

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

COLOMA CITGO
FACILITY ID NO.: 00015218
105 WASHINGTON AVENUE
COLOMA, BERRIEN COUNTY, MICHIGAN

MDEQ Docket No.: AOC-STD-2002-02

RESPONDENT:
ISABELLA BERTUCCA, FACILITY OWNER AND REGISTERED OWNER
OF THE UNDERGROUND STORAGE TANK SYSTEM
STRICTLY LIABLE

Proceeding Under Section 20134 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"); MCL 324.20134, and Section 21329 of Part 213, Leaking Underground Storage Tanks, of the NREPA; MCL 324.21329.

**ADMINISTRATIVE ORDER BY CONSENT
FOR CORRECTIVE ACTION**

ADMINISTRATIVE ORDER BY CONSENT FOR CORRECTIVE ACTION INDEX

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I. JURISDICTION

1.1 This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), the Department of Attorney General ("DAG") for the State of Michigan ("State"), and Ms. Isabella Bertuca (hereinafter "Respondent"), pursuant to the authority vested in the State by Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"); MCL 324.20134(1); MSA 13A.20134(1), and Section 21329 of Part 213, Leaking Underground Storage Tanks, of the NREPA; MCL 324.21329; MSA 13A.21329. The Order concerns (1) the settlement of an assessed penalty, and (2) the performance by the Respondent of certain corrective actions at the Coloma Citgo facility ("Facility"), Coloma, Berrien County, Michigan.

II. DENIAL OF LIABILITY

2.1 The execution of this Order by the Respondent is neither an admission of liability with respect to any issue dealt with in this Order nor is it an admission of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon the Respondent and their successors and assigns as is further delineated in this Order. No change in ownership or corporate status shall in any way alter the

Respondent's responsibilities under this Order. The Respondent shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility, and shall provide a copy of this Order to any subsequent lessees, owners, grantees of any interest whatsoever, or successors before ownership rights are transferred. The Respondent shall comply with the requirements of Section 20116 of Part 201; MCL 324.20116.

3.2 The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

IV. STATEMENT OF PURPOSE

4.1 In entering into this Order, it is the mutual intent of the Parties to: 1) expedite the effective implementation of corrective actions associated with "Existing Contamination", as defined in Paragraph 5.1 of this Order, at and emanating from the Facility, 2) reach a settlement regarding the penalty assessed by the MDEQ for failure of the Respondent to submit reports required by statute, as described in Paragraph 6.12 of this Order, and 3) to minimize litigation.

V. DEFINITIONS

5.1 "Existing Contamination" means environmental contamination that (1) presently exists at the Property, (2) has emanated from the Property, (3) is subjacent to the Property, or (4) regardless of its location, is attributable to past releases at the Property. For further purpose of defining Existing

Contamination, the State and the Respondent agree that all data and technical reports for the Facility produced to date by, or on the behalf of the Respondent or the State are probative evidence of the nature and extent of Existing Contamination for purposes of this Order, known at the time of execution of this Order, and shall be admissible as evidence in any proceeding involving a dispute over the same.

5.2 "Facility" means the Property identified Paragraph 5.9 of this Order and any area, place, or property where a regulated substance therefrom has been released, deposited, stored, disposed of, or otherwise comes to be located (hereinafter the "Facility") as that term is defined in Section 20101(1) of Part 201; MCL 324.20101(1).

5.3 "Free Product" means a regulated substance in a liquid phase equal to or greater than 1/8 inch of measurable thickness, that is not dissolved in water, and that has been released into the environment.

5.4 "NREPA" means the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; MCL 324.101 et seq., a comprehensive recodification of Michigan's environmental protection and natural resources laws.

5.5 "Part 201" means Part 201, Environmental Remediation, of the NREPA; MCL 324.20101 et seq., and rules promulgated thereunder, being the Part 201 Rules, 1990 AACS R 299.5101 et seq.

5.6 "Part 213" means Part 213, Leaking Underground Storage Tanks, of the NREPA; MCL 324.21301a et seq.

5.7 “Part 215” means Part 215, Underground Storage Tank Financial Assurance, of the NREPA; MCL 324.21501 et seq., and the rules promulgated thereunder, being the Michigan Qualified Underground Storage Tank Consultants and Certified Underground Storage Tank Professionals (“QC/CP Rules”); 1999 AACS R 324.21501 et seq.

5.8 “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity as that term is defined in Section 301 of Part 3, Definitions, of the NREPA; MCL 324.301 et seq.

5.9 “Property” means the property located at 105 Washington Avenue, Coloma, Berrien County, Michigan.

5.10 “Qualified Underground Storage Tank Consultant” (“QC”) means a person on the list of QCs prepared pursuant to Section 21542 of Part 215; MCL 324.21542, and as defined in Rule 1 of the QC/CP Rules; 1999 AACS R 324.21501.

5.11 The term “State” means the State of Michigan, its departments, agencies, officials, and employees.

5.12 Unless otherwise stated herein, all terms used in this Order which are defined in Part 201 or the Part 201 Rules; 1990 AACS R 299.5101 et seq., shall have the same meaning in this document as in Part 201 and the Part 201 Rules, except for the terms “owner”, “operator”, “corrective action”, “regulated substance”, and “underground storage tank (“UST”) system”, which shall have the same meaning as in Part 213.

VI. FINDINGS OF FACT

6.1 The Property and source of contamination is located at 105 Washington Avenue, Coloma, Berrien County, Michigan and is known as Coloma Citgo. The Property was operated as a full service gasoline station from at least the early 1970s until 1999 when the remaining UST systems were removed.

6.2 The Respondent purchased the Property in 1995, and is the current owner of the Property.

6.3 Records filed with the State indicate that as of May 3, 1995, the Respondent was the registered owner of record for the UST system(s) located at the property, and allegedly last used the UST system in April 1998.

