

CONVERSATION RECORD

TIME 10:06

DATE 8/9/84

TYPE

VISIT

CONFERENCE

TELEPHONE

INCOMING
 OUTGOING

ROUTING

NAME/SYMBOL	INT
Leininger	
Jones	
Grundler	

Location of Visit/Conference: O'hare Hilton, Lillenthal Rm. (sp?)

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU

Attached

ORGANIZATION (Office, dept., bureau, etc.)

TELEPHONE NO.

SUBJECT

Cliffs Dow A.O.

SUMMARY

- Discussions on the A.O. were done on a page-by-page basis. Enclosed is a copy of the A.O. with many of the R.P.'s comments
- The Respondents believe this A.O. should be under section 104, not 106. Their reasoning is that they were stockholders ~~and~~ of ~~the~~ a defunct company that volunteered under no coercion by the U.S. EPA or State of Michigan. As a result, since they believe that they were not the generators, they should not be under the possible penalties that are liable under 106. Bob promised to bring this point ~~the~~ to HQ's attention, but told them he didn't think the A.O. would pass HQ's approval except under 106.
- The Respondents also asked if they could put in some "whereas" clauses. Bob said that he would look them over, but he didn't promise to incorporate them in the A.O.

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

ACTION TAKEN

SIGNATURE

TITLE

DATE

CONVERSATION RECORD

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TELEPHONE NO.

SUBJECT

SUMMARY

The Respondents felt section II was full of errors and that the 1st and last paragraphs should be the only ones retained. Bob said we will get back to them on this.

- Section III's heading should be changed to Jurisdictional Basis or Jurisdictional Findings. Bob said he will get back to them on this.

- They also questioned some language on the basis of 04 versus 06 orders throughout the A.O.

- The Respondents feel that the subsidiaries should not be bound to this A.O. Bob asked that they put their reasoning in ~~the~~ writing concerning this question and that he will get back to them.

- The Respondents have trouble with section III, paragraph B. They would need more time to bring a contractor on board and thus the time schedule should be revised accordingly. They feel they will need at least ~~one~~ 4 weeks to secure a contract with a contractor after the public comment period has ended.

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SUBJECT

SUMMARY

Documents sent to the Respondents
~~Progress reports~~ should be sent to Dow, G-P, CCI and the city, not just to one project coordinator.

- The Respondents also disagree with the authority that the OSC has on page 8. They made some suggested language changes.

- In discussing the Dispute resolution clause (Section IX), the Respondents feel that the ~~final authority~~ process is too long. They would like to see a process that is resolved by only one step beyond the written comments phase, either by a meeting of the supervisors or by a moderator.

- They also feel that some general provision in the A.O. should include how revisions in the work plan may take place.

- The Respondents requested that if a delay due to a dispute, ~~should be resolved by the dispute resolution clause. The each decision in a dispute will be composed of 2 parts. One the the dispute will be decided, and second, whether any delay is to be allowed.~~

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

ACTION TAKEN

SIGNATURE

TITLE

DATE

CONVERSATION RECORD TIME DATE

TYPE VISIT CONFERENCE TELEPHONE INCOMING OUTGOING

ROUTING table with columns NAME/SYMBOL and INT

Location of Visit/Conference: NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU ORGANIZATION (Office, dept., bureau, etc.) TELEPHONE NO.

SUBJECT

SUMMARY - They questioned whether info. is to be retained for 6 years and the nature of the material that is to be retained. - They also requested state and EPA assistance in obtaining necessary permits. We said... - They requested advance notice of public meetings and questioned whether section XII was in contradiction to work plan. We said it wasn't and that we will have a CRP available for their review soon. - The Respondents felt that costs to be reimbursed at a once a year lump sum with a portion of it intended to pay off previous costs, with the rest paying oversight costs. The advantage is that the companies wouldn't pay beyond a certain point which would make their budgeting process easier. The burden would be on us to hold down oversight costs. - The Respondents enclosed a "covenant not to sue" clause for incorporation. We promised to review it.

NAME OF PERSON DOCUMENTING CONVERSATION SIGNATURE DATE

ACTION TAKEN

SIGNATURE TITLE DATE

CONVERSATION RECORD

TIME

DATE

TYPE

VISIT

CONFERENCE

TELEPHONE

INCOMING

OUTGOING

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TELEPHONE NO.

ROUTING

NAME/SYMBOL

INT

SUBJECT

SUMMARY

- They made some suggested wording changes in Sections 17 & 18. (See Order).

- They wished to delete section 19.

- They enclosed a "No Admissions" ~~etc~~ section to be reviewed by EPA. ~~to~~ Bob promised to look it over.

- They made some changes on page 22 (see Order)

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

ACTION TAKEN

SIGNATURE

TITLE

DATE

CLIFFS-DOW MEETING

August 9, 1984

Robert Leininger	U.S. EPA	312-886-6720
Janet S. VanAlsten	Dow	517-636-8252
Kenneth R. Fitzpatrick	Dow	517-636-1549
Myron E. Jackson	Cliffs	(216) 241-2356
MIKE NEILLETTE	CLIFFS	" " "
DAVID CASE	CLIFFS	(202) 452-5455
BOB CHILMAN	CLIFFS	(906) 486-9981
Steve Cornell	G-P	404-521-4651
Rich Horden	G-P	404-521-4846
Jim Stokes	G-P (Alaska side)	404-586-1500
Doug Yeskis	U.S. EPA	312-886-9296
Willard L. Martin	City of MIQ	906-228-8200 X 211

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DRAFT

IN THE MATTER OF:)
)
CLIFFS-DOW DISPOSAL AREA)
MARQUETTE, MICHIGAN)
)
Proceeding Under Section) U.S. EPA Docket No.
106(a) of the Comprehensive)
Environmental Response,)
Compensation and Liability)
Act, 42 U.S.C. §9006(a))
(1980))

ADMINISTRATIVE ORDER
BY CONSENT

The signatories to this Administrative Order By Consent ("Consent Order"), by their respective attorneys, having agreed to the entry of this Consent Order,

THEREFORE, It is Ordered, Adjudged, and Decreed that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") on August 14, 1981, by Executive Order 12316, 42 Fed. Reg. 42237 (Aug. 20, 1981), who duly re delegated the authority to the Regional Administrator of Region V, USEPA on April 1, 1983. This Consent Order is also issued pursuant to the common ^{laws} ~~law~~ and ~~statutory laws~~ of the State of Michigan relating to protection of public health and the environment.

*oppose 106
order
they believe
Ref. 104*

leave in 1E & last paragraphs; & include rest in work plan

II. DESCRIPTION OF SITE

The Cliffs-Dow Disposal Area site (hereinafter "Site") is situated in the north half of section 10 T48N, R25W Marquette County, Michigan. The Site is located near County Road 550 and occupies about two acres of wooded and shrub covered land on the northwest outskirts of Marquette, Michigan.

The site property is and has been owned by the City of Marquette. From 1954 until 1968 the City leased this low-lying area to the Cliffs Dow Company for the disposal of wood tars from the production of charcoal. Dow Chemical Company (hereinafter "Dow") and the Cleveland-Cliffs Iron Company (hereinafter "Cleveland Cliffs") were the original owners of the Cliffs Dow Company. On April 9, 1968, the Company was sold to the Georgia-Pacific Corporation and E. L. Bruce Company, which continued the business under the name of Royal Oak Charcoal Company. The total volume of waste disposed of at the site is estimated to be 20,000 cubic yards.

*inaccurate
as
opposed
to
the
work
plan*

The U.S. EPA Notification of Hazardous Waste Site document dated June 4, 1981, lists the waste types at the Site as solvents, tars and resins from charcoal processing. Two samples, one soil and one tar, were taken at the Site on September 22, 1981. The soil sample was found to contain concentrations of lead, nickel, selenium, silver, zinc, and two organic priority

pollutants (chloroform and ethyl benzene). The tar sample was found to contain six priority pollutants (chloroform, fluoranthene naphthalene, phenanthrene, 2-4 dimethylphenol and phenol). Soil contamination appears to exist on the Site to a depth of up to seventeen feet.

