



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5WQW-TUB-8

MAY 31 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John A. Rapanos
925 E. Wheeler
Midland, Michigan 48640

**Re: Clean Water Act Section 309(a) Administrative Order and
Section 308 Information Request Concerning the Alleged
Discharge of Dredged or Fill Materials into Navigable Waters
of the United States**

Dear Mr. Rapanos:

The enclosed Administrative Order ("Order") is issued to you by the United States Environmental Protection Agency ("U.S. EPA") pursuant to Section 309(a) of the Clean Water Act ("CWA or the Act"), 33 U.S.C. §1319(a). The Order finds you to be in violation of Section 301 of the CWA, 33 U.S.C. §1311, and requires corrective action by you to come into compliance.

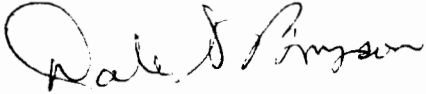
Compliance with the terms of this Order is required within the time period specified in the Order. Failure to comply with the Order may subject you to further enforcement action.

Also, pursuant to the authority provided by Section 308 of the Act, 33 U.S.C. §1318(a), it is hereby requested that you furnish U.S. EPA with information pertaining to the alleged discharge of dredged or fill materials into navigable waters at several locations within the State of Michigan.

Please submit the information requested in the accompanying Section 308 request in a notarized statement certifying that all representations contained therein are true and accurate to the best of your knowledge and belief. Care should be exercised to assure that responses are complete and accurate, since Section 309(c)(2) of the Act provides for the imposition of criminal penalties when false information is knowingly provided to the Agency.

If you have any technical questions concerning these matters, please contact Mr. Gerald D. Winn of my staff at (312) 353-6424. For questions regarding legal issues, please contact Mr. John P. Stekete at (312) 886-0558. Your written responses to the Order and to the information request should be sent to the address shown in the Order and information request.

Sincerely yours,



Dale S. Bryson
Director, Water Division

Enclosure

cc: Dennis Hall, Michigan DNR
Steven Sadewasser, Michigan DNR
Gary Mannesto, Army Corps of Engineers, Detroit District
John Cooper, U.S. Fish and Wildlife Service, East Lansing

bcc: Groman, OWP
Westlake, ORA
Mikulka, MCS
Steketee, ORC ✓
Cohen, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF)

John A. Rapanos)
Midland, Michigan,)

RESPONDENT.)

PROCEEDINGS UNDER SECTION 309(a))
OF THE CLEAN WATER ACT, 33 U.S.C.)
§1319(a))

DOCKET NO. V-WQW-AO-91-16

FINDINGS OF
VIOLATION AND
COMPLIANCE ORDER

The following **FINDINGS** are made and **ORDER** issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by the Clean Water Act (CWA), 33 U.S.C. §1251, et seq., which was delegated to the Regional Administrator and duly redelegated to the undersigned Director, Water Division, Region V.

FINDINGS

1. The Respondent in these Findings and Order is John A. Rapanos, 925 E. Wheeler Rd., Midland, Michigan 48640.
2. Respondent, John A. Rapanos, owns and controls the wetlands, identified in Paragraph ⁸~~11~~, below.
3. Respondent is a person as defined at Section 502(5) of the CWA, 33 U.S.C. §1362(5).
4. Section 404(a) of the CWA, 33 U.S.C. §1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.
5. Section 404(g) of the CWA, 33 U.S.C. §1344(g) authorizes the State of Michigan, through the Michigan Department of Natural

Resources (MDNR), to administer an individual and general permit program for the discharge of dredged and fill material into certain navigable waters within its jurisdiction.

6. On October 16, 1984, pursuant to the authority provided to the Administrator under Section 404(h) of the CWA, 33 U.S.C. §1344(h), the Administrator determined that the State of Michigan, through the MDNR, was authorized to assume the §404 permitting authority for certain navigable waters within its jurisdiction.

7. Section 301 of the CWA, 33 U.S.C. §1311, provides that, except as in compliance with, inter alia, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. §1344, the discharge of any pollutant into navigable waters by any person shall be unlawful.