6.4 On June 22, 1999, Earth Resources International, L.C., on behalf of the Respondent, reported a confirmed release at the time of removal of the USTs at this Facility. Subsequent to the removal of the USTs, no additional corrective actions were performed by the Respondent as necessary to complete and submit an Initial Assessment Report (IAR) and Final Assessment Report (FAR) as required by Part 213 for the release reported on June 22, 1999.

6.5 A release of regulated substances has occurred to the soils and groundwater at the Facility. The regulated substances found at the Facility are gasoline constituents, which include Benzene, Toluene, Ethylbenzene and Xylenes ("BTEX"), Methyl tert-Butyl Ether (MTBE), various Polynuclear Aromatic Hydrocarbons (PNAs), and Lead. Specifically, Benzene, a known carcinogen, was detected in the groundwater at a concentration at least 2,180 times the Tier 1 Residential Drinking Water Risk-Based Screening Level.

6.6 Benzene at concentrations that exceed the maximum allowable levels established pursuant to Section 21304a of Part 213 is present in the soils and groundwater located at the Facility.

6.7 Free product was first discovered on December 1, 1993, and is currently present at the Facility.

6.8 The presence of free product and the contamination of the soils and groundwater may present an imminent and substantial endangerment to the public health, welfare, or the environment.

6.9 The Respondent is a "Person" as defined in Paragraph 5.8 of this Order.

6.10 The Respondent was the owner of the Property at the time of the release of the regulated substances.

6.11 The Respondent was the operator of the Property at the time of the release of the regulated substances at the Facility.

6.12 On September 17, 2001, the Respondent was assessed a penalty of \$20,200 by the MDEQ pursuant to Section 21313a of Part 213; MCL 324.21313a, for failure to submit the reports in accordance with the requirements of Sections 21308a and 21311a of Part 213; MCL 324.21308a and 324.21311a.

6.13 It is the intent of the Respondent to conduct corrective actions at the Facility in accordance with the requirements of Part 213.

VII. DETERMINATIONS

7.1 On the basis of the Findings of Fact, the MDEQ makes the following determinations:

(a) The Property and associated areas of environmental contamination is a "Facility" as that term is defined in Section 20101(1) of Part 201; MCL 324.20101(l).

(b) The Respondent is a "Person" as that term is defined in Section 301(g) of Part 3; MCL 324.301(g).

(c) BTEX, MTBE, PNAs, and Lead, are "regulated substances" as that term is defined in Section 21303 of Part 213; MCL 324.21303(d), are present in the soils and/or groundwater at the Facility.

(d) The presence of BTEX, MTBE, PNAs, and Lead, in the soils and/or groundwater at the Facility constitutes a "release or threatened release" within the meaning of Section 21303 (e) and (g) of Part 213; MCL 324.21303 (e) and (g).

(e) The actual or threatened release of regulated substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare, and the environment within the meaning of Section 20119 of Part 201; MCL 324.20119.

(f) In order to protect the public health, safety, welfare, and the environment, and to abate the danger or threat, it is necessary and appropriate that corrective action be taken.

(g) The Respondent is a person that may be liable within the meaning of Sections 20119 and 20126 of Part 201; MCL 324.20119 and MCL 324.20126.

7.2 On the basis of the Finding of Facts, the MDEQ and the DAG make the following determinations:

(a) The Respondent will properly implement the corrective actions required by this Order.

(b) This Order is in the public interest, will minimize litigation, and will expedite effective corrective action at the facility.

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ, THE DAG, AND THE RESPONDENT HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VIII. IMPLEMENTATION OF CORRECTIVE ACTIONS

8.1 All work performed in accordance with this Order shall be performed by a QC as defined in Part 215. In accordance with Section XVII of this Order, the Respondent shall submit work plans and reports as required by Sections XVII and XVIII of this Order, and conduct corrective actions as required by the Part 213. The MDEQ may approve with modifications work plans and reports, in accordance with the procedures in Section XVII of the Order. Each work plan or report shall be accompanied by the Storage Tank Division (STD) Part 213 Certification Cover Sheet and the appropriate Report Cover Sheet if one exists. Each work plan or report shall include a detailed description of the tasks to be

conducted or that have been completed during the corrective action, including the methodology, specifications, and a schedule for implementation and completion of the corrective action. The Respondent shall implement each work plan or conduct corrective action pursuant to the procedures of Part 213 and shall submit each required report in accordance with the schedules set forth therein. As approved, each component of each work plan or report, and approved modifications thereto, shall be deemed incorporated into this Order and made an enforceable part of this Order. The Respondent shall submit to the MDEQ a complete written description of the activities conducted pursuant to this Section as part of any submission required under the terms of this Order within 30 days from completion of the activity to be specified in the report (i.e. Free Product Recovery Status Report). Such description shall include, but not be limited to, an overview of the work conducted, a complete description of the methodologies employed and documentation and analysis of data collected pursuant to this Order and the subject submission.

8.2 Within 180 days of this Order being executed by the parties to the Order, the QC retained by the Respondent shall construct an active free product recovery system and implement free product recovery in compliance with the requirements of Section 21307(2)(c)(i-iv) of Part 213 and in accordance with the guidance provided by the MDEQ, STD's "Operational Memorandum No. 7: Identification, Reporting, and Recovery of Free Product at LUST Sites," Revised February 26, 2001.

8.3 Within one year from the effective date of this Order, and every year thereafter, the QC retained by the Respondent shall demonstrate, to the approval of the MDEQ, the effectiveness of the active free product recovery system in conducting free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones. The Respondent agrees to undertake all necessary and appropriate steps to expedite free product recovery in a manner acceptable to the MDEQ.