Surface waters in the area that may be influenced by the Site include the Dead River and ultimately Lake Superior. The Dead River flows to the northeast and is situated south and east of the site. Average annual surface water runoff in the area is approximately 8 inches occurring primarily in early spring.

Groundwater flow is generally to the east and slightly to the northeast. Benzene, phenol, xylene, chloroform and other hazardous substances have been detected in the groundwater.

Based on the results of the inspections and studies at the Site and the potential for surface and groundwater contamination, the Site was included in the National Priorities List promulgated by U.S. EPA on September 8, 1983, as Appendix B to the National Oil and Hazardous Substances Contingency Plan, 48 Fed. Reg. 40658 (Sept. 8, 1983), and is a candidate for response action by U.S. EPA under CERCLA.

III. FINDINGS

The Regional Administrator, U.S. EPA, ~~has determined that:~~

- (1) the Site is a "facility" as defined in Section 101(9) of CERCLA;
- (2) Dow, Cleveland-Cliffs, Georgia-Pacific and the City of Marquette (hereinafter "Respondents") are all "persons" as

Jurisdictional Basis or Jurisdictional Findings
(Determines)
(alleges) but the respondents do not (agree) that
could be in jurisdiction Action

that term is defined in Section 101(21) of CERCLA; (3) "hazardous" substances" as defined by Section 101(14) of CERCLA have been disposed of at the site (4) the release and threatened release of hazardous substances into the soils, groundwater and the surface water adjacent to the Site constitutes a "release or threat of release" as that term is defined in Section 101(22) of CERCLA, ~~(which may present an imminent and substantial endangerment to public health or welfare of the environment;~~ } *questioned whether this is necessary*
(5) the Respondents are "responsible persons" within the meaning of ¹⁰¹⁽²¹⁾ ~~Section 107~~ of CERCLA; and (6) the actions to be taken pursuant to this Consent Order ~~are~~ ^{may be} reasonable and necessary to protect the public health or welfare and the environment.

A reasonable time period for beginning and completing the actions required by this Consent Order has been provided for, and the Respondents have agreed to undertake the actions requested by the U.S. EPA in this Consent Order. The Work to be undertaken pursuant to this Consent Order is appropriate for determining the appropriate extent of response authorized by CERCLA and is not inconsistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (1983).

IV. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents, U.S. EPA and Michigan (the "Parties"), their officials, officers, directors, agents, principals, servants,

employees, successors, and assigns, and upon all persons, firms, and corporations acting under or for the Parties, including ~~subsidiaries and~~ divisions of the Respondents. Each representative of a Party who signs this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order to legally bind such Party to this document.

V. NOTICE TO THE STATE

The requirement of Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (hereafter "CERCLA") 42 U.S.C. §9606(a), to notify the State of Michigan has been satisfied.

VI. REMEDIAL INVESTIGATION/FEASIBILITY STUDY

A. Respondents shall complete a Remedial Investigation ("RI") and perform a Feasibility Study ("FS") of the Site ~~and the immediately surrounding area~~ in accordance with the RI/FS ^{the parties jointly developed and by ~~interest, RI/FS, and Respondents~~} approved by U.S. EPA and ^{and} Michigan and attached hereto and incorporated herein as ~~Exhibit Attachment~~

A. The RI/FS shall be conducted in accordance with the National Contingency Plan, 40 C.F.R. Section 300.68(e) through (j), 31216-31217 (July 6, 1982).

B. Respondents shall commence the Work within one week of the effective date of this Consent Order. The Work shall be completed in accordance with the standards, specifications and

the schedule of completion contained in Attachment A of this Consent Order.

VII. PROGRESS REPORTS

A. Respondents shall provide to U.S. EPA and Michigan written progress reports which describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month as well as actions which are scheduled for the next month. These progress reports are to be submitted to U.S. EPA and Michigan by the tenth day of every month following the effective date of this Consent Order.

B. Documents, including progress reports and approvals, to be submitted to the Parties shall be sent by certified mail return receipt requested, to the following addresses or to such other address as the Parties hereafter may designate in writing:

1. Those documents to be submitted to U.S. EPA should be sent in duplicate to:

Director, Waste Management Division
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

2. Those documents to be sent to Respondents should be sent to:

Representative to coordinators

original to Bill Witt

4 copies

to Dow

*GP
CCI
City*

Suggest they take out this on quarterly reports to modify

3. Those documents to be sent to Michigan should be sent to:

Jack D. Bails
Chief, Environmental Enforcement Division
Michigan Department of Natural Resources
6th Floor
Stevens T. Mason Building
Lansing, MI 48909

C. If the date for submission of any item or notification required by this Consent Order falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

VIII. PROJECT COORDINATORS

A. Respondents, U.S. EPA and Michigan shall each designate a Project Coordinator for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in the Consent Order, communications among Respondents, U.S. EPA and Michigan concerning the terms and conditions of this Consent Order shall be made between the Project Coordinators. During the course of implementation of the Work, the Project Coordinators shall, whenever possible, operate by consensus. The Project coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

the effective date

B. Within five (5) days of ~~entry~~ of this Consent Order, the Signatories shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator.

C. Each Project coordinator shall be responsible for assuring that all communications received from the other Project Coordinators are appropriately disseminated and processed.

D. The Project Coordinator for U.S. EPA ("OSC") shall have the authority vested in an on-scene coordinator by 40 C.F.R. Part 300 (1983), including authority to require Respondents to cease performance of the Work or any portion thereof which in the opinion of the OSC, may or does present or contribute to an ^{imminent and substantial} endangerment to public health, welfare or the environment. ^{for 72 hrs.} In the event that the OSC does require such cessation of the Work, the OSC then shall have the authority to require Respondents to perform the Work consistent with Attachment A of this Consent Order in accordance with the instructions of the OSC to avoid or mitigate the endangerment, which he or she believes may occur. If Respondents object to any order requiring cessation of the Work or to any order to perform the Work in accordance with the instructions of the OSC, Respondents may petition a court with competent jurisdiction to stay or set aside the order of the OSC.

They oppose this

Qualifier

E. Either the Project Coordinator for Respondents or the Alternate Project Coordinator ^{or their designate} for Respondents shall be ^{available} on-site during all hours of site work and shall be on call for the pendency of this Consent Order.

F. Any Project Coordinator upon request may obtain a split or duplicate sample from any sample being taken at the site by any other Project Coordinator or representative of any other Party. The Respondent's Project Coordinator shall notify the U.S. EPA and Michigan Project Coordinators not less than five days in advance of any sample collection for which such Project Coordinators have indicated that they wish to obtain split or duplicate sample.

C/Quif

IX. REVIEW OF DOCUMENTS; RESOLUTION OF DISPUTES

A. 1. Respondents shall submit all documents required by the Work to U.S. EPA and Michigan pursuant to the criteria and schedules set forth in the Work.

2. U.S. EPA and Michigan shall review each such document and, within thirty ^{to working} days of receipt advise Respondents in writing as to whether the document is approved or disapproved. In the event Respondents are notified that the document is disapproved in whole or in part, U.S. EPA and Michigan shall include a statement in the notification as to the modifications or additions which must be made to the document prior to approval, and an explanation as to why such modifications or additions are necessary. U.S. EPA and Michigan shall base any decision to approve or disapprove a document upon whether it has been completed in conformance with the standards and specifications set forth in th Work (Attachment A of the Consent Order) ~~and~~

put in to schedule
ck
↓

check w/ site
↓

~~whether such document~~ ^{which} is consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (1983).

3. If Respondents do not object to the corrective measures, if any, proposed by U.S. EPA ^{and} Michigan, Respondents shall expeditiously undertake and complete such measures in accordance with the proposed schedule of completion.