8. Prior to March 2, 1989, and at times more fully known to the Respondent, the Respondent caused and allowed approximately 302,000 cubic yards of fill material to be discharged, by use of dump trucks, bulldozers, a Roto Clear, and other heavy machinery, into 29 acres of wetlands (navigable waters), identified on Exhibit 1 (attached), located in Section 29, Township 14N, Range 3E, Williams Township, near Auburn, Bay County, Michigan. The fill material was discharged into wetlands adjacent to the Labozinski Drain (Hoppler Creek), a tributary stream to the Kawkawlin River, which is a navigable water of the United States.

9. The unauthorized fill material, consisting of sand, tree stumps, and brush, is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6).

10. Respondent's discharge of fill material into the wetlands

and navigable waters was incidental to activity having as its purpose bringing the navigable waters into use as a shopping center and related commercial developments.

11. The discharges of fill material allowed by the Respondent are "discharges of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12).

12. The machinery and heavy equipment, referenced in Paragraph 8 above constitute "point sources" as defined in Section 502 of the CWA, 33 U.S.C. §1362(14).

13. The wetlands and navigable waters identified in Paragraph 8, above, are "waters of the United States" as defined at 40 C.F.R. Section 232.2(q) and are "navigable waters" as defined at Section 502(7) of the CWA, 33 U.S.C. §1362(7).

14. At the time of the acts alleged above, and as of the date of issuance of this Order, Respondent held no permit issued by the State of Michigan pursuant to Section 404 of the CWA, authorizing the discharge of dredged or fill material into the wetlands and navigable waters identified in Paragraph ¹² ~~8~~, above.

18. Respondent's unpermitted discharges of fill material into the wetlands and navigable waters identified in Paragraph 8, above, constitute violations of Section 301 of the CWA, 33 U.S.C. §1311.

19. Each day the material remains in the waters of the United States without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. §1344, constitutes an additional day of violation of Section 301 of the CWA, 33 U.S.C. §1311.

ORDER

BASED UPON THE FOREGOING FINDINGS, and pursuant to the authority vested in the Administrator, U.S. EPA, under Section 309(a)(3) of the CWA and by him delegated to the Regional Administrator, and duly redelegated to the undersigned, **IT IS HEREBY ORDERED:**

1. That the Respondent immediately cease further discharges of fill material into the wetlands identified in Paragraph 8 of the Findings, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. §1344 by the State of Michigan.

2. That within fifteen (15) days of the receipt of this Order, Respondent shall submit to U.S. EPA written certification of intent to comply with this Order.

3. That within thirty (30) days of receipt of this Order, the Respondent shall submit a plan to restore the wetlands and navigable waters identified in Paragraph 8 of the Findings to their original condition and contours. Exhibit 2 (attached) provides general guidelines necessary for preparation of a removal and restoration plan.

4. That within thirty (30) days of approval by U.S. EPA of all or any portion of the plan identified in Paragraph 3, above, Respondent shall commence restoration activities to restore the indicated wetlands and navigable waters in accordance with the approved plan.

5. That within sixty (60) days of receipt of U.S. EPA's approval, the Respondent shall provide written certification that

Respondent has restored the wetlands and navigable waters as nearly as possible to the original condition in accordance with the approved plan.

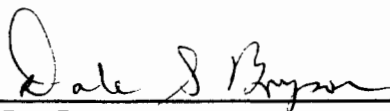
6. Submittals provided under Paragraphs 2, 3, and 5 of this Order shall be certified and submitted by the Respondents under authorized signature to the Director, Water Division, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Wetlands Protection Section, 5WQW-TUB-8. U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

Compliance with the terms of this Order in no way affects Respondent's obligation to comply with the CWA or any other Federal, State, or local law or regulation. Violation of the terms of this Order may result in the U.S. EPA taking further enforcement action under Section 309 of the CWA, such as, a civil action for appropriate relief, including civil penalties of up to twenty-five thousand dollars (\$25,000) per day per violation.