8.4 Within five years from the effective date of this Order, the QC retained by the Respondent shall demonstrate, to the approval of the MDEQ, that all free product has been recovered, or shall submit a plan satisfactory to the MDEQ to address any remaining free product and contamination.

8.5 If the MDEQ does not agree that free product is being fully recovered in accordance with Paragraphs 8.3 and 8.4 of this Order, the QC retained by the Respondent shall implement additional corrective actions in the same manner as described in Section IX.

8.6 All other corrective actions proposed in the Corrective Action Plan ("CAP") must be implemented in accordance with the MDEQ approved schedule as provided in the FAR.

8.7 All corrective actions conducted at the Facility must be conducted in accordance with this Order, Part 213, and other applicable laws and regulations.

8.8 The Respondent, or their designated representative, shall notify the MDEQ, STD Project Manager by telephone or facsimile not less than seven days in advance of scheduled on-site work activities. The Respondent, or their designated representative, shall notify the STD project manager not less than 24 hours prior to a scheduling change from the original notification.

8.9 The parties acknowledge and agree that this Order does not constitute a warranty or representation of any kind by the MDEQ that the work performed in accordance herein will result in the achievement of the corrective action criteria as established by law.

IX. ADDITIONAL CORRECTIVE ACTION

9.1 As used in this Section, "Additional Corrective Action" shall mean all activities not specifically set forth in work plans, reports, or the CAP that the MDEQ determines are necessary to meet the performance and cleanup standards required in Part 213 and all applicable state and federal requirements and that do not fundamentally change the overall corrective action approach outlined in the CAP. These activities may include modifications to the components of the corrective action, equipment, facilities, services, and supplies used to implement the corrective action.

9.2 In the event the MDEQ determines that additional corrective action is necessary, notifications of such additional corrective action will be provided to the Respondent's QC. The Respondent may also propose additional corrective action which shall be subject to approval by the MDEQ. Any additional corrective action determined to be necessary by the MDEQ, or otherwise agreed to by the parties, shall be completed by the Respondent in accordance with the standards, specifications, and schedules approved by the MDEQ.

9.3 Unless the MDEQ agrees to extend the time period, within 30 days of receipt of notice from the MDEQ that additional corrective action is necessary, or from the date on which the parties otherwise agree that additional corrective action is necessary, the Respondent shall submit a plan for the additional corrective action to the MDEQ for approval. The plan shall be developed and submitted in conformance with the requirements of Section XVII of this Order. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Order. The Respondent shall implement the plan for additional corrective action in accordance with the schedule contained therein.

9.4 Nothing in the preceding paragraph shall limit the power and authority of the MDEQ, the DAG or a court, to take, direct or order all appropriate action to protect public health, welfare, safety, or the environment to prevent, abate or minimize a release or threatened release of regulated substances.

X. ENGAGEMENT OF A QUALIFIED CONSULTANT

10.1 Aqua-Tech Consultants, Inc. ("Aqua-Tech") has been designated by the Respondent to be her QC to perform and oversee all corrective actions required under this Order. In the event that Aqua-Tech ceases to perform corrective actions prior to the completion of the corrective actions required under this Order, the Respondent shall notify the MDEQ within seven days and retain the services of another QC within 30 days to complete the corrective actions required by this Order.

10.2 The Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Order within three calendar days of the effective date of such retention.

10.3 Notwithstanding the terms of any such contract, the Respondent is directly responsible for the performance of the corrective actions required in this Order, and shall ensure that its' QC, other contractors, subcontractors, laboratories, and consultants perform all work in conformance with the terms and conditions of this Order.

XI. QUALITY ASSURANCE/SAMPLING

11.1 The Respondent shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory utilized by the Respondent in implementing this Order for quality assurance monitoring.

11.2 The Respondent shall submit to the MDEQ the results of all sampling or tests and all other data generated by the Respondent or their contractor(s), or on the Respondent's behalf, in the course of implementing this Order. Said results shall be included in progress reports as set forth in Section XVIII.

11.3 At the request of the MDEQ, the Respondent shall allow the MDEQ or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent pursuant to the implementation of this Order. Except as may be necessary for sampling required pursuant to Section XI, the Respondent shall notify the MDEQ not less than seven days in advance of any sample collection activity. In addition, the MDEQ shall have the right to take any additional samples that it deems necessary.

11.4 Notwithstanding any provision of this Order, the MDEQ and the DAG shall retain all of their information gathering, inspection, and enforcement authorities and rights under Parts 213 and 201 and any other applicable statute or regulation.

XII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

12.1 Each party shall designate a Project Coordinator. Whenever notice is required to be given or a communication, report, sampling data, analysis of data, or other submission is required to be forwarded by one party to the other party under this Order, such communication shall be directed to the Project Coordinators at the below listed addresses. If any party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

A. For financial matters pursuant to Section XXIV, XXV, and XXVI:

11/2004
Exec. Section
RR

Paula McAllister
Executive Section
Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657
Telephone: 517-335-7251
Fax: 517-335-2245

(Via courier)
Constitution Hall
525 West Allegan Street
Lansing, MI 48933

B. For record retention pursuant to Section XVII:

11/2004
Exec. Section
RR

Roger Przybysz, Chief
Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657
Telephone: 517-373-2789
Fax: 517-335-2245

← should be XVI

(Via courier)
Constitution Hall
525 West Allegan Street
Lansing, MI 48933

- C. For matters related to this Order:
Dan Yordanich
Enforcement Unit
Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657
Telephone: 517-241-9540
Fax: 517-335-2245

(Via courier)
Constitution Hall
525 West Allegan Street
Lansing, MI 48933

- D. MDEQ Project Manager:

Debra Clark, Project Coordinator
Storage Tank Division
Kalamazoo District
Michigan Department of Environmental Quality
7953 Adobe Road
Kalamazoo, Michigan 49009-5026
Telephone: 616-567-3514
Fax: 616-567-9440

As to Respondent:

Isabella Bertuca
5717 Beech
Coloma, Michigan 49038
Telephone: 616-468-4692

With a copy to:

Alfred L. Schubkegel, Jr.
Varnum, Riddering, Schmidt & Howlett, LLP
251 North Rose Street
Kalamazoo, MI 49007
Telephone: 616-382-2300
Fax: 616-382-2382

As to Respondent's QC:

Lawrence M. Austin
Aqua-Tech Consultants, Inc.
540 Leonard NW, Suite G
Grand Rapids, Michigan 49504
Telephone: 616-458-7980
Fax: 616-458-6127

12.2 The Respondent's QC shall have primary responsibility for directly overseeing the implementation of the corrective actions and other requirements specified in this Order.