4. If Respondents object to any proposed corrective measures, Respondents shall, within ten days after receiving written notice, initiate the dispute resolution procedure set forth in paragraph B of this Section.

B. All disputes concerning implementation of the Work shall be resolved pursuant to the following procedure:

1. Any Project Coordinator who determines that a dispute cannot be resolved informally shall provide a written notice to the other Project Coordinators which sets forth:

- a) his understanding as to the nature of the dispute
- b) his understanding as to the technical position of the other Project Coordinators with regard to the dispute
- c) his technical position with regard to the dispute and
- d) the bases for concluding that his technical position on the dispute should be followed rather than the positions of the other Project Coordinator in dispute.

Revisions
of work
plan
General
Provision
in A.O.

2. Within fifteen (¹⁰~~15~~) business days of receipt of any notice of dispute, the other Project Coordinators shall advise each other in writing as to whether they agree or disagree with the specific statements provided in the notice to them pursuant to sub-paragraph 1 of this Section. Any Project Coordinator who disputes a specific statement shall clearly set forth:

- ASK state whether*
- a) the bases for disputing such statement
 - b) his technical position with regard to the disputed statement
 - c) the bases for concluding that his technical position on the dispute should be followed rather than the other Project Coordinator in dispute.

3. If, within fifteen (¹⁰~~15~~) business days from the date of the submission of the reply(ies) to the notice of dispute, the parties have not reconciled all issues raised in such notice, U.S. EPA and Michigan shall jointly present a written notice to Respondent which sets forth the remaining areas of disagreement and the action(s), withholding of action(s), or change(s) to the Work that U.S. EPA and Michigan determined are necessary. If Respondent believe that the resulting U.S. EPA/ Michigan proposal is technically inappropriate or inconsistent with the Work, Respondents shall notify U.S. EPA and Michigan

within fifteen (¹⁰~~15~~) business days of receipt of such proposal. If respondents do not so notify U.S. EPA and Michigan, Respondents shall be deemed to have assented to the proposal made by U.S. EPA and Michigan and such proposal shall become part of the Consent Order as if originally so written.

4. If Respondents notify U.S. EPA and Michigan of ^{supervisors} their continued objections to the proposal, the parties shall have an additional fifteen (¹⁰~~15~~) business days from receipt of Respondents' notifications within which to resolve the dispute. Changes to the Work agreed to among the parties during this fifteen (¹⁰~~15~~) calendar day period shall become part of the Consent Order as if originally so written. ~~B~~

5. Any such dispute not resolved by the end of the fifteen (¹⁰~~15~~) business day period specified in sub-paragraph 4 above, shall be deemed resolved in favor of U.S. EPA and shall become part of the Consent Order as if originally so written.

C. Respondents waive any right they may have to contest or adjudicate the validity of any term in this Consent Order, except any terms adopted pursuant to Paragraph B(5) above.

Respondents may challenge any term adopted pursuant to Paragraph B(5) above in any action brought by U.S. EPA and Michigan to enforce the term or in any action brought by Respondent to contest the term.

The
~~U.S. EPA and Michigan~~ *Att parties* X. ACCESS TO THE SITE *and [unclear]*
 and their authorized representatives shall have access to the Site at all reasonable times in order to observe and monitor the progress of the Work, to take samples from and to inspect the Site, and to inspect records relating to the performance of the Consent Order.

XI. RETENTION AND AVAILABILITY OF INFORMATION

A. Respondents shall make available to U.S. EPA and Michigan and shall retain during the pendency of this Consent Order and for a period of six years after its termination, all records and documents in their possession, custody, or control which ^{*directly*} relate to the performance of this Consent Order, including, but not limited to documents reflecting the results of any sampling, tests or other data or other information generated or acquired by any of them, or on their behalf with respect to the implementation of this Consent Order.

B. Respondents may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Order pursuant to 40 C.F.R. §2.203(b) and applicable Michigan law.

Analytical data concerning soil, water and ambient air samples acquired by any Party shall not be claimed as confidential by the Parties. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R.

Work on [unclear] [unclear] [unclear] for [unclear]

Part 2, Subpart B, and if determined confidential by Michigan, afforded protection under applicable Michigan law. If no such claim accompanies the information when it is submitted to the U.S. EPA or Michigan, the public may be given access to such information without further notice to Respondents.

XII. DELAY IN PERFORMANCE; STIPULATED PENALTIES

A. Respondents shall pay into the Hazardous Substances Response Trust Fund administered by U.S. EPA and shall pay to Michigan the sums set forth below as stipulated penalties for each week that Respondents fail to submit a report or document in accordance with the requirements contained in this Consent Order.

These stipulated penalties shall accrue in the amount of \$1,000.00 for the first week and \$2,000.00 for each week thereafter, 1/2 to U.S. EPA and 1/2 to Michigan, to the order of the parties identified in paragraph XV of this Consent Order at the addresses there listed.

B. Respondents shall notify U.S. EPA and Michigan within twenty days of any delay caused by circumstances beyond the control of Respondents which occurs in the performance of the Work or the submission of reports required under this Consent Order. Such notification shall be in writing and shall describe fully the nature of the delay, the reasons therefor, the expected

duration of the delay, the actions which will be taken to mitigate further delay, and the timetable by which the actions in mitigation of the delay will be taken. Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

C. Any failure by Respondents to properly complete the ~~work of the submit reports or submit documents for reports required by the work~~ which results from circumstances beyond the ^{reasonable} control of Respondents shall not be deemed to be a violation of its obligations under this Consent Order nor shall it make Respondents liable for the stipulated penalties contained in paragraph XII(A) of this Consent Order. To the extent a delay is caused by such circumstances beyond the ^{reasonable} control of Respondents, the time for performance hereunder shall be extended.

D. In the event Respondent and U.S. EPA and Michigan cannot agree that the time for performance shall be extended, the dispute shall be resolved in accordance with the provisions of paragraph VIII(B) of this Consent Order. Respondents shall have the burden of proving that the delay was caused by circumstances beyond the ^{reasonable} control of Respondents.

E. The stipulated penalties set forth in subparagraph XIII(A) above shall not preclude U.S. EPA or Michigan from electing to pursue any other remedies or sanctions, including a suit for statutory penalties up to the amount authorized by law, which may be available to U.S. EPA or Michigan by reason of Respondents' failure to comply with any requirements of this Consent Order.

XIII. COMPLIANCE WITH ALL LAWS

All work undertaken by Respondents pursuant to this Consent Order shall be performed in compliance with all applicable federal, state and local laws and regulations. Respondents shall be responsible for obtaining all federal, state, or local permits which are necessary for the performance of the Work.

State of Mich. & EPA's Assistance in obtaining permits

XIV. PARTICIPATION IN COMMUNITY RELATIONS ACTIVITIES

Respondents shall be given ^{advance reasonable} notice of and provided with the opportunity to participate in any public meetings which may be held or sponsored by U.S. EPA ^{or Michigan} ~~or Michigan~~ to explain activities at or concerning the Site, including the findings of the RI/FS.

look for notice days in CRP

XV. REIMBURSEMENT OF RESPONSE COSTS

A. Within thirty days of the effective date of this Consent Order, Respondents shall pay to U.S. EPA the sum of _____ and shall pay to Michigan the sum of _____ as reimbursement for response costs incurred by U.S. EPA and Michigan from _____ through _____. Payment to U.S. EPA shall be made to the order of the Hazardous Substances Response Trust Fund. Payment shall be forwarded to U.S. EPA, Region V, Regional Hearing Clerk, 230 South Dearborn Street, Chicago, Illinois 60604. Payment to Michigan shall be made to the order of the State of Michigan. Payment shall be forwarded to the Assistant Attorney General in Charge, Environmental Protection Division, Michigan Department of Attorney General, 720 Law Building, Lansing, MI 48903.

