

In the Matter of:

MDEQ Reference No.: AOC-ERD-02-005

The Acquisition of the Former Chrysler Corporation's  
Trenton Chemical Property;  
5437 East Jefferson Avenue, Trenton, Michigan

By Wayne County, Michigan

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**ADMINISTRATIVE ORDER ON CONSENT,  
COVENANTS NOT TO SUE AND CONTRIBUTION PROTECTION**

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## ADMINISTRATIVE ORDER ON CONSENT, COVENANTS NOT TO SUE AND CONTRIBUTION PROTECTION

This ADMINISTRATIVE ORDER ON CONSENT ("Agreement") is executed and entered into by and between Jennifer Granholm, Attorney General of the State of Michigan, ex. rel the Michigan Department of Environmental Quality ("MDEQ"), collectively referred to as "the State", Daimler-DCX Corporation ("DCX"), formerly known as Chrysler Corporation, and Wayne County, Michigan (the "County"). By execution of this Agreement, the State, DCX, and the County stipulate and agree to be bound by all of the recitals, terms and conditions herein.

The MDEQ has issued a Certificate of Completion of Construction of a limited industrial land use-based remedy to DCX based on the MDEQ's determination that all relevant requirements with regard to the former DCX Trenton Chemical facility ("Facility") under the Consent Decree between the State and DCX, dated November 28, 1994 in Case No.94-079112-CE ("Consent Decree") have been satisfied. The Consent Decree and the Certificate of Completion of Construction are attached as Attachment A.

### I. DEFINITIONS

The terms used in this Agreement shall have the following meanings:

1.1 "Agreement" means this document, its attachments, and any report, document, or other submittal made pursuant to this document or any attachment hereto. All attachments to this document and other reports, documents, or submittals made under this Agreement are incorporated into and made an enforceable part of the document.

1.2 "Existing Conditions" means any Hazardous Substance detected at any concentration above the residential criteria established pursuant to Section 20120a(1) and (17) of the NREPA in any media, regardless of its location, that is attributable to past releases at the Property and has not been remediated prior to the effective date of this Agreement. For purposes of this definition "past" means it occurred prior to the effective date of this Agreement. Additionally, for further purposes of defining Existing Conditions, the State, DCX and the County agree that all data and technical reports relating to the Property produced to date by DCX, DCX's consultants, the County or the MDEQ that are listed in Attachment B are probative evidence of the nature and extent of Existing Conditions for purposes of this Agreement and shall be admissible as evidence in any proceeding involving a dispute over the same.

1.3 "Facility" means the Property identified in Attachment C and any area, place or property where a hazardous substance, which originated at the Property and is emanating or has emanated from the Property, is present at concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, MCL 324.21301 *et. seq.* has been released, deposited, disposed of, or otherwise come to be located.

1.4 "Limited Industrial Criteria" means the cleanup criteria and requirements established under Section 20120a(1)(i) and (17) of the NREPA.

1.5 "NREPA" means the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*

1.6 "Part 201" means Part 201, Environmental Remediation, of the NREPA, as amended, MCL, 324.20101 *et seq.*, and the administrative rules promulgated hereunder.

1.7 "Post-Existing Conditions" mean environmental contamination associated with the release or threatened release of any Hazardous Substance at the Property that occurs after the effective date of this Agreement.

1.8 "Property" means the former DCX Trenton Chemical property located at 5437 East Jefferson Avenue, Trenton, Wayne County and legally described in Attachment C.

1.9 "Purchase Agreement" means the Purchase Agreement between DCX and the County executed on September 4, 2002.

1.10 All other terms used in this Agreement which are defined in Part 3, Definitions, of the NREPA, MCL 324.301, Part 201 of the NREPA, MCL 324.20101 *et seq.*, or the Part 201 Administrative Rules 1990 AACS R 299.51010, *et seq.*, shall have the same meaning in this Agreement as in Part 3, Part 201 and the Part 201 Administrative Rules.

## II. STATEMENT OF OBJECTIVES

It is the objective of the State of Michigan, and DCX and the County in entering into this Agreement to: (a) provide for the County to purchase the Property without incurring liability for Existing Conditions, if any; and (b) foster the redevelopment and reuse of the Property.

## III. AUTHORITY

The Attorney General as the chief legal officer of the State has the authority under the laws of the State to enter into this Agreement.

## IV. BACKGROUND INFORMATION CONCERNING THE PROPERTY

4.1 The Property is presently owned by DCX and was historically used for the manufacture of various automotive components, including brake pads, brake pistons, and associated adhesives, oils and sealers. DCX ceased manufacturing activities on the Property and began decommissioning of the production facilities in 1990.