12.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

XIII. ACCESS

13.1 Upon reasonable notice to the Respondent from the effective date of this Order, the MDEQ, its authorized employees, agents, representatives, contractors, and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Order, to the extent access to the Facility is controlled by, or available to the Respondent for the purpose of conducting any activity authorized by this Order or otherwise fulfilling any responsibility under federal or state law with respect to environmental conditions at the Facility, including, but not limited to:

- (a) Monitoring the work or any other activities taking place pursuant to this Order on the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning and implementing corrective actions at or near the Facility;
- (f) Assessing compliance with requirements for the implementation of monitoring, operation, maintenance, and other measures necessary to assure the effectiveness and integrity of a remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents, and;
- (h) Conduct all required corrective actions to protect the public health, safety, and welfare pursuant to Part 213.

13.2 To the extent that the Facility or any other area where the work is to be performed by the Respondent under this Order is owned or controlled by persons other than the Respondent, the Respondent shall use her best efforts to secure from such persons access for the parties and their authorized employees, agents, representatives, contractors, and consultants. The Respondent shall provide the MDEQ with a

copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best efforts" includes, but is not limited to, reasonable compensation to the owner to secure such access and taking judicial action to secure such access. If, after using best efforts, the Respondent is unable to obtain access within 45 days of the effective date of this Order, the Respondent shall promptly notify the MDEQ. The State may thereafter assist the Respondent in obtaining access. The Respondent shall, within 30 days of receipt of written request from the MDEQ, reimburse the State for all costs not inconsistent with law incurred by the State in obtaining access in the manner provided by Section XXIII.

13.3 Any lease, purchase, contract, or other agreement entered into by the Respondent which transfers to another party a right of control over the Facility or a portion of the Facility shall contain a provision preserving for the MDEQ or another party undertaking the corrective actions and their authorized representatives, the access provided under Section XIII.

13.4 All parties granted access to the Facility pursuant to this Order shall comply with all applicable health and safety laws and regulations.

13.5 Notwithstanding any provision of this Order, the MDEQ and the DAG shall retain all of their inspection and access authorities under any applicable statute or regulation.

XIV. CREATION OF DANGER

14.1 During performance of corrective actions conducted pursuant to this Order, if the Respondent obtain information concerning the occurrence of any event that causes a release or threat of a release of a

regulated substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, welfare, or the environment, the Respondent shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat or endangerment and shall immediately notify the MDEQ's project manager or, in the event of his/her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by the Respondent shall be in accordance with all applicable health and safety laws and regulations. The Respondent, as appropriate shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent recurrence of such an incident. Regardless of whether the Respondent notifies the MDEQ pursuant to this Paragraph, if corrective actions undertaken under this Order cause a release or threat of release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare, or to the environment, the MDEQ may: (a) require the Respondent to stop corrective actions at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment; (b) require the Respondent, as appropriate to undertake any such activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; and/or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDEQ undertakes any action to abate such a release, threat or endangerment, the Respondent shall reimburse the State for all costs incurred by the State that are lawfully incurred. Payment of such costs shall be made in the manner provided in Paragraph 23.3.

14.2 Nothing in the preceding Paragraphs shall limit the power and authority of the MDEQ, or the State to take, to direct or order any person to undertake all appropriate action to protect the public health,

welfare, safety, or the environment, to prevent, abate or minimize a release or threatened release of regulated substances, pollutants or contaminants on, at or from the Facility.

XV. COMPLIANCE WITH OTHER LAWS

15.1 All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 201, the Part 201 Rules, and Part 213, and laws relating to occupational safety and health and other state environmental laws. Other agencies may also be called upon to review the conduct of work under this Order. Further, the Respondent must designate, in a report to the MDEQ, any facilities that the Respondent proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XVI. RECORD RETENTION/ACCESS TO INFORMATION

16.1 The Respondent and her representatives, consultants, and contractors shall preserve and retain, during the pendency of this Order and for a period of five years after its termination, all records, sampling, or test results, charts and other documents relating to historical regulated substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant to any requirement of this Order. After the five years period of document retention, the Respondent and their successors and assigns shall obtain the MDEQ's written permission prior to the destruction of such documents and, upon request, the Respondent and/or their successors and assigns shall relinquish custody of all documents to the MDEQ.

The Respondent's request shall be accompanied by a copy of this Order and sent to the following address or at such other address as may subsequently be designated in writing by the MDEQ:

Chief, Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657

16.2 The Respondent shall, upon request, provide to the MDEQ all documents and information within their possession, or within the possession or control of their employees, contractors, agents, or representatives relating to the work at the Facility or 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, other documents or information related to the work. The Respondent shall also, upon request, make available to the MDEQ, upon reasonable notice, Respondent's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

16.3 The Respondent may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information requested by this Order. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDEQ, it may be made available to the public by the MDEQ without further notice to the Respondent. Analytical data shall not be claimed as confidential or privileged by the Respondent.

