

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

IN RE: KALKASKA STREET/EXPRESS
TIRE FACILITY,

Site ID Nos. 400019⁰⁰ and 440111^{PA#}
AOC-USTD-97-01

Proceeding Under Section 20119 and 20134 of the Michigan Natural Resources and
Environmental Protection Act, 1994 PA 451, As Amended, MCL 324.20119 and 20134;
MSA 13A.20119 and 20134

ADMINISTRATIVE ORDER BY CONSENT FOR CORRECTIVE ACTION

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I. JURISDICTION

This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Frank J. Kelley, Attorney General for the State of Michigan, and Northwood Oil Company (hereinafter "Northwood") pursuant to the authority vested in the MDEQ by Sections 20119 and 20134(1) of Part 201 of the Michigan Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20119 and 324.20134(1); MSA 13A.20119 and 13A.20134(1), and section 21329 of Part 213 of NREPA, MCL 324.21329; MSA 13A.21329. The Order concerns the performance by Northwood of certain response activities at the Kalkaska Street/Express Tire Facility, Kalkaska County, Michigan (hereafter, the "Facility") and the payment by Northwood of past costs relating to the Facility.

II. DENIAL OF LIABILITY

The execution of this Order by Northwood 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 Northwood and its successors and assigns. No change in ownership or corporate status shall in any way alter Northwood's responsibilities under this Order.

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

In entering into this Order, it is the mutual intent of the Parties to expedite effective response activity, to remediate the groundwater and soil contamination caused by the release of regulated substances at the Facility, and to minimize litigation.

V. DEFINITIONS

5.1 "Facility" means the Property and any area, place, or property where a hazardous substance has been released, deposited, stored, disposed of thereon or otherwise comes to be located.

5.2 "Part 201" means Part 201 of NREPA (formerly the Michigan Response Act ("MERA")), 1982 PA 307, as amended, MCL 299.601 et seq; MSA 13.32(1) et seq).

5.3 "Part 213" means Part 213 of NREPA (formerly the Leaking Underground Storage Tank Act ("LUST")), 1988 PA 478, as amended, MCL 299.831 et seq; MSA 14.528(261) et seq).

5.4 "Part 215" means Part 215 of NREPA, (formerly the Michigan Underground Storage Tank Financial Assurance Act, 1988 PA 518, as amended, MCL 299.801 et seq; MSA 13.29(201) et seq).

5.5 "Property" means the former gas station, now the location of Express Tire, 122 S. Cedar Street, Kalkaska, Michigan.

5.6 "NREPA" means the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq; MSA 13A.101 et seq, a comprehensive recodification of Michigan's environmental protection and natural resources laws.

5.7 "Qualified Underground Storage Tank Consultant" ("QC") means a person on the list of qualified underground storage tank consultants prepared pursuant to Section 21542 of NREPA.

5.8 The term "State" shall mean the State of Michigan, its departments, agencies, officials, and employees.

5.9 Unless otherwise stated herein, all terms used in this Agreement which are defined in Part 201 or the Part 201 Rules, 1990 AACRS R 299.5101 *et seq*, shall have the same meaning in this document as in Part 201 and the Part 201 Rules, except the terms "owner," "operator," and "underground storage tank system," which shall have the meaning as in Part 213.

VI. FINDINGS OF FACT

6.1 The source of the contamination at the facility was an underground storage tank system located on the Property at 122 South Cedar Street, Kalkaska, Michigan.

6.2 The Property was the location of a gas station from 1963 to 1985. Northwood Oil Company owned the Property from 1963 to 1987. Gasoline was stored in an underground storage tank located on the Property which was removed in 1985. In 1987 the Property was purchased by Ascione Development Company, and Express Tire, a tire sales and service operation, has been located on the site since that time.

6.3 Sampling of residential drinking wells downgradient of the property in 1984, 1987, 1990 and 1993 identified benzene, toluene, ethylbenzene and xylene (BTEX) contamination in five of those wells. Subsequent investigation revealed contaminated soils at the former underground storage tank location.

6.4 The regulated substances found at the Facility are the gasoline constituents benzene, toluene, ethylbenzene and xylene (BTEX).

