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DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been made by the Occidental Chemical Corporation ("Occidental"), the Grantor and fee title holder, whose business address is 5005 LBJ Freeway, Dallas, Texas 75244-6119 for the benefit of the Grantee, Michigan Department of Natural Resources and Environment ("MDNRE"), whose address is P.O. Box 30473, Lansing, Ingham County, Michigan, 48909-7926, and recorded with the Muskegon County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at certain portions of real property located within Sections 30, 31 and 32, Town 12 North, Range 14 West of Montague Township and the City of Montague, Muskegon County, Michigan. This real property is described as follows:

LAND SITUATED IN SECTION 30 AND SECTION 31, TOWN 12 NORTH, RANGE 17 WEST, MONTAGUE TOWNSHIP, AND SECTION 32, TOWN 12 NORTH, RANGE 17 WEST, LYING WITHIN THE CITY OF MONTAGUE, MUSKEGON COUNTY, MICHIGAN AND MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 31, TOWN 12 NORTH, RANGE 17 WEST; THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER SAID SECTION 31, SOUTH 01 DEGREES 43 MINUTES 43 SECONDS WEST 2288.93 FEET TO THE CENTERLINE OF OLD CHANNEL TRAIL; THENCE ALONG SAID CENTERLINE, NORTH 54 DEGREES 10 MINUTES 21 SECONDS EAST 214.90 FEET TO THE WESTERLY RIGHT OF WAY OF PACK STREET AND AN EXTENSION THEREOF; THENCE ALONG SAID RIGHT OF WAY AND EXTENSION THEREOF, SOUTH 35 DEGREES 46 MINUTES 58 SECONDS EAST 476.53 FEET TO AN INTERMEDIATE TRAVERSE LINE ALONG WHITE LAKE; THENCE ALONG SAID INTERMEDIATE TRAVERSE LINE THE FOLLOWING SEVEN (7) CALLS, SOUTH 21 DEGREES 58 MINUTES 04 SECONDS WEST 518.09 FEET; THENCE SOUTH 16 DEGREES 46 MINUTES 51 SECONDS WEST 336.68 FEET; THENCE SOUTH 34 DEGREES 24 MINUTES 24 SECONDS WEST 359.08 FEET; THENCE SOUTH 36 DEGREES 40 MINUTES 59 SECONDS WEST 529.96 FEET; THENCE SOUTH 11 DEGREES 23 MINUTES 13 SECONDS EAST 436.55 FEET; THENCE SOUTH 37 DEGREES 31 MINUTES 47 SECONDS WEST 483.10 FEET; THENCE SOUTH 80