XVII. SUBMISSIONS AND APPROVALS

17.1 Within 90 days after of this Order being executed by the parties to the Order, the QC retained by the Respondent shall complete an IAR in accordance with Section 21308a of Part 213; MCL 324.21308a, and submit the report to the MDEQ on a form created pursuant to Section 21316 of Part 213; MCL 324.21316.

17.2 Within 180 days of this Order being executed by the parties to the Order, the QC retained by the Respondent shall complete a FAR in accordance with Section 21311a of Part 213; MCL 324.21311a that includes a CAP developed pursuant to the requirements of Section 21309a of Part 213; MCL 324.21309a and submit the report to the MDEQ on a form created pursuant to Section 21316 of Part 213; MCL 324.21316.

17.3 Within 30 days of receiving approval of a complete FAR submitted in accordance Section 21311a of Part 213; MCL 324.21311a, from the MDEQ Project Manager, the QC retained by the Respondent shall implement the corrective actions proposed in the approved CAP.

17.4 In accordance with Section 21312a of Part 213; MCL 324.21312a, within 30 days following completion of the corrective action, the QC retained by the Respondent shall complete a closure report and submit the report to the MDEQ on a form created pursuant to Section 21316 of Part 213; MCL 324.21316. Within 60 days after receipt of the closure report the MDEQ shall provide the Respondent and the consultant who submitted the closure report with a confirmation of the MDEQ's receipt of the report.

17.5 Within six months after receipt of the closure report the MDEQ shall conduct a review of the closure report, and if after conducting the review the MDEQ shall provide the Respondent with a letter that describes the review and the results. If the review confirms that the cleanup criteria pursuant to Section 21304a of Part 213 are met, the MDEQ shall issue a Closure Letter in accordance with Paragraph 31.2 of this Order and pursuant to Section 21315 of Part 213. If, after the review, the MDEQ determines that corrective actions were not conducted in compliance with Part 213 or that cleanup criteria were not met, the MDEQ may require the Respondent to do either or both of the following: 1) provide additional information related to any requirement of Part 213; or 2) retain a consultant to take additional corrective actions necessary to comply with Part 213.

17.6 All plans, documents, submissions, and reports ("Submissions") required by this Order shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. Prior to receipt of MDEQ approval, any report submitted to the MDEQ for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the "MDEQ." This document was prepared pursuant to a governmental Administrative Order by Consent. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

17.7 Within 30 days of receipt of any submission relating to the work that is required to be submitted for approval pursuant to this Order, the MDEQ Project Manager will in writing (a) approve the submission; (b) disapprove the submission, notifying the Respondent of deficiencies; or (c) approve the submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, the Respondent shall proceed to take any action required by the submission as approved or as modified, and

shall submit a new "STD Leaking Underground Storage Tank" cover sheet and the modified pages of the plan marked "Final".

17.8 Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDEQ, the Respondent shall, within 30 days thereafter, correct the deficiencies and resubmit the submission for approval. The 30 days provided to correct the deficiencies does not extend subsequent statutory, subsequent negotiated compliance dates, or other obligations set forth in this agreement. Notwithstanding a notice of disapproval, the Respondent shall proceed to take any corrective action not directly related to the deficient portion of the submission. If, upon resubmission, the submission is not approved, the MDEQ shall so advise the Respondent and the Respondent shall be deemed to be in noncompliance with this Order.

17.9 A finding of approval or approval with modifications shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the submission or warrants that the submission comports with law.

17.10 No informal advice, guidance, suggestions, or comments by the MDEQ regarding submissions or any other writing submitted by the Respondent shall be construed as relieving the Respondent of their obligation to obtain such formal approval as may be required by this Order.

XVIII. PROGRESS REPORTS

18.1 The Respondent shall provide to the MDEQ Project Manager written monthly progress reports relating to the recovery of free product. The free report recovery status reports shall include the "Leaking Underground Storage Tank Supplemental Report Cover Sheet"; Form EQP3849 and the "Free Product Recovery Status Report"; Form EQP3850. The Respondent may propose that the free product recovery status reports be submitted quarterly once the corrective actions to conduct free product removal have demonstrated the effectiveness of those actions in meeting the requirements of Section 21307(2)(c)(i) of Part 213; MCL 324.21307(2)(c)(i). The Respondent may begin to submit quarterly free product recovery status reports together with the progress reports required by Paragraph 18.2 of the Order once written approval has been received from the MDEQ Project Manager.

18.2 The Respondent shall provide to the MDEQ written quarterly progress reports relating to corrective action that shall: (a) describe the activities that have been taken toward achieving compliance with this Order during the previous three month time period; and (b) describe data collection and activities scheduled for the next three month time period; and (c) include all results of sampling and tests and other data received by the Respondent, their employees or authorized representatives during the previous three month time period relating to the corrective actions performed pursuant to this Order. The first quarterly report shall be submitted to the MDEQ within 21 days following the effective date of this Order and quarterly thereafter until the issuance of the Closure Letter as provided in Section XXXI.

XIX. INDEMNIFICATION AND INSURANCE

19.1 The Respondent shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of the Respondent, their officers, employees, agents, or any persons acting on their behalf or under their control in carrying out corrective actions pursuant to this Order. Neither the State nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract entered into by or on behalf of the Respondent in carrying out activities pursuant to this Order. Neither the Respondent nor any contractor shall be considered an agent of the State.

19.2 The Respondent waives any and all claims or causes of action against the State and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, Order or arrangement between the Respondent or any other person for performance of corrective actions at the Facility, including claims on account of construction delays.

19.3 The Respondent shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, Order or arrangement between the Respondent and any person for performance of work at the Facility, including claims on account of construction delays.

