

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	3
II.	PARTIES BOUND	4
III.	DEFINITIONS	5
IV.	FINDINGS OF FACT	7
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	11
VI.	ORDER	12
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	13
VIII.	WORK TO BE PERFORMED	14
IX.	SITE ACCESS	24
X.	ACCESS TO INFORMATION	25
XI.	RECORD RETENTION	27
XII.	COMPLIANCE WITH OTHER LAWS	28
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	28
XIV.	AUTHORITY OF ON-SCENE COORDINATOR	29
XV.	PAYMENT OF FUTURE RESPONSE COSTS	29
XVI.	DISPUTE RESOLUTION	30
XVII.	FORCE MAJEURE	32
XVIII.	STIPULATED PENALTIES	33
XIX.	COVENANTS NOT TO SUE BY EPA	36
XX.	RESERVATIONS OF RIGHTS BY EPA	36
XXI.	COVENANTS NOT TO SUE BY RESPONDENT	37
XXII.	OTHER CLAIMS	38
XXIII.	CONTRIBUTION PROTECTION	39
XXIV.	INDEMNIFICATION	39
XXV.	MODIFICATIONS	40
XXVI.	NOTICE OF COMPLETION OF WORK	41
XXVII.	SEVERABILITY/INTEGRATION/APPENDICES	41
XXVIII.	EFFECTIVE DATE AND TERMINATION	42

Figure	1 -	Map Of Site	
Appendix	1 -	Properties Outside East Plant Area Subject To Removal Action	
Appendix	2 -	Action Memorandum	
Appendix	3 -	Parcel 22 Workplan	
Appendix	4 -	Upstream Workplan	
Appendix	5 -	SSC Workplan Scope Of Work	
Appendix	6 -	Form Of Access Request Correspondence And Access Agreement	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and General Motors Corporation ("GM" or "Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred and to be incurred by the United States at or in connection with the property located adjacent to or downstream from former Outfall 001 (Old Stormwater Lagoon) ("Former Outfall 001"), NPDES Permit No. IN0003573 ("NPDES Permit") Outfall 002 (treated wastewater effluent) ("Outfall 002"), and NPDES Permit Outfall 003 (new stormwater lagoon overflows) ("Outfall 003") at the GM Powertrain Bedford Plant ("Plant") where polychlorinated biphenyls ("PCBs") from the Plant have come to be located ("Site"). The Site includes only that portion of the Plant property located east of GM Drive and which is necessary for the implementation of the removal action required by this Order ("East Plant Area"). The Site, the reaches of the watercourses within the Site that are subject to the removal action required under this Order and the East Plant Area are depicted on the attached Figure 1. The properties within the Site outside the Plant property and certain parcels within the East Plant Area and on which the removal action required under this Order is to be undertaken are listed on Appendix 1 by parcel number.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622.

3. EPA has notified the State of Indiana ("State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings,

other than proceedings by EPA to implement or enforce this Order, the validity of the findings of fact, conclusions of law and determinations in Sections I, IV and V, and the validity of any statements, findings or conclusions contained in the Action Memorandum attached as Appendix 2. Respondent also does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings by EPA to implement or enforce this Order, the characterization of materials within the Site that are subject to the removal action required under this Order which are at concentrations less than 50 mg/kg total PCBs as "PCB remediation waste" under 40 C.F.R. Part 761 and Indiana Department of Environmental Management ("IDEM") Rule 329 Indiana Administrative Code ("IAC") 4.1. Further, Respondent does not admit, and retains the right to contest and defend against, any allegation by EPA or any other party of any violation of the Toxic Substances Control Act, as amended ("TSCA"), 15 U.S.C. §§ 2601, et seq., or its implementing regulations or any other law or regulations relating to the release or migration of PCBs into or through the environment, including, but not limited to, the migration of PCBs in seeps and springs at the Site prior to or after the Effective Date due to releases of PCBs into the environment that first occurred prior to April 18, 1978. Subject to the foregoing, Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives performing the Work receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

I.III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed by the Superfund Division Director, EPA Region 5, and all attachments thereto. The Action Memorandum is attached as Appendix 2.

b. "Agreement" shall mean the Voluntary Corrective Action Agreement for the Plant, effective March 20, 2001, and amended on October 1, 2002.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

d. "Day" shall mean a calendar day unless otherwise expressly specified. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the effective date of this Order as provided in Section XXVIII.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Future Response Costs" shall mean all costs relating to the Site that the United States incurs including, but not limited to, direct and indirect costs relating to reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll

costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 43 (costs and attorneys' fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 52 (emergency response). Future Response Costs shall also include all Interim Response Costs.

h. "IDEM" shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Interim Response Costs" shall mean costs of the type referenced in subparagraph 7.g. of this Order charged by the United States to the GM-Bedford Superfund account between October 28, 2002 and the Effective Date.

k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Order" shall mean this Administrative Order on Consent and all attachments (Figure 1 and Appendices 1 through 6) hereto (listed in Section XXVIII). In the event of conflict between this Order and any attachment, this Order shall control.

m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

n. "Parties" shall mean EPA and Respondent.

o. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

p. "Respondent" shall mean General Motors Corporation, a Delaware corporation.

q. "Section" shall mean a portion of this Order identified by a Roman numeral.

r. "Site" shall mean the area described as such in Paragraph 1 and depicted generally on the attached Figure 1.

s. "State" shall mean the State of Indiana.

t. "TSCA" shall mean the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601, *et seq.*

u. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any PCB remediation waste as defined in 40 C.F.R. §§ 761.3 and 761.50(b)(3)(i) and IDEM Rule 329 IAC 4.1-4-1.

v. "Work" shall mean the activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

8. The Plant is located at 105 GM Drive, Bedford (Lawrence County), Indiana, 47421. It comprises 152.5 acres of land, including buildings covering 915,000 square feet of operating floor space.