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DEGREES 37 MINUTES 14 SECONDS WEST 507.37 FEET TO THE POINT OF ENDING OF SAID INTERMEDIATE TRAVERSE LINE, SAID POINT OF ENDING ALSO BEING A FOUND CONCRETE MONUMENT ON THE EAST LINE OF THE PLAT OF BLUEBERRY RIDGE, AS RECORDED IN MUSKEGON COUNTY RECORDS; THENCE ALONG SAID EAST LINE, NORTH 02 DEGREES 07 MINUTES 47 SECONDS EAST 2373.29 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 31; THENCE ALONG SAID LINE, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 1658.96 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 31; THENCE ALONG THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION 31, NORTH 01 DEGREES 05 MINUTES 42 SECONDS EAST 659.73 FEET; THENCE NORTH 86 DEGREES 55 MINUTES 50 SECONDS WEST 658.47 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 31; THENCE ALONG SAID WEST LINE, SOUTH 00 DEGREES 59 MINUTES 39 SECONDS WEST 659.67 FEET TO THE SOUTH LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 31; THENCE ALONG SAID LINE, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 2070.53 FEET TO THE WEST QUARTER CORNER OF SAID OF SECTION 31; THENCE ALONG THE WEST LINE OF THE NORTHWEST FRACTIONAL QUARTER SECTION 31, NORTH 00 DEGREES 40 MINUTES 32 SECONDS EAST 2637.95 FEET TO THE SOUTHWEST CORNER OF SECTION 30; THENCE ALONG THE WEST LINE OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 30, NORTH 00 DEGREES 54 MINUTES 44 SECONDS EAST 1606.70 FEET; THENCE 859.59 FEET ALONG THE ARC OF A 666.20 FOOT RADIUS CURVE TO THE RIGHT HAVING A CHORD BEARING NORTH 55 DEGREES 50 MINUTES 57 SECONDS EAST 801.19 FEET; THENCE SOUTH 87 DEGREES 11 MINUTES 14 SECONDS EAST 784.72 FEET TO THE EAST LINE OF NORTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID EAST LINE, NORTH 01 DEGREES 24 MINUTES 02 SECONDS EAST 100.04 FEET; THENCE NORTH 87 DEGREES 11 MINUTES 14 SECONDS WEST 377.31 FEET; THENCE 473.24 FEET ALONG THE ARC OF A 666.20 FOOT RADIUS CURVE TO RIGHT HAVING A CHORD BEARING NORTH 66 DEGREES 50 MINUTES 14 SECONDS WEST 463.35 FEET; THENCE NORTH 46 DEGREES 29 MINUTES 14 SECONDS WEST 442.90 FEET TO THE SOUTH LINE OF THE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID LINE, NORTH 87 DEGREES 10 MINUTES 49 SECONDS WEST 309.13 FEET TO THE WEST QUARTER CORNER OF SECTION 30; THENCE ALONG THE WEST LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30, NORTH 00 DEGREES 52 MINUTES 34 SECONDS EAST 1320.05 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID SOUTH LINE, SOUTH 87 DEGREES 16 MINUTES 49 SECONDS EAST 728.61 FEET TO THE WEST LINE OF THE WEST FIVE (5) ACRES OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID WEST LINE, NORTH O1 DEGREES 07 MINUTES 51 SECONDS EAST 1321.14 FEET TO THE NORTH LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID NORTH LINE, SOUTH 87 DEGREES 22 MINUTES 43 SECONDS EAST 164.92 FEET

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TO THE EAST LINE OF THE WEST FIVE (5) ACRES OF THE EAST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID EAST LINE, SOUTH 01 DEGREES 08 MINUTES 02 SECONDS WEST 1321.42 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 30; THENCE ALONG SAID SOUTH LINE, SOUTH 87 DEGREES 16 MINUTES 49 SECONDS EAST 1906.20 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 30; THENCE ALONG SAID LINE, NORTH 01 DEGREES 39 MINUTES 55 SECONDS EAST 1324.44 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 30; THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 30, SOUTH 87 DEGREES 03 MINUTES 38 SECONDS EAST 2006.78 FEET; THENCE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 30, SOUTH 01 DEGREES 11 MINUTES 40 SECONDS WEST 1122.00 FEET; THENCE PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 30, SOUTH 87 DEGREES 03 MINUTES 38 SECONDS EAST 633.00 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 30; THENCE ALONG SAID EAST LINE, SOUTH 01 DEGREES 11 MINUTES 40 SECONDS WEST 1521.87 FEET TO THE EAST QUARTER CORNER OF SECTION 30; THENCE ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 30, SOUTH 01 DEGREES 46 MINUTES 09 SECONDS WEST 2650.68 FEET TO THE NORTHEAST CORNER OF SECTION 31 AND THE POINT OF BEGINNING, INCLUDING LAND LYING BETWEEN SAID INTERMEDIATE TRAVERSE LINE AND THE WATERS EDGE OF WHITE LAKE AS IT MAY OCCUR FROM DAY TO DAY. OVERALL SAID PARCEL CONTAINS 929.5 ACRES ± (40,490,822 SQ. FT) MORE OR LESS INCLUDING LAND LYING BETWEEN THE INTERMEDIATE TRAVERSE LINE AND THE WATERS EDGE OF WHITE LAKE (7.72± ACRES / 336,100 SQ. FT) MORE OR LESS.