19.4 Prior to commencing any corrective actions on or near the site, the Respondent shall secure, and maintain for the duration of this Order, comprehensive general liability insurance with minimum coverage of \$1,000,000, per occurrence, naming the MDEQ, the DAG, and the State as additional insured parties. If the Respondent demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, the Respondent needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, the Respondent shall provide the MDEQ and the DAG with certificates evidencing said insurance and the MDEQ's, the DAG's, and the State's status as additional insured parties. In addition, for the duration of this Order, the Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing corrective action on behalf of the Respondent in furtherance of this Order. Prior to commencement of the work under this Order, the Respondent shall provide to the MDEQ satisfactory proof of acquiring such insurance.

XX. MODIFICATIONS/INCORPORATION BY REFERENCE

20.1 If this Order, other than work plans for the IAR and FAR or time schedules referenced herein, is modified, any such modifications are effective only if in writing and by signature of the STD Chief, the DAG, and the Respondent's designated Project Coordinator or other authorized representative. Amendments to work plans, the IAR, or the FAR and time schedules referenced in this Order shall only be made in writing by the MDEQ Project Manager.

20.2 The time schedules referenced herein are incorporated into this Order and are included as an enforceable part thereof. Any plans, specifications, and schedules required by this Order are, upon approval by the MDEQ, incorporated into this Order and made enforceable parts thereof.

XXI. DELAYS IN PERFORMANCE

21.1 Any delay attributable to a "Force Majeure" shall not be deemed a violation of the Respondent's obligations under this Order in accordance with this Section.

21.2 The Respondent shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure". For the purpose of this Order, "Force Majeure" is defined as an occurrence or nonoccurrence arising from causes beyond the control of the Respondent, and which could not be avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes or failure to obtain a permit or license as a result of the Respondent's actions or omissions.

21.3 When circumstances occur that the Respondent believes constitute a Force Majeure, the Respondent shall notify the MDEQ by telephone or facsimile of the circumstances within 24 hours after they first become aware of those circumstances. Within five working days after the Respondent first became aware of such circumstances, the Respondent shall supply the MDEQ, in writing, an explanation of the causes(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and to be taken by the Respondent to avoid, minimize or overcome the delay and the timetable for

implementation of such measures. Failure of the Respondent to comply with the written notice provision of this Paragraph shall constitute a waiver of the Respondent's right to assert a claim of Force Majeure with respect to the circumstances in question.

21.4 If the MDEQ agrees that a delay is or was caused by Force Majeure, the Respondent's delay shall be excused and the MDEQ shall provide the Respondent such additional time as may be necessary to compensate for the Force Majeure event. The Respondent shall have the burden of demonstrating that: (i) the delay is or was caused by a Force Majeure event; and (ii) that the amount of additional time requested is necessary to compensate for that event.

21.5 An extension of one compliance date based upon a particular Force Majeure incident does not mean that the Respondent qualifies for an extension of a subsequent compliance date without meeting its burden of proof as specified in this Section for each incremental step or other requirement or deadline in this agreement for which an extension is sought.

XXII. DISPUTE RESOLUTION

22.1 If the Respondent objects to any notice of disapproval, modification, or decision of the MDEQ concerning this Order, the Respondent shall notify the MDEQ, in writing, of their objections within seven days of receipt of the notice. Within ten days from the MDEQ's receipt of the notification of objection, the MDEQ and the Respondent shall reach a resolution of the issues which are the subject of the objection. If a resolution cannot be reached on any issue within this ten-day period, the MDEQ shall provide written

statement of its decision to the Respondent and the Respondent shall commence the activities required by the MDEQ decision within ten days of receipt of the MDEQ decision.

22.2 In the event the Respondent does not commence the activities required by the MDEQ decision, the DAG, on the behalf of the MDEQ, may take such civil enforcement actions against the Respondent as may be provided for by Sections 20119(4) and 20137(1) of Part 201; MCL 324.20119(4); MCL 324.20137(1), and Section 21323 of Part 213; MCL 324.21323, and other statutory and/or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages. In such an event, the MDEQ retains the right to perform necessary corrective actions and to recover the costs thereof from the Respondent. Engagement of a dispute resolution among the parties shall not be cause for the delay of any work.

22.3 During the pendency of any dispute concerning the reimbursement of costs or the payment of stipulated penalties or civil penalties, notwithstanding the invocation of the dispute resolution, stipulated penalties, or civil penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order. Within ten days of the MDEQ decision, the Respondent shall pay the balance of the costs or penalties, or any relevant portion thereof, to the MDEQ in the manner provided in Section XXIII subject to any dispute resolution.

22.4 Notwithstanding this Section, the Respondent shall pay that portion of a demand for reimbursement of costs, payment of the assessed penalty, or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Section XXIII, XXIV, and XXV, as appropriate.

22.5 No action or decision of the MDEQ or the DAG shall constitute final agency action giving rise to any rights of judicial review, prior to the DAG's initiation of judicial action to compel the Respondent to comply with this Order to enforce a term, condition, or other action required by this Order in accordance with Section 20137 of Part 201; MCL 324.20137 or Section 21323 of Part 213; MCL 324.21323. Nothing in this Order shall expand the Respondent's ability to obtain judicial pre-enforcement review of this Order.

XXIII. REIMBURSEMENT OF COSTS

23.1 For purposes of this Order, the term "Oversight Costs" include, but are not limited to, costs incurred to monitor corrective actions at the Facility; observe and comment on field activities; review and comment on submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; enforcement costs as defined pursuant to Section 20101(j) of Part 201; MCL 324.20101(j); interest accrued pursuant to Section 20126a(3) of Part 201; MCL 324.20126a(3); and monitor and document compliance with this Order.

