

(D) Purchased services: sampling costs, laboratory fees, and professional fees for which the need can be predicted;

(E) Disposal and treatment costs: costs of transporting, treating, and disposing of waste materials, such as treatment plant residues, generated during operations;

(F) Administrative costs: costs associated with administration of remediation alternative operation and maintenance not included under other categories;

(G) Insurance, taxes, and licensing costs: costs of such items as liability and sudden accidental insurance; real estate taxes on purchased land or right-of-way; licensing fees for certain technologies; and permit renewal and reporting costs;

(H) Maintenance reserve and contingency funds: annual payments into escrow to cover: (1) costs of anticipated replacement or rebuilding of equipment; and (2) any large unanticipated operation and maintenance costs; and

(I) Other costs: items that do not fit any of the above categories.

30. As part of the Sediment Remediation Evaluation and Selection Report, TPI shall select for implementation one or more of the sediment remediation alternative(s). TPI shall specify the criteria used in selecting the alternative(s) chosen, including identifying trade-offs among the technical, environmental and health concerns, governmental and local interests and requirements, and costs.

31. Development of an Engineering and Design Plan. By no later than one hundred twenty (120) days after approval of the Sediment Remediation Evaluation and Selection Report, TPI shall submit to U.S. EPA for approval an engineering and design plan ("Engineering and Design Plan"). The purpose of the Engineering and Design Plan is to set forth the plans for the design, construction, operation and maintenance of the selected remediation alternative(s). The Engineering and Design Plan shall include the following plans:

- a. Updated Community Relations Plan. TPI shall update the Community Relations Plan that was submitted as part of the original, comprehensive Sediment Remediation Project Plan in light of the new information available on the selected remediation alternative(s).
- b. Updated Health and Safety Plan. TPI shall update the Health and Safety Plan that was submitted as part of the original, comprehensive Sediment Remediation Project Plan in light of the new information available on the selected remediation alternative(s).
- c. Design Plans and Specifications. TPI shall develop clear and comprehensive design plans and specifications to implement the selected sediment remediation alternative(s).
- d. Operation and Maintenance Plan. TPI shall prepare an Operation and Maintenance Plan to cover both implementation and long-term maintenance of the selected sediment remediation alternative(s).
- e. Final Cost Estimate. TPI shall refine the cost estimate developed in the Sediment Remediation Evaluation and Selection Plan to reflect the more detailed and accurate design plans and specifications being developed.
- f. Final Project Schedule. TPI shall prepare a project schedule for implementation of the selected remediation alternative(s) which includes the timing for the initiation and completion of all critical path tasks and the identification of the completion dates of the major interim milestones and the final project completion date.
- g. Performance Quality Assurance Plan. TPI shall prepare a Performance Quality Assurance Plan that includes, but is not limited to, (i) a description of the responsibility and authority of all organizations and key personnel involved in commencing and completing the selected remediation alternative(s); (ii) an identification of the qualifications of all organizations and key personnel sufficient to demonstrate that they possess the training and experience necessary to fulfill their identified responsibilities; (iii) a summary of the inspection activities, observations, and testing that will be used to monitor the construction and/or installation of the selected remediation alternative(s); (iv) an identification of the sampling activities, sample size, sample locations, and frequency of testing, and criteria for acceptance and rejection and plans for correcting problems as addressed in the project specifications; (v) an identification of the documentation and reports that will be generated during the implementation of the selected remediation alternative(s).

32. Implementation and Completion of the Selected Sediment Remediation Alternative(s). Weather permitting, by no later than sixty (60) days after approval of the Engineering and Design Plan, TPI shall commence implementation of the selected sediment remediation alternative(s). TPI shall implement the selected sediment remediation alternative(s) in accordance with the plans and schedules approved in the Engineering and Design Plan. If weather does not permit TPI to commence implementation of the selected sediment remediation alternative(s) within sixty (60) days after approval of the Engineering and Design Plan, TPI shall promptly notify U.S. EPA, and the Sediment Remediation Project Coordinators identified in Subsection VI.F of this Decree shall work together to identify an appropriate date on which the implementation may commence. For weather-related delays involving the commencement of the implementation of the selected sediment remediation alternative(s), TPI shall not be required to comply with the Force Majeure provisions of this Decree for securing a revised commencement date, provided that TPI has engaged in discussions with U.S. EPA's Sediment Remediation Project Coordinator regarding the matter. If the Sediment Remediation Project Coordinators do not agree the need for weather related delays or upon a revised commencement date within ninety (90) days after approval of the Engineering and Design Work Plan, the dispute shall be resolved in accordance with the administrative dispute resolution provisions of Paragraph 41.