ALSO:
LOTS 1, 2, 21, 22, AND 23 OF THE RECORDED PLAT OF BLUEBERRY RIDGE, AS RECORDED IN MUSKEGON COUNTY RECORDS. SAID PARCEL CONTAINS 9.04± ACRES (393,657 SQ. FT) MORE OR LESS.

The restricted portions of the property are designated "Area A", "Area B", and "Area C" as depicted on attached Exhibit 1, and are legally described as follows:

Area A (PIN # 61-02-030-100-0004-00)

LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 30 AND THE NORTHWEST QUARTER OF SECTION 31, TOWN 12 NORTH, RANGE 17 WEST, MONTAGUE TOWNSHIP, MUSKEGON COUNTY, MICHIGAN AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTH ¼ CORNER OF SECTION 31, ALSO BEING THE SOUTH ¼ CORNER OF SECTION 30, TOWN 12 NORTH, RANGE 17 WEST; THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 31, NORTH 86 DEGREES 57 MINUTES 27 SECONDS WEST

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162.79 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 54 MINUTES 46 SECONDS WEST 754.57 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, NORTH 89 DEGREES 05 MINUTES 14 SECONDS WEST 1718.51 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, NORTH 00 DEGREES 54 MINUTES 46 SECONDS EAST 2418.53 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, SOUTH 89 DEGREES 05 MINUTES 14 SECONDS EAST 1718.51 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, SOUTH 00 DEGREES 54 MINUTES 46 SECONDS WEST 1663.96 FEET TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 30 AND THE POINT OF BEGINNING. SAID PARCEL CONTAINS 95.41± ACRES (4,156,267 SQ. FT) MORE OR LESS.

Area B (PIN # 61-02-030-100-0004-00)

LAND SITUATED IN SECTION 30 AND SECTION 31 TOWN 12 NORTH, RANGE 17 WEST, MONTAGUE TOWNSHIP, MUSKEGON COUNTY, MICHIGAN AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTH ¼ CORNER OF SECTION 30, ALSO BEING THE NORTH ¼ CORNER OF SECTION 31, TOWN 12 NORTH, RANGE 17 WEST; THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 30, NORTH 86 DEGREES 57 MINUTES 27 SECONDS WEST 162.79 FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 54 MINUTES 46 SECONDS EAST 2260.16 FEET; THENCE SOUTH 88 DEGREES 13 MINUTES 51 SECONDS EAST 1798.43 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, SOUTH 01 DEGREES 46 MINUTES 09 SECONDS WEST 528.81 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, SOUTH 88 DEGREES 13 MINUTES 51 SECONDS EAST 818.40 FEET; THENCE PERPENDICULAR TO AFORESAID LINE AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30, SOUTH 01 DEGREES 46 MINUTES 09 SECONDS WEST 3704.31 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 352.12 FEET; THENCE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 31, SOUTH 01 DEGREES 43 MINUTES 43 SECONDS WEST 620.02 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 383.81 FEET; THENCE PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 01 DEGREES 43 MINUTES 43 SECONDS EAST 299.87 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 342.86 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31; THENCE ALONG SAID LINE, NORTH 01 DEGREES 24 MINUTES 45 SECONDS EAST 254.14 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 1032.80 FEET; THENCE PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 01 DEGREES 05 MINUTES 42 SECONDS EAST 865.53 FEET; THENCE

PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 31, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 443.91 FEET; THENCE NORTH 00 DEGREES 54 MINUTES 46 SECONDS EAST 1115.51 FEET TO THE NORTH LINE NORTHWEST QUARTER OF SECTION 31 AND THE POINT OF BEGINNING. SAID PARCEL CONTAINS 241.01± ACRES (10,498,595 SQ. FT) MORE OR LESS.

