

*Bonney-Graceland  
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STATE OF MICHIGAN  
~~FILED 10th JUDICIAL CIRCUIT~~  
~~BENZIE COUNTY~~  
*In the Circuit Court for Benzie County*

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

Civil Action No. *08-8279-CE*

v

Honorable *JAMES M. BATZER*

GRACELAND FRUIT, INC., and  
KEVIN BONNEY d/b/a  
BONNEY BROS. PUMPING COMPANY,

Defendants.

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**A TRUE COPY**

*Tammie Bowers*  
JUL 18 2008  
BENZIE COUNTY CLERK

**CONSENT JUDGMENT**

The Plaintiff is the Michigan Department of Environmental Quality (MDEQ). The Defendants are Graceland Fruit, Inc., and Kevin Bonney dba Bonney Bros. Pumping Company (Defendants). This Consent Judgment concerns resolution of a complaint filed against the Defendants on 7/2, 2008, regarding violations of Part 31, Water Resources Protection, Part

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121, Liquid Industrial Wastes and Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq*, MCL 324.12101 *et seq*, and MCL 324.20101 *et seq*, respectively; and for the performance of response activities pursuant to Part 201 of NREPA.. Defendants agree not to contest the authority or jurisdiction of the Court to enter this Consent Judgment or any of its terms or conditions.

The entry of this Consent Judgment by Defendants is neither an admission of liability with respect to any issue dealt with nor is it an admission or denial of any factual allegation or legal conclusion stated or implied in this Consent Judgment.

The Parties agree, and the Court by entering this Consent Judgment finds, that the terms and conditions of this Consent Judgment are fair, reasonable, and consistent with the public interest and applicable law.

NOW THEREFORE, before taking any testimony, and without this Consent Judgment constituting an admission of any of the allegations in the Complaint and with the consent of the Parties, through their attorneys, it is hereby ORDERED:

#### **I. JURISDICTION**

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115, MCL 324.12115, and MCL 324.20137. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have to the jurisdiction or venue of this Court.

1.2 The Court shall retain jurisdiction over the Parties and subject matter of this action in order to enforce this Consent Judgment.

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## **II. PARTIES BOUND**

2.1 This Consent Judgment shall apply to and be binding upon Plaintiff and Defendants and their successors and assigns. No change or changes in the ownership or corporate status of Defendants shall in any way alter Defendants' responsibilities under this Consent Judgment.

2.2 The signatories to this Consent Judgment certify that they are authorized to execute this Consent Judgment and to legally bind the parties they represent.

## **III. STATEMENT OF PURPOSE**

3.1 In entering into this Consent Judgment, the mutual intent of Plaintiff and Defendants is to:

- (a) conduct a Remedial Investigation (RI) and Feasibility Study (FS) to determine the nature and extent of any releases of hazardous substances and any threat to the public health, safety, or welfare, or the environment caused by the release or threatened release of hazardous substances at the Facility, and support the selection of a remedial action for the Facility consistent with Part 201 of the NREPA;
- (b) conduct interim response activities consistent with Part 201 of the NREPA;
- (c) develop and submit to the MDEQ an approvable Remedial Action Plan (RAP) or Long Term Interim Response Action (LTIRA) that complies with Part 201 of the NREPA;
- (d) perform the MDEQ-approved RAP or LTIRA in accordance with its approved implementation schedule;
- (e) resolve compliance issues under Parts 31, 121, and 201 of the NREPA, specified in the Complaint;

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- (f) reimburse the State of Michigan for past costs of surveillance and enforcement, including attorneys fees , and Future Response Activity Costs;
- (g) resolve the State of Michigan's claims for past violations of Parts 31, 121, and 201 of the NREPA;
- (h) resolve claims for damages to the natural resources pursuant to Parts 31, 121, and 201 of the NREPA; and
- (i) minimize litigation.

#### IV. DEFINITIONS

4.1 "Consent Judgment" means this Consent Judgment, and its attached appendix and any work plan, RAP, proposal, or other documents approved by the MDEQ pursuant to Section VII of this Consent Judgment.

4.2 "Defendants" means Graceland Fruit, Inc. and Kevin Bonney dba Bonney Bros. Pumping Company.

4.3 "Document(s)" means any submission required to be submitted by Defendants to the MDEQ pursuant to this Consent Judgment.

4.4 "Facility" means any area of the Property as defined in paragraph 4.6 where a hazardous substance in excess of the concentrations that satisfy the requirements of Section 20120a(1)(a) or (17), MCL 324.20120(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA has been released, deposited, disposed of, or otherwise comes to be located; and any other area, place or property where a hazardous substance that originated at and is emanating from, or has emanated from the Property has come to be located in concentrations that exceed these requirements or criteria.

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4.5 "Future Response Activity Costs" means those costs incurred by the State after the effective date of this Consent Judgment to perform response activities pursuant to Paragraph 6.9 of this Consent Judgment.

4.6 "Property" means the property that encompasses and includes the borrow pit, located in Section 18, Homestead Township, T26N, R14W, Benzie County, State of Michigan.

4.7 "Plaintiff" means the MDEQ, its successor entities, and those authorized persons or entities acting on their behalf.

4.8 "Parties" mean the Plaintiff and Defendants.

4.9 "State" or "State of Michigan" means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

4.10 All other terms used in this Consent Judgment, are as defined in Parts 3, 31, 121, and 201, of the NREPA, MCL 324.301, MCL 324.3101 *et seq.*, MCL 324.12101 *et seq.*, and MCL 324.20101 *et seq.*, respectively, and their implementing rules.

4.11 Every word importing the singular number shall be construed to mean the plural number, and every word importing the plural number shall be construed to mean the singular number.

#### **V. SCHEDULE FOR COMPLIANCE WITH PARTS 31, AND 121 OF THE NREPA**

##### **5.1 Environmental Monitoring**

a. Within sixty (60) days of the effective date of this Consent Judgment Defendants shall submit to the MDEQ for review and approval, a work plan to monitor the groundwater and surface water impacted by the release of the blueberry waste (Monitoring Plan). The Monitoring Plan shall include the following:

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1. A plan using Great Lakes and Environmental Assessment Section, Procedure #51, Qualitative Biological and Habitat Survey Protocols for Wadable Streams and Rivers, Revised May 2002 (Procedure #51), to biologically monitor the streams north of the discharge site. Procedure #51 is attached to this Consent Judgment as Attachment A. Biological monitoring shall occur at least once per year.