33. Submission of a Sediment Remediation Project Completion Report. By no later than one hundred twenty (120) days following completion of the implementation of the selected sediment remediation alternative(s), TPI shall submit to U.S. EPA for approval a Sediment Remediation Project Completion Report ("Sediment Remediation Project Completion Report" or "Project Completion Report"). In the Sediment Remediation Project Completion Report, TPI shall: (i) certify

that all work was performed in compliance with this Decree and with approved plans and reports;

- (ii) certify that TPI has not deducted sediment remediation SEP expenditures from its taxes;
- (iii) identify the volume of sediment and quantity of contamination removed from Horse Creek and/or the Pine River;
- (iv) describe the environmental and/or health benefits resulting from the Sediment Remediation Project; and
- (v) set forth a detailed accounting of the costs incurred.

C. SCHEDULES OF IMPLEMENTATION AND MODIFICATIONS THERETO

34. TPI shall develop the implementation schedules required under the plans and reports submitted pursuant to Subsection VI.B of this Decree with the goal of implementing and completing the Sediment Remediation Project as expeditiously as practicable, taking into account all logistical issues and the goal of maximizing the environmental benefits of the Project. To the extent applicable, all schedules of implementation shall include a milestone representing the date(s) that TPI shall submit applications for federal, state and local permits or approvals that may be required for the performance of work or activities. TPI shall not be responsible for the timing of such governmental permits or approvals, provided that TPI uses its best efforts to: (i) submit permit and approval applications that comply with all applicable requirements; and (ii) secure approval of permits and approvals after filing the applications, including timely supplying additional information, if requested. In the development of schedules of implementation, TPI shall not be required to use dates certain. TPI may schedule dates to reflect a period of time after critical path governmental approvals (e.g., a specified number of days after issuance of relevant construction permits).

35. TPI may request U.S. EPA to modify (a) specific date(s) within this Consent Decree or within any approved schedule of implementation by complying with the procedures set forth in

the Force Majeure provisions of this Decree, except that TPI shall not be required to comply with the requirements of Paragraph 114 of Force Majeure provisions of this Decree for seeking delays in the completion dates: (i) under the circumstances set forth in Paragraphs 26, 32, 60, and this Paragraph; or (ii) if U.S. EPA, in its sole discretion and in writing, waives TPI's requirement to comply with Paragraph 114. In addition to Force Majeure events, TPI may raise as bases for delays or impediments to performance of the Sediment Remediation Project, prohibitions or restrictions of federal, state, or local law on the performance of work or activities; adverse weather conditions; difficulties securing access; and/or the failure of a governmental entity to timely act upon a timely-submitted permit or approval application, provided that TPI has used its best efforts to: (i) submit permit and approval applications that comply with all applicable requirements; and (ii) secure approval of permits and approvals after filing the applications, including timely supplying additional information, if requested. If, by operation of this Paragraph, TPI is not required to comply with the requirements of Paragraph 114 of the Force Majeure provisions, TPI shall provide reasonable notice to the U.S. EPA's Sediment Remediation Project Coordinator regarding any delays or impediments to performance, and shall communicate with U.S. EPA's Sediment Remediation Project Coordinator regarding the rescheduling of any originally-scheduled milestone or implementation date. U.S. EPA shall not unreasonably withhold consent to requests for modification of schedules of implementation. Nothing in this Paragraph shall limit the rights of U.S. EPA and TPI to agree to modifications of the dates initially set forth in this Decree or in approved schedules of implementation. All modifications to any dates initially set forth in this Decree or to any schedules of implementation shall be signed in writing by the Sediment Remediation Project Coordinators for U.S. EPA and TPI, and neither the United States nor TPI shall

be required to file such modifications with the Court in order for the modifications to be effective. Stipulated penalties shall not accrue nor be due and owing during any period between an originally-scheduled milestone or implementation date and an approved modification to such date; provided however, that U.S. EPA shall retain the right to seek stipulated penalties if U.S. EPA does not approve a modification to a date or dates.