4.2 Releases into the environment of hazardous substances, including lead, asbestos, vinyl chloride, and xylene, on the Property have caused Existing Conditions.

4.3 The Property is a "facility" within the meaning of Part 201 and the Part 201 Administrative Rules.

4.4 DCX has performed Response Activities at the Facility in accordance with the limited industrial land use-based remedial action plan under supervision and approval of the MDEQ.

4.5 The County intends to acquire the Property for redevelopment and reuse. In light of the County's proposed reuse of the Property for recreational purposes (specifically, a wildlife refuge and environmental education center), the MDEQ reevaluated the environmental conditions at the Property and determined that the response activities required to be performed pursuant to the RAP and the Consent Decree assure the protection of the public health, safety and welfare, and the environment relative to the proposed recreational use. Consequently, with the consent of DaimlerChrysler and approval of the MDEQ, the RAP was reclassified on October 10, 2002, as a site-specific remedial action plan pursuant to Section 20120a(2) of Part 201, which allows for industrial and/or recreational use of the Property.

#### V. FUNDING AND PERFORMING FUTURE SITE RESPONSE ACTION

DCX shall perform all future Response Activities and monitoring at the Facility required under Section 20120b(3) and MAC R 299.5719 to assure the effectiveness and integrity of the Remedial Action, as set forth in the Consent Decree and has filed in accordance with Section 20120b(3) and R 299.5719 the Deed Restrictions set forth in Attachment D.

#### VI. AFFIRMATIVE COVENANTS, CERTIFICATIONS, AND ADDITIONAL OBLIGATIONS BY DCX CORPORATION AND THE COUNTY

6.1 DCX Corporation hereby certifies that, prior to the effective date of this Agreement, it has fully disclosed or made available to the State and the County all information known to it relating to: (a) the nature and extent of Existing Conditions associated with the Facility; and (b) any other environmental contamination relating to the Facility that may present a risk of harm to the public health, safety or welfare or the environment.

6.2 The County certifies to the best of its knowledge, after reasonable inquiry, that prior to the effective date of this Agreement that it: (a) is financially capable of redeveloping and reusing the Property in accordance with paragraph 6.3; (b) has never owned or operated the Property at any time prior to the execution of the Purchase Agreement; (c) is not affiliated in any way with any person that may be liable under Section 20126 of the NREPA for Existing Conditions at the Property, including DCX and its subsidiaries, successors, directors or officers or any other owner or operator of the Property; and (d) has fully disclosed and made available to the State all information known to it relating to the nature and extent of Existing Conditions associated with the Facility and any other environmental contamination relating to the Facility that may present a risk of harm to the public health, safety or welfare or the environment.

6.3 The County is purchasing the Property from DCX and agrees: (a) to use the Property for recreational purposes, specifically a wildlife refuge and environmental education center; (b) to comply with all applicable state and federal statutes, rules and regulations relating to the storage, handling, use, treatment, discharge, release or disposal of hazardous substances on the Property; (c) that any submission relating to hazardous substances required to be made to any other agency of the federal or state government will also be made to the MDEQ Remediation and Redevelopment Division; and (d) that the redevelopment or reuse of the Property by the County will not result in a release or threat of release.

6.4 DCX and the County agree that within five (5) days of the effective date of this Agreement, they will record or cause to be recorded the Declaration of Restrictive Covenants, approved by the MDEQ and attached hereto as Attachment D, with the Wayne County Register of Deeds. DCX and the County agree that they will provide, or cause to be provided, the MDEQ a true copy of the recorded Declaration of Restrictive Covenants, including liber and page, within ten (10) days of receipt of the recorded instrument from the Wayne County Register of Deeds.

6.5 The County hereby agrees to notify and obtain MDEQ approval thirty (30) days in advance of any new use(s) it intends to make of the Property which is (are) different than or inconsistent with the use(s) identified in Paragraph 6.3. The County further acknowledges and understands that such new use(s) of the Property may require implementation of additional Response Activities, deed restrictions, and/or institutional controls to protect the public health and safety or the environment in light of such new use(s). The County will be responsible for implementing any such additional Response Activities, deed restrictions, and/or institutional controls subject to MDEQ review and approval.

6.6 The County agrees that its ownership, operations or activities at the Property will not interfere with, impair or impede Response Activities required to be undertaken at the Property; will not exacerbate or contribute to Existing Conditions or result in a release or threat of release; and that it will exercise due care and take reasonable precautions with respect to the Existing Conditions and any release or threat of release of hazardous substances.