Area C (PIN # 61-02-030-100-0004-00, 61-02-031-400-0008-00, 61-02-031-200-0002-00, 190-0001-00, 190-0002-00, 190-0021-00, 190-0022-00, 190-0023-00)

LAND SITUATED IN SECTION 30 AND SECTION 31, TOWN 12 NORTH, RANGE 17 WEST, MONTAGUE TOWNSHIP, AND SECTION 32 LYING WITHIN THE CITY OF MONTAGUE, MUSKEGON COUNTY, MICHIGAN AND MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 31, T12N, R17W; THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER SAID SECTION 31, SOUTH 01 DEGREES 43 MINUTES 43 SECONDS WEST 2288.93 FEET TO THE CENTERLINE OF OLD CHANNEL TRAIL; THENCE ALONG SAID CENTERLINE, NORTH 54 DEGREES 10 MINUTES 21 SECONDS EAST 214.90 FEET TO THE WESTERLY RIGHT OF WAY OF PACK STREET AND AN EXTENSION THEREOF; THENCE ALONG SAID RIGHT OF WAY AND EXTENSION THEREOF, SOUTH 35 DEGREES 46 MINUTES 58 SECONDS EAST 476.53 FEET TO AN INTERMEDIATE TRAVERSE LINE ALONG WHITE LAKE; THENCE ALONG SAID INTERMEDIATE TRAVERSE LINE THE FOLLOWING 7 CALLS, SOUTH 21 DEGREES 58 MINUTES 04 SECONDS WEST 518.09 FEET; THENCE SOUTH 16 DEGREES 46 MINUTES 51 SECONDS WEST 336.68 FEET; THENCE SOUTH 34 DEGREES 24 MINUTES 24 SECONDS WEST 359.08 FEET; THENCE SOUTH 36 DEGREES 40 MINUTES 59 SECONDS WEST 529.96 FEET; THENCE SOUTH 11 DEGREES 23 MINUTES 13 SECONDS EAST 436.55 FEET; THENCE SOUTH 37 DEGREES 31 MINUTES 47 SECONDS WEST 483.10 FEET; THENCE SOUTH 80 DEGREES 37 MINUTES 14 SECONDS WEST 507.37 FEET TO THE POINT OF ENDING OF SAID INTERMEDIATE TRAVERSE LINE, SAID POINT OF ENDING ALSO BEING A FOUND CONCRETE MONUMENT ON THE EAST LINE OF THE PLAT OF BLUEBERRY RIDGE, AS RECORDED IN MUSKEGON COUNTY RECORDS; THENCE ALONG SAID EAST LINE, NORTH 02 DEGREES 07 MINUTES 47 SECONDS EAST 2373.29 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF 31; THENCE ALONG SAID LINE, NORTH 86 DEGREES 55 MINUTES 18 SECONDS WEST 1658.96 FEET TO THE CENTER ¼ CORNER OF SAID SECTION 31; THENCE ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION 31, NORTH 01 DEGREES 05 MINUTES 42 SECONDS EAST 659.73 FEET; THENCE NORTH 86 DEGREES 55 MINUTES 50 SECONDS WEST 156.49 FEET; THENCE NORTH 00 DEGREES 54 MINUTES 46 SECONDS EAST 863.84 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF NORTHEAST QUARTER OF SECTION 31, SOUTH 86 DEGREES 55 MINUTES 18 SECONDS EAST 443.91 FEET; THENCE PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 31, SOUTH 01 DEGREES 05 MINUTES 42 SECONDS WEST 865.53 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF NORTHEAST QUARTER OF