2. A plan to chemically monitor the streams north of the site where the blueberry waste was released. Chemical monitoring shall occur at least twice per year.

3. A plan to monitor the groundwater downgradient from the discharge site.

#### **VI. PERFORMANCE OF PART 201 OF THE NREPA RESPONSE ACTIVITIES**

##### **6.1 Performance Objectives**

Defendants shall perform all necessary response activities at the Facility including, but not limited to, the response activities set forth in this Section to achieve and maintain the performance objectives of complying with Part 201 of the NREPA and its implementing rules, and assuring the protection of public health, safety and welfare, and the environment. In addition, the performance objectives of interim response activities to address adverse impacts to the stream are to restore the stream to background physical, chemical and biological conditions within five years of the effective date of this Consent Judgment.

##### **6.2 Compliance with Section 20107a of the NREPA**

To the extent the Defendants own or operate part or all of the Facility, Defendants shall maintain and, upon the MDEQ's request, submit to the MDEQ documentation that summarizes the actions Defendants have taken or are taking to comply with Section 20107a(1)(a) – (c) of the NREPA and the related Part 201 rules. Failure of the Defendants to comply with the provisions

of this paragraph shall constitute a violation of this Consent Judgment and shall be subject to the stipulated penalties set forth in Section XI (Fines and Costs) of this Consent Judgment.

### 6.3 Submittal of Work Plans

All work plans, RAP and reports required under Paragraphs 6.4 – 6.7 shall be submitted to the MDEQ for review in accordance with the provisions Section VII of this Consent Judgment. Upon receipt of the MDEQ's written approval of a work plan or RAP, Defendants shall implement the provisions of the work plan or RAP in accordance with its approved schedule.

### 6.4 Interim Response Activities (IR)

a. Defendants have performed investigations and IR to address the adverse impacts to the stream (Stream Restoration IR), and impacts to downgradient water supplies. Within sixty (60) days of the effective date of this Consent Judgment, Defendants shall submit a report to the MDEQ describing the investigations and IR that have been completed. The report shall include results of all soil, groundwater and water supply samples collected by Defendants, the volume of contaminated soils excavated from the site and the method of disposal for these soils.

b. The MDEQ will review the report and make one of the following determinations:

1. If the additional information is required for the MDEQ to fully evaluate the report, the MDEQ will notify Defendants in writing identifying the required information and specifying a date for Defendants to revise and submit the report. Defendants shall submit a revised report, including the information required by the specified date.

2. If the MDEQ approves the report, the MDEQ will direct the Defendants to proceed with the environmental monitoring required under paragraph 5.1 of this

Consent Judgment. Upon receipt of approval of the report, Defendants shall initiate the environmental monitoring and submit annual reports as specified in subparagraph c and paragraph 8.2, below.

3. If the MDEQ determines that additional IR are necessary to meet the performance objectives for the stream specified in paragraph 6.1 and/or to address affected downgradient water supplies, including replacement of such water supplies, the MDEQ will direct the Defendants to submit applicable IR work plans to design and implement the additional IR. Defendants shall submit the IR work plan(s) by the date specified by the MDEQ. The IR work plans shall propose investigative activities necessary to develop the IR, comply with the applicable provisions of R 299.5526, and include a schedule for implementation. The MDEQ will approve, disapprove or approve with modifications the IR work plan(s) in accordance with Section VII of this Consent Judgment. Upon receipt of written approval of the IR work plan(s), Defendants shall implement the IR work plan(s) in accordance with the approved schedule. Defendants shall also initiate environmental monitoring required under paragraph 5.1 of this Consent Judgment and submit annual reports as specified in subparagraph c and paragraph 8.2, below.

c. By no later than November 30, 2008 and each year thereafter, and lasting until the performance objectives for the stream specified in paragraph 6.1 have been met, Defendants shall submit an annual report to the MDEQ. The annual report shall describe all the chemical and biological monitoring results for the preceding year, the response activities that have taken place in the preceding year, and an evaluation of the effectiveness of the approved stream IR based on an analysis of BOD and COD in the impacted areas of the stream and unaffected branches of the stream. The annual report shall also include proposed modifications to the approved Stream Restoration IR that may be necessary to assure that the Stream



Restoration IR is effective in restoring the stream to background conditions, and is meeting the performance objectives of this Consent Judgment. Defendants shall include a schedule for implementing the proposed modifications to the approved Stream Restoration IR.

d. The MDEQ will review the annual report and make one of the following determinations:

1. If additional information is required for the MDEQ to fully evaluate the report, the MDEQ will notify Defendants in writing identifying the required information and specifying a date for Defendants to revise and submit the annual report. Defendants shall submit a revised report, including the information required by the specified date.
2. If the MDEQ approves or approves with modifications the recommendations contained in the annual report, Defendants shall, upon receipt of the MDEQ's written approval, implement any modifications to the Stream Restoration IR in accordance with the approved schedule.
3. If the MDEQ disapproves the recommendations contained in the annual report, and determines that modification of the Stream Restoration IR is necessary to restore the stream to background conditions and meet the performance objectives of this Consent Judgment, the MDEQ's written disapproval will specify a date for Defendants to submit a work plan for modification of the Stream Restoration IR in accordance with the MDEQ's determination.
4. Defendants shall submit a work plan for modification of the Stream Restoration IR by the date specified. The MDEQ will approve, disapprove or approve with modifications the work plan in accordance with Section VII of this Consent Judgment.