B. Within thirty days of the end of each calendar year during the pendency of this Consent Order U.S. EPA and Michigan shall provide Respondents with a full accounting and explanation of the response costs incurred by U.S. EPA and Michigan in connection with the Site during the previous year. Within thirty (30) days of receipt of such accounting and explanation, Respondents shall reimburse U.S. EPA and Michigan for all such costs associated with U.S. EPA's and Michigan's activities in connection with the Consent Order that are not inconsistent with the National Oil and Hazardous Substances Contingency Plan.

Dispute Resolution Clause

XVI. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to Section XVI of this Consent Order, and reimbursement of the U.S. EPA and Michigan as provided in Section XIV, U.S. EPA and Michigan covenant not to sue Respondent for any costs incurred by them or associated with the conduct and completion of the RI/FS.

see the version

XVII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from U.S. EPA and Michigan [~~that Respondents have demonstrated~~] that all of the terms of the Consent Order have been completed. Following completion of all of the requirements of the Work in the Consent Order, Respondents shall request a determination by U.S. EPA and

Michigan as to whether Respondents have satisfactorily completed the Work. U.S. EPA and Michigan shall provide Respondents with such a determination within 30 days of such a request. *or a joint written letter of what deficiencies exist.*

XVIII. RESERVATION OF RIGHTS

A. Except as expressly provided in this Consent Order, Respondents, and U.S. EPA and Michigan expressly reserve all rights and defenses that they may have, including U.S. EPA's *documents and reports required.* and Michigan's right to disapprove the ~~work performed~~ *work performed* by Respondents as provided in this Consent Order in which event U.S. EPA and Michigan will have *the* right to undertake their own remedial investigation, feasibility study, and remedial actions and to seek reimbursement from Respondents thereafter for such costs incurred by the Hazardous Substances Response Trust Fund and/or Michigan.

*take or
or
reword*

B Except as expressly provided in this Consent Order, the Respondents expressly reserve all rights and defenses that they may have.
C. Nothing herein is intended to release, discharge, or *may have,* in any way affect any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a Party to this Consent Order from 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 materials or hazardous substances at, to or from the

Site. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Consent Order.

D. Nothing in this Consent Order is intended by the parties to be, nor shall it be, a release or settlement of any private claims for injuries to persons or property, known or unknown, ^{or} of any private persons, ~~or of any local governmental entity.~~

E. The U.S. EPA and Michigan recognize and agree that Respondents shall have a ^{joint and several} right to contribution, indemnity and(or) any other available remedies against any person found to be a responsible person or otherwise liable for contribution, indemnity and(or) other available remedies for any amounts which have been or will be expended by Respondents or paid to the U.S. EPA and(or) Michigan under this Consent Order or otherwise in connection with any claims asserted by the U.S. EPA, Michigan and(or) others against Respondents in connection with the Site.

Bob is checking w/ State

XIX. OTHER APPLICABLE LAWS

The Parties agree that this Consent Order shall not supersede the requirements of any applicable local, state and federal laws and regulations.

Take out

XX. OTHER CLAIMS

Respondents agree to indemnify and save and hold harmless ~~anticipated or otherwise~~ U.S. EPA and Michigan from any and all claims, or causes of action arising from negligent acts or omissions or willful misconduct of Respondents in carrying out the activities pursuant to this Consent Order. U.S. EPA and Michigan shall notify Respondents of any such claims or actions within twenty working days of ^{receiving notice} notification that such a claim or action ^{is anticipated or it has been} ~~has been~~ filed. U.S. EPA and Michigan agree not to act with respect to any such claim or action without first providing Respondents with an opportunity to participate. They further agree to cooperate with Respondents in the defense of any such claim or action.

U.S. EPA and Michigan shall not be held liable under or as a party to any contract entered into by Respondent in carrying out the activities pursuant to this Consent Order.

→ Reverse indemnify

XXI. ~~ADMISSIONS~~

NO ADMISSIONS

Nothing in this Consent Order, including the Work Plan attached hereto as Exhibit A, is intended by the parties to be, nor shall it be, an admission of facts or law, an estoppel or a waiver of defenses by Respondents for any purpose.

New Paragraph
to be reviewed
by Bob

XXII. PUBLIC COMMENT AND EFFECTIVE
DATE OF ADMINISTRATIVE ORDER

Within fifteen (15) days of the date of the execution of this Consent Order, U.S. EPA and Michigan shall announce the availability of this Consent Order to the public for review and comment. U.S. EPA and Michigan shall accept comments from the public for a period of thirty (30) days after such announcement. At the end of the comment period, U.S. EPA and Michigan shall review all such comments and shall either:

- a) determine that the Consent Order should be made effective in its present form, in which case Respondents shall be so notified in writing. The Consent Order shall become effective on the date Respondents receive such notification; or
- b) determine that modification of the Consent Order is necessary, in which case Respondents will be informed as to the nature of all required changes. If Respondents agree to the modifications, the Consent Order shall be so modified and shall become effective upon signature of the parties.

In the event that Respondents are unwilling to agree on modifications required by U.S. EPA and Michigan as a result of public comment, this Consent Order may be withdrawn by U.S. EPA and Michigan. In such an event, U.S. EPA and Michigan reserve all rights to take such actions as they deem necessary, and Respondents reserve all rights to contest such actions.

IT IS SO AGREED:

The CLEVELAND-CLIFFS IRON COMPANY

By: _____

Date: _____

The DOW CHEMICAL COMPANY

By: _____

Date: _____

GEORGIA-PACIFIC CORPORATION

By: _____

Date: _____

CITY OF MARQUETTE, MICHIGAN

Mayer: _____
Clerk: _____
By: _____

Date: _____

STATE OF MICHIGAN

by:
FRANK J. KELLY
Attorney General

Stewart H. Freeman
Assistant Attorney General in Charge
Environmental Protection Division

Attorneys for the State of Michigan

Date: _____

IT IS SO ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

By: _____
Valdas V. Adamkus
Regional Administrator
United States Environmental Protection
Agency, Region V

Date: _____

XVI. COVENANT NOT TO SUE

From the date of effectiveness of this Consent Order, for as long as the terms herein are complied with, and upon termination of this Consent Order [and reimbursement of the U.S. EPA and Michigan as provided in Section XV,] U.S. EPA and Michigan covenant not to sue, execute judgment or take any civil judicial or administrative action under common law (federal or state), state law, including Michigan Public Act 307, and any federal statutes administered or enforced by U.S. EPA, including CERCLA, against the Respondents, their ~~subsidiaries~~, divisions, parents, affiliates or their respective directors, officers, employees, agents, successors and assigns, arising out of or related to ~~the~~ ~~conducting~~ the remedial action and feasibility study with respect to the Site. Provided that the terms of this Consent Order are complied with, this covenant not to sue, execute judgment or take other action includes all civil legal and administrative costs incurred by the U.S. EPA or Michigan with respect to matters which are the subject of this Consent Order.

*in discussion
yet*

XXI. NO ADMISSION

The U.S. EPA, Michigan and the Respondents have entered into this Consent Order to facilitate the expedient preparation of a remedial investigation and feasibility study at the Site and do not admit, accept or intend to acknowledge any liability or fault by any party hereto with respect to any matter arising out of or relating to the Site. This Consent Order, ^{including the Work Plan attached hereto as Exhibit A,} is not intended as and shall not be construed to be an admission of fact or law, or estoppel or a waiver of defenses by Respondents for any purpose.