6.5 BTEX has been found in the soils proximate to the historic location of the underground storage tank at the Property and in the groundwater downgradient of the Property.

6.6 The contamination of soils and groundwater may present an imminent and substantial endangerment to the public health, safety, welfare or the environment

6.7 Northwood Oil Company, is a person as defined by NREPA.

6.8 Northwood Oil Company was the owner of the property at the time of the release of the hazardous substances.

6.9 By letters dated August 29, 1991, February 9, 1993, March 10, 1994 and April 27, 1994 Northwood was notified of its status as persons that may be liable under the former MERA.

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 are a "Facility" as that term is defined in Section 20101(o) of NREPA.

(b) Northwood is a "person" as that term is defined in Section 301(g) of NREPA.

(c) Benzene, toluene, ethylbenzene and xylene, "regulated substances" as that term is defined in Section 21303(b) of NREPA, are present in the soils and groundwater.

(d) The leaking or leaching of BTEX into the soils and groundwater constitutes an actual or threatened "release" within the meaning of Sections 20101(bb) and 20101(ii) of NREPA.

(e) The actual or threatened releases of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare or the environment within the meaning of Section 20119 of NREPA.

f) In order to protect public health, safety, welfare and the environment, and to abate the danger or threat, it is necessary and appropriate that corrective action be taken. The corrective action consists of the performance of the work specified in Section VIII of this Administrative Order by Consent.

(g) Northwood is a person that may be liable within the meaning of Sections 20119 and 20126(1) of NREPA.

7.2 On the basis of the finding of facts, the MDEQ and the Attorney General make the following determinations:

a) Northwood will properly implement the corrective action required by this Order.

(b) Northwood will remit the past cost-payments required by this Order.

(c) This Consent Order is in the public interest, will expedite effective corrective action and will minimize litigation.

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ, THE ATTORNEY GENERAL, AND NORTHWOOD HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VIII. IMPLEMENTATION OF CORRECTIVE ACTIONS

8.1 All work performed by Northwood in accordance with this Agreement shall be performed by a Qualified Underground Storage Tank Consultant as defined in Part 215.

8.2 Northwood has submitted to the MDEQ an Initial Assessment Report pursuant to Section 21308a of NREPA and a Final Assessment Report pursuant to Section 21311a of NREPA. The Initial Assessment Report was audited under authority of Section 21315 of NREPA and is incorporated into this document pursuant to Section XXI. The Final Assessment Report, upon execution of this Order, will be considered a "Draft" Final Assessment Report submitted pursuant to

Section XVII of this Order, and will be subject to the submission and approval procedures contained therein.

8.3 Northwood shall continue to submit work plans and reports as required by Part 213. Northwood shall implement each work plan pursuant to the procedures of Part 213 and in accordance with the schedules set forth therein. Northwood shall comply with all of the reporting requirements of Sections 21307, 21307a, and 21308(a)-12a of NREPA.

8.4 Each work plan and report submitted to the USTD must be accompanied by the USTD 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 during the Corrective Action, including methodology, specifications, and a schedule for implementation and completion of the Corrective Action. 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.

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

8.6 Northwood shall notify the USTD project manager by telephone or facsimile at least three (3) days in advance of scheduled on-site work activities. Northwood shall notify the USTD project manager no less than twenty-four (24) hours prior to a scheduling change from the original notification.

8.7 The parties acknowledge and agree that this Order does not provide a warranty or representation of any kind by the MDEQ that the work performed in accordance herein will result in the achievement of the remedial 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 in the Final Assessment Report 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 remedial approach outlined in the Final Assessment Report. These activities may include modifications to the components of the remedial action and the type and cost of materials, equipment, facilities, services and supplies used to implement the remedial 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 Northwood's Project Coordinator. Northwood 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 Northwood in accordance with the standards, specifications and scheduled approved by the MDEQ.