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Upon receipt of written approval of the work plan, Defendants shall implement the work plan in accordance with the approved schedule.

e. In accordance with paragraph 15.1 of this Consent Judgment, Defendants may request an extension of the required date to complete restoration of the stream specified in paragraph 6.1 of this Consent Judgment. Any such request shall be submitted to the DEQ with the annual report required under subparagraph c, above. In addition to the requirements of paragraph 15.1, the request shall include a demonstration that Defendants have fully complied with the approved Stream Restoration IR.

f. Failure by Defendants to meet the performance standard for the stream established in paragraph 6.1 shall not be subject to stipulated penalties under Section XI (Fines and Costs), provided that Defendants have fully complied with the approved Stream Restoration IR and any subsequent approved modifications to it. However, this paragraph in no way affects the Defendants obligation under this Consent Judgment to restore the stream to background physical, chemical and biological conditions, or the DEQ's right to enforce this obligation.

#### 6.5 Remedial Investigation, Remedial Action Plan and Long Term Interim Response Action

a. By May 31, 2008, Defendants shall submit to the MDEQ for review and approval, a work plan for a Remedial Investigation/feasibility study (RI/FS) to investigate and determine the nature and extent of contamination and to evaluate specific response alternatives. The RI/FS shall comply with the applicable provisions of Part 201 of the NREPA and its administrative rules, including R 299.5528 and R 299.5530, and shall include an implementation schedule.

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- b. After submission of the RI/FS, the MDEQ will approve, disapprove, or approve with specific modifications, the RI/FS in accordance with Section VII of this Consent Judgment.
- c. Upon receipt of written approval of the RI/FS, Defendants shall implement its provisions in accordance with the approved schedule.
- d. Within sixty (60) days after completion of the RI/FS, Defendants shall submit to the MDEQ for review and approval, a RI/FS Report summarizing the results of the RI/FS. The RI/FS Report shall recommend a specific response action to address identified contamination at the facility.
- e. After submission of the RI/FS Report, the MDEQ will approve, disapprove, or approve with specific modifications, the RI/FS Report in accordance with Section VII of this Consent Judgment.
- f. Within ninety (90) days after receipt of written approval of the RI/FS Report, Defendants shall submit to the MDEQ for review and approval, a Remedial Action Plan (RAP). The RAP shall comply with the applicable provisions of Part 201 of the NREPA and its administrative rules, including R 299.5532. The RAP shall include a schedule for implementation.
- g. The MDEQ will approve, disapprove, or approve with specified modifications, the RAP in accordance with Part 201 of the NREPA and Section VII of this Consent Judgment.
- h. Upon receipt of written approval of the RAP, Defendants shall implement the RAP in accordance with the approved schedule.
- i. Defendants may, as an alternative to submitting a RAP, submit a Long Term Interim Response Activity Plan (LTIRA). The LTIRA shall be submitted within ninety

(90) days after receipt of written approval of the RI/FS Report. The LTIRA shall contain a schedule for implementation. The LTIRA shall comply with the following provisions of R 299.5532:

1. R 299.5532(4)
2. R 299.5532(5)(a) & (c)
3. R 299.5532 (6) through (10)
4. R 299.5532(11)(a) through (b), and (d) through (n)
5. R 299.5532(12) through (13)

j. The MDEQ will approve, disapprove, or approve with specified modifications, the LTIRA in accordance with Section VII of this Consent Judgment.

k. Upon receipt of written approval of the LTIRA, Defendants shall implement the LTIRA in accordance with the approved schedule.

1. If an LTIRA is submitted, the deadline for RAP submittal specified in subparagraph f, above will be suspended until the LTIRA is either approved or disapproved by MDEQ. If MDEQ disapproves the LTIRA after Defendants submit a revised LTIRA in accordance with Section VII of this Consent Judgment, Defendants shall submit a RAP within ninety days of such disapproval. If the LTIRA is approved by MDEQ, Defendants will not be required to submit a RAP as long as the following conditions are met:

1. All of the components of the approved LTIRA are being implemented as described by the LTIRA and within the schedule presented in the LTIRA.
2. The remedy chosen in the LTIRA remains effective at protecting human health and the environment. If MDEQ determines that the remedy is ineffective Defendants may be required to modify the current response activity or to undertake additional

investigative and/or response activities in accordance with paragraph 6.7 of this Consent Judgment.

m. Following implementation of the LTIRA, Defendants shall submit either a RAP to the MDEQ for review and approval, or if site conditions have improved to the point where the site is in compliance with the applicable provisions of Part 201 of the NREPA and its administrative rules, including R 299.5532 and R 299.5705, Defendants may submit a closure report in accordance with R 299.5532(4).

#### 6.7 Modification of a Response Activity Work Plan

a. If the MDEQ determines that a modification to a response activity work plan is necessary to meet and maintain the applicable performance objectives specified in this section, to comply with Part 201 of the NREPA, or to meet any other requirement of this Consent Judgment, the MDEQ may require that such modification be incorporated into a response activity work plan previously approved by the MDEQ under this Consent Judgment. Said determination by the MDEQ shall be in writing and describe the basis for the modification. If extensive modifications are necessary, the MDEQ may require Defendants to develop and submit a new response activity work plan. Defendants may request that the MDEQ consider a modification to a response activity work plan by submitting such request for modification to the MDEQ project coordinators, along with the proposed change in the response activity work plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by Defendants must be forwarded to the MDEQ at least 30 days prior to the date that the performance of any affected response activity is due. Any work plan modifications or any new work plans shall be developed in accordance with the applicable requirements of this

section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section VII (Approval of Submittals).

b. Upon receipt of the MDEQ's approval, Defendants shall perform the response activities specified in a modified response activity work plan or a new work plan in accordance with the MDEQ-approved implementation schedules.

c. Except for MDEQ determinations made pursuant to paragraph 6.4.d.3 of this Consent Judgment, Defendants may dispute the determination by the MDEQ that a modification is necessary pursuant to Section XIII (Dispute Resolution) of this Consent Judgment.

