising Facility**] and commonly known as [**Site name**]; and

Whereas, the RAP for a Limited [**Residential, Commercial, Recreational, Industrial, Other or Site-Specific, Criteria-Based**] Remedial Action submitted by _____ on _____ [**date**], to the MDEQ, including its attachments and any MDEQ-approved modifications, complies with applicable requirements under Part 201 of the NREPA and the Part 201 administrative rules and will be considered approved through the execution of this Agreement; and

Whereas, this Agreement satisfies the requirements of Section 20120b(3) of the NREPA, as amended in June 1995.

Based on the foregoing Recitals and in consideration of the MDEQ's approval of the RAP for a Limited [**Residential, Commercial, Recreational, Industrial, Other or Site-Specific, Criteria-Based**] Remedial Action, _____ [**legal name of PPP**] and the MDEQ hereby stipulate and agree as follows:

I. PARTIES BOUND

1.1 This Agreement shall apply to and be binding upon MDEQ and _____ and its successors and assigns. No change in ownership or corporate status of _____ shall in any way alter _____'s responsibilities under this Agreement. Any agreement assigning or transferring the rights, duties and benefits of this Agreement shall provide that the terms and conditions of this Agreement are binding upon the assignee or transferee. _____ shall provide the MDEQ with written notice of the intent to transfer ownership of part or all of its ownership interest in the property at [**Site Name**]. Such transfer or assignment shall not occur without adequate and complete provision for the continued operation and maintenance of the remedial action and the prevention of exposures as described in the Restrictive Covenant.

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

II. DEFINITIONS

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

2.2 The term "MDEQ" means the Michigan Department of Environmental Quality and any authorized representatives acting on its behalf.

2.3 The term "Operation and Maintenance Plan" or "O&M Plan" means the Operation, Maintenance and Long-Term Monitoring Plan (Attachment B) and which constitutes a portion of the RAP.

2.4 The term "Remedial Action Plan," "Limited Land Use or Site-Specific, Criteria-Based Remedial Action Plan" or "RAP" means the Remedial Action Plan for the _____ [name of site] prepared by _____ [name of consultant] and submitted to MDEQ on [date], including any MDEQ-approved modifications to the RAP.

2.5 The term "State" means the State of Michigan, any of its agencies and any authorized representatives acting on its behalf.

III. FINANCIAL ASSURANCE MECHANISM

[The following paragraphs in this section (III) are applicable for a FAM in the form of an escrow. Contact C&E for alternate language for other types of FAMs.]

3.1 _____ shall establish and fund an Environmental Escrow to secure the performance of monitoring, operation and maintenance, oversight, and other costs necessary to assure the effectiveness and integrity of the remedial action [**INSERT: in perpetuity, OR, if appropriate, any other length of time**], as set forth in the RAP.

3.2 _____ has secured an Environmental Escrow in the amount of \$ _____ (Attachment C). This amount reflects an estimate of the present value of the costs for monitoring, operation and maintenance, oversight, and other costs necessary to assure the effectiveness and integrity of the remedial action for the initial [**INSERT: thirty (30) year period for a FAM that will continue in perpetuity, OR, if appropriate, any other length of time**] that this Agreement is in effect.

3.3 Sixty (60) days prior to the initial five (5)-year anniversary date and every succeeding five-year anniversary date of this Agreement, _____ shall submit to the MDEQ for review and approval the following: (a) an updated O&M Plan; (b) if necessary, a plan for other response activities needed to assure the effectiveness and integrity of the remedial action as set forth in the RAP; and (c) an updated estimate of the present value costs for implementing the O&M Plan and other response activities for the next [**INSERT: thirty (30)-**

year period for a FAM that will continue in perpetuity, OR, if appropriate, any other length of time]. The updated present value cost estimate shall include documentation of the costs for monitoring, operation and maintenance, oversight, and other response activities performed at the Facility for the previous five (5)-year period and shall be signed by an officer representing _____, who shall certify the data is true and correct.

3.4 Within sixty (60) days of receipt by the MDEQ of the items listed in Paragraph 3.3 (a)-(c), the MDEQ shall determine whether these submittals are adequate and appropriate and shall determine whether the existing Environmental Escrow provides sufficient financial assurance for the continued performance of the updated O&M Plan and other response activities for the next **[INSERT: thirty (30) year period for a FAM that will continue in perpetuity, OR , if appropriate any other length of time]**. If the MDEQ determines that the existing Environmental Escrow does not provide adequate funds, _____ shall capitalize the Environmental Escrow with additional funds and provide a revised environmental escrow agreement (EEA) to that effect to the MDEQ within sixty (60) days of receipt of the MDEQ notification that these additional funds are required. In the alternative, _____, with the approval of the MDEQ, may choose to establish an alternate financial assurance mechanism and the parties shall modify this Section of this Agreement as set forth in Section XI (Modifications). Modification of this Section shall include, but is not limited to, the type of FAM and the duration and amount of funds to be secured by the alternate FAM.