SECTION 31, SOUTH 86 DEGREES 55 MINUTES 18 SECONDS EAST 1032.80 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31; THENCE ALONG SAID LINE, SOUTH 01 DEGREES 24 MINUTES 45 SECONDS WEST 254.14 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF NORTHEAST QUARTER OF SECTION 31, SOUTH 86 DEGREES 55 MINUTES 18 SECONDS EAST 342.86 FEET; THENCE PARALLEL WITH THE EAST LINE NORTHEAST QUARTER OF SECTION 31, SOUTH 01 DEGREES 43 MINUTES 43 SECONDS WEST 299.87 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF NORTHEAST QUARTER OF SECTION 31, SOUTH 86 DEGREES 55 MINUTES 18 SECONDS EAST 383.81 FEET; THENCE PARALLEL WITH THE EAST LINE NORTHEAST QUARTER OF SECTION 31, NORTH 01 DEGREES 43 MINUTES 43 SECONDS EAST 620.02 FEET; THENCE PARALLEL WITH THE SOUTH LINE OF NORTHEAST QUARTER OF SECTION 31, SOUTH 86 DEGREES 55 MINUTES 18 SECONDS EAST 352.12 FEET; THENCE PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 30, NORTH 01 DEGREES 46 MINUTES 09 SECONDS EAST 3704.31 FEET; THENCE PERPENDICULAR TO AFORESAID LINE, SOUTH 88 DEGREES 13 MINUTES 51 SECONDS EAST 235.84 FEET TO THE EAST LINE OF THE SOUTHEAST QUARTER SECTION 30; THENCE ALONG SAID EAST LINE, SOUTH 01 DEGREES 46 MINUTES 09 SECONDS WEST 1785.41 FEET TO THE POINT OF BEGINNING INCLUDING LAND LYING BETWEEN SAID INTERMEDIATE TRAVERSE LINE AND THE WATERS EDGE OF WHITE LAKE AS IT MAY OCCUR FROM DAY TO DAY. OVERALL SAID PARCEL CONTAINS 123.6 ACRES ± (5,413,869 SQ. FT) MORE OR LESS INCLUDING LAND LYING BETWEEN THE INTERMEDIATE TRAVERSE LINE AND THE WATERS EDGE OF WHITE LAKE (7.72± ACRES / 336,100 SQ. FT) MORE OR LESS. SUBJECT TO EASEMENTS AND RESTRICTION APPARENT AND OF RECORD.

ALSO:

LOTS 1, 2, 21, 22, AND 23 OF THE RECORDED PLAT OF BLUEBERRY RIDGE, AS RECORDED IN MUSKEGON COUNTY RECORDS. SAID PARCEL CONTAINS 9.04± ACRES (393,657 SQ. FT) MORE OR LESS.

These restricted portions of the property are hereinafter referenced collectively as the "Restricted Properties".

The following exhibit is incorporated into this Restrictive Covenant:

Exhibit 1 -- Survey of the Restricted Properties that are subject to the land use or resource use restrictions specified herein.

The Restricted Properties are associated with the Occidental Chemical Corporation, Montague, Michigan RCRA Corrective Action Facility, USEPA Facility Identification Number MID006014906, (hereafter the "Facility") for which a Corrective Action is being conducted consistent with the Corrective Measures Implementation Plan dated August 21, 2001(CMIP), approved by the United States Environmental Protection Agency ("USEPA") on September 20, 2001. The CMIP was submitted to USEPA pursuant to a RCRA Section 3008(h) Administrative Order, USEPA Docket Number V-W-009-93 ("Administrative Order"). The Corrective Action is being implemented to address environmental contamination fully described in the RCRA Facility

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Investigation ("RFI") reports dated October 15, 1996 and April 30, 1999, and approved by USEPA on September 11, 1997 and February 7, 2000, respectively. The Restricted Properties are also associated with certain duties and obligations imposed upon Occidental Chemical Corporation as the legal successor to Hooker Chemicals and Plastics Corporation under a Consent Judgment ("Consent Judgment") entered on October 30, 1979 in the matter of *Frank J. Kelly et al. v Hooker Chemicals and Plastics Corp.*, Circuit Court for Ingham County, Michigan, Case No. 79-22378-CE.