9. Several unnamed tributaries of Bailey's Branch Creek flow from the Plant property. On the east side of the Plant property, an unnamed tributary originating at Outfall 002 flows into Bailey's Branch Creek. Bailey's Branch Creek, in turn, flows into Pleasant Run, which empties into Salt Creek. Flow from the Plant property supplies approximately 100 percent of the dry

weather flow in this unnamed tributary of Bailey's Branch Creek beginning at Outfall 002. On the north side of the Plant property, Former Outfall 001 discharged into an unnamed tributary of Bailey's Branch Creek. On the northeast side of the Plant property, Outfall 003 may discharge to an unnamed tributary of Bailey's Branch Creek during episodic lagoon overflow events.

10. Residential properties border the unnamed tributaries of Bailey's Branch Creek, Bailey's Branch Creek and Pleasant Run downstream from the Plant.

11. GM operated the Plant from 1942 until 1946 for the United States. GM purchased the Plant from the United States in 1946. It has owned the Plant since that time, operating it primarily as an aluminum foundry for casting automotive parts such as transmission casings, pistons and engine blocks.

12. In 1965, GM began using Pydraul 312, a hydraulic fluid containing PCBs, at the Plant in various die casting machines. Prior to this, the Plant utilized a water-based hydraulic fluid which did not contain PCBs.

13. In 1966, in order to collect hydraulic fluids that were leaking from the die casting machines at the Plant, GM instituted a reclamation program wherein hydraulic fluid that leaked from the die casting machines was collected in a service tunnel system and then flowed by gravity to unlined, wastewater lagoons on the Plant property. From the lagoons, the fluid was recovered and reclaimed.

14. At various times, PCB oils were carried with the discharge from the Plant's wastewater lagoons to Outfall 002 leading into Bailey's Branch Creek via an unnamed ditch.

15. In 1972, the Plant switched to Pydraul 312A, a phosphate ester-based hydraulic fluid thought to be non-PCB containing. However, GM subsequently discovered that Pydraul 312A contained residual levels of PCBs. In September of 1972, the Plant switched to the use of Pydraul 65E hydraulic fluid which did not contain any PCBs.

16. Following approval from the Indiana Stream Pollution Control Board ("ISPCB") and Indiana State Board of Health in January 1973, Respondent constructed a primary wastewater treatment plant ("WTP") at the Plant to collect and treat wastewater contaminated with hydraulic fluid from the Plant. Since then, the WTP has been upgraded with additional treatment capability including biological treatment, carbon polishing and other treatment systems. By 1976, the old wastewater lagoon system was removed from service.

17. In 1977, a PCB study conducted for GM by Camp, Dresser & McKee found PCB levels in water in Bailey's Branch Creek downstream from the Plant at 55 parts per billion ("ppb") and 21 ppb. One sample of stream sediments in Pleasant Run Creek downstream from its confluence with Bailey's Branch showed PCBs at 800 parts per million ("ppm").

18. In 1979, GM submitted to the ISPCB analytical results for water/oil mixture samples from a spring on the Plant property near the WTP. Respondent recorded levels of 1.5 ppm to 1,453 ppm PCBs in water/oil mixture samples collected from the spring over a period from 1976 to 1979.

19. On October 21, 1980, GM entered into a Stipulation and Consent Order with ISPCB, Cause No. B-416, pursuant to which GM agreed to implement various measures to treat and reduce PCBs contained in the effluents from Former Outfall 001 and Outfall 002 and to undertake certain studies of watercourses downstream of those outfalls.

20. In 1981, a second PCB study conducted for GM by Camp, Dresser & McKee collected 664 small fish from Pleasant Run and Salt Creek. A total of 19 of these fish were submitted for PCB tissue analyses. All of the fish sampled, except for those collected upstream from the Plant, contained PCB levels exceeding the 5 ppm tolerance limit for fish and shellfish established by the federal Food and Drug Administration at the time of the study.

21. In 1989, a Compliance Sampling Inspection of the Plant conducted by IDEM found PCBs in sediments in the unnamed ditch

connecting Outfall 002 to Bailey's Branch, in Bailey's Branch itself, in Pleasant Run Creek downstream from the Bailey's Branch confluence, and in Salt Creek.

22. Effective March 20, 2001, the Parties entered into a Voluntary Corrective Action Agreement for the Plant and amended this agreement on October 1, 2002 (collectively "Agreement"). As part of the work it performed under the Agreement, GM sampled soils, sediments, surface water, springs, and seeps on properties adjacent to the unnamed tributaries, Bailey's Branch Creek, and Pleasant Run in residential and undeveloped areas downstream from the Plant. GM found PCB levels in soils ranging from non-detect up to 9,900 ppm, with a mean of 18.5 ppm; in sediments ranging from non-detect up to 25,000 ppm, with a mean of 207 ppm; in springs ranging from non-detect to 1.2 ppb total PCBs, with an average of 0.051 ppb, and all non-detect for dissolved PCBs; and in seeps ranging from an estimated 0.51 ppb up to 180 ppb total PCBs, with an average of 75.63 ppb, and from non-detect to 51 ppb dissolved PCBs, with an average of 12.2 ppb.