23.2 The Respondent shall reimburse the State for all future oversight costs incurred by the State in overseeing the corrective actions being conducted by the Respondent for matters covered in this Order. As soon as possible after each anniversary of the effective date of this Order, pursuant to Section 21323 of Part 213; MCL 324.21323, the MDEQ is authorized to demand reimbursement of all oversight costs lawfully incurred by the State for the full amount claimed. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

23.3 The Respondent shall have the right to request a full and complete accounting of all demands made hereunder, including timesheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to the MDEQ. Except as provided by Section XXII, the Respondent shall reimburse the MDEQ for such costs within 30 days of receipt of a written demand from the MDEQ. All payments made pursuant to this Order shall be by check payable to the "Michigan Department of Environmental Quality, Storage Tank Division", and shall be sent by first-class mail to the following address:

Administrative Unit
Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657

The "Coloma Citgo, Facility ID No. 00015218" and the MDEQ Docket Number for the Order AOC-STD-2002-02 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Manager and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909.

XXIV. ASSESSED PENALTIES

24.1 By execution of this Order by the parties to the Order, the MDEQ agrees to hold in abeyance the administrative penalty assessed by the MDEQ, STD and as described in Paragraph 6.12 of this Order, pending the successful completion of corrective actions and all other requirements of this Order. At such time as the approved corrective actions are completed and a Closure Letter is issued by the MDEQ as described in Paragraph 31.2 of this Order, the MDEQ shall waive the assessed penalty.

24.2 Except as provided by Sections XXIII, XXIV, and XXV, if the Respondent fails or refuses to comply with any term or condition in Sections VIII, IX, XV and XXII, the Respondent shall pay the MDEQ the assessed penalty within 30 days of receiving a written demand from the State.

24.3 The assessed penalty owed to the state shall be paid no later than 30 days after receiving a written demand from the State. The State's failure to issue a written demand proximate to the time period when the violation occurred in no way vitiates the Respondent's obligation to pay the penalties when a demand is issued. Payment shall be made in the manner provided in Section XXIII. Interest shall accrue on the unpaid balance at the end of the 30-day period at the rate provided for in Section 20126a; MCL 323.20126a. Failure to pay the assessed penalties within 30 days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

XXV. STIPULATED PENALTIES

25.1 Except as provided by Sections XXIII, XXIV, and XXV, if the Respondent fails or refuses to comply with any term or condition in Sections VIII, IX, XV, and XXII, the Respondent shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$50
16th through 30th day	\$100
beyond 30 Days	\$500

25.2 Except as provided in Sections XXIII, XXIV, and XXV, if the Respondent fails or refuses to comply with any other term or condition of this Order, other than Section XV, the Respondent shall pay the MDEQ stipulated penalties of \$500 a day for each and every failure or refusal to comply.

25.3 The Respondent shall notify the MDEQ, in writing, of any violation of this Order no later than five days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this Paragraph constitutes an independent violation of this Order.

25.4 Stipulated penalties shall begin to accrue on the day performance was due or other failure or refusal to comply occurred and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Order.

25.5 Except as provided in Section XXII, stipulated penalties owed to the state shall be paid not later than 30 days after receiving a written demand from the State. The State's failure to issue a written demand proximate to the time period when the violation occurred in no way vitiates the Respondent's obligation to pay the penalties when a demand is issued. Payment shall be made in the manner provided in Section XXIII. Interest shall accrue on the unpaid balance at the end of the 30-day period at the rate provided for in Section 20126a of Part 201; MCL 323.20126a. Failure to pay the stipulated penalties within 30 days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

25.6 Liability for or payment of stipulated penalties are not the State's exclusive remedy in the event the Respondent violate this Order. The State reserves the right to pursue any other remedy or remedies that

it is entitled to under this Order or any applicable law for any failure or refusal of the Respondent to comply with the requirements of this Order, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three times the costs incurred by the State as a result of the Respondent's violation of or failure to comply with this Order pursuant to Section 21323 of Part 213; MCL 324.21323; and Sections 20119(4) and 20137(1) of Part 201; MCL 324.20119(4) and MCL 324.20137(1), and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXVI. COVENANT NOT TO SUE RESPONDENT BY THE STATE

26.1 With respect to the Respondent's liability for Facility corrective action costs incurred by the State prior to the effective date of this Order, the State hereby covenants not to sue the Respondent. With respect to liability for performance of corrective actions required to be performed under this Order, the covenant not to sue shall take effect upon issuance by the MDEQ of the Closure Letter in accordance with Section XXXI. The covenant not to sue is conditioned upon the complete and satisfactory performance by the Respondent of their obligations under this Order. The covenant not to sue extends only to the Respondent and does not extend to any other person.

26.2 The State reserves, and this Order is without prejudice to, all rights to take action against the Respondent with respect to all matters other than those specified in Paragraph 26.1 of the Order, including, but not limited to, the following:

- (a) Liability arising from a violation by the Respondent of a requirement of this Order, including conditions of an approved submission required herein;

 - (b) Liability for any other corrective actions required to address environmental contamination at the Facility;

 - (c) Liability for corrective action costs in addition to those referred to in Section XXIII;

 - (d) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of regulated substance(s) outside of the Facility and not attributable to the Facility;

 - (e) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of regulated substance(s) taken from the Facility;

 - (f) Liability for damages for injury to, destruction of, or loss of natural resources;

 - (g) Liability for criminal acts;

 - (h) Any matters for which the State is owed indemnification under Section XIX of this Order;
- and;
- (i) Liability for violations of federal or state law which occur during or after implementation of a remedial action.

26.3 The State's Pre-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the Respondent (1) to perform further corrective actions relating to environmental contamination at the Facility or (2) to reimburse the State for additional costs of response if, prior to issuance of a Closure Letter of the corrective actions:

(a) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the entry of this Order; or

(b) Information is received, in whole or in part, after the entry of this Order; and

(c) These previously unknown conditions or this information, together with any other relevant information, indicate that the remedial action is not protective of the public health, safety, welfare, or the environment.