The CMIP submitted by Occidental Chemical Corporation to USEPA required the recording of this Restrictive Covenant with the Muskegon County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances and hazardous constituents located within the Restricted Properties; 2) assure that any future use of the Restricted Properties are protective of human health and consistent with the exposure assumptions utilized in the development of cleanup criteria established for the Facility and relied upon in the CMIP; and 3) prevent damage or disturbance of any element of the Corrective Measures implemented at the Facility. The restrictions contained in this Restrictive Covenant are based upon information available at the time of USEPA's September 20, 2001 decision. The September 20, 2001 decision relies upon the Limited Industrial/Commercial cleanup criteria developed under MCL 324.20120a(1)(g) and (i) to protect human health and the environment. Failure of the Corrective Measures to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the CMIP; future changes in the environmental condition of the Restricted Properties or changes in the cleanup criteria developed under MCL 324.20120a(1); the discovery of environmental conditions at the Facility that were not accounted for in the CMIP; or use of the Restricted Properties in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

Summary of Corrective Measures/Response Activities

Hazardous substances and hazardous constituents including dioxins and furans, hexachlorobenzene, hexachlorocyclopentadiene, hexachlorobutadiene, octachlorocyclopentene, hexachloroethane, mirex, tetrachloroethylene, carbon tetrachloride, chloroform, and trichloroethylene have been released and/or disposed of on the Restricted Properties. Prior to recording of this Restrictive Covenant, Corrective Measures were undertaken to remove or treat in-place some of the contamination, including removal of contaminated sediment in White Lake, removal of contaminated soils in several areas with placement of a clean soil cap, construction of a containment vault for disposal of hazardous wastes, and operation of a groundwater purge system and groundwater treatment system. Hazardous substances and hazardous constituents, including carbon tetrachloride, chloroform, hexachlorocyclopentadiene, octachlorocyclopentene, hexachlorobutadiene, hexachloroethane, trichloroethene, and tetrachloroethene remain present in soils and groundwater at the Restricted Properties at levels that require controls to prevent unacceptable exposures.

Areas of the Restricted Properties contain hazardous substances and hazardous constituents in excess of the concentrations developed as the unrestricted residential criteria under MCL 324.20120a(1)(a) or (17) of the NREPA. Information pertaining to the environmental conditions at the Facility and response activities undertaken at the Facility is on file with the USEPA and the MDNRE. The MDNRE recommends that prospective purchasers or users of the Restricted Properties undertake appropriate due diligence prior to acquiring or using the Restricted Properties, and undertake appropriate actions to comply with the requirements of MCL 324.20107a of the NREPA.

Definitions

"MDNRE" means the Michigan Department of Natural Resources and Environment, its successor entities, and those persons or entities acting on its behalf.

"NREPA" shall mean the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

"USEPA" means the United States Environmental Protection Agency, its successor entities, and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 111, MCL 324.11101 et seq, Part 201 of the NREPA, MCL 324.20101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C 6901 et seq.; or the administrative rules promulgated there under shall have the same meaning in this document.

NOW THEREFORE,

Pursuant to this Restrictive Covenant, Occidental Chemical Corporation, the legal successor to Hooker Chemical & Plastics Corporation, a New York corporation, whose address is Occidental Tower, 5005 LBJ Freeway, Dallas, TX, 75244-6119, as Owner and fee title holder of the Property, hereby declares and covenants that Area A, Area B, and Area C shall be subject to the restrictions and conditions set forth below:

1. **Restrictions on Land Use**

A. **Area A**. The containment vault, including a 300 foot buffer as required by the Consent Judgment, is located within Area A.

(i) **Consent Judgment**. The Owner shall maintain and monitor the containment vault and the containment vault groundwater monitoring system, including groundwater monitoring wells, the groundwater purge system, and the groundwater purge treatment system (collectively referred to as the "groundwater systems") as set forth in the Consent Judgment and the plans submitted and approved pursuant to the Consent Judgment.

(ii) **Soil Disturbance, Movement and Management**. The Owner shall prohibit all activities within Area A except for those that are necessary to maintain the integrity of the containment vault.

(iii) **Prohibited Activities**. The Owner shall prohibit those activities in Area A that could impair the integrity of the groundwater transmission lines, electrical lines or other portions of the groundwater systems.