#### 6.8 Voidance and Nullification of the MDEQ's Approval of a RAP

a. If the remedial action provided for in the MDEQ-approved RAP relies on the cleanup criteria established under Section 20120a(1)(f) – (j) or (2) of the NREPA and the Defendants allow a lapse of or fail to comply with any applicable provisions of Section 20120b(3) of the NREPA, MCL 324.20120(b)(3), the MDEQ's approval of the RAP is void from the time of the lapse or violation until the lapse or violation is corrected in accordance with paragraph 6.8(c) to the satisfaction of the MDEQ. With respect to a land use or resource use restriction, a lapse of or noncompliance with this Consent Judgment or an MDEQ-approved RAP includes the following:

(i) A court of competent jurisdiction determines that a land use or resource use restriction is unlawful;

(ii) A land use or resource use restriction is not filed or enacted in accordance with this Consent Judgment or the MDEQ-approved RAP;

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(iii) A land use or resource use restriction is violated or is not enforced by the controlling entity; or

(iv) A land or resource use restriction expires or is modified or revoked without the MDEQ's approval.

b. The MDEQ's approval of the RAP shall be nullified as provided in R 299.5520(11) or (12) of the Part 201 implementing rules, until the lapse or violation is corrected to the satisfaction of the MDEQ.

c. Within 30 days of Defendants becoming aware of a lapse, violation, or failure to comply under subparagraphs a or b above, Defendants shall submit to the MDEQ for review and approval, a written notification of such lapse, violation, or noncompliance. The notification shall include a description of the nature of the lapse, violation, or noncompliance, an evaluation of the impact or potential impact of the lapse, violation, or noncompliance on the effectiveness and integrity of the RAP, and one of the following:

(i) If Defendants have corrected the lapse, violation, or noncompliance, a written demonstration of how and when the Defendants corrected the lapse, violation, or noncompliance.

(ii) If Defendants have not yet corrected the lapse, violation, or noncompliance, a work plan and implementation schedule for addressing the lapse, violation or noncompliance. If Defendants believe that they will not be able to correct the lapse, violation, or noncompliance without modifying the MDEQ-approved RAP, a work plan and implementation schedule outlining the response activities Defendants will take to comply with Part 201 and assure that the Facility does not pose a threat to public health, safety, or welfare or the environment.

The work plan and implementation schedule identified in paragraph 6.8c(i) or (ii) shall provide for the development of any additional response activity plans and associated implementation schedules that are necessary to assure the protection of public health, safety, and welfare, and the environment, including, if applicable, work plans for interim response activities, additional RI activities to provide information necessary to support the selection and approval of an alternative RAP, and an alternative RAP that complies with Part 201 of the NREPA and the Part 201 implementing rules, and meets the performance objectives specified in paragraph 6.1 of this Consent Judgment. Defendants shall submit and the MDEQ shall review any plans and schedules submitted pursuant to paragraph 6.8 in accordance with the procedures set forth in Section VII of this Consent Judgment. Upon receipt of the MDEQ approval, Defendants shall perform the response activities in accordance with the MDEQ-approved work plans and schedules.

d. Independent of the statutory consequences of avoidance or nullification of the MDEQ approval of a RAP, stipulated penalties as specified in Section XI shall begin to accrue on the day the lapse or violation under paragraph 6.8(a) or (b) occurred and shall continue to accrue until the lapse or violation is corrected to the satisfaction of the MDEQ. Avoidance or nullification of the MDEQ's approval of a RAP is not subject to the dispute resolution provisions of this Consent Judgment.

#### 6.9 MDEQ's Performance of Response Activities

If Defendants cease to perform the response activities required by this Consent Judgment, are not performing response activities in accordance with this Consent Judgment, or are performing response activities in a manner that may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing 30 days prior written notice to Defendants, take over the performance of those response activities. However, the MDEQ is

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not required to provide 30 days written notice prior to performing response activities that the MDEQ determines are necessary to prevent an imminent and substantial endangerment to public health, safety, or welfare or the environment. Costs incurred by the State pursuant to this paragraph to perform response activities that Defendants are obligated to perform under this Consent Judgment shall be considered to be "Future Response Activity Costs" and Defendants shall provide reimbursement of these costs plus accrued interest to the State in accordance with paragraphs 11.2, and 11.6 of this Consent Judgment.

## **VII. APPROVAL OF SUBMITTALS**

7.1 For any work plan, proposal, RAP, or other document, excluding applications for permits or licenses, which are required by this Consent Judgment to be submitted to the MDEQ by Defendants, the following process and terms of approval shall apply.

7.2 All work plans, proposals, RAP, and other documents required to be submitted by this Consent Judgment shall include all the information required by the applicable statute and rule, as well as all of the information required by the applicable provisions of this Consent Judgment.

7.3 In the event the MDEQ disapproves a work plan, proposal, RAP, or other document, it will notify Defendants, in writing, specifying the reasons for disapproval. Defendants shall, within 30 days of receipt of such disapproval, submit a revised work plan, proposal, RAP, or other document which adequately addresses the reasons for the MDEQ's disapproval. If the revised work plan, proposal, RAP, or other document is still not acceptable to the MDEQ, the MDEQ will notify Defendants of this disapproval.

7.4 In the event the MDEQ approves with specific modifications, a work plan, proposal or other document except the RAP, it will notify Defendants, in writing, specifying the

modifications required to be made prior to its implementation and the specific reasons for such modifications. The MDEQ may require Defendants to submit prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal or other document that adequately addresses such modifications. If the reviewed work plan, proposal or other document is still not acceptable to the MDEQ, the MDEQ will notify Defendants of this disapproval.

7.5 Upon MDEQ approval or approval with modifications as provided in paragraph 7.4 above, of a work plan, proposal, RAP, or other document, such work plan, proposal, RAP, or other document shall be incorporated by reference into and become an enforceable part of this Consent Judgment.

7.6 Failure of Defendants to submit a revised approvable work plan, proposal, RAP, or other document, within the applicable time periods of paragraphs 7.3 or 7.4 of this Consent Judgment that does not include any and all of the changes required by the MDEQ in its notice of disapproval or approval with modifications, constitutes a violation of this Consent Judgment and shall subject Defendants to the enforcement provisions, including the imposition of stipulated penalties as specified in paragraph 11.3, of this Consent Judgment.

