

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

MDEQ Reference No.: AOC-ERD-98-002

Cone Drive Textron

Respondent:

Cone Drive Operations, Inc.,  
a subsidiary of Textron, Inc.,

Traverse City, Grand Traverse County

Proceeding under Sections 20119 and 20134(1) of Part 201 of the Natural Resources and  
Environmental Protection Act, 1994 PA 451, as amended.

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**ADMINISTRATIVE ORDER BY CONSENT  
FOR RESPONSE ACTIVITY**

# ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY INDEX

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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 Cone Drive/Textron, pursuant to the authority vested in the MDEQ by Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The Order concerns the performance by Cone Drive Operations, Inc., a subsidiary of Textron, Inc., ("CDT") of certain response activities at the Cone Drive Textron Facility, Grand Traverse County, Michigan.

## **II. DENIAL OF LIABILITY**

The execution of this Order by CDT is neither an admission or denial of liability with respect to any issue dealt with in this Order nor is it an admission or denial of any factual allegations, fact findings or legal determinations stated or implied herein.

## **III. PARTIES BOUND**

3.1 This Order shall apply to and be binding upon CDT. No change in ownership or corporate or legal status of CDT, including but not limited to, any transfer of assets or real or personal property, shall in any way alter CDT's responsibilities under this Order. CDT shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property, and shall provide a copy of this Order to any subsequent owners or successors before ownership rights are transferred. In the event of such transfer, CDT shall comply with the requirements of Section 20116 of NREPA, MCL 324.20116.

3.2 CDT shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the response activities performed pursuant to this Order within three (3) calendar days of the effective date of such retention.

3.3 Notwithstanding the terms of any such contract, CDT is responsible for compliance with the terms of this Order, and shall ensure that such contractors, subcontractors, laboratories and consultants perform all response activities in conformance with the terms and conditions of this Order.

3.4 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: (a) implement the approved Remedial Investigation ("RI") work plan, attached as Attachment 2, so as to determine the source, nature and extent and impact of contamination at the Facility; (b) develop and implement a work plan for Interim Response Activities ("IR") designed to initiate removal of hazardous substances that are in a liquid phase not dissolved in water, (c) develop and submit a Conceptual Remedial Action Plan to bring the Facility to closure under Part 201; (d) reimburse the State for past and future response costs as described in Section XX; (e) settle the State's known claims for civil penalties which existed prior to the effective date of this Order; and, (f) minimize litigation.

4.2 The subject of this agreement includes an area of hazardous substances in soil and groundwater from CDT operations in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) and (17) of NREPA that originate on the east side of the Cone Drive Textron building and/or other hazardous substances in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) and (17) of NREPA where they are commingled with the soil and groundwater containing hazardous substances from CDT's operations which are also in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) and (17) of NREPA. Hazardous substances from CDT operations that originate on the east side of the Cone Drive Textron building which are in surfacewater or sediments are the subject of this agreement as described in paragraph 7.6. The soil addressed by this agreement is limited to

those hazardous substances containing soils that have been contaminated by migrating hazardous substances in groundwater and are commonly referred to as soils in the smear zone or capillary fringe. Surface soils and soils located above the smear zone on properties located east of the Cone Drive Textron Manufacturing Plant's eastern property boundaries are not the subject of this agreement except where the smear zone may intersect the surface near the Boardman Lake shoreline. This Order is without prejudice to CDT and the State's defenses, claims, rights and obligations concerning divisibility of harm with regard to the origin of or liability for hazardous substances found east of CDT property and concerning joint and several liability for hazardous substances found at the Facility east of CDT Property.

## **V. DEFINITIONS**

5.1 Conceptual Remedial Action Plan "Conceptual RAP" means a plan for performance of remedial action pursuant to Part 201 of NREPA and the Part 201 Rules prepared and submitted by CDT subject to the conditions of Paragraph 7.6 7.7 and 7.8 of this Order.

5.2 "ERD" means the Environmental Response Division of the MDEQ and its successor entities.

5.3 "Facility" means the Property identified in Attachment 1 and any area, place, or property where a Hazardous Substance, which originated from CDT operations, in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of NREPA, MCL 324.20120a (1)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 of NREPA has been released, deposited, disposed of, or otherwise comes to be located.