6.7 In the event that any dispute arises between the State and the County concerning:

- A. The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the Facility;
- B. Exacerbation of or contribution to the existing release or threat of release;
- C. Interference with, or failure to cooperate with the MDEQ, its contractors, or other persons conducting response activities approved by the MDEQ; or
- D. Failure to exercise due care with respect to any release or threat of release at the Facility;

the burden of proof in such a dispute shall be borne by the parties in accordance with Sections 20126(6) and 20129(1) of the NREPA.

## VII. COVENANTS NOT TO SUE

7.1 The State hereby covenants not to sue or take any civil, judicial or administrative action against the County (excluding any officers, directors or employees formerly employed by DCX) for any claims arising from: (a) Existing Conditions associated with the Facility, and (b) the acts or omissions of any owner or operator of the Property prior to the effective date of this Agreement that may have contributed to or caused Existing Conditions at the Facility.

7.2 The County hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies or their authorized representatives or DCX or its authorized representatives for any claims or losses with respect to the Facility arising from: (a) the Existing Conditions associated with the Facility; (b) any acts or omissions of the State or its authorized representatives or DCX or its authorized representatives prior to the effective date of this Agreement related to the Existing Conditions; (c) Post-Existing Conditions; or (d) off-site disposal, remediation, recycling or reclamation of Hazardous Substances associated with the Facility. The County further agrees not to take any civil, judicial or administrative action to attempt to compel the State to undertake, implement or complete any Response Activity at or related to the Facility.

#### VIII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of the NREPA, MCL 324.20129(5) and to the extent any claim relates to Existing Conditions, the County shall not be liable for claims for contribution under Section 20126 of the NREPA, MCL 324.20126. the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607 and 9613, or any other state or federal cause of action. This section does not discharge the liability of any other persons liable under Section 20126 of the NREPA, MCL 324.20126 except as provided in Section XVI herein. Any action by the County for contribution from any person not a party to this Agreement relating to Existing Conditions of the Property shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 or other applicable federal or state law, in accordance with Section 20129(9). MCL 324.20129(9).

#### IX. VOIDING OF THE AGREEMENT AND REMEDIES FOR BREACH OF THE AGREEMENT

9.1 Paragraphs 7.1 and Section VIII of this Agreement shall become void if the County: (a) violates any of its certifications set forth in Paragraphs 6.2; (b) fails to perform its obligations set forth in Paragraph 6.4; or (c) violates the Restrictive Covenants set forth in Attachment D of this Agreement.

9.2 Except as provided in Paragraph 9.1 and Section X, in the event that a party to this Agreement believes that the other party has not materially complied with the terms of this Agreement, or has otherwise not materially fulfilled its obligations under this Agreement, that party may pursue any remedies available by law.

#### X. RESERVATION OF RIGHTS

10.1 The covenant stated in Paragraph 7.1 and Contribution Protection stated in Section VIII shall apply to only Existing Conditions. The State reserves the right to take independent judicial or administrative actions against the County for any of the following: (a) to enforce the provisions of this Agreement; (b) Post Existing Conditions associated with the Facility; (c) the exacerbation of or contribution to the Existing Conditions associated with the Property; (d) failure by the County to comply with the deed restrictions set forth in Attachment D; or (e) any other violations of law not relating to the Existing Conditions.

10.2 The parties agree that nothing in this Agreement shall be construed as a statement, representation or finding by the State that the Property is fit for any use other than the use(s) described in Paragraph 6.3.

10.3 Nothing in this Agreement shall in any way limit the power and authority of the State to take appropriate action to: (a) protect public health, safety or welfare or the environment; or (b) prevent, abate or minimize a release or threatened release associated with the Facility, including the authority to undertake Response Activities or to otherwise address Existing or Post-Existing Conditions.

10.4 Except as provided in Section XVI, nothing in this Agreement shall in any way limit or affect the State's right to take judicial or administrative action against any other person(s) who may be liable under Section 20126 of the NREPA, MCL 324.20126.

10.5 Nothing in this Agreement shall affect the duties and obligations that may have with respect to permits or other governmental approval or waive the County's duties and obligations under applicable federal or State law.

10.6 Nothing herein shall be construed as a waiver or modification of Sections 20137(4) and 20137(5) of the NREPA, MCL 324.20137(4) and (5), as those sections may relate to Existing or Post-Existing Conditions.

#### XI. INDEMNIFICATIONS

11.1 This Agreement shall not be construed as an indemnity by the State for the benefit of the County or any other party.