23. On May 24, 2002, GM submitted the draft RCRA Corrective Action Parcel 22 Interim Measure Workplan to EPA for review and approval. This workplan described the procedures to be used in the remediation of this property, located near where Bailey's Branch Creek crosses Broomsage Road. After modification by GM to address EPA's comments, EPA approved this workplan on July 23, 2003 ("Parcel 22 Workplan") (Appendix 3).

24. A small amount of PCB-contaminated oil was observed on May 9, 2002 from an underground spring on one resident's property within the Site near Outfall 002 following a significant rain event. The oil was collected, removed and disposed of by GM. As interim measures, in May of 2002, GM installed a dam, booms and a bypass system to isolate the spring and on June 15, 2002 GM completed installation of a collection system to collect the oil from the spring. Thereafter, GM periodically inspected the collection system until access to do so was denied by the property owner in September of 2002.

25. On October 8, 2002, Respondent submitted the draft RCRA Corrective Action Upstream Parcels Interim Measure Workplan to

EPA for review and approval. This workplan, as subsequently modified by Respondent, described the procedures to be used in the remediation of Parcels 401, 215 and 216 and the unnamed tributary of Bailey's Branch Creek located on such parcels; the area of said unnamed tributary located on the East Plant Area and the ditch located on the East Plant Area from Outfall 003 to its terminus on Parcel 215; and Parcels 205, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and the unnamed tributary of Bailey's Branch Creek located on such parcels. After modification by GM to address EPA's comments, EPA approved this workplan on July 23, 2003 ("Upstream Workplan") (Appendix 4).

26. GM has pursued work under the Agreement, including determining the nature and extent of hazardous substances in sediments and soils at the Site and conducting corrective actions necessary to remediate PCB contamination at the Site, but has not been able to complete the work at the Site contemplated by the Agreement due to circumstances beyond its control, i.e., denial of access by affected property owners.

27. In July, 2003, the Director of the Superfund Division, EPA Region 5, approved the Action Memorandum concerning the removal action required under this Order and the selection of the clean-up criteria applicable to the Site consistent with TSCA, in particular, 40 C.F.R. § 761.61(c), as implemented under CERCLA and the NCP, and with the Agreement (which implements the corrective action requirements of RCRA), CERCLA and the NCP. The Action Memorandum is attached to this Order as Appendix 2.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact, above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and is liable for performance of response action and for response costs incurred and to be incurred at the Site.

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance at and/or from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP, 40 C.F.R. 300.700(c)(3)(ii), the Agreement (which implements the corrective action requirements of RCRA), and TSCA as implemented under CERCLA.

g. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Work to be performed by Respondent pursuant to this Order shall constitute a response action taken or ordered by the President.

h. The Site is not an "eligible response site" as defined in Section 101(41) of CERCLA, 42 U.S.C. § 9601(41), because: (i) the Site is not a "brownfield site" as defined in Section 101(39) of CERCLA, 42 U.S.C. § 9601(39); and (ii) the President has conducted a preliminary assessment or site inspection at the Site.

i. Compliance with this Order shall be deemed to be compliance with the Agreement with respect to the Work.

VI. ORDER

29. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with

all provisions of this Order, including, but not limited to, all figures and appendices attached to this Order and all documents incorporated by reference into this Order.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

30. Respondent shall perform the Work itself or retain a contractor(s) to implement the Work. Respondent has selected Conestoga-Rovers and Associates, Inc. ("CRA") to direct and generally oversee activities on behalf of Respondent relating to the Work and EPA hereby approves Respondent's use of CRA for such purposes. Respondent shall notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform any portion of the Work at least 5 business days prior to commencement of such Work. EPA retains the right to disapprove of any of the other contractors and/or subcontractors retained by Respondent. If EPA disapproves a selected contractor or subcontractor, such disapproval and reasons for disapproval shall be submitted in writing to Respondent. Respondent shall retain a different contractor or subcontractor within 15 business days following receipt of EPA's written disapproval and shall notify EPA of that contractor's or subcontractor's name and qualifications within 20 business days after EPA's disapproval.

31. Respondent has designated James J. McGuigan of CRA as its Project Coordinator who shall be responsible for administration of all Respondent's actions required by this Order. EPA shall direct all submissions and notices required by this Order to Respondent to the attention of James J. McGuigan at CRA, 8615 West Bryn Mawr Avenue, Chicago, Illinois 60631-3501; phone: (773) 380-9937; facsimile: (773) 380-6421; email: jmcguigan@croworld.com, with a copy to Cheryl R. Hiatt or her designee at GM, 1996 Technology Drive, Troy Technology Park South, Building A, Mail Code 483-619-356, Troy, Michigan 48083; phone: 248-680-5219; facsimile: 248-680-5129; email: cheryl.r.hiatt@gm.com. To the greatest extent possible, Respondent's Project Coordinator shall be present on-Site or readily available during performance of the Work. EPA retains the right to disapprove of any other Project Coordinator selected by Respondent. If EPA disapproves a selected Project

Coordinator, such disapproval and reasons for disapproval shall be submitted in writing to Respondent. Respondent shall retain a different Project Coordinator within 3 business days following receipt of EPA's written disapproval and shall notify EPA of that person's name and qualifications within 4 business days after receipt of EPA's disapproval. Receipt by Respondent's Project Coordinator of any written notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

32. EPA has designated Brad Stimple of the Emergency Response Branch, EPA-Region 5, as its On-Scene Coordinator ("OSC"). Respondent shall direct 2 copies of all submissions required by this Order to the OSC at U.S. EPA - Region 5, Eastern District Office, 25089 Center Ridge Road, Westlake, Ohio, 44145, by certified or express mail. Respondent shall also send one copy of all such submissions to Peter Ramanuskas, U.S. EPA - Region 5, 77 West Jackson Boulevard, DP-8J, Chicago, Illinois, 60604-3590; phone: 312-886-7890; facsimile: 312-353-4788; email: ramanuskas.peter@epa.gov, and to Timothy Thurlow, U.S. EPA - Region 5, Office of Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590; phone: 312-886-6623; facsimile: 312-886-0747; email: thurlow.timothy@epa.gov. Respondent is encouraged to make its submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and to use two-sided copies.

