

## INJECTION WELL AGREEMENT AMENDMENT

CMS Land Company (CMS) and the Michigan Department of Environmental Quality (MDEQ) enter into this Injection Well Agreement Amendment (Amendment).

### BACKGROUND

1. CMS and the Michigan Department of Natural Resources and Environment (MDNRE) entered into an Injection Well Agreement (Agreement) that became effective on November 3, 2010. Since that time, a number of significant or unanticipated events have occurred that are relevant to the Agreement. Those events include the following:

- (a) Executive Order 2011-1 abolished the MDNRE, created the MDEQ, and transferred the authorities and functions of the former MDNRE that are relevant to the Agreement to MDEQ as of March 13, 2011. MDEQ is the successor in interest to the MDNRE.
- (b) CMS has developed a treatment system for cement kiln dust leachate (CKD leachate) that is expected to reduce the amount of total mercury entering Little Traverse Bay under CMS's National Pollutant Discharge Elimination System Permit No. MI0058827 (NPDES Permit).
- (c) CMS, MDEQ, and other relevant parties have entered the "enforceable agreement" referenced in section 15.x. of the EPA AOC and Paragraph 1 of the Agreement, which does not rely on deep well injection as a method of disposal for CKD leachate..

### PURPOSE OF AMENDMENT

2. The United States Environmental Protection Agency (EPA) issued Final Permit MI-047-11-0001 under the Underground Injection Control program of the federal Safe Drinking Water Act, 40 CFR 300h *et seq.*, (UIC Permit) on February 8, 2012. MDEQ has completed reviewing CMS's Mineral Well Permit Application under Part 625 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.62501 *et seq.* (Part 625 Permit), and is preparing to issue the Part 625 Permit. These permitting activities will satisfy CMS's obligations under the Agreement to pursue the UIC and Part 625 permits.

3. CMS and MDEQ have determined that performance of the obligations under the Agreement will not be necessary unless one of the two events identified in the new Paragraph 9 of the Agreement (stated in Paragraph 5 of this Amendment) occur.

### AMENDMENT OF AGREEMENT

For the reasons stated above, CMS and MDEQ agree to amend the Agreement as solely as follows:

4. *Paragraph 6 of the Agreement* – The text of Paragraph 6 of the Agreement shall remain unchanged and the following sentence shall be added at the very end:

CMS shall meet the requirements specified in the UIC Permit, Part 625, or their associated statutes or administrative rules as needed to keep the UIC Permit and Part 625 permit from terminating or expiring.

5. *Paragraph 9 of the Agreement* – The text of Paragraph 9 of the Agreement is deleted and replaced with the following text:

*Timing of the Well Evaluation.* The work for the Well Evaluation shall commence within thirty days of when CMS receives the last permit or authorization required to conduct the Well Evaluation if one of the following events has occurred:

(a) CMS has failed to meet the final effluent limits for total mercury specified in the NPDES Permit and has failed to cure the exceedance within six months; or

(b) After July 1, 2013, CMS trucks an average of more than 100,000 gallons a day of CKD leachate collected from the Development Area of the Little Traverse Bay CKD Release Site for disposal at an injection well for ninety (90) consecutive days, excluding temporary trucking for planned treatment plant/treatment system maintenance or upgrades, emergency conditions, and solids disposal.

CMS shall not be in breach of this Agreement if it diligently and without unreasonable delay pursues obtaining any necessary permits or authorizations, excluding the UIC Permit or the Part 625 Permit, and the equipment and contractors necessary to commence the work for the Well Evaluation if the conditions of Paragraph 9(a) or (b) occur.

6. *Paragraph 22 of the Agreement* – Paragraph 22 is deleted and replaced with the following text:

*Duration of Agreement.* This Agreement shall remain in effect until June 15, 2017, or until CMS submits the Completion of Construction Report to MDEQ, whichever occurs first.

#### OTHER TERMS AND CONDITIONS OF AMENDMENT

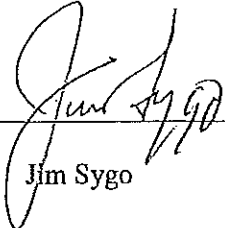
7. *Counterparts and Copies.* This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

8. *Effective Date.* This Amendment shall be effective upon signing by both CMS and MDEQ with approval as to form by the Michigan Department of Attorney General.

**AGREED BY:**

Michigan Department of Environmental  
Quality

CMS Land Company

By:   
Jim Sygo

By: \_\_\_\_\_

Michael C. Sniegowski

Its: Deputy Director

Its: Vice President

Dated: 6-13-12

Dated: \_\_\_\_\_

**APPROVED AS TO FORM BY:**

Michigan Department of Attorney General

By: 

Danielle Allison-Yokom

Its: Assistant Attorney General

Dated: June 13, 2012

8. *Effective Date.* This Amendment shall be effective upon signing by both CMS and MDEQ with approval as to form by the Michigan Department of Attorney General.

**AGREED BY:**

Michigan Department of Environmental  
Quality

CMS Land Company

By: \_\_\_\_\_

Jim Sygo

Its: Deputy Director

Dated: \_\_\_\_\_

By:  \_\_\_\_\_

Michael C. Sniegowski

Its: Vice President

Dated: 6-13-12

**APPROVED AS TO FORM BY:**

Michigan Department of Attorney General

By: \_\_\_\_\_

Danielle Allison-Yokom

Its: Assistant Attorney General

Dated: \_\_\_\_\_