9.3. Unless the MDEQ agrees to extend the time period, within thirty (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 Northwood shall submit a plan for the additional corrective action to the MDEQ for approval. The plan shall be developed in conformance with the requirements of this Order. If not otherwise submitted, the plan shall also include an estimate of the additional costs for the additional corrective action for purposes of complying with section X. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Order. Northwood 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 Attorney General or a court, to take, direct or order all appropriate action to protect public health, welfare and safety or the environment or to prevent, abate or minimize a release or threatened release of regulated substances.

X. FINANCIAL ASSURANCE

Within 15 days after the effective date of this Order, and annually thereafter until the State has certified completion of the corrective actions required herein, pursuant to Section XXX of this Order, Northwood shall demonstrate to, and obtain the approval of, the MDEQ that it has in place a financial assurance mechanism consistent with MAC R 299.9701 et seq, for the estimated costs of the corrective actions to be performed by Northwood under the terms of this Order. The financial assurance mechanism shall also assure sufficient funds to cover the State's response and oversight costs.

XI. ENGAGEMENT OF A QUALIFIED CONSULTANT

11.1 Within 15 days of the effective date of this Order Northwood shall designate its QC to perform the corrective actions required under this Agreement.

11.2 Northwood shall provide a copy of this Order to its QC and all of its contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Order within three (3) calendar days of the effective date of such retention.

11.3 Notwithstanding the terms of any such contract, Northwood is responsible for the performance of the corrective actions required in this Order, and shall ensure that such contractors, subcontractors, laboratories, and consultants perform all work in conformance with the terms and conditions of this Order.

XII. QUALITY ASSURANCE/SAMPLING

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

12.2 Northwood shall submit to the MDEQ the results of all sampling or tests and all other data generated by Northwood or its contractor(s), or on Northwood's behalf, in the course of implementing this Order. Said results shall be included in the Progress Reports as set forth in Section XIX.

12.3 At the request of the MDEQ, Northwood shall allow the MDEQ or its authorized representatives to take split and/or duplicate samples of any samples collected by Northwood pursuant to the implementation of this Order. Except as may be necessary for sampling required pursuant to Section XV, Northwood shall notify the MDEQ not less than seven (7) 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.

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

XIII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

13.1 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 Record Retention Pursuant to Section XVII:

Chief, Underground Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, Michigan 48909-7657
Telephone: (517) 335-7251
Telefax: (517) 335-2245

(Via courier)

Town Center
333 South Capitol, 2nd Floor
Lansing, Michigan 48933

B. For all other matters pertaining to this Agreement:

Ann Emington
Project Coordinator
Underground Storage Tank Division
Michigan Department of Environmental Quality
Cadillac District Office
120 W. Chapin Street
Cadillac, MI 49601

As to Northwood:

Ben Komrska
Environmental Consultants and Services, Inc.
10748 Garfield, North #9
Traverse City, MI 49686

and

Jerry Johnston
Northwood Oil
c/o Alpena Oil Co.
235 Water Street
Alpena, MI 49707

13.2 In addition to its Project Coordinator, the MDEQ may designate other MDEQ employees or other authorized representatives, employees, and QC's to

observe and monitor the progress of any activity undertaken pursuant to this Order. In such an event, the names of those MDEQ authorized representatives shall be provided to Northwood.

13.3. Northwood's project coordinator shall have primary responsibility for overseeing the implementation of the corrective actions and other requirements specified in this Order.

XIV. ACCESS

14.1 The MDEQ and Northwood have entered into an access agreement with the owner of the Property which provides access to the MDEQ and Northwood for the purpose of conducting corrective action. See Appendix 1.

14.2 To the extent access to the remainder of the Facility is owned, controlled by, or available to Northwood, 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, 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; and

(g) Inspecting and copying non privileged records, operating logs, contracts or other documents.

14.3. This Agreement does not restrict or limit any other right the MDEQ may have to enter the Property or other properties to which access is required for the implementation of this Order pursuant to specific statutory or regulatory authority. Consistent with the MDEQ's responsibilities under federal or State law, the MDEQ and its authorized representatives shall use their best efforts to minimize interference, to promptly undertake and complete necessary activities, and employ efforts that are the least intrusive to the owner's property, operations or activities. For purposes of this paragraph "Best Efforts" does not mean taking actions that would result in incurring any material costs increases in performing corrective actions. However, in the event that the MDEQ or other parties undertake or oversee corrective actions at the Facility, the parties to this Order recognize and agree that the MDEQ and other parties undertaking corrective actions may have to disrupt, halt or otherwise interfere with operations or commercial activities at the Property.