D. U.S. EPA REVIEW AND APPROVAL OF PLANS AND REPORTS SUBMITTED UNDER SUBSECTION VI.B OF THIS DECREE

36. The following plans and reports shall require the approval of U.S. EPA prior to the implementation of any of the work or activities contemplated in the plan or report: (i) the Sediment Remediation Project Work Plan, including all “subplans” submitted under the comprehensive Project Work Plan; (ii) the Sediment Remediation Evaluation and Selection Report; and (iii) the Engineering and Design Plan, including all “subplans” submitted under the Engineering and Design Plan. The Sediment Remediation Project Completion Report shall require the approval of U.S. EPA prior to termination of Section VI of this Decree.

37. For the four plans and reports identified in Paragraph 36, U.S. EPA shall: (a) approve the plan or report; (b) disapprove the plan or report, in whole or in part; (c) approve the plan or report upon specified conditions, directing that TPI modify the plan or report; or (d) any combination of the above. U.S. EPA shall undertake its action on the submitted plan or report only after providing MDEQ with reasonable opportunity for consultation and after considering any comments received by the public within thirty (30) days of the dissemination of the submitted plan or report to the public.

38. By no later than sixty (60) days after U.S. EPA notifies TPI of its disapproval or its direction to modify the plan or report, TPI shall submit a modified plan or report. TPI may request

an extension to this submission correction period, but all such requests by TPI and all responses by U.S. EPA shall be in writing.

39. Notwithstanding the receipt of a notice of disapproval or conditional approval, in whole or in part, TPI shall proceed, if directed by U.S. EPA, to take any action required by any nondeficient portion of TPI's plan or report, if such action can be undertaken independent of the deficient portion of TPI's submission. Implementation of any nondeficient portion of a plan or report shall not relieve TPI of any liability for stipulated penalties which may accrue pursuant to this Decree.

40. In the event that a resubmitted plan or report or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require TPI to correct the deficiencies in a further revised plan or report and/or include the conditions in a further revised plan or report. U.S. EPA also retains the right to modify or develop any disapproved or conditioned portion of a resubmitted plan or report, and TPI shall implement any such plan, report or item as modified or developed by U.S. EPA, subject only to TPI's right to invoke the administrative dispute resolution provisions of Paragraph 41. If, at any time after U.S. EPA's first disapproval in whole or in part of a resubmitted plan or report, or U.S. EPA's approval of such resubmitted plan or report with conditions, TPI disagrees with U.S. EPA's comments on or requests regarding a resubmitted plan or report or portion thereof, TPI shall have the right to invoke the administrative dispute resolution provisions of Paragraph 41.

41. By no later than thirty (30) days after receipt of (i) U.S. EPA's modifications to a resubmitted plan or (ii) U.S. EPA's request for a second, or later, resubmission, TPI shall: (i) commence implementation of the plan, report, or item as modified by U.S. EPA; (ii) submit a

modified plan or report that satisfies the conditions or comments of U.S. EPA on the resubmitted plan or report; or (iii) notify U.S. EPA's Sediment Remediation Project Coordinator and the Office of Regional Counsel of U.S. EPA Region 5, in writing, of TPI's intent to invoke the administrative dispute resolution provisions of this Paragraph. If TPI elects to invoke the administrative dispute resolution provisions of this Paragraph, U.S. EPA and TPI shall engage in informal negotiations for a period of thirty (30) days, unless such time is modified by written agreement of U.S. EPA and TPI. If the dispute is not resolved by informal means, TPI shall send a written Statement of Position to U.S. EPA by no later than thirty (30) days following the conclusion of the informal dispute resolution period. Such Statement of Position shall set forth the issue in dispute, the outcome that TPI believes is appropriate, the basis for TPI's position, any factual data, analyses or opinions supporting TPI's position, and any supporting documentation relied upon by TPI. If U.S. EPA concurs with TPI's position, by no later than thirty (30) days after receipt of TPI's Statement of Position, U.S. EPA shall provide notice to TPI of its concurrence. If U.S. EPA does not concur with TPI's position, by no later than thirty (30) days after receipt of TPI's Statement of Position, U.S. EPA shall set forth its Statement of Position, including its position on the issue in dispute, the outcome that U.S. EPA believes is appropriate, the basis for U.S. EPA's position, any factual data, analyses or opinions supporting U.S. EPA's position, and any supporting documentation relied upon by U.S. EPA. By no later than thirty (30) days after U.S. EPA submits its Statement of Position, TPI may submit a Reply. The Director of the Water Division of Region 5 of U.S. EPA will issue a final administrative decision resolving the dispute based on the record before him/her. To the extent that U.S. EPA prevails in whole or in part on its position on the disputed plan or report, or any portion thereof, the decision of the Director shall include the conditions under which U.S. EPA will give