7.7 Any delays caused by Defendants' failure to submit an approvable work plan, proposal, RAP, or other document when due shall in no way affect or alter Defendants' responsibility to comply with any other deadline specified in this Consent Judgment.

7.8 No informal advice, guidance, suggestions, or comments by the MDEQ regarding reports, work plans, plans, specifications, schedules, or any other writing or document submitted by Defendants will be construed as relieving Defendants of their obligation to obtain written approval, when required by this Consent Judgment.

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7.9 An approval or approval with modifications as provided in paragraph 7.4 above of a document shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods, or statements in the document or warrants that the submission comports with law or that the implementation of response activities by the Defendants will result in the Facility meeting the appropriate cleanup criteria.

### **VIII. REPORTING**

8.1 Each Party shall designate one or more project coordinators. Whenever notices are required to be given or progress reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submission s are required to be forwarded by one Party to the other Party under this Consent Judgment, or whenever other communications between the Parties is needed, such communications shall be directed to the project coordinators at the addresses listed below. If any Party changes its designated project coordinator, the name, address and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

A. As to MDEQ:

- (1) For all matters set forth in this Consent Judgment  
Brian Myers  
Water Bureau  
Michigan Department of Environmental Quality  
120 West Chapin Street  
Cadillac, Michigan 49601-2158  
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And

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(2) For all matters set forth in Section VI

Eric Chatterson  
Groundwater Permits Unit  
Water Bureau  
Michigan Department of Environmental Quality  
525 W. Allegan Street  
Lansing, Michigan 49933  
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Fax: 517-241-8133  
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B. As to Defendants:

- (1) Kevin Bonney  
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- (2) Joseph E. Quandt  
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E-mail: [ajkok@varnumlaw.com](mailto:ajkok@varnumlaw.com)

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These project coordinators will have primary responsibility for communications related to the performance of response activities at the Facility and the other requirements specified in this Consent Judgment for the MDEQ.

8.2 Defendants shall submit annual reports describing the actions or response activities taken to meet the requirements of Sections V and VI. The reports shall be submitted by November 30 of each year. The reporting schedule may be modified as provided in Section XV of this Consent Judgment.

8.3 Defendants shall verbally report any violation of the terms and conditions of this Consent Judgment to the MDEQ no later than the close of the next business day following detection of a violation and shall follow up such verbal notification with a written report within five (5) business days of detecting the violation. The written report shall include a detailed description of the violation, as well as a description of any actions taken or proposed to be taken to correct the violation. Defendants shall report any anticipated violation of this Consent Judgment to the MDEQ in advance of the relevant deadlines whenever possible.

#### **IX. RIGHT OF ENTRY**

9.1 Defendants shall allow any authorized representative or contractor of the MDEQ, upon presentation of proper credentials, to enter the Facility at all reasonable times for the purpose of monitoring compliance with this Consent Judgment. This paragraph in no way limits the authority of the MDEQ to conduct tests, inspections, or other response activities as allowed by the NREPA and its implementing rules or any other applicable law, rule, or regulation.

9.2 To the extent that the Facility, or any other property where the response activities are to be performed under this Consent Judgment, is owned or controlled by persons other than the Defendants, Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants.

Upon request, Defendants shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Defendants shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after Defendants receipt of the MDEQ's approval of the work plan for which such access is needed. If Defendants have not been able to obtain access within sixty (60) days after filing judicial action, Defendants shall promptly notify the MDEQ of the status of their efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of response activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XIV (Force Majeure). To the extent Defendants are subject to the requirements of Section 20114 of the NREPA, Defendants' failure to secure access or petition the court within one (1) year of having reason to believe access to another person's property is necessary to comply with Section 20114 of the NREPA, shall subject the Defendants to both stipulated penalties under Section XI of this Consent Judgment and civil fines under Part 201 of the NREPA. Should both stipulated penalties and civil fines be assessed, the lower amount of the two shall be credited as partial payment of the other.

9.3 Any lease, purchase, contract, or other agreement entered into by the Defendants that transfer to another person a right of control over the Facility or a portion of the Facility shall contain a provision preserving for the MDEQ or any other person undertaking response activities, and their authorized representatives, the access provided under this Section.

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## **X. RETENTION OF RECORDS**

Upon request by an authorized representative of the MDEQ, Defendants shall make available to the MDEQ all records, plans, logs, and other documents required to be maintained under this Consent Judgment or pursuant to Parts 31, 121, or 201 of the NREPA or their implementing rules. All documents shall be retained by Defendants for a period of at least three (3) years from the date of their generation unless a longer period of retention is required by Parts 31, 121, or 201, or their implementing rules. Upon expiration of the three (3)-year or other required retention period, Defendants shall obtain the MDEQ's written permission to destroy any documents. Alternatively, Defendants may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period of time, or Defendants may relinquish custody of all documents to the MDEQ. Defendant's request regarding the destruction, maintenance, or relinquishment of documents shall be accompanied by a copy of this Consent Judgment and sent to the address listed in Section VIII (Reporting).

## **XI. MONETARY SETTLEMENT, COSTS AND PENALTIES**

11.1 Defendants agree to pay to the State of Michigan \$150,000 DOLLARS as monetary settlement of the allegations specified in the Complaint. Payment of the \$150,000 shall be made as follows: The first payment of \$50,000 shall be made by no later than May 15, 2009. A second payment of \$50,000 shall be made by no later than December 15, 2009, and a final payment of \$50,000 shall be made no later than December 15, 2010. If Defendants fail to make a payment by the specified due date, Defendants shall pay the balance of the \$150,000 owed within thirty days of receipt of written demand from the MDEQ. This paragraph 11.1 and any written demand from the MDEQ shall not be subject to the dispute resolution procedures set forth in Section XIII (Dispute Resolution), nor shall Section XIV (Force Majeure) apply to any

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failure on the part of Defendants to make a payment. All payments shall be made in accordance with paragraph 11.7.