14.4 To the extent that the Facility or any other area where the work is to be performed by Northwood under this Order is owned or controlled by persons other than Northwood, Northwood shall use its best efforts to secure from such persons access for the parties and their authorized employees, agents, representatives, contractors and consultants. Northwood 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 or taking judicial action to secure such access.

14.5 After the effective date of this Order, Northwood may request that the MDEQ contact owners of property to which access is necessary for the of corrective action pursuant to this Order, informally requesting that Northwood be provided

access to their property. The MDEQ will contact each such owner on one occasion but may in its discretion provide additional contacts. If after using best efforts, Northwood is unable to obtain access within forty-five (45) days of requesting such access, Northwood shall promptly notify the MDEQ.

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

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

XV. CREATION OF DANGER

15.1 During performance of the corrective actions required pursuant to this Order, if Northwood obtains information concerning the occurrence of any event that causes or threatens a release of a hazardous 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, Northwood shall immediately undertake all appropriate action to prevent, abate or minimize such release, threat of release or endangerment and shall immediately notify the MDEQ's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by Northwood shall be in accordance with all applicable health and safety laws and regulations. Northwood 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 Northwood notifies the MDEQ under this subsection, if corrective actions undertaken under this Order cause or threaten a 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 Northwood 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 Northwood 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, Northwood shall reimburse the state for all costs incurred by the state that are not inconsistent with law. Payment of such costs shall be made in the manner provided in Paragraph 24.4.

15.2 Nothing in the preceding subsection shall limit the power and authority of the MDEQ, the State of Michigan to take, direct or order all appropriate action to protect the public health, welfare and safety, or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, or contaminants on, at or from the Facility.

XVI. COMPLIANCE WITH OTHER LAWS

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 213, Part 201, the Part 201 Rules, CERCLA, laws relating to occupational safety and health and other state laws. Other agencies may also be called upon to review the conduct of work under this Order. Further, Northwood must designate, in a report to the MDEQ, any facilities that Northwood proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XVII. RECORD RETENTION/ACCESS TO INFORMATION

17.1 Northwood and its representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of five (5) years after its termination, all records, sampling or test results, charts and other documents relating to historical hazardous 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 (5) year period of document retention, Northwood, and its successors shall obtain the MDEQ's written permission prior to the destruction of such documents and, upon request, Northwood and/or its successors shall relinquish custody of all documents to the MDEQ. Northwood'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, Underground Storage Tank Division
Michigan Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657

17.2 Northwood shall, upon request, provide to the MDEQ all documents and information within its possession, or within the possession or control of its 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 or other documents or information related to the work. Northwood shall also, upon request, make available to the MDEQ, upon reasonable-notice, Northwood's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the work.

17.3 Northwood 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 Northwood.

Analytical data shall not be claimed as confidential or privileged by Northwood.

XVIII. SUBMISSIONS AND APPROVALS

18.1 All plans, submissions and reports ("Submissions") required by this Order shall be delivered to the MDEQ in accordance with the procedures and schedules set forth in Part 213 and 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 Michigan Department of Environmental Quality ("MDEQ"). This document was prepared pursuant to a governmental Administrative Order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

18.2. Upon receipt of any submission relating to the work that is required to be submitted for approval pursuant to this Order, the MDEQ Project Coordinator will in writing (a) approve the submission; (b) disapprove the submission, notifying Northwood of deficiencies; or (c) approve the submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, Northwood shall proceed to take any action required by the submission as approved or as modified, and shall submit a new USTD LUST cover sheet and the modified pages of the plan marked "Final".

18.3. 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, Northwood shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the submission for approval. The thirty (30) days provided to correct the deficiencies does not extend subsequent statutory or

subsequent negotiated compliance dates. Notwithstanding a notice of disapproval, Northwood 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 Northwood and Northwood shall be deemed to be in violation of this Order.