33. EPA and Respondent, subject to Paragraph 31, shall have the right to change their designated OSC or Project Coordinator. EPA shall notify Respondent, and Respondent shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally, but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

34. Respondent shall perform the following Work:

a. The Parcel 22 Workplan (Appendix 3) was approved by EPA on July 23, 2003, and is deemed submitted and approved under this Order. Respondent shall implement the Parcel 22 Workplan in

accordance with this Order and the schedule set forth in such workplan.

b. The Upstream Workplan (Appendix 4) was approved by EPA on July 23, 2003, and is deemed submitted and approved under this Order. Respondent shall implement the Upstream Workplan in accordance with this Order and the schedule set forth in such workplan.

c. Generate and implement a Quality Assurance Project Plan ("QAPP") as provided in Paragraph 37 and interim and final Operation, Maintenance and Monitoring Plans ("OMMPs") as provided in Paragraphs 38 and 40 for the removal action required under this Order.

d. Generate and implement a Downstream Parcels Removal Action Workplan, including a Health and Safety Plan ("HASP"), ("Downstream Workplan") for the remaining creek and floodplain sections of properties within the Site not addressed in the Parcel 22 Workplan and the Upstream Workplan. This workplan shall, to the extent practicable, be consistent with the Upstream Workplan.

e. Generate and implement a Site Source Control Workplan, including a HASP, ("SSC Workplan") consistent with the Scope of Work attached as Appendix 5 to address all known seeps and springs contaminated with PCBs within the East Plant Area and seeps and springs contaminated with PCBs which may be discovered at other areas of the Site during the Work which are capable of recontaminating the water bodies within the Site during and after the removal action required under this Order. In particular, the SSC Workplan will provide for removal of PCB oil and contaminated water from the collection system installed in the unnamed tributary of Bailey's Branch Creek near Outfall 002 and installation of additional collection systems to collect runoff from seeps and springs contaminated with PCBs located on the East Plant Area or adjacent to the Plant property and those discovered on the private properties within the Site and subject to this Order, along the affected water bodies. After implementation of the SSC Workplan, periodic sampling and monitoring of these

source areas shall be conducted in accordance with the applicable OMMP to document that PCBs are not migrating to the creeks and ditches. Consistent with Appendix 5, the SSC Workplan shall include sampling or monitoring of seeps and springs within the Site for PCBs.

f. As set forth in the workplans, remove PCB contaminated sediments from within the stream channels of the unnamed tributaries of Bailey's Branch Creek, Bailey's Branch Creek and Pleasant Run within the Site, in order to achieve a statistical cleanup criterion of 1 mg/kg total PCBs as selected in Appendix 2. Alternatively, Respondent may elect to remove from such areas all visible sediments to the top of bedrock without conducting verification sampling. Stream bank material, defined as material located horizontally to a distance two feet from the stream channel and down vertically to the top elevation of the stream bed after sediment removal, will either be removed entirely without conducting verification sampling or so as to achieve a statistical clean-up criterion of 1 mg/kg total PCBs as selected in Appendix 2. All material removed as part of the removal action shall be securely staged pending off-Site disposal concurrent with removal project activities or final disposition in accordance with subparagraphs 34.i(3), 34.i(4), and 34.i(5), below.

g. As set forth in the workplans, remove PCB contaminated soils from the flood plain areas of the properties outside the Plant property within the Site to achieve a statistical cleanup criterion of 1.8 mg/kg total PCBs as selected in Appendix 2. Alternatively, Respondent may elect to remove from such areas where total PCBs exceed 1.8 mg/kg all visible soil to the top of bedrock without conducting verification sampling. All material removed as part of the removal action shall be securely staged pending off-Site disposal concurrent with removal project activities or final disposition in accordance with subparagraphs 34.i(3), 34.i(4), and 34.i(5), below.

h. Verification sampling and chemical analysis, if required, shall take place as the removal action progresses. Samples shall be collected in accordance with the sampling and statistical analysis plans contained in the workplans. A record of sample locations and results must be maintained and submitted to EPA for review upon request.

i.

(1) PCB contaminated soils and sediments removed from the work areas at the Site must be properly characterized for disposal as authorized by this Order or as otherwise allowed under applicable law.

(2) Soils and sediments removed from the work areas at the Site contaminated with PCBs at concentrations equal to or greater than 50 mg/kg shall be transported off-Site for proper disposal at a landfill approved to accept PCB remediation waste in accordance with 40 C.F.R. § 761.61 and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 (which incorporates 40 C.F.R. § 761.61 by reference) and 329 IAC 4.1-13. As of the Effective Date of this Order, landfills approved to accept PCB remediation waste include, but are not limited to, the Heritage RCRA Subtitle C landfill in Roachdale, Indiana and the EQ landfill in Wayne County, Michigan. Waste must be disposed of in compliance with the EPA Off Site Disposal Rule (Section 300.440 of the NCP and 58 Fed. Reg. 49200) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13.