CONVERSATION RECORD

TIME 10:06

DATE 8/9/84

TYPE		ROUTING	
<input type="checkbox"/> VISIT	<input checked="" type="checkbox"/> CONFERENCE	<input type="checkbox"/> TELEPHONE	
Location of Visit/Conference: <i>O'hare Hilton, Lillenthal Rm.</i>		<input type="checkbox"/> INCOMING	NAME/SYMBOL
NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU		<input type="checkbox"/> OUTGOING	INT
<i>Attached</i>			<i>Leininger</i>
ORGANIZATION (Office, dept., bureau, etc.)			<i>Jones</i>
TELEPHONE NO.			<i>Grundler</i>
SUBJECT			
<i>Cliffs Dow A.O.</i>			

SUMMARY

- Discussions on the A.O. were done on a page-by-page basis. Enclosed is a copy of the A.O. with many of the R.P.'s comments
- The Respondents believe this A.O. should be under section 104, not 106. Their reasoning is that they were stockholders ~~and~~ of ~~the~~ a defunct company that volunteered under no coercion by the U.S. EPA or State of Michigan. As a result, since they believe that they were not the generators, they should not be under the possible penalties that are liable under 106. Bob promised to bring this point ~~the~~ to HQ's attention, but told them he didn't think the A.O. would pass HQ's approval except under 106.
- The Respondents also asked if they could put in some ~~ACTION REQUIRED~~ "whereas" clauses. Bob said that he would look them over, but he didn't promise to incorporate them in the A.O.

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE

ACTION TAKEN

SIGNATURE	TITLE	DATE

CONVERSATION RECORD

TIME DATE

TYPE VISIT CONFERENCE TELEPHONE INCOMING OUTGOING

ROUTING table with columns NAME/SYMBOL and INT

Location of Visit/Conference: NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU ORGANIZATION (Office, dept., bureau, etc.) TELEPHONE NO.

SUBJECT

SUMMARY - The Respondents felt section II was full of errors and that the 1st and last paragraphs should be the only ones retained. Bob said we will get back to them on this. - Section III's heading should be changed to Jurisdictional Basis or Jurisdictional Findings. Bob said he will get back to them on this. - They also questioned some language on the basis of 104 versus 106 orders throughout the A.O. - The Respondents feel that the subsidiaries should not be bound to this A.O. Bob asked that they put their reasoning in writing concerning this question and that he will get back to them. - The Respondents have trouble with section III, paragraph B. They would need more time to bring a contractor on board and thus the time schedule should be revised accordingly. They feel they will need at least 4 weeks to secure a contract with a contractor after the public comment period has ended.

NAME OF PERSON DOCUMENTING CONVERSATION SIGNATURE DATE

ACTION TAKEN

SIGNATURE TITLE DATE

CONVERSATION RECORD TIME DATE

TYPE VISIT CONFERENCE TELEPHONE INCOMING OUTGOING ROUTING NAME/SYMBOL INT

SUMMARY Documents sent to the Respondents

- Progress reports should be sent to Dow, G-P, CCI and the city, not just to one project coordinator.
- The Respondents also disagree with the authority that the OSC has on page 8. They made some suggested language changes.
- In discussing the Dispute resolution clause (Section IX), the Respondents feel that the final authority process is too long. They would like to see a process that is resolved by only one step beyond the written comments phase, either by a meeting of the supervisors or by a moderator.
- They also feel that some general provision in the A.O. should include how revisions in the work plan may take place.

- The Respondents requested that if a delay due to a dispute, should be resolved by the dispute resolution clause. Then each decision in a dispute will be composed of 2 parts. One the the dispute will be decided, and second, whether any delay is to be allowed.

NAME OF PERSON DOCUMENTING CONVERSATION SIGNATURE DATE

ACTION TAKEN

SIGNATURE TITLE DATE

CONVERSATION RECORD

TIME DATE

TYPE VISIT CONFERENCE TELEPHONE INCOMING OUTGOING

ROUTING table with columns NAME/SYMBOL and INT

Location of Visit/Conference: NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU ORGANIZATION (Office, dept., bureau, etc.) TELEPHONE NO.

SUBJECT

SUMMARY - They questioned whether info. is to be retained for 6 years and the nature of the material that is to be retained. - They also requested state and EPA assistance in obtaining necessary permits. We saw - They requested advance notice of public meetings and questioned whether section XII was in contradiction to work plan. We said it wasn't and that we will have a CRP available for their review soon. - The Respondents felt that costs to be reimbursed at a once a year lump sum with a portion of it intended to pay off previous costs, with the rest paying oversight costs. The advantage is that the companies wouldn't pay beyond a certain point which would make their budgeting process easier. The burden would be on us to hold down oversight costs. - The Respondents enclosed a "covenant not to sue" clause for incorporation. We promised to review it.

NAME OF PERSON DOCUMENTING CONVERSATION SIGNATURE DATE

ACTION TAKEN

SIGNATURE TITLE DATE

CONVERSATION RECORD TIME DATE

TYPE VISIT CONFERENCE TELEPHONE INCOMING OUTGOING

ROUTING table with columns NAME/SYMBOL and INT

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU ORGANIZATION (Office, dept., bureau, etc.) TELEPHONE NO.

SUBJECT

SUMMARY - They made some suggested wording changes in Sections 17 & 18. (See Order). - They wished to delete section 19. - They enclosed a "No Admissions" section to be reviewed by EPA. Bob promised to look it over. - They made some changes on page 22 (see Order)

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION SIGNATURE DATE

ACTION TAKEN

SIGNATURE TITLE DATE

CLIFFS-DOW MEETING

August 9, 1984

Robert Leiminger	U.S. EPA	312-886-6720
Janet S. VanAlsten	Dow	517-636-8252
Kenneth R. Fitzpatrick	Dow	517-636-1549
Myron E. Jackson	Cliffs	(216) 241-2356
MIKE NEILLETTE	CLIFFS	" " "
DAVID CASE	CLIFFS	(202) 452-5455
SCOTT CHILMAN	CLIFFS	(906) 486-9981
Steve Cornell	G-P	404-521-4651
Rich Harden	G-P	404-521-7846
Jim Stokes	G-P (Altaf Bond)	404-586-1500
Doug Yeskis	U.S. EPA	312-886-9296
Willard L. Martin	City of MIQ	906-228-8200 X 211

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DRAFT

IN THE MATTER OF:)
)
CLIFFS-DOW DISPOSAL AREA)
MARQUETTE, MICHIGAN)
)
Proceeding Under Section) U.S. EPA Docket No.
106(a) of the Comprehensive)
Environmental Response,)
Compensation and Liability)
Act, 42 U.S.C. §9006(a))
(1980))

ADMINISTRATIVE ORDER
BY CONSENT

The signatories to this Administrative Order By Consent ("Consent Order"), by their respective attorneys, having agreed to the entry of this Consent Order,

THEREFORE, It is Ordered, Adjudged, and Decreed that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") on August 14, 1981, by Executive Order 12316, 42 Fed. Reg. 42237 (Aug. 20, 1981), who duly re delegated the authority to the Regional Administrator of Region V, USEPA on April 1, 1983. This Consent Order is also issued pursuant to the ~~common law and statutory laws~~ ^{laws} of the State of Michigan relating to protection of public health and the environment.

*from 106
order
they believe
Ref. 104*

II. DESCRIPTION OF SITE

leave in 1E & fast paragraphs; & include rest in work plan

The Cliffs-Dow Disposal Area site (hereinafter "Site") is situated in the north half of section 10 T48N, R25W Marquette County, Michigan. The Site is located near County Road 550 and occupies about two acres of wooded and shrub covered land on the northwest outskirts of Marquette, Michigan.

The site property is and has been owned by the City of Marquette. From 1954 until 1968 the City leased this low-lying area to the Cliffs Dow Company for the disposal of wood tars from the production of charcoal. Dow Chemical Company (hereinafter "Dow") and the Cleveland-Cliffs Iron Company (hereinafter "Cleveland Cliffs") were the original owners of the Cliffs Dow Company. On April 9, 1968, the Company was sold to the Georgia-Pacific Corporation and E. L. Bruce Company, which continued the business under the name of Royal Oak Charcoal Company. The total volume of waste disposed of at the site is estimated to be 20,000 cubic yards.

inaccurate as opposed to the work plan.