18.4. 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.

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

XIX. PROGRESS REPORTS

Northwood shall provide to the MDEQ written quarterly, progress reports relating to the corrective actions that shall: (a) describe the actions that have been taken toward achieving compliance with this Order during the previous quarter; (b) describe data collection and activities scheduled for the next quarter; and (c) include all results of sampling and tests and other data received by Northwood, its employees or authorized representatives during the previous quarter relating to the corrective actions response activities performed pursuant to this Order. The first quarterly report shall be submitted to the MDEQ within 90 days following the effective date of this Order and quarterly thereafter until the issuance of the Certificate of Completion as provided in Section XXX.

XX. INDEMNIFICATION AND INSURANCE

20.1 Northwood shall indemnify and save and hold harmless the State of Michigan 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 Northwood, its officers, employees, agents or any persons acting on its behalf or under its control in carrying out response actions pursuant to this Order. Neither the State of Michigan 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 Northwood in carrying out actions pursuant to this Order. Neither Northwood nor any contractor shall be considered an agent of the State.

20.2 Northwood waives any and all claims or causes of action against the State of Michigan 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, agreement or arrangement between Northwood and any person for performance of corrective actions at the Facility, including claims on account of delays.

20.3 Northwood shall indemnify and hold harmless the State of Michigan 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, agreement or arrangement between Northwood and any person for performance of work at the Facility, including claims on account of construction delays.

20.4 Prior to commencing any corrective actions on or near the site, Northwood shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance with limits of 1 million dollars (\$1,000,000.00), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If Northwood 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, Northwood 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, Northwood shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General and the State of Michigan's status as additional insured parties. In addition, for the duration of this Order, Northwood 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 response action on behalf of Northwood in furtherance of this Order. Prior to commencement of the work under this Order, Northwood shall provide to the MDEQ satisfactory proof of such insurance.

XXI. MODIFICATIONS/INCORPORATION BY REFERENCE

21.1 If this Order, other than the work plans or time schedules contained herein, is modified, such modifications shall be in writing by signature of the Director of the MDEQ, the Attorney General, and Northwood's designated Project Coordinator or other authorized representative. Amendments to the work plans and time schedules contained in this Order shall be made in writing by the MDEQ Project Coordinator.

21.2 The Initial Assessment Report (Appendix 2), is incorporated into this Order and is an enforceable part thereof. Any plans, reports, specifications and schedules required by this Order are, upon approval by the MDEQ, incorporated into this Order and made enforceable parts thereof.

XXII. DELAYS IN PERFORMANCE

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

22.2 For the purpose of this Order, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, entirely beyond the control and without the fault of Northwood, such as: an Act of God; untimely review of permit applications or submissions by the MDEQ or other applicable authority; and acts or omissions of third parties with which Northwood has no contractual relationships or is otherwise not responsible for, that could not have been avoided or overcome by Northwood's due diligence, and that delay the performance of an obligation under this Order. "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 Northwood's actions or omissions.

22.3 When circumstances occur that Northwood believes constitute a Force Majeure, Northwood shall notify the MDEQ by telephone or telefax of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Within five (5) working days after Northwood first become aware of such circumstances, Northwood 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 Northwood to avoid, minimize or overcome the delay and the timetable for implementation of such measures. Failure of Northwood to comply with the written notice provision of this subsection shall constitute a waiver of Northwood's right to assert a claim of Force Majeure with respect to the circumstances in question.

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

22.5 An extension of one compliance date based upon a particular Force Majeure incident does not mean that Northwood 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 for which an extension is sought.

XXIII. DISPUTE RESOLUTION

23.1 If Northwood objects to any decision concerning a "Covered Matter" as defined in subparagraph 26.2 of this Order, Northwood shall notify the MDEQ, in writing, of its objections within seven (7) days of receipt of the MDEQ decision. The MDEQ and Northwood shall have ten (10) days from the receipt by the MDEQ of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this ten (10) day period, the MDEQ shall provide a written statement of its decision to Northwood and Northwood shall commence the activities required by the MDEQ decision within ten (10) days of receipt of the MDEQ decision.