(3) Subject to subparagraph 34.i(5), below, soils and sediments removed from the work areas at the Site contaminated with PCBs at concentrations less than 50 mg/kg may be temporarily staged within the East Plant Area on a staging pad consistent with 40 C.F.R. § 761.65(c)(9) and IDEM Rule 329 IAC 4.1-4-1 (which incorporates 40 C.F.R. § 761.65(c)(9) by reference) and as described in the Parcel 22 Workplan (i.e., located on AOI-7 or another area approved by EPA) for a period of up to 1 year. EPA may approve an extension of this time period if requested by Respondent. Respondent shall remove and dispose of any such soils and sediments in excess of staging pad capacity concurrent with removal project activities at a RCRA Subtitle D landfill in accordance with 40 C.F.R. § 761.61(a)(5)(v)(A) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13, or otherwise dispose of such materials off-Site in accordance with 40 C.F.R. § 761.61, at a facility compliant with the EPA Off Site Disposal Rule (Section 300.440 of the NCP and 58 Fed. Reg. 49200) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13.

(4) EPA may approve final placement or containment of

the soils and sediments removed from the work areas at the Site with concentrations less than 50 mg/kg PCBs within the East Plant Area pursuant to a proposal by Respondent in accordance with 40 C.F.R. § 761.61(c) and IDEM Rule 329 IAC 4.1-4-1 (which incorporates 40 C.F.R. § 761.61(c) by reference) submitted within the staging period referred to in subparagraph 34.i(3), above. If EPA disapproves Respondent's proposal, Respondent shall remove and dispose of such materials in accordance with 40 C.F.R. § 761.61(a)(5)(v)(A) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13, or otherwise dispose of such materials off-Site in accordance with 40 C.F.R. § 761.61, at a facility compliant with the EPA Off Site Disposal Rule (Section 300.440 of the NCP and 58 Fed. Reg. 49200) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13.

(5) Respondent may stage up to 15,000 cubic yards of soil containing PCBs at concentrations less than 7 mg/kg, with an average concentration not greater than 5.3 mg/kg within a second staging area as will be described in the Downstream Workplan. Pursuant to the Agreement, EPA shall determine if these soils will be suitable for use as grading fill as part of the Final Remedy within the East Plant Area in accordance with 40 C.F.R. § 761.61(c) and IDEM Rule 329 IAC 4.1-4-1 (which incorporates 40 C.F.R. § 761.61(c) by reference) if Respondent may place or contain such soils within the East Plant Area under subparagraph 34.i(4), above, or if Respondent must remove and dispose of such soils in accordance with 40 C.F.R. § 761.61(a)(5)(v)(A) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13, or otherwise dispose of such materials off-Site in accordance with 40 C.F.R. § 761.61, at a facility compliant with the EPA Off Site Disposal Rule (Section 300.440 of the NCP and 58 Fed. Reg. 49200) and, for landfills in Indiana, IDEM Rules 329 IAC 4.1-4-1 and 329 IAC 4.1-13.

j. Air monitoring for contaminants of concern and nuisance dust must be conducted during the removal action required under this Order in accordance with the approved workplans.

k. The approved workplans under subparagraphs 34.a, b, d, and e, above, provide or shall provide for the restoration of areas disturbed by the removal of PCB-contaminated soils and sediments on properties within the Site not located within the Plant property. This will include backfilling/grading, re-vegetation and erosion control.

l. Any contaminated water generated as part of the removal action under this Order must be characterized, treated and disposed of in the WTP as authorized in correspondence between GM and IDEM dated February 19, 2003, January 29, 2003, January 14, 2003 and October 15, 2002, by a method allowed by 40 C.F.R. §761.61(b)(1) and IDEM Rule 329 IAC 4.1-4-1, or as otherwise approved by EPA.

m. Respondent shall regularly inform owners of property located within the Site of removal activities required under this Order which may affect their properties.

n. The provisions of subparagraphs 34.a, b, d, f, and g, above, do not apply to the East Plant Area, except that the provisions of subparagraphs 34.b and f, above, shall apply to the stream channels and banks of the unnamed tributaries of Bailey's Branch Creek located within the East Plant Area.

35. Workplans and Implementation.

a. Within 15 business days after the Effective Date, Respondent shall submit to EPA for review and approval a draft SSC Workplan for performing the Work described in subparagraph 34.e, above. The draft SSC Workplan shall provide a description of, and an expeditious schedule for, the Work described in subparagraph 34.e, above. Within 90 days after the Effective Date, Respondent shall submit to EPA for review and approval a draft Downstream Workplan. The draft Downstream Workplan shall provide a description of, and an expeditious schedule for, the Work described in subparagraphs 34.d, f and g, above.

b. EPA may approve, disapprove, require revisions to or modify the draft workplans, OMMPs and QAPP. If EPA requires revisions, Respondent shall submit to EPA a revised draft within 7 business days after receipt of EPA's notification of required revisions. Respondent shall implement the plans as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the plans, the schedules and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Respondent shall not commence any Work except in

conformance with the terms of this Order. Respondent shall not commence or undertake any removal action at the Site without prior EPA approval.

36. Health and Safety Plans.

Any HASP included in a workplan required or approved under this Order shall comply with applicable Occupational Safety and Health Administration regulations found at 29 C.F.R. Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work.