11.2 Defendants shall reimburse the MDEQ for all Future Response Activity Costs incurred by the State. As soon as possible after each anniversary of the effective date of this Consent Judgment, the MDEQ will provide Defendants with a written demand for payment of Future Response Activity Costs that have been lawfully incurred. Any such demand will set forth with reasonable specificity the nature of the costs incurred. Except as provided by Section XIV (Dispute Resolution), Defendants shall reimburse the MDEQ for such costs within 30 days of receipt of a written demand from the MDEQ. If Defendants fail to make full payment to the MDEQ for Future Response Activity Costs, interest at the rate specified in Section 20126a(3) of the NREPA shall begin to accrue on the unpaid balance on the day after payment was due until the date upon which Defendants make full payment of those costs and any accrued interest to the MDEQ. In any challenge by Defendants to a MDEQ demand for reimbursement of Future Response Activity Costs, Defendants shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Section 20126(1)(a) of the NREPA.

11.3 For each failure to comply with the provisions of Sections V and VI of this Consent Judgment, Defendants shall pay stipulated penalties of: (1) \$500.00 per violation per day for the first seven (7) days, (2) \$750.00 per violation per day for the next eight (8) to fourteen (14) days of violation, and (3) \$100.00 per violation per day for each day of violation after fourteen (14) days. Each violation constitutes a separate violation for which stipulated penalties may be assessed. The violations subject to the stipulated penalties of this subparagraph include but are not limited to:

a. Failure to submit an approvable work plan, proposal, RAP, or other document within the time period provided in Section V or VI of this Consent Judgment.



b. Failure to fully implement or comply with any activity or condition required by Section V or VI, including those contained in any approved work plan or other document required to be implemented under Section V or VI of this Consent Judgment.

c. Failure to submit approvable revised work plans, proposals, RAPs, or other documents addressing an MDEQ disapproval or approval with modifications with the time period provided in paragraphs 7.3 or 7.4 of this Consent Judgment.

11.4 For each failure to comply with any other provision of this Consent Judgment that is not subject to paragraph 11.3, Defendants shall pay stipulated penalties of \$100 per violation per day for each day of violation. Violations of this Consent Judgment that are subject to stipulated penalties under this subparagraph include, but are not limited to:

a. Failure to verbally report violations and submit written reports within the time period provided in paragraphs 8.2 and 8.3.

b. Failure to retain records on site in accordance with Section X (Retention of Records).

c. Failure to pay civil fines, costs, or stipulated or interest penalties by the required dates in accordance with this section.

d. Failure to pay compensation for injury, destruction or loss of natural resources in accordance with Section XII (Natural Resources Damages).

11.5 Stipulated penalties assessed under paragraphs 11.3 or 11.4 shall be paid within 30 days after written demand is made by the MDEQ in accordance with paragraph 11.7 of this Consent Judgment.

11.6 To ensure timely payment of the monetary settlement, Future Response Activity Costs, damages, stipulated penalties and other monetary payments that are payable under this Consent Judgment, Defendants shall pay interest each time it fails to make a complete or timely

payment of any monies due to the MDEQ or the State under the provisions of this Consent Judgment. The interest for failing to pay civil fines, past costs of surveillance and enforcement, and stipulated penalties shall be based on the rate set forth at MCL 600.6013(6) and shall be calculated upon the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is paid in full. Payment of the interest for failing to pay the monetary settlement and stipulated penalties shall be paid in accordance with paragraph 11.7 of this Consent Judgment. The interest for failing to pay Future Response Activity Costs shall be based on the rate set forth in Section 20126a(3) of the NREPA, MCL 324.20126a(3), and shall be calculated upon the outstanding unpaid balance until the delinquent payment is paid in full. Payment of the interest for failing to pay Future Response Activity Costs shall be paid in accordance with paragraph 11.8 of this Consent Judgment.

11.7 Defendants shall pay the monetary settlement specified in paragraph 11.1, and stipulated penalties by certified or cashier's check made payable to the State of Michigan and mailed or delivered to the MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157 or hand delivered to the MDEQ, Revenue Control Unit, Constitution Hall, 525 West Allegan, 5<sup>th</sup> Floor, South Tower, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this section must include the Payment Identification Number WTR3090.

11.8 Defendants shall pay the Future Response Activity Costs provided for in this Consent Judgment, by check made payable to the State of Michigan – Environmental Response Fund, and mailed to the MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the MDEQ, Revenue Control Unit, Constitution Hall, 525 West Allegan Street, 5<sup>th</sup> Floor, South Tower, Lansing, Michigan 48933. To ensure proper credit,

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all payments made pursuant to this section must include the Payment Identification Number WTR3090.

11.9 Defendants agree not to contest the monetary settlement paid pursuant to paragraph 11.1. Defendants further agree not to contest the legal authority of the MDEQ to assess Future Response Activity Costs pursuant to paragraph 11.2 or any stipulated penalties or interest pursuant to paragraphs 11.3, 11.4, and 11.6, above, but reserve the right to dispute the factual basis upon which a demand by the MDEQ for Future Response Activity Costs or stipulated penalties or interest penalties is made. Defendants may only dispute the amount assessed by the MDEQ, or the factual basis upon which the assessment was made through the dispute resolution process contained in Section XIII.

## **XII. NATURAL RESOURCES DAMAGES**

12.1 In addition to payments set forth in Section XI (Fines and Costs), within thirty (30) days of the effective date of this Consent Judgment, Defendants shall pay to the State of Michigan the sum of \$100,000 DOLLARS as compensation to the state for the full value of injury, destruction or loss of natural resources of the state for which Defendants are liable. Defendants shall pay such compensation, by check made payable to the State of Michigan – Natural Resource Damage Fund and mailed to the MDEQ, Cashier's – WB08-001, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the MDEQ, Revenue Control Unit, Constitution Hall, 525 West Allegan Street, 5<sup>th</sup> Floor, South Tower, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this paragraph must include the Project Number 481077-08.