23.2 Northwood shall commence the activities required by the MDEQ decision within ten (10) days, as provided in paragraph 23.1, unless within that time period Northwood files a petition for resolution with the Chief of the Underground Storage Tank Division, MDEQ ("Chief"). This petition shall set forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule within which the dispute must be resolved to ensure implementation of this Order. The Chief shall issue a written decision within thirty (30) days of his receipt of a petition for resolution. The decision of the Chief shall be binding on the parties.

23.3 If Northwood fails to petition the Chief within ten (10) days, as provided in paragraph 23.2 or withdraws its petition prior to the Chief's written decision, the dispute shall be resolved in accordance with the MDEQ's written statement of decision.

23.4 In the event Northwood does not comply with the MDEQ decision, including a decision of the Chief pursuant to paragraph 23.2, the MDEQ, in cooperation with the Department of Attorney General, may take such civil enforcement actions against the noncomplying party as may be provided for by Sections 20119(4) and 20137(1) of NREPA, MCL 324.20119(4) and 20137(1), and other statutory and/or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by law. In such an event, the MDEQ retains the right to perform necessary corrective actions and to recover the costs thereof. Engagement of a dispute resolution among the parties shall not be cause for the delay of any work.

23.5 During the pendency of any dispute concerning the reimbursement of costs or the payment of stipulated penalties, Northwood shall pay that portion of a demand, with any applicable interest, that is subject to a good faith dispute into an escrow account. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order. Penalties shall be paid into this account as they continue to accrue, at least every seven (7) days. Upon each deposit, Northwood shall provide the MDEQ with a copy of the deposit slip. Within ten (10) days of the MDEQ decision, the escrow agent shall pay the balance of the account or any relevant portion thereof, to the MDEQ in the manner provided in Section XXIV and/or to Northwood, to the extent each party prevailed in dispute resolution.

23.6 Notwithstanding this Section, Northwood shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a good faith dispute in accordance with and in the manner provided in Sections XXIV and XXV, as appropriate.

23.7 No action or decision of the MDEQ or the Attorney General shall constitute final agency action giving rise to any rights of judicial review, prior to the Attorney General's initiation of judicial action to compel Northwood to comply

with this Order or to enforce a term, condition or other action required by this Order in accordance with Section 20137 of NREPA, MCL 324.20137. Nothing in this Order shall expand Northwood's ability to obtain pre-enforcement review of this Order.

XIV. REIMBURSEMENT OF COSTS

24.1 For the purposes of this Order, the term "past response activity costs" shall mean those costs incurred and paid by the State prior to the effective date of this Order. For purposes of this Order, the term "oversight costs" include, but are not limited to, costs to monitor response activities 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; enforce, monitor and document compliance with this Order.

24.2 Northwood shall pay the MDEQ eight thousand dollars (\$8,000.00) within seven (7) days of the effective date of this Order to resolve all claims for past response activity costs relating to matters covered in this Order. This payment shall be by check payable to the "State of Michigan - Environmental Response Fund", and shall be sent by first class mail to the following address:

Administration Section
Environmental Response Division
Michigan Department of Environmental Quality
300 S. Washington Square
Lansing, MI 48933-2125

Kalkaska Street/Express Tire and MERA No. 400019 shall be identified on the check.

24.3 Northwood shall reimburse the State for all future oversight costs incurred by the State in overseeing the remedial activities of Northwood for matters covered in this Order. As soon as possible after each anniversary of the effective date of this Order, the MDEQ will provide Northwood with a written demand of

oversight costs lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

24.4 Northwood shall have the right to request a full and complete accounting of all demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to the MDEQ. Except as provided by this Section, Northwood shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ. In any challenge by Northwood to a demand for recovery of costs by the MDEQ, Northwood shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(2)(a) of NREPA, MCL 324.20126a(2)(a). All payments made pursuant to this Order shall be by check payable to the "State of Michigan Environmental Response Fund - LUST Sub Account", and shall be sent by first class mail to the following address:

Administration Section
Underground Storage Tank Division
Department of Environmental Quality
P.O. Box 30157
Lansing, MI 48909-7657

Kalkaska Street/Express Tire and LUST No. 440111 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources Division, 530 Mason Building, Lansing, Michigan 48909.