26.4 The State's Post-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel the Respondent (1) to perform further corrective actions relating to the Facility or (2) to reimburse the State for additional costs of response if, subsequent to issuance of the Closure Letter of a corrective action:

(a) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the issuance of the Closure Letter; or

(b) Information is received, in whole or in part, after the issuance of the Closure Letter; and

(c) These previously unknown conditions or this information, together with other relevant information, indicate that the remedial action is not protective of the public health, safety, welfare, or the environment.

26.5 For purposes of Paragraph 26.3, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in the administrative record supporting a remedial action at the time of entry of this Order. For purposes of Paragraph 26.4, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in the administrative record supporting the remedial action and any information received by the MDEQ pursuant to the requirements of this Order prior to issuance of the Closure Letter of the corrective action.

XXVII. SUCCESSORS/ASSIGNS AND DISSOLUTION

27.1 The Respondent shall neither assign nor transfer in anyway this Order or any of the benefits, duties or obligations under this Order.

27.2 Nothing in this Order shall be construed to modify or affect the liability that may be imposed upon the Respondent under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., Resource, Conservation and Recovery Act, 42 USC 6901 et seq., Part 213, Part 201, or any other law, for any contamination other than Existing Contamination.

XXVIII. COVENANT NOT TO SUE THE STATE BY RESPONDENT

28.1 The Respondent hereby covenants not to sue or take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or cause of action against the State with respect to the Facility arising from this Order including any direct or indirect claim for reimbursement from the MDEQ, STD pursuant to Section 20119(5) of Part 201; MCL 20119(5), Section 21319a(5) of Part 213; MCL 324.21319a(5) or any other provision of law.

28.2 In any subsequent administrative or judicial proceeding initiated by the DAG for injunctive relief, recovery of corrective action costs, or other appropriate relief relating to the Facility, the Respondent agree not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, claim-splitting, or other defenses based upon any contention that the claims raised by the MDEQ or the DAG in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Sections XXVI and XXIX.

XXIX. CONTRIBUTION PROTECTION

29.1 Pursuant to Section 20129 of Part 201; MCL 324.20129, and to the extent provided in Sections XXVI and XXVIII, the Respondent shall not be liable for claims for contribution regarding matters addressed in this Order. Entry of this Order does not discharge the liability of any other person(s) that may be liable under Section 20126 of Part 201; MCL 324.20126. In any action by the Respondent for contribution from any person not a party to this Order, the Respondent's cause of action shall be

subordinate to the right of the State if the State files an action pursuant to NREPA or other applicable federal law, in accordance with Section 20129(8) of Part 201; MCL 324.20129(8) and Section 21323 of Part 213; MCL 324.21323.

XXX. RESERVATION OF RIGHTS BY THE STATE AGAINST RESPONDENT

30.1 The MDEQ and the DAG reserve the right to bring an action against the Respondent under federal and state law for any matters that are defined by Paragraph 26.3.

30.2 The MDEQ and the DAG expressly reserve any and all rights and defenses that they may have to enforce this Order against the Respondent, including the MDEQ's right both to disapprove of corrective actions performed by the Respondent and to require the Respondent to perform tasks in addition to those detailed in this Order.

30.3 In the event the MDEQ determines that the Respondent has failed to implement any provisions of the Order in an adequate or timely manner, the MDEQ may perform, or contract to have performed, any and all portions of the corrective action(s) as the MDEQ determines necessary and the MDEQ may seek recovery of State corrective action costs.

30.4 Failure by the State to timely enforce any term, condition, or requirement of this Order shall not:

(a) Provide or be construed to provide a defense for the Respondent's noncompliance with any such term, condition, or requirement of this Order; or

(b) Estop or limit the authority of MDEQ or the DAG to later enforce any such term, condition, or requirement of the Order or seek any other remedy provided by law.

30.5 Notwithstanding any other provision of this Order, the MDEQ retains all authority and reserves all rights to take any and all corrective action(s) authorized by law.

XXXI. CERTIFICATION

31.1 When the Respondent determines that they have completed all the work required by this Order, they shall submit to the MDEQ a Notification of Completion and a draft Closure Report as described in Paragraph 17.5 of this Order. The draft Closure Report shall summarize all corrective actions performed under this Order. The draft Closure Report shall include or reference any supporting documentation.

31.2 Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion, the draft Closure Report, any supporting documentation and the actual corrective actions performed pursuant to this Order. Within six months from receipt of the Notification of Completion, the MDEQ will determine whether the Respondent has satisfactorily completed all requirements of this Order, including, but not limited to, completing the work required by this Order, complying with all terms and conditions of this Order and paying any and all cost reimbursement and stipulated penalties owed to the MDEQ. If the MDEQ determines that all requirements have been satisfied, the MDEQ will so notify the

Respondent, and upon receipt of a "Final" Closure Report in accordance with Section XVII, shall issue a Closure Letter.

XXXII. SEPARATE DOCUMENTS

32.1 This Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXIII. EFFECTIVE DATE

33.1 This Order is effective upon the date that the Respondent receives written notice that the Director or the Director's designated representative has signed the Order. All times for performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein.

IT IS SO AGREED BY:

Robert P. Reichel
Robert P. Reichel (P31878)
Assistant Attorney General
Natural Resources and
Environmental Protection Division

5/6/02
Date

IT IS SO AGREED BY:

Roger Przybysz
Roger Przybysz, Chief
Storage Tank Division
Michigan Department of Environmental Quality

5/3/02
Date

IT IS SO AGREED BY:

Isabella Bertuca
Isabella Bertuca
5717 Beech
Coloma, Michigan 49038

4-30-02
Date

The foregoing instrument was acknowledged before me this 30th day of April, 2002, by Isabella Bertuca.

Neva Galati
Notary Public

My Commission Expires _____

NEVA GALATI
Notary Public, Van Buren County, MI
Acting in Kalamazoo County, MI
My commission expires: March 12, 2004