(iv) **Groundwater Use**. The Owner shall prohibit any and all groundwater use within Area A except for groundwater monitoring and operation of the groundwater purge system, as approved by the MDNRE.

(v) **Building Restrictions**. The Owner shall prohibit all buildings or other structures within Area A except those that are necessary to support the integrity of the containment vault.

(vi) **Fencing and Marking**. The Owner shall construct and maintain a secure and sound fence perimeter, measuring at least fifty (50) feet from the edge of the landfill, and shall construct and continuously maintain granite marker(s) at all gates identifying the boundaries of the containment vault and the toxic nature of the material contained in the containment vault in Area A, together with signage inside the fence, visible from each side, stating: "Warning, Toxic Material Burial Area, Keep Out." The Owner shall prohibit all vehicular traffic within the fenced perimeter of Area A, except that which is necessary for support of site remediation, maintenance and inspection.

B. **Area B**. Area B encompasses areas of the property where soil may be impacted at depth, and where additional restrictions will assure the safety and proper management of soils. The monitoring wells for the groundwater system are present in Area B.

(i) **Soil Disturbance, Movement and Management**. The Owner shall ensure that any soil movement in Area B must be performed under a site-specific health and safety plan that addresses potential exposure of hazardous constituents to workers. All moved soils must stay within Area B, or must be characterized and managed appropriately if moved outside of Area B. The Owner shall prohibit any subsurface activity that could damage the monitoring wells for the groundwater system.

(ii) **Groundwater Use**. The Owner shall prohibit any and all groundwater use within Area B except for groundwater monitoring and operation of the groundwater purge system, as approved by the US EPA and MDNRE.

(iii) **Building Restrictions**. The Owner shall address the volatilization of volatile organic compounds to indoor air from groundwater when constructing or renovating buildings in Area B by directly analyzing the shallow groundwater under any such building or structure, and if necessary, using vapor barriers or other mechanisms to control vapor intrusion into the building or structure.

C. **Area C**. Area C encompasses the portion of the property over the groundwater plume that has, historically, not been developed for industrial use. The groundwater system is located in this area, including the groundwater purge treatment system, purge lines, purge wells, and monitoring wells.

(i) **Soil Disturbance, Movement and Management**. The Owner shall prohibit any subsurface activity in Area C that could damage the groundwater transmission lines, electrical lines or other portions of the groundwater systems.

(ii) **Building Restrictions**. The Owner shall prohibit the construction of all buildings or other structures within Area C that would inhibit or restrict access to the purge wells or transmission lines.

(iii) **Groundwater Use**. The Owner shall prohibit any and all groundwater use within Area C except for groundwater monitoring and operation of the groundwater purge system, as approved by the US EPA and MDNRE.

D. **All Restricted Areas (Area A, Area B, and Area C).**

(i) **No Interference with Corrective Measures**. The Owner shall prohibit activities within any and all of the restricted areas, also referred to as the Restricted Properties, that may interfere with any element of the Corrective Measures, the containment vault, and the groundwater systems implemented at the Restricted Properties, including the performance of operation and maintenance activities, monitoring, or other measures necessary to assure the effectiveness and integrity of the Corrective Measures, the containment vault, and the groundwater systems.

(ii) **Contaminated Soil Management**. The Owner shall manage all soils, media and/or debris located on the Restricted Properties in accordance with any applicable requirements of MCL 324.20120c, MCL 324.11101 et seq.; Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. **Restrictive Covenant Runs with the Land**

This Restrictive Covenant shall run with the land and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This restrictive covenant may only be modified or rescinded with the prior written approval of MDNRE and USEPA. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

3. **Access**

The Owner shall grant to the USEPA, the MDNRE, and their designated representatives and delegatees the right to enter the Restricted Properties at reasonable times for the purpose of determining and monitoring compliance with the Administrative Order, the Consent Judgment, and this Restrictive Covenant, including the right to take samples, inspect the conduct of the Corrective Measures, and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with the Administrative Order or the Consent Judgment.