XXV. STIPULATED PENALTIES

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

Period of Delay	Penalty Per Violation Per Day
1st through 15th day	\$100.00
16th through 30th day	\$250.00
Beyond 30 Days	\$1,000.00

25.2 Except as provided in Sections XXII or XXIII, if Northwood fails or refuses to comply with any other term or condition of this Order, Northwood shall pay the MDEQ stipulated penalties of \$250.00 a day for each and every failure or refusal to comply.

25.3 Northwood shall notify the MDEQ, in writing, of any violation of this Order no later than five (5) 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 XXIII, stipulated penalties owed to the state shall be paid no later than thirty (30) days after receiving a written demand from the state. Payment shall be made in the manner provided in Section XXIV. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 20126a(3) of NREPA, MCL 324.20126a(3). Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

25.6 Liability for payment of stipulated penalties are not the state's exclusive remedy in the event Northwood violates 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 Northwood to comply with the requirements of this Order.

XXVI. COVENANT NOT TO SUE NORTHWOOD BY THE STATE

26.1 In consideration of the actions that will be performed and the payments that will be made by Northwood under the terms of this Order, and except as specifically provided in this Section, the State of Michigan covenants not to sue or to take further civil, judicial, or administrative action against Northwood for any claims arising from Covered Matters.

26.2 "Covered Matters" shall include any liability to the State of Michigan under applicable state and federal law relating to the Facility for releases or threatened releases which were identified prior to the effective date of this Order for the following:

- (a) Performance of the approved corrective action by Northwood under the Order;
- (b) Reimbursement of past costs incurred by the State as set forth in Paragraph 24.2 of this Order; and
- (c) Payment of oversight costs incurred by the State as set forth in Paragraphs 24.3 and 24.4 of this Order.

26.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 26.2. The State reserves, and this Order is without prejudice to, all rights against Northwood with respect to all other matters, including, but not limited to, the following:

- (a) Liability arising from a violation by Northwood of a requirement of this Order, including conditions of approved submittals required herein;

- (b) Liability for any other corrective actions required at the Facility;
- (c) Liability for corrective action costs other than those referred to in Section XXIV;
- (d) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous 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 hazardous 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 XX of this Order; and
- i) Liability for violations of federal or state law which occur during or after implementation of the corrective action.

26.4 With respect to liability for Facility response costs incurred prior to the effective date of this Order, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraph 24.2. With respect to liability for performance of corrective actions required to be performed under this Order, and corrective action costs incurred by the State after the effective date of this Order and reimbursement of those costs by Northwood pursuant to Section XXIV of this Order, the covenant not to sue shall take effect upon issuance by the MDEQ of the Certification of Completion in accordance with Section XXX. The covenant not to sue is conditioned upon the complete and satisfactory performance by Northwood of its obligations under this Order. The covenant not to sue extends only to Northwood and does not extend to any other person.

26.5 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 administrative order seeking to compel Northwood (1) to perform further corrective actions relating to the Facility or (2) to reimburse the State of Michigan for additional costs of corrective action, if prior to Certification of Completion of the Remedial Action:

- (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 these previously unknown conditions or this information together with any other relevant information indicates that the corrective action is not protective of the public health, safety or welfare or the environment.

26.6 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 administrative order seeking to compel Northwood (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (a) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the Certification of Completion; or
- (b) Information is received, in whole or in part, after the Certification of Completion; and these previously unknown conditions or this information together with other relevant information indicate that the corrective action is not protective of the public health, safety or welfare or the environment.

26.7 For purposes of Paragraph 26.5, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in MDEQ files supporting the corrective action at the time of entry of this Order. For purposes of Paragraph 26.6, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in MDEQ files supporting the corrective

action, and any information received by the MDEQ pursuant to the requirements of this Order prior to Certification of Completion of the corrective action.