37. Quality Assurance Project Plan.

a. Within 10 business days after the Effective Date, Respondent shall submit to EPA for review and approval a QAPP which shall provide that all sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and appropriate guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Consistent with the foregoing, the methods and procedures contained in Respondent's existing QAPP covering the RCRA corrective actions under the Agreement at the Plant shall be used as much as possible. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "EPA Guidance for Quality Assurance Project Plans," EPA/QA/G-5, EPA/600/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans," EPA/QA/R-5, EPA/240/B-01/003 (June 2000) and "Instructions on the Preparation of a Superfund Division Quality Assurance Project Plan," EPA Region 5, based on EPA QA/R-5, Revision 0 (June 2000). Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)" or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing the Work. Respondent shall notify EPA not less than 24 hours in advance of any sample collection activity unless EPA agrees to a shorter notice period. EPA shall have the right to take any additional samples that it deems necessary. Upon request by Respondent, EPA shall allow Respondent or its contractors to take split and/or duplicate samples of any samples collected by or on behalf of EPA. EPA shall provide the final results of all analyses of samples taken by or on behalf of EPA to Respondent upon EPA's receipt of the final analytical results. EPA shall provide notice to Respondent at least 24 hours in advance of any EPA sampling activity unless Respondent agrees to a shorter notice period.

38. Operation, Maintenance and Monitoring Plans.

Respondent shall submit an interim OMMP to EPA within 30 business days after the completion of each portion of the Work described in subparagraphs 34.a, b, d and e, above. Each interim OMMP shall identify the operation, maintenance and monitoring activities necessary to ensure the long term integrity of the applicable portion of the Work. Each interim OMMP shall be implemented until the Final Report is approved for the removal action required under this Order in accordance with Paragraph 40 and Section XXVI. The Final Report shall include a final OMMP for all of the completed Work which shall govern post-construction operation, maintenance and monitoring activities.

39. Reporting.

a. Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order, beginning 30 days after the Effective Date until EPA's approval of the Final Report under Section XXVI, unless otherwise directed in writing by the OSC. These reports shall thereafter

be due by the 15th day of each succeeding month and shall describe all significant developments during the preceding month, including the Work performed and any problems encountered, validated final analytical data received during the reporting period and developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems and planned resolutions of past or anticipated problems.

b. Respondent shall submit 4 copies of all plans, reports or other submissions required by this Order or any approved workplan to be submitted to EPA. Upon written request by EPA and if feasible, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least 30 days prior to its conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. Respondent shall require that the transferee provide access as described in Paragraph 42.

40. Final Report.

Within 90 days after receipt of all manifests, validated final analytical and QA/QC data and completion of the removal action required under this Order, except for any continuing obligations required by this Order (e.g., monitoring, source control measures operation, record retention and payment of Future Response Costs), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order which shall include a final OMMP as required by Paragraph 38 ("Final Report"). The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, 40 C.F.R. §300.165, entitled "OSC Reports." The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the final validated analytical results of all sampling and analyses performed and accompanying appendices containing all relevant documentation generated during the removal action (e.g.,

manifests, permits and certificates of disposal). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of the Final Report:

"Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

41. Off-Site Shipments.

a. Respondent shall, prior to the first off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment and of any contemplated additional shipments to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this notification requirement shall not apply to any off-Site shipment when the total volume of such shipment will not exceed 10 cubic yards.

(1) Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of any receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by subparagraph 41.a.i, above, as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping Waste Materials from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. §9621(d)(3), and 40 C.F.R. §300.440. Respondent shall only send Waste Materials from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

42. Respondent shall provide access to those areas of the Site that it owns or is in possession of, which access is necessary to implement this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State representatives. These individuals shall be permitted to move freely at those areas of the Site that Respondent owns or is in possession of in order to conduct actions which EPA determines to be necessary.

43. Where the Work is to be performed in areas of the Site owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date or such longer period as otherwise specified or agreed to in writing by the OSC, by utilizing the form of access request correspondence and access agreement in Appendix 6. Respondent shall also offer each property owner from whom it seeks access at least \$4,000.00 as consideration for entering into an access agreement in the form included in Appendix 6. Such correspondence may be sent to the legal counsel of any property owner whose property is affected by the removal action required under this Order if represented by counsel. Respondent shall, as soon as reasonably practicable, notify EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access and Respondent shall be deemed to have utilized its best efforts to obtain access with respect to any property owner if it sends the access correspondence and access agreement included in Appendix 6 to the affected property owner (or counsel, as appropriate) and offers compensation of at least \$4,000.00 as consideration for the property

owner's entry into the access agreement. EPA shall then, as expeditiously as practicable, assist Respondent in gaining access, to the extent necessary to effectuate the removal action under this Order, using such means as EPA deems appropriate. Such means may include utilization of its access authorities under §104(e) of CERCLA, 42 U.S.C. §9604(e), and Section 300.400(d) of the NCP, 40 C.F.R. §300.400(d), consistent with EPA's guidance entitled "Entry and Continued Access Under CERCLA" (June 5, 1987), OSWER Directive No. 9829.2. The Parties acknowledge, and EPA in its discretion may advise those from whom it seeks access after the Effective Date, that, in accordance with Sections 104(e)(5)(B) and 107(q)(1)(A)(iv) of CERCLA, 42 U.S.C. §§ 9604(e)(5)(B) and 9607(q)(1)(A)(iv), any property owner denying access to persons that are authorized to conduct response actions under CERCLA may be subject to a civil penalty of up to \$27,500 per day of noncompliance and may be deprived of the "contiguous landowner" defense in Section 107(q) of CERCLA. Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access in accordance with Section XV (Payment of Future Response Costs). If Respondent has attempted in good faith to obtain access to an area or areas owned by or in the possession of someone other than Respondent and is unable to do so after utilizing the correspondence and agreement included in Appendix 6 and offering the \$4,000.00 specified above as consideration for the property owner entering into such access agreement, then Respondent shall not be liable for stipulated penalties under this Order or be otherwise liable for failure to comply with this Order or to meet any schedules or milestones in this Order or in the workplans or other plans approved under this Order with respect to properties to which access has been denied.

44. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

45. Subject to Paragraphs 46 and 47, Respondent shall provide to EPA, upon written request, copies of all documents, records and information within its possession or

control or that of its contractors or agents relating to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

46. Except as provided in subparagraph 48.a, Respondent may assert business confidentiality claims covering part or all of the documents, records or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents, records or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents, records or information when they are submitted to EPA, or if EPA has notified Respondent that the documents, records or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents, records or information without further notice to Respondent.

47. Except as provided in subparagraph 48.a, Respondent may assert that documents, records and information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no final documents, final reports or other final information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged, and no drafts of any documents, records or information prepared by, for or on behalf of Respondent and subject to any privilege available under this Paragraph 47 shall be required to be made available to EPA under this Section X or be required to be retained by Respondent under Section XI.

48. a. No claim of privilege or confidentiality shall be made with respect to any data developed to prepare any reports or conduct any investigations or other actions taken under the Agreement or this Order.

b. Notwithstanding any provision of this Order, EPA retains all of its information gathering authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XI. RECORD RETENTION

49. Until 6 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all documents, records or information (including documents, records and information in electronic form) now in its possession or control or which come into its possession or control that Respondent is required to provide to EPA under Section X, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all such documents, records, and information.

50. At the conclusion of the 6 year document retention period, Respondent shall notify EPA at least 90 days prior thereto, and, upon request by EPA made before the end of such 90 day period, Respondent shall deliver documents, records and information required to be retained under Paragraph 49 to EPA; provided however that, except as provided in subparagraph 48.a, Respondent may assert that documents, records and information are entitled to confidentiality or are privileged under the attorney-client privilege or any other privilege recognized by federal law in accordance with Paragraphs 46 or 47, respectively, as the case may be, in which case they shall be maintained as confidential by EPA or withheld as privileged by Respondent in accordance with such paragraphs.

XII. COMPLIANCE WITH OTHER LAWS

51. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. §300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. In the event of any action or occurrence related to the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, any applicable HASP, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch, EPA-Region 5, at (312) 353-2318 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph 52, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP in accordance with Section XV (Payment of Future Response Costs).

53. In addition, Respondent shall submit a written report to EPA within 7 days after each such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the

Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11004, et seq., with which Respondent shall comply if and to the extent applicable.

XIV. AUTHORITY OF ON-SCENE COORDINATOR

54. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct or direct any Work, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC. The OSC's authority shall only extend to the removal action (including emergency response under Section XIII) required under this Order.

XV. PAYMENT OF FUTURE RESPONSE COSTS

55. a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP, up to a total, cumulative amount of \$400,000 in accordance with this Section XV. On an annual basis, EPA will send Respondent a bill requiring payment that includes an itemized cost summary. Respondent shall make all payments within 45 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 57.

b. Respondent shall make all payments required by this Paragraph 55 by a check made payable to "EPA Hazardous Substance Superfund," referencing Respondent's name and address and EPA Site/Spill ID number 0564 OU1 or by wire transfer in accordance with instructions provided by EPA. Respondent shall send the check(s) to:

U.S. Environmental Protection Agency
Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

c. At the time of payment, Respondent shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA-Region 5, 77 West Jackson Blvd., Chicago,

Illinois 60604-3590.

d. The amounts paid by Respondent pursuant to subparagraph 55.a, above, shall be deposited in the GM-Bedford Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site or be transferred by EPA to the EPA Hazardous Substance Superfund.

56. In the event that payment of Future Response Costs is not made within 45 days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph 56 shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

57. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP, subparagraph 7.g or j, above, or this Section XV. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 55 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the person listed in subparagraph 55.c, above. Respondent shall ensure that, if EPA prevails in the dispute, EPA shall receive the amount upon which it prevailed from the escrow funds plus any accrued Interest due thereon within 30 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section XVI shall be the exclusive mechanism for resolving disputes arising

under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

59. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, Respondent shall notify EPA in writing of its objection(s) within 10 business days after such action, unless the objection(s) has (have) been informally resolved. This written notice of dispute shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies. EPA shall submit its Statement of Position in response to Respondent's notice of dispute, including supporting documentation, no later than 10 business days after receipt of Respondent's written notice of dispute. In the event that these 10 business day time periods (collectively "Negotiation Period") for exchange of written documents may cause a delay in the Work, they shall be shortened upon, and in accordance with, written notice by EPA. The Negotiation Period for exchange of written documents relating to disputes over billings for Future Response Costs may be extended at the sole discretion of EPA.

60. An administrative record of any dispute under this Section XVI shall be maintained by EPA. The record shall include Respondent's written notice of dispute and EPA's Statement of Position served pursuant to Paragraph 59. Upon review of the administrative record, the Director of the Superfund Division, EPA-Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order which shall be incorporated into and become an enforceable part of this Order.

61. Any agreement reached by the Parties pursuant to this Section XVI shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section XVI. Following resolution of the dispute, as provided by this Section XVI, Respondent shall fulfill the requirement that was the

subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

62. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including, but not limited to, its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance, except with respect to access.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure*, Respondent shall notify EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 5 business days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

64. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations.

An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

65. This Section XVII is subject to Paragraph 43 relating to Respondent's inability to obtain access to properties owned by others within the Site and Paragraph 43 shall control over this Section XVII in the event of any inability to obtain access.

XVIII. STIPULATED PENALTIES

66. Subject to Paragraph 43 relating to Respondent's inability to obtain access, Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*).