The U.S. EPA Notification of Hazardous Waste Site document dated June 4, 1981, lists the waste types at the Site as solvents, tars and resins from charcoal processing. Two samples, one soil and one tar, were taken at the Site on September 22, 1981. The soil sample was found to contain concentrations of lead, nickel, selenium, silver, zinc, and two organic priority

pollutants (chloroform and ethyl benzene). The tar sample was found to contain six priority pollutants (chloroform, fluoranthene naphthalene, phenanthrene, 2-4 dimethylphenol and phenol). Soil contamination appears to exist on the Site to a depth of up to seventeen feet.

Surface waters in the area that may be influenced by the Site include the Dead River and ultimately Lake Superior. The Dead River flows to the northeast and is situated south and east of the site. Average annual surface water runoff in the area is approximately 8 inches occurring primarily in early spring.

Groundwater flow is generally to the east and slightly to the northeast. Benzene, phenol, xylene, chloroform and other hazardous substances have been detected in the groundwater.

Based on the results of the inspections and studies at the Site and the potential for surface and groundwater contamination, the Site was included in the National Priorities List promulgated by U.S. EPA on September 8, 1983, as Appendix B to the National Oil and Hazardous Substances Contingency Plan, 48 Fed. Reg. 40658 (Sept. 8, 1983), and is a candidate for response action by U.S. EPA under CERCLA.

III. FINDINGS

The Regional Administrator, U.S. EPA, ~~has determined that:~~

- (1) the Site is a "facility" as defined in Section 101(9) of CERCLA;
- (2) Dow, Cleveland-Cliffs, Georgia-Pacific and the City of Marquette (hereinafter "Respondents") are all "persons" as

Jurisdictional Basis or Jurisdictional Findings
(determines)
challenges but the respondents do not (agree) that
could be in jurisdiction action

that term is defined in Section 101(21) of CERCLA; (3) "hazardous" substances" as defined by Section 101(14) of CERCLA have been disposed of at the site (4) the release and threatened release of hazardous substances into the soils, groundwater and the surface water adjacent to the Site constitutes a "release or threat of release" as that term is defined in Section 101(22) of CERCLA, (~~which may present an imminent and substantial endangerment to public health or welfare of the environment;~~) (5) the Respondents are "~~responsible~~ persons" within the meaning of ¹⁰¹⁽²¹⁾ ~~Section 107~~ of CERCLA; and (6) the actions to be taken pursuant to this Consent Order ~~are~~ ^{may be} reasonable and necessary to protect the public health or welfare and the environment.

} questioned whether this is necessary

A reasonable time period for beginning and completing the actions required by this Consent Order has been provided for, and the Respondents have agreed to undertake the actions requested by the U.S. EPA in this Consent Order. The Work to be undertaken pursuant to this Consent Order is appropriate for determining the appropriate extent of response authorized by CERCLA and is not inconsistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (1983).

IV. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents, U.S. EPA and Michigan (the "Parties"), their officials, officers, directors, agents, principals, servants,

employees, successors, and assigns, and upon all persons, firms, and corporations acting under or for the Parties, including ~~subsidiaries and~~ divisions of the Respondents. Each representative of a Party who signs this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order to legally bind such Party to this document.

V. NOTICE TO THE STATE

The requirement of Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (hereafter "CERCLA") 42 U.S.C. §9606(a), to notify the State of Michigan has been satisfied.

VI. REMEDIAL INVESTIGATION/FEASIBILITY STUDY

A. Respondents shall complete a Remedial Investigation ("RI") and perform a Feasibility Study ("FS") of the Site ~~and the immediately surrounding area~~ in accordance with the RI/FS ^{the parties} ~~jointly developed and by U.S. EPA, Michigan, and Respondents~~ ^{jointly developed and by U.S. EPA, Michigan, and Respondents} approved by U.S. EPA and Michigan and attached hereto and incorporated herein as ~~Exhibit Attachment~~ ^{Attachment}

A. The RI/FS shall be conducted in accordance with the National Contingency Plan, 40 C.F.R. Section 300.68(e) through (j), 31216-31217 (July 6, 1982).

B. Respondents shall commence the Work within one week of the effective date of this Consent Order. The Work shall be completed in accordance with the standards, specifications and

the schedule of completion contained in Attachment A of this Consent Order.

VII. PROGRESS REPORTS

A. Respondents shall provide to U.S. EPA and Michigan written progress reports which describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month as well as actions which are scheduled for the next month. These progress reports are to be submitted to U.S. EPA and Michigan by the tenth day of every month following the effective date of this Consent Order.

B. Documents, including progress reports and approvals, to be submitted to the Parties shall be sent by certified mail return receipt requested, to the following addresses or to such other address as the Parties hereafter may designate in writing:

1. Those documents to be submitted to U.S. EPA should be sent in duplicate to:

Director, Waste Management Division
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

2. Those documents to be sent to Respondents should be sent to:

Representative to coordinators

original to Bill Witt

4 copies

to Dow

GP

CCI

City

Suggest they take out this or modify to quarterly reports

3. Those documents to be sent to Michigan should be sent to:

Jack D. Bails
Chief, Environmental Enforcement Division
Michigan Department of Natural Resources
6th Floor
Stevens T. Mason Building
Lansing, MI 48909

C. If the date for submission of any item or notification required by this Consent Order falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

VIII. PROJECT COORDINATORS

A. Respondents, U.S. EPA and Michigan shall each designate a Project Coordinator for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in the Consent Order, communications among Respondents, U.S. EPA and Michigan concerning the terms and conditions of this Consent Order shall be made between the Project Coordinators. During the course of implementation of the Work, the Project Coordinators shall, whenever possible, operate by consensus. The Project coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

the effective date

B. Within five (5) days of ~~entry~~ of this Consent Order, the Signatories shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator.

C. Each Project coordinator shall be responsible for assuring that all communications received from the other Project Coordinators are appropriately disseminated and processed.

D. The Project Coordinator for U.S. EPA ("OSC") shall have the authority vested in an on-scene coordinator by 40 C.F.R. Part 300 (1983), including authority to require Respondents to cease performance of the Work or any portion thereof which in the opinion of the OSC, may or does present or contribute to an ^{imminent and substantial} endangerment to public health, welfare or the environment. ^{for 72 hrs.} In the event that the OSC does require such cessation of the Work, the OSC then shall have the authority to require Respondents to perform the Work consistent with Attachment A of this Consent Order in accordance with the instructions of the OSC to avoid or mitigate the endangerment, which he or she believes may occur. If Respondents object to any order requiring cessation of the Work or to any order to perform the Work in accordance with the instructions of the OSC, Respondents may petition a court with competent jurisdiction to stay or set aside the order of the OSC.

They oppose this
Qualifier

E. Either the Project Coordinator for Respondents or the Alternate Project Coordinator ^{or their designate} for Respondents shall be on-site ^{available} during all hours of site work and shall be on call for the pendency of this Consent Order.

F. Any Project Coordinator upon request may obtain a split or duplicate sample from any sample being taken at the site by any other Project Coordinator or representative of any other Party. The Respondent's Project Coordinator shall notify the U.S. EPA and Michigan Project Coordinators not less than five days in advance of any sample collection for which such Project Coordinators have indicated that they wish to obtain split or duplicate sample.

C/Quif

IX. REVIEW OF DOCUMENTS; RESOLUTION OF DISPUTES

A. 1. Respondents shall submit all documents required by the Work to U.S. EPA and Michigan pursuant to the criteria and schedules set forth in the Work.

2. U.S. EPA and Michigan shall review each such document and, within thirty days ^{10 working} of receipt advise Respondents in writing as to whether the document is approved or disapproved. In the event Respondents are notified that the document is disapproved in whole or in part, U.S. EPA and Michigan shall include a statement in the notification as to the modifications or additions which must be made to the document prior to approval, and an explanation as to why such modifications or additions are necessary. U.S. EPA and Michigan shall base any decision to approve or disapprove a document upon whether it has been completed in conformance with the standards and specifications set forth in th Work (Attachment A of the Consent Order) ~~and~~

put in to schedule
CA 7/4

check w/ stat

~~whether such document~~ ^{which} is consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (1983).