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### **XIII. DISPUTE RESOLUTION**

13.1 Unless otherwise provided in this Consent Judgment, the dispute resolution procedures of this section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment, except for the MDEQ's avoidance or nullification of approval of the RAP pursuant to paragraphs 6.8(a) and (b) and the MDEQ's performance of response activities to address an imminent and substantial threat to the public health, safety, or welfare or environment pursuant to paragraph 6.9, which are not disputable. Failure of Defendants to follow the procedures set forth in this section shall result in the waiver of any rights it may have to challenge MDEQ's decision as to the matter involved. Initiation of dispute resolution shall not be a valid reason for Defendants to delay the performance of compliance requirements or response activities.

13.2 Any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed 20 days from the date of written notice by any Party that a dispute has arisen, unless the time period for negotiations is modified by written agreement between the Parties. The time period to resolve a dispute under this section shall commence when one Party sends the other Party a written notice of dispute. If agreement cannot be reached on any issue within the 20-day period for informal negotiations, the MDEQ shall provide a written statement of its decision to Defendants and, in the absence of initiation of formal dispute resolution by Defendants under paragraph 13.3, the MDEQ's position as outlined in its written informal decision, shall be binding on the parties.

13.3 If Defendants and the MDEQ cannot informally resolve a dispute under paragraph 13.2, Defendants may initiate formal dispute resolution by requesting that the disputed issue be reviewed by the MDEQ, Water Bureau (WB) Chief. This written request must be filed with the

MDEQ, WB Chief within fifteen (15) days of Defendants' receipt of the MDEQ's decision that is issued at the conclusion of the informal dispute resolution procedure set forth in paragraph 13.2.

13.4. Defendants' request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which Defendants bases its position. Within 21 days of the WB Chief's receipt of Defendants' request for a review of disputed issues, the WB Chief will provide a written statement of decision to Defendants, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation relied upon by the WB Chief's review of the disputed issues. The WB Chief's time period for review of the disputed issues may be extended by written agreement of the Parties.

13.5 The written statement of the WB Chief issued under paragraph 13.3 shall be a final decision and is binding on the Parties unless, within 21 days after receipt of the MDEQ's written statement of decision, Defendants file a petition for resolution of the dispute with this Court. The petition filed by the Defendants shall set forth a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Judgment. The petition filed by Defendants with the Court shall not raise an issue that was not presented in the original written notice of dispute.

13.6 An administrative record of the dispute shall be maintained by the MDEQ. The administrative record shall include all of the information provided by the Defendants pursuant to paragraph 13.3, as well as any other documents relied upon by the MDEQ in making its final

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decision pursuant to paragraph 13.3. Where appropriate, the MDEQ or Court shall allow submission of supplemental statements of position or other material by the parties to the dispute.

13.7 In proceeding on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are the subject of this Consent Judgment, Defendants shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any other dispute, Defendants shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent Plaintiff from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Consent Judgment. Defendants have the right to request that the administrative record be supplemented with other material involving the matter(s) in dispute pursuant to Section 20137(5) of the NREPA, MCL 324.20137(5).

13.8 Notwithstanding the invocation of dispute resolution under this section, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Judgment but payment shall be stayed pending resolution of the dispute. To the extent Defendants prevail in the Dispute Resolution process, no stipulated penalties shall be due; however, to the extent the MDEQ prevails, the stipulated penalties shall be paid within 30 days of a final resolution of the dispute. Defendants shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section XI (Fines and Costs).

#### **XIV. FORCE MAJEURE**

14.1 Defendants shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure"

shall not be deemed a violation of Defendants' obligations under this Consent Judgment in accordance with this section.

14.2 For the purpose of this Consent Judgment, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of Defendants, such as: an Act of God, untimely review of permit applications or submissions by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by Defendants' diligence and that delay the performance of an obligation under this Consent Judgment. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Defendants' actions or omissions.

14.3 Defendants shall notify the MDEQ, verbally, within two (2) business days of discovering any event that causes a delay in their compliance with any provision of this Consent Judgment that may constitute a Force Majeure. Verbal notice shall be followed by written notice within ten (10) business days of the event and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by Defendants to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

14.4 Failure of Defendants to comply with the notice requirements and time provisions in paragraph 14.3 shall negate the ability of Defendants to assert a claim of Force Majeure and render Section XIV void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 14.3.

14.5 If the Parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated and the Parties to this Consent Judgment may agree upon

an appropriate modification of this Consent Judgment. If the Parties to this Consent Judgment are unable to reach such agreement, the dispute shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Judgment. The burden of proving that any delay was beyond the reasonable control of Defendants, and that all the requirements of this Section XIV have been met by Defendants, rests with Defendants.

14.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Defendants qualify for an extension of a subsequent compliance date for any other requirement under this Consent Judgment without providing proof that additional time for each incremental step or other requirement is necessary.

#### **XV. EXTENSIONS AND MODIFICATIONS**

15.1 This Consent Judgment may only be modified according to the terms of this section, except as provided by paragraph 6.7 or Sections XIII (Dispute Resolution) and XIV (Force Majeure). The Parties agree that the MDEQ may, in its sole discretion, grant the Defendants a reasonable extension of the specified deadlines set forth in this Consent Judgment and may modify the reporting schedule contained in paragraph 8.2 without further action by this Court. Any extension shall be preceded by a written request to the MDEQ, no later than ten (10) business days prior to the pertinent deadline, and shall include:

- a. Identification of the specific deadline(s) of this Consent Judgment that will not be met.
- b. A detailed description of the circumstances which will prevent the Defendants from meeting the deadline(s).
- c. A description of the measures the Defendants have taken and/or intend to take to meet the required deadline.

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d. The length of the extension requested and the specific date on which the obligation will be met. The MDEQ shall respond in writing to such requests. No extension of a deadline under this Consent Judgment shall be valid unless in writing from the MDEQ.

15.2 Modification of any other provision of this Consent Judgment shall be upon written agreement and stipulation between the Parties and shall become effective only upon entry by this Court.

#### **XVI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

16.1 Plaintiff covenants not to sue or take administrative action against Defendants for the following:

- (a) Response activities performed by Defendants pursuant to MDEQ-approved work plans under this Consent Judgment.
- (b) Payment of Future Response Activity Costs incurred by the State as set forth in paragraph 11.2 of this Consent Judgment.
- (c) Payment of compensation for injury, destruction or loss of natural resources set forth in Section XII of this Consent Judgment.