3.5 _____ may submit a written request to reduce the amount of the Environmental Escrow along with the updated present value cost estimate submitted in accordance with Paragraphs 3.3 and 3.4. If the MDEQ determines, through the review and approval process set forth in Paragraph 3.4, that the Environmental Escrow provides for funds in excess of those necessary to provide sufficient financial assurance for the continued implementation of activities specified in the O&M Plan for the next **[INSERT: thirty (30) year period for a FAM that will continue in perpetuity, OR, if appropriate, any other length of time]**, _____ may reduce the amount of funds in the Environmental Escrow in an amount acceptable to the MDEQ.

3.6 In the event that _____ fails at any time to adequately implement the RAP, including the O&M Plan, or other additional response activities that are necessary and appropriate to assure the effectiveness and integrity of the remedial action (as referenced in Paragraphs 3.3 and 3.5), the MDEQ, at its discretion, may choose to implement those response activities that _____ has failed to perform. Within thirty (30) days of receiving a written detailed compilation of costs incurred by the State to implement those response activities, _____ shall reimburse those costs to the State. If approved in writing by the MDEQ, such reimbursement may be made from the Environmental Escrow in accordance with the procedure established in the EEA.

3.7 If, at any time, _____ does not comply with the requirements of Section 20120b(3)(e) of the NREPA, the MDEQ's approval of the FAM and the RAP becomes void from the time of the violation, unless the violation is corrected to the satisfaction of the MDEQ. _____ may be subject to the remedies available to the MDEQ as provided for in this Agreement for the violation.

IV. IMPLEMENTATION

4.1 _____ agrees to implement and comply with the terms and conditions of the RAP. As approved, each component of each work plan and its approved modifications shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement.

4.2 Within sixty (60) days of the first anniversary of this agreement and within sixty (60) days of each anniversary thereafter, _____ shall provide an annual report to the MDEQ project coordinator describing the implementation of the RAP, including, but not limited to, the operation and maintenance activities and any other response activities that have been undertaken by _____ at the Facility for the prior year. The report shall describe any modifications to the RAP that should be implemented to assure the continued effectiveness and integrity of the remedial action.

4.3 The MDEQ reserves the right to review all records, data and reports documenting the operation and maintenance activities that have been undertaken by _____.

4.4 Approval of the RAP shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the RAP or warrants that the RAP comports with law.

4.5 Within _____ days of obtaining MDEQ approval, _____ shall properly remove or plug all monitor wells that were installed as part of the response activity at or related to the Facility and that will not be used for long-term monitoring at the Facility. The proper well abandonment procedures described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) shall be used by _____ in plugging all wells.

4.6 _____ shall, upon completion of the response activities detailed in the RAP, including operation and maintenance and long-term monitoring, provide notice to and obtain approval from the MDEQ and implement the proper removal or plugging of all remaining monitor wells at or related to the Facility. The proper well abandonment procedures described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) shall be used by _____ in plugging all wells.

4.7 If, based upon new information, the MDEQ determines that a modification to the work specified in the approved RAP is necessary to meet and maintain the performance standards described in Part 201 of the NREPA and its administrative rules, the MDEQ may require that such modification be incorporated into the RAP. Alternatively, if the necessary modifications are extensive, the MDEQ may require _____ to submit a proposed plan to the MDEQ for review and approval. However, such modifications may only be required pursuant to this Paragraph to the extent that those modifications are consistent with the scope of the

approved Limited _____ [**Residential, Commercial, Recreational, Industrial, Other or Site-Specific, Criteria-Based**] RAP.

4.8 The RAP may only be modified by written agreement between _____'s Project Coordinator and the MDEQ, ERD Division Chief or his or her representative.

V. RESTRICTIVE COVENANT

5.1 _____ shall record with the _____ [**County**] County Register of Deeds the attached Restrictive Covenant (Attachment D) [within 21 days of the Department's selection or approval of the RAP], or [within 21 days of the completion of construction of the containment or barrier] [**select the appropriate option based on the circumstances**]. The Restrictive Covenant shall comply with the requirements of Section 20120b(4) of Part 201 of the NREPA.