3. If Respondents do not object to the corrective measures, if any, proposed by U.S. EPA ^{and} Michigan, Respondents shall expeditiously undertake and complete such measures in accordance with the proposed schedule of completion.

4. If Respondents object to any proposed corrective measures, Respondents shall, within ten days after receiving written notice, initiate the dispute resolution procedure set forth in paragraph B of this Section.

B. All disputes concerning implementation of the Work shall be resolved pursuant to the following procedure:

1. Any Project Coordinator who determines that a dispute cannot be resolved informally shall provide a written notice to the other Project Coordinators which sets forth:

- a) his understanding as to the nature of the dispute
- b) his understanding as to the technical position of the other Project Coordinators with regard to the dispute
- c) his technical position with regard to the dispute and
- d) the bases for concluding that his technical position on the dispute should be followed rather than the positions of the other Project Coordinator in dispute.

Revisions
of work
plan
General
Provision
in A.O.

2. Within fifteen (¹⁰~~15~~) business days of receipt of any notice of dispute, the other Project Coordinators shall advise each other in writing as to whether they agree or disagree with the specific statements provided in the notice to them pursuant to sub-paragraph 1 of this Section. Any Project Coordinator who disputes a specific statement shall clearly set forth:

- ASK State whether*
- a) the bases for disputing such statement
 - b) his technical position with regard to the disputed statement
 - c) the bases for concluding that his technical position on the dispute should be followed rather than the other Project Coordinator in dispute.

3. If, within fifteen (¹⁰~~15~~) business days from the date of the submission of the reply(ies) to the notice of dispute, the parties have not reconciled all issues raised in such notice, U.S. EPA and Michigan shall jointly present a written notice to Respondent which sets forth the remaining areas of disagreement and the action(s), withholding of action(s), or change(s) to the Work that U.S. EPA and Michigan determined are necessary. If Respondent believe that the resulting U.S. EPA/ Michigan proposal is technically inappropriate or inconsistent with the Work, Respondents shall notify U.S. EPA and Michigan

within fifteen (¹⁰/~~15~~) business days of receipt of such proposal. If respondents do not so notify U.S. EPA and Michigan, Respondents shall be deemed to have assented to the proposal made by U.S. EPA and Michigan and such proposal shall become part of the Consent Order as if originally so written.

4. If Respondents notify U.S. EPA and Michigan of ^{supervisors} their continued objections to the proposal, the parties shall have an additional fifteen (¹⁰/~~15~~) business days from receipt of Respondents' notifications within which to resolve the dispute. Changes to the Work agreed to among the parties during this fifteen (¹⁰/~~15~~) calendar day period shall become part of the Consent Order as if originally so written. ~~B~~

5. Any such dispute not resolved by the end of the fifteen (¹⁰/~~15~~) business day period specified in sub-paragraph 4 above, shall be deemed resolved in favor of U.S. EPA and shall become part of the Consent Order as if originally so written.

C. Respondents waive any right they may have to contest or adjudicate the validity of any term in this Consent Order, except any terms adopted pursuant to Paragraph B(5) above.

Respondents may challenge any term adopted pursuant to Paragraph B(5) above in any action brought by U.S. EPA and Michigan to enforce the term or in any action brought by Respondent to contest the term.

The
~~U.S. EPA and Michigan~~ *Att parties* X. ACCESS TO THE SITE *and [unclear]*
 and their authorized representatives shall have access to the Site at all reasonable times in order to observe and monitor the progress of the Work, to take samples from and to inspect the Site, and to inspect records relating to the performance of the Consent Order.

XI. RETENTION AND AVAILABILITY OF INFORMATION

A. Respondents shall make available to U.S. EPA and Michigan and shall retain during the pendency of this Consent Order and for a period of six years after its termination, all records and documents in their possession, custody, or control which ^{*directly*} relate to the performance of this Consent Order, including, but not limited to documents reflecting the results of any sampling, tests or other data or other information generated or acquired by any of them, or on their behalf with respect to the implementation of this Consent Order.

B. Respondents may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Order pursuant to 40 C.F.R. §2.203(b) and applicable Michigan law.

Analytical data concerning soil, water and ambient air samples acquired by any Party shall not be claimed as confidential by the Parties. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R.

Work on [unclear] [unclear] [unclear] for [unclear]

Part 2, Subpart B, and if determined confidential by Michigan, afforded protection under applicable Michigan law. If no such claim accompanies the information when it is submitted to the U.S. EPA or Michigan, the public may be given access to such information without further notice to Respondents.

XII. DELAY IN PERFORMANCE; STIPULATED PENALTIES

A. Respondents shall pay into the Hazardous Substances Response Trust Fund administered by U.S. EPA and shall pay to Michigan the sums set forth below as stipulated penalties for each week that Respondents fail to submit a report or document in accordance with the requirements contained in this Consent Order.

These stipulated penalties shall accrue in the amount of \$1,000.00 for the first week and \$2,000.00 for each week thereafter, 1/2 to U.S. EPA and 1/2 to Michigan, to the order of the parties identified in paragraph XV of this Consent Order at the addresses there listed.

B. Respondents shall notify U.S. EPA and Michigan within twenty days of any delay caused by circumstances beyond the control of Respondents which occurs in the performance of the Work or the submission of reports required under this Consent Order. Such notification shall be in writing and shall describe fully the nature of the delay, the reasons therefor, the expected

duration of the delay, the actions which will be taken to mitigate further delay, and the timetable by which the actions in mitigation of the delay will be taken. Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

C. Any failure by Respondents to properly complete the ~~or the submit reports or submit documents or reports required by the work~~ Work, which results from circumstances beyond the ^{reasonable} control of Respondents shall not be deemed to be a violation of its obligations under this Consent Order nor shall it make Respondents liable for the stipulated penalties contained in paragraph ^{XII(A)} XII(A) of this Consent Order. To the extent a delay is caused by such circumstances beyond the ^{reasonable} control of Respondents, the time for performance hereunder shall be extended.

D. In the event Respondent and U.S. EPA and Michigan cannot agree that the time for performance shall be extended, the dispute shall be resolved in accordance with the provisions of paragraph VIII(B) of this Consent Order. Respondents shall have the burden of proving that the delay was caused by circumstances beyond the ^{reasonable} control of Respondents.

E. The stipulated penalties set forth in subparagraph ^{XIII(A)} XIII(A) above shall not preclude U.S. EPA or Michigan from electing to pursue any other remedies or sanctions, including a suit for statutory penalties up to the amount authorized by law, which may be available to U.S. EPA or Michigan by reason of Respondents' failure to comply with any requirements of this Consent Order.

XIII. COMPLIANCE WITH ALL LAWS

All work undertaken by Respondents pursuant to this Consent Order shall be performed in compliance with all applicable federal, state and local laws and regulations. Respondents shall be responsible for obtaining all federal, state, or local permits which are necessary for the performance of the Work.

State of Mich. & EPA's Assistance in obtaining permits
look for notice days in CRP

XIV. PARTICIPATION IN COMMUNITY RELATIONS ACTIVITIES

Respondents shall be given ^{advance reasonable} notice of and provided with the opportunity to participate in any public meetings which may be held or sponsored by U.S. EPA ^{or Michigan} ~~or Michigan~~ to explain activities at or concerning the Site, including the findings of the RI/FS.

XV. REIMBURSEMENT OF RESPONSE COSTS

A. Within thirty days of the effective date of this Consent Order, Respondents shall pay to U.S. EPA the sum of _____ and shall pay to Michigan the sum of _____ as reimbursement for response costs incurred by U.S. EPA and Michigan from _____ through _____. Payment to U.S. EPA shall be made to the order of the Hazardous Substances Response Trust Fund. Payment shall be forwarded to U.S. EPA, Region V, Regional Hearing Clerk, 230 South Dearborn Street, Chicago, Illinois 60604. Payment to Michigan shall be made to the order of the State of Michigan. Payment shall be forwarded to the Assistant Attorney General in Charge, Environmental Protection Division, Michigan Department of Attorney General, 720 Law Building, Lansing, MI 48903.