67. Stipulated Penalty Amounts - Work.

The following stipulated penalties shall accrue per violation per day for failure to meet: (a) a deadline set forth in Section VIII for the submission of workplans; or (b) a Major Milestone, defined as a due date designated for a submission or task expressly designated as a Major Milestone in an approved workplan:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	First week
\$500	Second week or partial week thereafter

68. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 39 and 40:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	First week
\$200	Second week or partial week thereafter

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission, until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Superfund Division Director under Paragraph 59, during the period, if any, beginning on the 21st day after the Negotiation Period begins (or, if the Negotiation Period is shortened or lengthened, on the day after the end of such shortened or lengthened period) until the date that the Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

70. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue if and to the extent provided in Paragraph 69 regardless of whether EPA has notified Respondent of a violation.

71. All penalties accruing under this Section XVIII shall be due and payable to EPA within 45 days after Respondent's receipt from EPA of a written demand for payment of the

penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 0564 OU1, the EPA Docket Number of this Order, and the name and address of the party making payment. Copies of check(s) used for payment pursuant to this Section XVIII, and any accompanying transmittal letter(s), shall also be sent as provided in subparagraph 55.c, above.

72. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work.

73. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision.

74. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of the written demand made pursuant to Paragraph 71. Nothing in this Order shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(1) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(1) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

75. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

76. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct or order all actions necessary to protect public health, welfare or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from, the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

77. The covenant not to sue set forth in Section XIX does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Order;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

78. Respondent reserves whatever right it may have to contest and defend against any action taken by EPA pursuant to any reservation of rights contained in this Order, including in this Section XX.

XXI. COVENANTS NOT TO SUE BY RESPONDENT

79. As of the Effective Date, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in subparagraphs 77.b, c, and e - g, above, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation, nor shall these covenants not to sue apply to any claim Respondent has or may have against the United States for contribution or otherwise relating to or arising from the ownership and/or operation of the Plant by or on behalf of the United States (or any agency or department thereof) or any contract or transaction entered into by the United States (or any agency or department thereof) relating to the Plant.

80. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

XXII. OTHER CLAIMS

81. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Order.

82. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability such person may have under CERCLA, other statutes or common law, including, but not limited to, any claims of the United States for costs, damages and Interest

under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

83. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

84. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not Parties for indemnification, contribution or cost recovery.

XXIV. INDEMNIFICATION

85. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives (collectively "Related Parties") from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control in carrying out actions pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out actions pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

86. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section XXIV and shall consult with Respondent prior to settling such claim.

87. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement between any one or more of Respondent and any person for the performance of the Work, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between any one or more of Respondent and any person for the performance of the Work, including, but not limited to, claims on account of construction delays.

88. Notwithstanding anything to the contrary in this Section XXIV, Respondent shall have no obligation to indemnify or pay the United States or any Related Parties with respect to any claim arising from, or on account of, negligent or other wrongful acts or omissions of the United States or any Related Parties relating to the Site or the performance of the Work.

XXV. MODIFICATIONS

89. When the Parties agree that a modification to a plan or schedule should be made, the OSC may make such modification either in writing or by oral direction. EPA shall memorialize any oral modification in writing promptly, but the modification shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may only be modified in writing by mutual agreement of the Parties.

90. If Respondent seeks permission to deviate from any approved workplan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation

until receiving written approval from the OSC pursuant to Paragraph 89.

91. No informal advice, guidance, suggestion or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order or to comply with all requirements of this Order, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

92. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including monitoring, source control measures operation, payment of Future Response Costs, record retention, etc., EPA will provide written notice to such effect to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will so notify Respondent, provide a list of the deficiencies, and require that Respondent modify the applicable workplan, if appropriate, in order to correct such deficiencies. Respondent shall implement any modified and approved workplan and shall submit a modified Final Report to EPA in accordance with the EPA notice for response by EPA in accordance with this Paragraph 92. Failure by Respondent to implement the approved modified workplan shall be a violation of this Order. Completion of the Work shall not be interpreted as completion of corrective action activities at the Site under the Agreement unless so determined as part of the selection of the Final Remedy under the Agreement.

XXVII. SEVERABILITY/INTEGRATION/APPENDICES

93. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

94. This Order and its attached figure and appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following figure and appendices are attached to and incorporated into this Order:

- Figure 1 - Map Of Site
- Appendix 1 - Properties Outside East Plant Area
Subject To Removal Action
- Appendix 2 - Action Memorandum
- Appendix 3 - Parcel 22 Workplan
- Appendix 4 - Upstream Workplan
- Appendix 5 - SSC Workplan Scope Of Work
- Appendix 6 - Form Of Access Request Correspondence
And Access Agreement

XXVIII. EFFECTIVE DATE AND TERMINATION

95. This Order shall be effective upon receipt by Respondent of a copy of this Order signed by the Director, Superfund Division, EPA, Region 5. This Order shall terminate after EPA's approval of the Final Report under Section XXVI and upon Respondent's written notification thereafter that all other obligations under this Order have been completed and receipt by Respondent of EPA's written concurrence therewith; provided, however, that no such termination shall affect Sections XI, XIX, XX, XXI and XXIII which shall survive any such termination.

SIGNATORIES

The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind the party he represents to this Order.

By

William J. McFarland

DATE: 7-17-03

William J. McFarland
General Motors Corporation
Troy Technology Park South, Bldg. A
1996 Technology Dr, MC 483-619-356
Troy, Michigan 48083

IT IS SO ORDERED AND AGREED

BY: W. E. Muno

DATE: 7/28/03

William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

det_b\381226.2