XXVII. COVENANT NOT TO SUE BY NORTHWOOD

27.1 Northwood hereby covenants not to sue and agrees not to assert any claim or cause of action against the State of Michigan with respect to the Facility or response activities relating to the Facility arising from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of NREPA, MCL 324.20119(5) or any other provision of law.

27.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Northwood agrees not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised by the MDEQ or the Attorney General 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 Section XXVI (Covenant Not to Sue by the State).

XXVIII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of NREPA, MCL 324.20129(5) and to the extent provided in Section XXVI, Northwood 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) liable under Section 20126 of NREPA. In any action by Northwood for contribution from any person not a party to this Order, Northwood's cause of action shall be subordinate to the right of the State of

Michigan if the State files an action pursuant to NREPA or other applicable federal or state law, in accordance with Section 20129(8) of NREPA.

XXIX. RESERVATION OF RIGHTS AGAINST NORTHWOOD BY THE MDEQ

29.1 The MDEQ and the Attorney General reserve the right to bring an action against Northwood under federal and state law for any matters that are not "Covered Matters" as defined by subparagraph 26.2.

29.2 The MDEQ and the Attorney General expressly reserve any and all rights and defenses pursuant to any available legal authority that they may have to enforce this Order against Northwood, including, but not limited to, the MDEQ's right both to disapprove of corrective actions performed by Northwood, and to require Northwood to perform tasks in addition to those detailed in this Order.

29.3 In the event the MDEQ determines that Northwood 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 actions as the MDEQ determines necessary and to recover corrective action costs.

29.4 Failure by the MDEQ or the Attorney General to timely enforce any term, condition or requirement of this Order shall not:

- (a) Provide or be construed to provide a defense for Northwood for noncompliance with any such term, condition or requirement of this Order; or
- (b) Estop or limit the authority of MDEQ or the Attorney General to later enforce any such term, condition or requirement of the Order or seek any other remedy provided by law.

29.5 Notwithstanding any other provision of this Order, the MDEQ retains all authority and reserves all rights to take any and all corrective actions authorized by law.

XXX. CERTIFICATION

30.1 When Northwood determines that it has completed all the work required by this Order, it shall submit to the MDEQ a Notification of Completion and a draft Closure Report. The draft Closure Report shall summarize all corrective actions performed under this Order. The draft Closure Report shall include or reference any supporting documentation.

30.2 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 ninety (90) days of receipt of the Notification of Completion, the MDEQ will determine whether Northwood 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 Northwood, and upon receipt of the final Closure Report shall issue a Certificate of Completion.

XXXI. SEPARATE DOCUMENTS

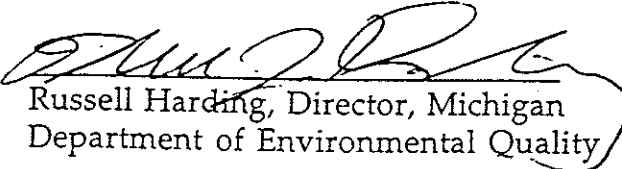
This Order may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXXII. EFFECTIVE DATE

This Order is effective upon the date that Northwood receives written notice that the Director has signed the Order. All times for performance of obligations

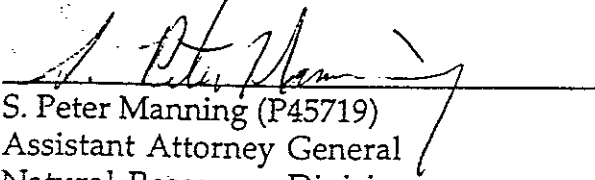
under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein.

IT IS SO AGREED AND ORDERED BY:


Russell Harding, Director, Michigan
Department of Environmental Quality

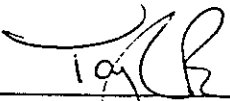
7/31/97
Date

APPROVED AS TO FORM:


S. Peter Manning (P45719)
Assistant Attorney General
Natural Resources Division

7/10/97
Date

IT IS SO AGREED BY:



Tammy Brown (48679), for
Northwood Oil Company

5-27-97
Date

CASES/94AG/9400043/KALK/AC/3/25/97-FINAL