11.2 The County acknowledges that neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors or representatives are a party to any contract entered into by or on behalf of the County or DCX in carrying out actions pursuant to this Agreement. Neither the County, nor DCX, nor any of their contractors shall be considered an agent of the State.

#### XII. CONTACT PERSONS FOR COMMUNICATIONS

Any notice or communication required under this Agreement shall be provided to the following:

As to MDEQ:

Edward A. Novak, Environmental Quality Analyst  
Remediation and Redevelopment Division,  
Michigan Department of Environmental Quality  
3058 West Grand Boulevard, Suite 2-3000  
Detroit, Michigan 48202  
Telephone: (313) 456-4668  
Fax: (313) 456-4662



As to DCX: Gregory Rose, Senior Environmental Specialist  
Facility Deactivation and Administration  
DCX Corporation  
2301 Featherstone Road  
CIMA 429-02-04  
Auburn Hills, Michigan 48326-2808  
Telephone: (810) 370-8614

As to Wayne County: Director of Parks Division  
Department of Public Services  
33175 Ann Arbor Trail  
Westland, MI 48185  
Telephone: (734) 261-1990

AND

Director of Public Services  
415 Clifford Street, 8<sup>th</sup> Floor  
Detroit, MI 48226  
Telephone: (313) 224-7700

### XIII. MODIFICATIONS

This Agreement shall not be modified unless such modification is in writing and signed by the County, DCX and the Department of Attorney General on behalf of the MDEQ.

### XIV. APPLICABLE LAW

All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable State and federal laws and regulations.

### XV. APPLICATION

This Agreement is only for the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not be enforceable by, or interpreted to be for the benefit of, any third party.

### XVI. SUCCESSORS/ASSIGNS AND DISSOLUTION

16.1 The County shall not further assign any of its benefits, duties and obligations under this Agreement, except as provided in this Section XVI.

16.2 The County may assign its benefits, duties and obligations under this Agreement in connection with the transfer of fee title to all or a portion of the Property, provided that the transferee demonstrates and agrees to those items set forth in Paragraph 16.5 and Attachment D of this Agreement and the State first approves the assignment in writing. Upon consummation of such assignment the transferee assumes responsibility for the obligations of the transferor as set forth in this Agreement. The transferor shall continue to enjoy the protections afforded by the Agreement, but shall, upon approval by the State, be released from the responsibilities imposed by the Agreement upon the transferor's receipt of the State's written approval of the transfer.

16.3 The County may assign the benefits, duties and obligations under this Agreement in connection with a land contract, lease, sublease, or any other form of conveyance which does not constitute transfer of a fee title interest with respect to all or any part of the Property; provided that the transferee demonstrates those items set forth in Paragraph 16.5 and Attachment D of this Agreement and the state first approves or the assignment in writing. In the event of such an assignment, both the transferor and the transferee shall have full rights, duties, obligations and benefits as afforded in this Agreement.

16.4 The State shall not unreasonably withhold any approval under this Section XVI, and shall either grant or deny the approval, in writing, stating the reasons for any denial, within thirty (30) days following its receipt of a written request for approval. The State shall not, as a condition of approval of a transfer, require the expenditure of additional funds for investigation or remediation of Existing Conditions at the Property, except for any investigation necessary to demonstrate that the transferee's proposed use of the Property will not be inconsistent with the obligations of the County as set forth in this Agreement.

16.5 Prior to the assignment of this Agreement, the transferee shall demonstrate to the satisfaction of the MDEQ all of the following:

- A. That the transferee is financially capable of redeveloping or reusing the Property in accordance with the covenant not to sue as set forth in this Section XVI;
- B. That the transferee is not affiliated in any way with any person that may be liable under Section 20126 of the NREPA for Existing Conditions at the Facility;
- C. That the redevelopment or reuse of the Property by the transferee will not do any of the following:
  - (1) Exacerbate or contribute to Existing Conditions or cause new contamination;
  - (2) Interfere with the implementation of Response Activities;
  - (3) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the Facility.

16.6 In the event that the County requests the State to approve the assignment of this Agreement to another person, the County agrees to pay to the State its actual costs of review in an amount not to exceed ten thousand (\$10,000) dollars. Upon approval of the transfer and within thirty (30) days of receipt of an invoice from the MDEQ for these costs, the County shall send a certified check made payable to the "State of Michigan - Environmental Response Fund" to the following address:

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
P.O. Box 30657  
Lansing, MI 48909-8157

(Via courier)  
525 West Allegan  
Constitution Hall  
South Tower, 5<sup>th</sup> Floor  
Lansing, MI 48933

The certified check shall reference the Facility name and the MDEQ Reference Number for this Agreement and the ERD Account Number that will be provided by the MDEQ at time of the assignment.