In addition to the enforcement actions for violation of this order outlined above, the CWA includes provisions for civil sanctions, criminal sanctions and administrative penalties for violation of the CWA. U.S. EPA may assess administrative penalties of ten thousand dollars (\$10,000) per day of violation, up to a maximum of one hundred twenty-five thousand dollars (\$125,000), or seek civil penalties of twenty-five thousand dollars (\$25,000) per day of violation and civil injunctive relief for violations of the CWA.

Furthermore, U.S. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA.

Signed and dated May 31, 1991



Dale S. Bryson
Director, Water Division
U.S. EPA, Region V

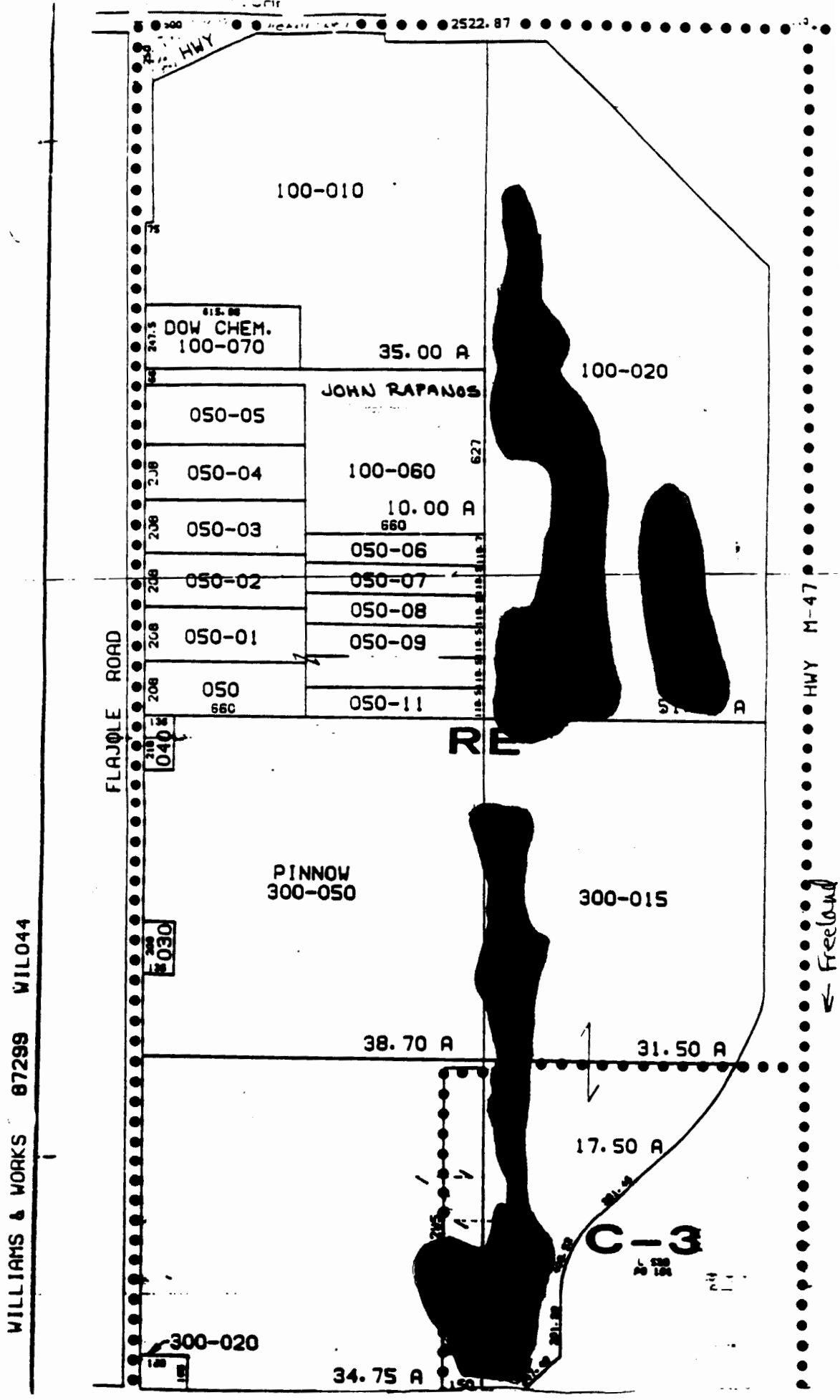
← Midland

US-10

Auburn →

Exhibit 1
From Bay County
Property Tax Records

 Filled Areas



SECTION 404 ENFORCEMENT:**GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS**

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with mean high water or high tide indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected mean high water or high tide elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.

- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

V. Inspections

- A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V**

| | | |
|--------------------|---|-----------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| JOHN A. RAPANOS, |) | REQUEST PURSUANT TO SECTION |
| MIDLAND, MICHIGAN, |) | 308 OF THE CLEAN WATER ACT |
| |) | (CWA) 33 U.S.C. § 1318(a) |
| RESPONDENT. |) | V-WAW-308-91-26 |
| <hr/> | | |

The following request is made pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) pursuant to Section 308(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1318(a), and duly redelegated to the undersigned Director, Water Division. Section 308(a) of the CWA provides that whenever required to carry out the objectives of the Act, the Administrator shall require any person the Administrator believes may be in violation of the Act to provide such information as may reasonably be required to make that determination. This request for information pertains to the alleged discharge of dredged or fill materials into navigable waters at several sites located throughout the State of Michigan.

DEFINITIONS

(1) The term "identify" means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

(2) The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g. corporation, partnership, etc.), organization, if any, and a brief description of its business.

(3) The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

(4) The term "navigable waters" means the waters of the United States, including wetlands and the territorial seas.

(5) The term "discharge of a pollutant" means any addition of any pollutant including unauthorized fill material to navigable waters from any point source.

(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other receptacles containing any hazardous substance or pollutant or contaminant.

(7) "Transaction" or "transact" means every separate act, deal, instance, occurrence, sale, transfer, giving, delivery, change in ownership, or change in possession.

(8) As used herein, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (including by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form pamphlet, statement, journal, postcard, letter, telegram, telex, report notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, video tape or other type of memory); including (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like of it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to in any other document.

(9) "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these information requests any information which might otherwise be construed to be outside their scope.

(10) Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.

(11) "Project Area #1" refers to all areas of land which were the subject of the alleged discharge of dredged or fill materials into navigable waters located in Section 29, Township 14N, Range 3E, Williams Township, Bay County, Michigan.

(12) "Project Area #2" refers to all areas of land which were the subject of the alleged discharge of dredged or fill materials into navigable waters located in Sections 1 and 2, Township 13N, Range 2E, Ingersoll Township, Midland County, Michigan.

(13) "Project Area #3" refers to all areas of land which were the subject of the alleged discharge of dredged or fill materials into navigable waters located in Section 3S, Township 13N, Range 3E, Tittabawassee Township, Saginaw County, Michigan.

(14) "Project Area #4" refers to all areas of land which were the subject of the alleged discharge of dredged or fill materials into navigable waters located in Section 10, Township 23N, Range 9E, AuSable Township, Iosco County, Michigan.

REQUEST

Please provide the information described below within fifteen (15) days of receipt of this request, verified by, and submitted with a authorized and notarized signature to the following address: U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Attention: Mr. Douglas A. Ehorn, Deputy Chief, Water Quality Branch (5WQW-TUB-8) .

(15) Provide a complete and accurate description of the ownership (including the individual, corporation, partnership trust, etc., who/which pays all property taxes, assessments, fees, etc.) of all lands on which the project areas #1, #2, #3 and #4 are located.

(16) Provide copies of all deeds to lands on which project areas #1, #2, #3 and #4 are located.

(17) Provide any document which describes or classifies any or all of the project areas as lowlands, marshes, wetlands, swamps, or fens.

(18) Describe any effort to determine whether any or all of the project areas to be filled, was a wetland as defined by U.S. EPA and/or the U.S. Army Corps of Engineers and/or the Michigan Department of Natural Resources.