5.2 _____ shall provide a true copy of the recorded Restrictive Covenant to the MDEQ within ten (10) days after the document is recorded and returned to _____ by the _____ [**County**] County Register of Deeds. The copy provided to the MDEQ shall include the liber and page number.

VI. ACCESS TO PROPERTY AND RECORDS

6.1 Upon the Effective Date of this Agreement, the MDEQ and its authorized employees and representatives shall have an irrevocable right-of-access at all reasonable times to the Property for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of remedial action measures, and inspect records related to the RAP.

6.2 This Agreement does not restrict or limit any right that the MDEQ may have to enter the Property or other properties to which access is required for the protection of the public health, safety or the environment pursuant to specific statutory or regulatory authority. Consistent with the MDEQ's responsibilities under federal or state law, the MDEQ and its authorized representatives shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and commercial activities on the Property. "Best efforts" shall not require the MDEQ to incur any material cost increases in carrying out its responsibilities to protect the public health, safety or welfare or the environment.

VII. PAYMENT OF OVERSIGHT COSTS

_____ shall reimburse the MDEQ for all costs lawfully incurred by the State in overseeing implementation of the RAP, including oversight of the O & M Plan as set forth in Attachment B. Following each anniversary of the date of this Agreement, the MDEQ will provide _____ with a summary of all oversight costs incurred during the preceding year. _____ shall pay oversight costs lawfully incurred by the State within thirty (30) days of receipt of the oversight cost summary.

[If the FAM is an escrow, MDEQ may be able to bill the escrow for oversight costs.]

VIII. COVENANT NOT TO SUE THE STATE/INDEMNIFICATION

_____ hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies, the MDEQ or their authorized representatives, for any claims arising from or connected with the MDEQ's approval or _____'s implementation of the RAP, including the execution of this Agreement. _____ also agrees to indemnify the State of Michigan, its agencies, the MDEQ and their authorized representatives from any and all claims or costs of defending any and all claims brought by others based upon, arising from, or connected with the implementation of the RAP of the execution of this Agreement.

IX. REMEDIES FOR BREACH OF AGREEMENT

9.1 _____ and the MDEQ recognize and agree that this Agreement is a legally enforceable contract as required by Section 20120b(3) of Part 201 and may be enforced in a court of competent jurisdiction. For that purpose, _____ consents to the jurisdiction of the Ingham County Circuit Court in any action by the State to enforce this Agreement.

_____ also recognizes and understands that the MDEQ's remedies in the event _____ breaches the terms and conditions of this Agreement may include, but are not limited to, specific performance, issuance of a unilateral administrative order under Sections 20114(1)(h) or 20119 of the NREPA, MCL 324.20114(1)(h), 324.20119, reimbursement of State costs, or any other statutory or common law remedy subject to the rights or defenses available to _____ under applicable law.

9.2 This Agreement shall not be construed as discharging the liability of any person or entity.

9.3 Nothing in this Agreement shall affect the duties and obligations _____ may have with respect to permits or other governmental approvals or waive _____'s duties and obligations under other applicable federal or state laws.

9.4 If provisions for any of the following, determined by the MDEQ to be applicable for the Facility, lapse or are not complied with as provided in this Agreement or RAP, MDEQ's approval of the RAP is void from the time of the lapse or violation, unless the lapse or violation is corrected to the satisfaction of the MDEQ:

- (a) Land Use or Resource-Use Restrictions
- (b) Monitoring
- (c) Operation and Maintenance
- (d) Permanent Markers
- (e) Financial Assurance

[include only those provisions which the MDEQ has determined as necessary]

If _____ fails to correct the lapse or violation within thirty (30) days of written notification of such lapse, the MDEQ, at its option, may perform the response activities that _____ has failed to perform. _____ shall reimburse the State for costs it incurs to perform those response activities within thirty (30) days of _____'s receipt of a cost summary report or the State shall be reimbursed from the Financial Assurance Mechanism for such work.

9.5 In the event the MDEQ's approval of the RAP becomes void, all other terms of this Agreement shall remain in full force and effect.