16.7 In no event may the benefits, duties or obligations herein be assigned or transferred to any person or entity that may be liable under Section 20126 of the NREPA, MCL 324.20126 for a release or threat of release at the Facility.

#### XVII. SEVERABILITY

The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

#### XVIII. TERMINATION

This Agreement shall terminate upon the MDEQ certifying that Existing Conditions at the Facility satisfy the residential cleanup criteria established pursuant to Section 20120(1)(a) and (17). The Covenants Not to Sue and Contribution Protection afforded in Sections VII and VIII of this Agreement shall survive the termination of this Agreement and, subject to paragraph 16.7, run with the land.

#### XIX. EFFECTIVE DATE

This Agreement shall become effective upon the date the County closes on the purchase of the Property from DCX.

#### XX. SIGNATORIES

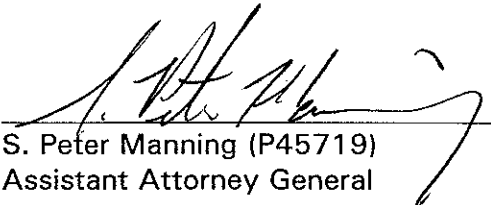
Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement.

THE STATE, DCX AND THE COUNTY AGREE TO ALL RECITALS, TERMS AND CONDITIONS HERETOFORE SET FORTH.

In the Matter of:  
MDEQ Reference No.: AOC-ERD-02-005

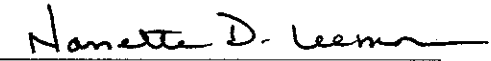
IT IS SO STIPULATED:

DEPARTMENT OF ATTORNEY GENERAL FOR THE STATE OF MICHIGAN  
AND ON BEHALF OF THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

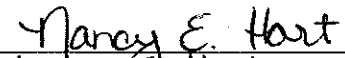
By:   
S. Peter Manning (P45719)  
Assistant Attorney General

Witness: 

Dated: 11/25/02

Witness: 

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2002, by, Assistant Attorney General for the State of Michigan on behalf of the Michigan Department of Environmental Quality and the State of Michigan.

  
Nancy E. Hart Notary Public  
Ingham County, Michigan  
My Commission Expires: 7-10-2006

In the Matter of:  
MDEQ Reference No.: AOC-ERD-02-005

IT IS SO STIPULATED:

WAYNE COUNTY, MICHIGAN

By: Edward McNamara  
Edward McNamara  
Chief Executive Officer

Witness: [Signature]

Dated: 10-28-02

Witness: [Signature]

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of OCTOBER, 2002, by Edward McNamara, Chief Executive Officer of Wayne County on behalf of Wayne County.


SUSAN V. TAHMASBI  
NOTARY PUBLIC WAYNE CO., MI  
MY COMMISSION EXPIRES Feb 19, 2007

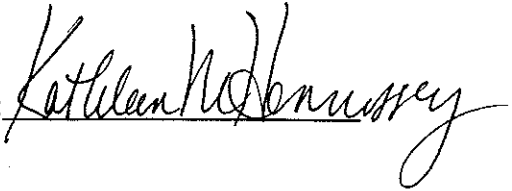
Susan V. Tahmasbi Notary Public  
Wayne County, Michigan  
My Commission Expires: 2-19-2007

In the Matter of:  
MDEQ Reference No.: AOC-ERD-02-005

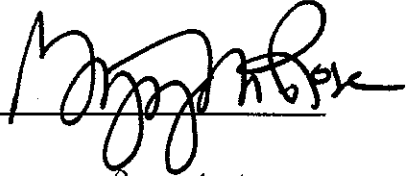
IT IS SO STIPULATED:

DAIMLERCHRYSLER CORPORATION

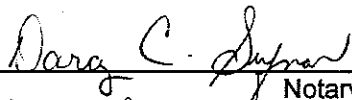
By:   
Bernard I. Robertson  
Senior Vice President – Engineering  
Technologies and Regulatory Affairs  
DaimlerChrysler Corporation

Witness: 

Dated: 11-19-02

Witness: 

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2002, by Bernard I. Robertson, Senior Vice President – Engineering Technologies and Regulatory Affairs, on behalf of DaimlerChrysler Corporation, a Delaware corporation.

  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

DARCY C. SUFNAR  
Notary Public, Oakland County, Michigan  
My Commission Expires April 11, 2004.