4. **Modification**

The Owner may request in writing to the USEPA and the MDNRE, at the addresses provided below, modifications to this Restrictive Covenant. This Restrictive Covenant may be modified only with the written approval of the U.S. EPA and the MDNRE. Any approved modification to this Restrictive Covenant shall be filed with the appropriate Registrar of Deeds by the then Owner and a certified copy shall be returned to the MDNRE and the USEPA at the addresses provided below.

5. **Transfer of Interest**

The Owner shall provide notice to the USEPA and MDNRE at the addresses provided below of the Owner's intent to transfer any interest in the Restricted Properties, or any portion thereof, at least ninety (90) days prior to consummating the conveyance in accordance with R 299.9522 of Part 111 of the NREPA. A conveyance of title, easement, or other interest in the Restricted Properties shall not be consummated by the Owner without adequate and complete

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provision for compliance with then applicable terms and conditions of this Restrictive Covenant, the Consent Judgment, the Administrative Order, and the NREPA. The Owner shall include in any instrument conveying any interest in any portion of the Restricted Properties, including but not limited to deeds, leases and mortgages, a notice which is in substantially the form as follows:

> *NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT, DATED [Insert Date], AND RECORDED WITH THE MUSKEGON COUNTY REGISTER OF DEEDS, LIBER NUMBER [Insert Number], PAGE [Insert Page Number]*

A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

6. **Notices**

Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant and reference USEPA ID No. MID 006 014 906, and shall be served either personally or sent via first class United States mail, postage prepaid, or by private courier, next day delivery as follows:

For the USEPA:

Corrective Action Section 2
Remediation and Reuse Branch
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd. (LU-9J)
Chicago, IL 60604-3590

with a copy to:

Office of the Regional Counsel
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd. (C-14J)
Chicago, IL 60604-3590

For the MDNRE:

Director
Michigan Department of Natural Resources and Environment
P.O. Box 30473
Lansing, Michigan 48909-7973

7. **Enforcement**

The State of Michigan, through the MDNRE, and the United States of America, on behalf of the USEPA as a Third Party Beneficiary, may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

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8. **Severability**

If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

9. **Authority to Execute Restrictive Covenant**

The undersigned person executing this Restrictive Covenant on behalf of the Owner and fee title holder represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant on behalf of Occidental Chemical Corporation.

IN WITNESS WHEREOF, Occidental Chemical Corporation has caused this Restrictive Covenant to be executed on this 28th day of May, 2010.

Occidental Chemical Corporation

By: _____
Signature

Name: MICHAEL G. ANDERSON
Print or Type Name

Its: VICE PRESIDENT
Title

STATE OF TEXAS)
) ss
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 28th day of May, 2010, by MICHAEL G. ANDERSON, VICE PRESIDENT of Occidental Chemical Corporation, a New York corporation, on behalf of the corporation.

Debra Lynne Taylor
DEBRA LYNNE TAYLOR
Notary Public, Dallas County, Texas
Acting in Dallas County, Texas
My Commission Expires: August 24, 2013

DEBRA LYNNE TAYLOR
Notary Public, State of Texas
My Commission Expires
August 24, 2013

PREPARED BY AND RETURN TO:
Steven C. Kohl, Esq.
Warner Norcross & Judd LLP
2000 Town Center
Suite 2700
Southfield, MI 48075-1318
Telephone (248) 784-5141

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EXHIBIT 1

SURVEY OF THE PROPERTY

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Aerial Photo Source: Abrams Aerial Survey Corporation

MW-05-02 Monitoring Well (Not All Shown)
PW Purge Well
Fence

Administrative Control Area "A"
Administrative Control Area "B"
Administrative Control Area "C"

0 300 600 1,200 1,800 2,400 Feet

N W E S

AECOM

Administrative Control Areas

Glen Springs Holdings, Inc.
Montague, Michigan

98355	March 2010	Creator: CPP021910
		Q.C: JT

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