final approval of the plan or report that is the subject of the dispute. This decision shall be binding upon TPI. If U.S. EPA prevails in whole or in part on its position with respect to the disputed plan or report or any portion thereof, TPI shall be liable for stipulated penalties from the date that TPI either should have: (i) commenced implementation of the plan, report, or item as modified by U.S. EPA; or (ii) submitted a modified plan or report that satisfied the conditions or comments of U.S. EPA, until the 31st day after the receipt by the Director of the Water Division of U.S. EPA's Statement of Position, or TPI's Reply, whichever date is later. If TPI prevails with respect to a given issue under the administrative dispute resolution provisions of this Paragraph, stipulated penalties shall not accrue nor be payable with respect to any such issue(s) on which TPI prevailed.

42. If TPI does not timely submit a notice invoking the administrative dispute resolution provisions of Paragraph 41, TPI shall be deemed to have accepted U.S. EPA's requested revisions. Any failure by TPI to: (i) timely submit a second corrected plan or report; or (ii) timely commence the activities required in the first resubmitted plan or report as modified or developed by U.S. EPA shall subject TPI to stipulated penalties pursuant to Subparagraph 90k. If TPI does not submit a notice invoking the administrative dispute resolution provisions of Paragraph 41, stipulated penalties shall accrue from the date on which TPI was required to submit the second corrected plan or report or the date on which TPI was required to undertake any activity required in the first resubmitted plan or report as modified or developed by U.S. EPA.

43. Upon approval by U.S. EPA, the four plans and reports identified in Paragraph 36 shall be incorporated herein as part of this Consent Decree and shall be fully enforceable.

E. QUARTERLY SEDIMENT REMEDIATION PROJECT MONITORING REPORTS

44. Quarterly Progress Reports. On a quarterly basis commencing in the first calendar

quarter following the entry of this Decree and continuing until TPI has completed implementation of the selected sediment remediation alternative(s), TPI shall submit quarterly reports that include, but are not limited to: (a) a description of the activities that TPI completed in the previous quarter, including brief summaries of actions taken pursuant to the Project Management Plan, the Community Relations Plan, the Health and Safety Plan, and, when applicable, the Engineering and Design Plan; (b) a summary of the activities planned for the next quarter; (c) an itemized summary of all expenditures that were incurred during the previous calendar quarter; (d) information regarding percentage of completion, and any unresolved delays encountered or anticipated that may affect the approved schedules for implementation or the dates set forth in this Decree, including efforts to mitigate any actual or anticipated delays; provided however, that nothing in this Paragraph shall be construed to modify or limit TPI's obligations under Paragraph 35 of this Section; and (e) any proposed modifications to any plans or reports that TPI has submitted or that U.S. EPA has approved. The quarterly progress reports shall be postmarked on or before the thirtieth (30) day following the end of the quarter to which the report relates.

F. SEDIMENT REMEDIATION PROJECT COORDINATORS AND SUBMISSION PROCEDURES

45. U.S. EPA's Sediment Remediation Project Coordinator is:

John Dorkin
Ecologist
ARTS Branch, Water Division
U.S. EPA Region 5, Mail Code WA-16J
77 West Jackson Blvd.
Chicago, IL 60604-3590
Phone: (312) 886-1980
Email: dorkin.john@epa.gov

46. MDEQ's Sediment Remediation Project Coordinator is:

Scott Hanshue
Aquatic Biologist
GLEAS Group, Surface Water Quality Division
Michigan Department of Environmental Quality

For regular mail:

P.O. Box 30273
Lansing, MI 48909-7773

For express mail:

300 S. Washington Square
Knapps Center
Lansing, MI 48909-7773

Phone: (517) 335-1125

Email: hanshues@state.mi.us

47. TPI's Sediment Remediation Project Coordinator is:

Sean Horne
SEP Project Coordinator
TPI Petroleum, Inc.
1925 E. Superior St.
Alma, MI 48801
Phone: (517) 463-9617
Email: sean_horne@udscorp.com

48. U.S. EPA, MDEQ, and TPI each shall have the right to change their respective Sediment Remediation Project Coordinators. Such a change shall be accomplished by notifying the others in writing as soon as practicable before or after the change occurs.

49. The Sediment Remediation Project Coordinators shall use their best efforts to facilitate timely and consistent communications regarding all issues arising under Section VI of this Decree. Whenever possible, the Sediment Remediation Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

50. Except where explicitly stated otherwise, TPI shall send all submissions, plans, reports, notices, correspondence or other documents required under Section VI of this Decree to