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DEPARTMENT OF ENVIRONMENTAL QUALITY
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GOVERNOR

DIRECTOR

March 24, 2008

Lieutenant Colonel William J. Leady
Department of the Army
United States Army Corps of Engineers
Detroit Area Office
P.O. Box 09258
Detroit, Michigan 48209-0258

Dear Colonel Leady:

The purpose of this letter is to seek clarification from you regarding the United States Army Corps of Engineers' (USACE) intentions to comply with requirements of the federal Clean Water Act Section 401 Certification issued on March 16, 2005, for the Upper Saginaw River Navigational Dredging Project and Associated Dredged Material Disposal Facility (DMDF).

Lieutenant Colonel Donald Lauzon (USAGE) stated in a March 25, 2005, letter to me (enclosed) that the USAGE expects to meet all of the DMDF operational requirements but does not consider the "Navigational Dredging - Operational Requirements" to be appropriate conditions of the 401 Certification. Nonetheless, Colonel Lauzon indicated that the USAGE would meet certain navigational dredging conditions. Despite our differences of opinion on whether it is appropriate to include navigational dredging requirements in a 401 Certification to ensure water quality standards are met, the Department of Environmental Quality (DEQ) believed we had an understanding that all of the remaining conditions of the 401 Certification would be met by the USACE and, therefore, that water quality standards would also be met during this project.

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You stated during a meeting on February 7, 2008, that the USACE, and not the State, has the authority to determine which provisions of the 401 Certification are legally binding and which are merely advisory. You indicated, therefore, that the USACE would choose which requirements in the 401 Certification for the Upper Saginaw project it would fulfill. This suggests to us a step back from the understanding that we had reached in 2005 and our expectations since that time. Your comments at the meeting raise concerns as to whether the conditions of the 401 Certification and, therefore, water quality standards will be met.

Our discussions regarding the Saginaw DMDF have been a collaborative effort that has progressed steadily, despite significant challenges, to achieve our

mutual goal of building a repository for river sediments that meets all federal and state regulatory requirements. Indeed, it has been on this basis that we jointly defended litigation in the

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state and federal courts where agency witnesses affirmed that the facility would be fully compliant with the 401 Certification and other applicable requirements, including the construction of a slurry wall. At least in part, it was our mutual representations that persuaded the courts to allow construction to advance to the point it is today.

We believe it is imperative that the USACE continue to collaborate with the state and local partners to complete a project that conforms to the representations we made to our citizens and the courts, so that all parties may confidently support the completion and utilization of this facility. Accordingly, we respectfully ask that you clarify those provisions of the 401 Certifications USAGE considers are legally binding and those which the USACE considers to be merely advisory. Moreover, whether legally binding or advisory, please identify those provisions the USAGE intends to fulfill.

Please contact Ms. Diana Klemans, Chief, Surface Water Assessment Section, Water Bureau, at 517-335-4121, if you have any questions regarding this request, or you may contact me.

Sincerely,



Steven E. Chester
Director
517-373-7917

Enclosure

cc: Mr. Alan Hoffman, Department of Attorney General
Mr. Jim Sygo, Deputy Director, DEQ
Mr. Frank J. Ruswick, Jr., Senior Policy Advisor, DEQ
Mr. Richard Powers, DEQ
Mr. James K. Cleland, DEQ
Ms. Diana Klemans, DEQ