X. NOTICES

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

As to MDEQ:

[Name]
Environmental Response Division
Telephone: () _____

(Regular Mail)
[Address]

(Via Courier)
[Insert if a different address]

As to _____:

[Project Coordinator]
[Company Name]
Telephone: () _____

(Regular Mail)
[Address]

(Via Courier)
[Address]

As to MDEQ for financial/escrow matters/reimbursement of State costs:

[Chief, Enforcement and Cost Recovery Unit]

Environmental Response Division

Telephone: ()

Regular Mail:

Environmental Response Division

Michigan Department of Environmental Quality

P.O. Box 30426

Lansing, MI 48909

(Via Courier)

[Address]

XI. MODIFICATIONS

This Agreement shall not be modified unless such modification is in writing and signed by _____'s Project Coordinator and the MDEQ, ERD Division Chief or his or her representative.

XII. RESERVATION OF RIGHTS

12.1 The parties reserve any and all rights available to them pursuant to Part 201 of the NREPA or any other legal authority to bring an action as provided by law.

12.2 Nothing in this Agreement constitutes or may be construed as a release or covenant not to sue by the State regarding any claim, cause of action or demand in law or equity against any person, firm, trust, trustee, joint venture, partnership, corporation, member or other entity, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants, contaminants or injurious substances found at, taken to, or taken from the Facility.

[Note: The following section may be required by the MDEQ if the facility conditions merit its inclusion]

XIII. NOTICE TO EASEMENT HOLDERS

13.1 _____ shall perform the following activities within thirty (30) days after the effective date of this Agreement:

- (a) Provide notice to each easement holder of record at the Facility that the _____ site is a “facility” under Part 201 of the NREPA
- (b) Provide a copy of the MDEQ-approved restrictive covenant to each easement holder of record at the Facility.

13.2 This section is subject to the Land Use or Resource-Use Restrictions provision stated in Section IX, Paragraph 9.4(a). Accordingly, if this notice is not sent within the thirty (30)-day period, the MDEQ’s approval of the RAP is void unless the lapse is corrected to the satisfaction of the MDEQ.

XIV. APPLICABLE LAW

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

14.2 All terms used in this Agreement, which are defined in Part 201 of the NREPA, MCL 324.20101 et seq.; and/or the Part 201 Rules, 1990 AACRS R 299.5101 et seq., shall have the same meaning in this Agreement as in Part 201 of the NREPA and the Part 201 Rules. If a conflict exists between the Rules and the statute, the statute prevails.

XV. DISSOLUTION

[Note: This section may be deleted if a financial assurance mechanism is not required]

In the event that _____ dissolves or otherwise ceases to conduct business and fails to make arrangements which are acceptable to the MDEQ for the continued implementation of the O&M Plan, all rights under this Agreement regarding the [FAM] shall immediately and automatically vest in the MDEQ.

XVI. CERTIFICATION

16.1 When _____ determines that it has completed all the response activities required by this Agreement and the RAP, including operation and maintenance activities and long-term monitoring, it shall submit to the MDEQ a Notification of Completion of Remedial Action (Notification) and a draft completion report. The draft completion report shall summarize all response activities performed under this Agreement and shall include or reference any supporting documentation.

16.2 Upon receipt of the Notification, the MDEQ will review the Notification, the draft completion report and any supporting documentation. Within ninety (90) days of receipt of the Notification, the MDEQ will determine whether _____ has satisfactorily completed all response activities described in the RAP, including, but not limited to, implementation of all operation and maintenance activities, long-term monitoring, and proper abandonment of all remaining monitor wells, and has reimbursed the State its costs as required by this Agreement. If the MDEQ determines that all response activities have been completed and all costs, as required by this Agreement and the RAP, have been paid to the State, the MDEQ will so notify _____. Upon MDEQ's receipt of a "Final" completion report from _____, the MDEQ shall issue a Certification of Completion of Remedial Action. The [FAM] established pursuant to Section III may be dissolved after issuance of the Certification of Completion of Remedial Action.

XVII. SEVERABILITY

The provisions of this Agreement are severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law and, therefore, unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, except that such severance shall not be allowed if the severance of such provision causes the Agreement to fail in its essential purposes.

XVIII. SEPARATE DOCUMENTS

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

XIX. EFFECTIVE DATE

This Agreement shall become effective on the date it is fully executed by all parties to this Agreement.

[Name], Chief
Environmental Response Division
Michigan Department of Environmental Quality

Dated: _____

[Authorized Representative of PPP]
[Name]
[Title]

Dated: _____

Attachment A

[Insert legal description of property here]

Attachment B

[Insert Operation and Maintenance Plan here (if required)]

Attachment C

[Insert Financial Assurance Mechanism here (if required)]

Attachment D

[Insert RCON.DOC and, if applicable, RCOFF.DOC]