B. Within thirty days of the end of each calendar year during the pendency of this Consent Order U.S. EPA and Michigan shall provide Respondents with a full accounting and explanation of the response costs incurred by U.S. EPA and Michigan in connection with the Site during the previous year. Within thirty (30) days of receipt of such accounting and explanation, Respondents shall reimburse U.S. EPA and Michigan for all such costs associated with U.S. EPA's and Michigan's activities in connection with the Consent Order that are not inconsistent with the National Oil and Hazardous Substances Contingency Plan.

Dispute Resolution Clause

XVI. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to Section XVI of this Consent Order, and reimbursement of the U.S. EPA and Michigan as provided in Section XIV, U.S. EPA and Michigan covenant not to sue Respondent for any costs incurred by them or associated with the conduct and completion of the RI/FS.

*see
the
version*

XVII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from U.S. EPA and Michigan [~~that Respondents have demonstrated~~] that all of the terms of the Consent Order have been completed. Following completion of all of the requirements of the Work in the Consent Order, Respondents shall request a determination by U.S. EPA and

Michigan as to whether Respondents have satisfactorily completed the Work. U.S. EPA and Michigan shall provide Respondents with such a determination within 30 days of such a request. *or a joint written letter of what deficiencies exist.*

XVIII. RESERVATION OF RIGHTS

A. Except as expressly provided in this Consent Order, Respondents, and U.S. EPA and Michigan expressly reserve all rights and defenses that they may have, including U.S. EPA's *documents and reports required.* and Michigan's right to disapprove the ~~work performed~~ *work performed* by Respondents as provided in this Consent Order in which event U.S. EPA and Michigan will have *the* right to undertake their own remedial investigation, feasibility study, and remedial actions and to seek reimbursement from Respondents thereafter for such costs incurred by the Hazardous Substances Response Trust Fund and/or Michigan.

take or reward

B Except as expressly provided in this Consent Order, the Respondents expressly reserve all rights and defenses that they may have.
C. Nothing herein is intended to release, discharge, or *may have,* in any way affect any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a Party to this Consent Order from 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 materials or hazardous substances at, to or from the

Site. The parties to this Consent Order expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Consent Order.

D. Nothing in this Consent Order is intended by the parties to be, nor shall it be, a release or settlement of any private claims for injuries to persons or property, known or unknown, ^{or} of any private persons, ~~or of any local governmental entity.~~

E. The U.S. EPA and Michigan recognize and agree that Respondents shall have a ^{joint and several} right to contribution, indemnity and(or) any other available remedies against any person found to be a responsible person or otherwise liable for contribution, indemnity and(or) other available remedies for any amounts which have been or will be expended by Respondents or paid to the U.S. EPA and(or) Michigan under this Consent Order or otherwise in connection with any claims asserted by the U.S. EPA, Michigan and(or) others against Respondents in connection with the Site.

Bob is checking w/ State

XIX. OTHER APPLICABLE LAWS

The Parties agree that this Consent Order shall not supersede the requirements of any applicable local, state and federal laws and regulations.

Take out

XX. OTHER CLAIMS

Respondents agree to indemnify and save and hold harmless ~~U.S. EPA and Michigan~~ ^{U.S. EPA and Michigan} from any and all claims, ~~or causes of action~~ ^{or causes of action} arising from negligent acts or omissions or willful misconduct of Respondents in carrying out the activities pursuant to this Consent Order. U.S. EPA and Michigan shall notify Respondents of any such claims or actions within twenty working days of ~~notification~~ ^{receiving notice} that such a claim or action ~~has been~~ ^{is anticipated or will have been} filed. U.S. EPA and Michigan agree not to act with respect to any such claim or action without first providing Respondents with an opportunity to participate. They further agree to cooperate with Respondents in the defense of any such claim or action.

U.S. EPA and Michigan shall not be held liable under or as a party to any contract entered into by Respondent in carrying out the activities pursuant to this Consent Order.

→ Reverse indemnify

XXI. ~~ADMISSIONS~~

NO ADMISSIONS

Nothing in this Consent Order, including the Work Plan attached hereto as Exhibit A, is intended by the parties to be, nor shall it be, an admission of facts or law, an estoppel or a waiver of defenses by Respondents for any purpose.

New Paragraph
to be reviewed
by Bob

XXII. PUBLIC COMMENT AND EFFECTIVE
DATE OF ADMINISTRATIVE ORDER

Within fifteen (15) days of the date of the execution of this Consent Order, U.S. EPA and Michigan shall announce the availability of this Consent Order to the public for review and comment. U.S. EPA and Michigan shall accept comments from the public for a period of thirty (30) days after such announcement. At the end of the comment period, U.S. EPA and Michigan shall review all such comments and shall either:

- a) determine that the Consent Order should be made effective in its present form, in which case Respondents shall be so notified in writing. The Consent Order shall become effective on the date Respondents receive such notification; or
- b) determine that modification of the Consent Order is necessary, in which case Respondents will be informed as to the nature of all required changes. If Respondents agree to the modifications, the Consent Order shall be so modified and shall become effective upon signature of the parties.

In the event that Respondents are unwilling to agree on modifications required by U.S. EPA and Michigan as a result of public comment, this Consent Order may be withdrawn by U.S. EPA and Michigan. In such an event, U.S. EPA and Michigan reserve all rights to take such actions as they deem necessary, and Respondents reserve all rights to contest such actions.

IT IS SO AGREED:

The CLEVELAND-CLIFFS IRON COMPANY

By: _____

Date: _____

The DOW CHEMICAL COMPANY

By: _____

Date: _____

GEORGIA-PACIFIC CORPORATION

By: _____

Date: _____

CITY OF MARQUETTE, MICHIGAN

Mayer: _____

Clerk: _____

By: _____

Date: _____

STATE OF MICHIGAN

by:
FRANK J. KELLY
Attorney General

Stewart H. Freeman
Assistant Attorney General in Charge
Environmental Protection Division

Attorneys for the State of Michigan

Date: _____

IT IS SO ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

By: _____
Valdas V. Adamkus
Regional Administrator
United States Environmental Protection
Agency, Region V

Date: _____

XVI. COVENANT NOT TO SUE

From the date of effectiveness of this Consent Order, for as long as the terms herein are complied with, and upon termination of this Consent Order [and reimbursement of the U.S. EPA and Michigan as provided in Section XV, } U.S. EPA and Michigan covenant not to sue, execute judgment or take any civil judicial or administrative action under common law (federal or state), state law, including Michigan Public Act 307, and any federal statutes administered or enforced by U.S. EPA, including CERCLA, against the Respondents, their ~~subsidiaries~~, divisions, parents, affiliates or their respective directors, officers, employees, agents, successors and assigns, arising out of or related to ~~the~~ ~~conducting~~ the remedial action and feasibility study with respect to the Site. Provided that the terms of this Consent Order are complied with, this covenant not to sue, execute judgment or take other action includes all civil legal and administrative costs incurred by the U.S. EPA or Michigan with respect to matters which are the subject of this Consent Order.

*in discussion
yet*

XXI. NO ADMISSION

The U.S. EPA, Michigan and the Respondents have entered into this Consent Order to facilitate the expedient preparation of a remedial investigation and feasibility study at the Site and do not admit, accept or intend to acknowledge any liability or fault by any party hereto with respect to any matter arising out of or relating to the Site. This Consent Order ^{, including the Work Plan attached hereto as Exhibit A,} is not intended as and shall not be construed to be an admission of fact or law, or estoppel or a waiver of defenses by Respondents for any purpose.