The covenants not to sue with respect to liability for performance of response activities shall take effect upon full and satisfactory performance of the response activities pursuant to the MDEQ-approved work plan. The covenant not to sue with respect to past costs of surveillance and enforcement, and Future Response Activity Costs shall take effect upon the MDEQ's receipt of payment for those costs.

16.2. This Consent Judgment in no way affects Defendants' responsibility to comply with any other applicable state or federal statute or regulation or local ordinances.

16.3. With respect to any violations not specifically addressed and resolved by this Consent Judgment, the MDEQ and the Attorney General reserve the right to pursue any and all

remedies to which they are entitled for any failure on the part of Defendants to comply with the requirements of the NREPA and its implementing rules.

16.4. The MDEQ and the Attorney General expressly reserve all rights and defenses that they may have to enforce the provisions of this Consent Judgment, and nothing in this Consent Judgment shall limit those rights and defenses, including the right to seek relief directly from this Court without first engaging in dispute resolution as provided in Section XIII.

16.5. Nothing in this Consent Judgment shall limit the power and authority of the MDEQ or the State of Michigan to take, direct, or order all appropriate action to protect the public health, safety, or welfare, or the environment.

16.6 This Consent Judgment constitutes a civil settlement resolving the violations specifically addressed in the complaint. In recognition of any payments of penalties or fines to resolve violations specifically addressed in the Complaint or imposed by the Consent Judgment, the MDEQ, upon receipt of payment of the penalties or fines will file an Acknowledgment with this Court that the penalties or fines have been paid.

16.7 This Consent Judgment does not resolve any criminal violations that may exist as a result of Defendants actions which are the subject of this Consent Judgment.

#### **XVII. TERMINATION**

17.1 This Consent Judgment shall remain in full force and effect until expressly terminated by an order of this Court.

17.2 When Defendant determines that it has completed all the activities required under this Consent Judgment, it may submit to the MDEQ, a notice of compliance and final report. The final report shall consist of a written certification that Defendant has fully complied with all of the requirements of this Consent Judgment. The certification shall include the date of

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compliance with each provision of this Consent Judgment, and any additional relevant information if requested by the MDEQ.

17.3 Upon receiving the notice of compliance, the MDEQ will review the notice, the final report, any supporting documentation, and the actual activities performed under this Consent Judgment. The MDEQ will issue a written certificate of compliance unless the MDEQ determines that Defendant has either not submitted the certification required under this Section, has failed to submit information specifically requested by the MDEQ, or has failed to comply with or complete all the requirements of this Consent Judgment.

17.4 After the MDEQ issues the certificate of compliance, the Parties shall stipulate to terminating this Consent Judgment, and upon filing a joint motion to this Court and the Court's subsequent Order, this Consent Judgment shall be terminated.

#### **XVIII. EFFECTIVE DATE**

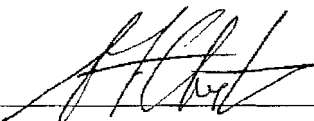
18.1 This Consent Judgment shall be effective upon the date that the Court enters the Consent Judgment. All dates for performance of activities under this Consent Judgment shall be calculated from the effective date of this Consent Judgment. For the purposes of this Consent Judgment, the term "day" shall mean a calendar day unless otherwise noted.

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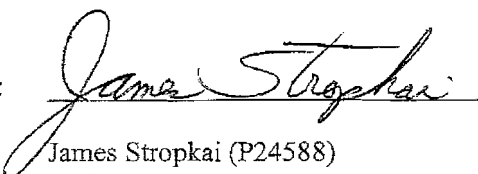
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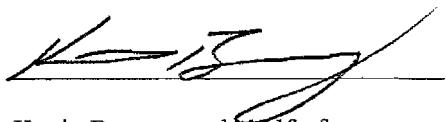
IT IS SO AGREED BY:

By: 

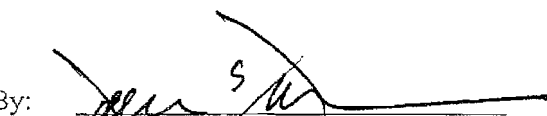
Steven E. Chester  
Director  
Department of Environmental Quality

By: 

James Stropkai (P24588)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
P.O. Box 30755  
Lansing, Michigan 48909  
517-373-7540

By: 

Kevin Bonney on behalf of  
Bonney Bros. Pumping Company  
9107 Worden Road  
Beulah, Michigan 49617

By: 

Joseph E. Quandt (P49739)  
ZIMMERMAN, KUHN, DARLING,  
BOYD, TAYLOR & QUANDT, PLC  
Attorneys for Defendant Bonney Bros.  
Pumping Company  
P.O. Box 987  
Traverse City, MI 49685-0987  
231-947-7900

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BEULAH, MI 49617

By:



Doug Plumstead on behalf of  
Graceland Fruit, Inc.  
1123 Main Street  
Frankfort, Michigan 49635

By:

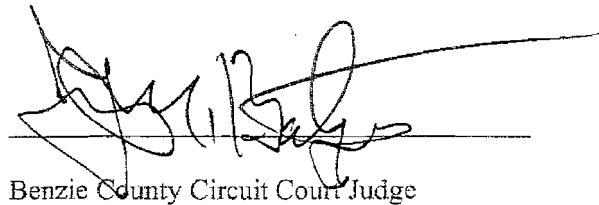


Andrew Kok (P45537)  
Varnum Riddering Schmidt Howlett  
Attorneys for Defendant Graceland Fruit, Inc.  
Bridgewater Place  
P.O. Box 352  
Grand Rapids, Michigan 49501-0352  
616-336-6516

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 17<sup>th</sup> day of \_\_\_\_\_

July, 2008.

Honorable



Benzie County Circuit Court Judge

ATTEST: A TRUE COPY

\_\_\_\_\_  
Deputy Court Clerk

ENRA/cases/2003-017822-A/Bonney Bros (Graceland) final consent judgment 5.23.08

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