(19) Identify any consultant, engineering firm, environmental group or other entity or individual that has conducted soil tests, surveys, studies, etc. for any or all of the project areas and provide copies of all documents related to such studies/tests/results.

(20) Provide copies of any report or study classifying any or all of the project areas as wetlands.

(21) Identify all persons involved in the decision to deposit dredged or fill material into any of the project areas and the date when the decision was made to begin filling any or all of the project areas.

(22) Identify any past or current release of any hazardous substance, pollutant or contaminant, within any or all of the project areas.

(23) Identify any landfill or dump sites located in any or all of the project areas.

(24) Provide copies of any rezoning applications for any or all lands containing any of the project areas.

(25) Identify any underground storage tanks located within 1/2 mile of any or all of the project areas and provide a map or maps showing the underground storage tank locations.

(26) Provide any documents related to bids for filling any or all of the project areas and provide a copies of the work schedules (original and revisions) for these projects.

(27) Identify the contractor(s) requested to begin the work in any or all of the project areas and the projected project completion dates.

(28) Identify the contractor(s) who actually performed the dredge or fill operations in any or all of the project areas and the dates of completion or projected completion of such projects.

(29) Identify and describe the total project costs for the filling at each individual project area and the funding sources for completed or projected construction or development.

(30) Provide a copy of the settlement agreement dated September 21, 1988, between the Charter Township of Williams, Bay County, Michigan and John A. Rapanos.

(31) Provide a copy of the hold harmless agreement dated September 22, 1988, between the charter Township of Williams, Bay County, Michigan and John A. Rapanos.

(32) Provide copies of any other similar agreements between the Charter Township of Williams or any other City, County, Township or municipality within the State of Michigan and John A. Rapanos or any of his related companies, partnerships, trusts or other organizations.

(33) A description of the relationship(s), if any, between the following entities:

- (a) American Venture Capital Compnay
- (b) Sturdibilt Builders, Inc.
- (c) Rapanos Design Associates
- (d) Lakeside Housing Company
- (e) Three Cities Motels, Inc.
- (f) Whisper Ridge Apartments
- (g) Prodo, Inc.

- (h) Allstate Liquidators
- (i) Restall, Inc.
- (j) Valley Plaza, Inc.
- (k) Rapanos Builders
- (l) Midland Mall
- (m) Midland Plaza
- (n) Appolo Builders, Inc.

Also, please list the name(s) of any entities **not** on this list which may be related in a similar manner to any entity on the above list.

(34) Provide the a list of all officers and directors and organizational chart of the American Venture Capital Company.

(35) Provide the a list of all officers and directors and organizational chart of Sturdibilt Builders, Inc.

(36) Provide the a list of all the partners of Rapanos Design Associates.

REQUEST TO PRODUCE A FINANCIAL ASSESSMENT

With respect to information needed for a financial assessment of the Respondent please provide the following:

(37) Submit copies of the personal tax return(s) (separate or joint) of John A. Rapanos and Judith A. Rapanos for the calendar years 1988, 1989, 1990.

(38) Submit copies of the corporate tax returns of American Venture Capital Company for the calendar years 1988, 1989, 1990.

(39) Submit copies of the corporate tax returns of Sturdibuilt Builders, Inc. for the calendar years 1988, 1989, 1990.

(40) Submit copies of the tax returns of Rapanos Design Associates for the calendar years 1988, 1989, 1990.

(41) Provide copies of any financial statements prepared by an accountant or accounting firm and/or any other study or report relating to the financial status of John A. Rapanos and Judith A. Rapanos, and any associated corporations, partnerships, trusts, etc.

(42) List all the sources and amounts of revenue for John A. Rapanos and Judith A. Rapanos, for the most recently completed calendar year.

(44) Identify and produce all documents prepared by or for John A. Rapanos during the last five years which forecast or

estimate the future revenues, expenses or economic posture of
John A. Rapanos and/or Judith A. Rapanos.

Date May 31, 1991

Dale S. Bryson
Dale S. Bryson
Director, Water Division
U.S. EPA, Region V