5.4 "MDEQ" refers to the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

5.5 "Oversight Costs" mean costs that are related to the State's development, oversight, enforcement, monitoring and documentation of compliance with this Order. Oversight Costs may

include costs incurred 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; prepare cost reimbursement documentation; and enforce, monitor and document compliance with this Order.

5.6 "Parties" refers to CDT and the State.

5.7 "Past Response Activity Costs" shall mean those costs incurred and paid by the State prior to the ending dates for each category set forth on the attached summary report (Attachment 3).

5.8 "Property" means the property located at 240 East Twelfth Street, Traverse City, and described in the legal description provided in Attachment 1.

5.9 The term "State" and "State of Michigan" mean the Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representative acting on their behalf.

5.10 CDT shall mean Cone Drive Operations, Inc., a subsidiary of Textron, Inc. and its successors and assigns.

5.11 Unless otherwise stated herein, all terms used in this document which are defined in Part 3 of NREPA, MCL 324.301 and Part 201 of NREPA, MCL 324.20101, et seq, or the Part 201 Rules, 1990 AACRS R 299.5101, et seq, shall have the same meaning in this document as in Part 301 of NREPA, Part 201 of NREPA and the Part 201 Rules.

## **VI. FINDINGS OF FACT/DETERMINATIONS**

6.1 The State makes the following determinations on the basis of these Findings of Fact:

6.2 The Cone Drive Operations, Inc. manufacturing plant is located in Section 10, Township 27 North, Range 11 west, in Grand Traverse County, Michigan. It occupies approximately 10 acres and is approximately 600 feet west of Boardman Lake.

6.3 The Cone Drive Textron Facility is a "Facility" as that term is defined in Section 20101(l)(o) of NREPA.

6.4 The Property was first occupied as an industrial plant by Parsons Corporation of Detroit during World War II, and originally produced munitions shell casings. After World War II, the Michigan Tool Company acquired the plant and began manufacturing gear products and related power transmission equipment. It was known at that time as the Cone Drive Gears Company. In 1958, the Michigan Tool Company became part of Ex-Cell-O Corporation and Cone Drive became a division of that Corporation. Ex-Cell-O Corporation was purchased by Textron Inc. in 1986. Cone Drive Operations, Inc. currently is a plant in the Industrial Products Segment of Textron, Inc.

6.5 Prior to 1950, a disposal pit was constructed at the southeast corner of the CDT property. This pit was utilized by the Cone Drive Gears Company/Michigan Tool Company, and by the Cone Drive Division of the Ex-Cell-O Corporation to dispose of waste oil, coolants, lubricants and solvents for more than 20 years. CDT is the successor to those corporations and is the present owner and operator of part of the Facility. Therefore CDT is responsible for an activity causing a release or threat of release pursuant to Section 20126 of Part 201 of the NREPA.

6.6 Tetrachloroethene, 1,2,4 trimethylbenzene, and cis-1,2-dichloroethene, and other contaminants, are all "hazardous substances" as that term is defined in Section 20101(1)(t) of NREPA, and have been found at the Facility.

6.7 The plume of groundwater contamination migrates through property that is zoned industrial and through property that is zoned residential after it leaves the Cone Drive Operation, Inc. Property. Cis-1,2-dichloroethene has been found in the groundwater in the plume at concentrations of 120 ppb. 1,2,4-trimethylbenzene has been found in the groundwater in the plume at concentrations of 360 ppb. Tetrachloroethene has been found in the groundwater in the plume at concentrations of 61 ppb. These concentrations exceed generic residential and generic industrial cleanup standards for each parameter. The liquid phase hazardous substances which have been observed at the Facility consist of petroleum solvents and various types of oils.

6.8 Hazardous substances, in concentrations in excess of unrestricted residential cleanup criteria in soils and groundwater found in the plume, in the area from the former Cone Drive disposal pit and extending to the shore and sediments of Boardman Lake constitute a "release or threatened release" within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of NREPA.

6.9 Boardman Lake, an impoundment of the Boardman River, is used extensively for swimming, boating, and fishing by area residents. The Michigan Department of Natural Resources has designated the Boardman River a Blue Ribbon Trout Stream which indicates that it is one of Michigan's best trout streams with excellent water quality. Steelhead, brown trout, salmon, carp, perch, and pike are all found in Boardman Lake and the connecting Boardman River.

6.10 Cone Drive Operations, Inc., a subsidiary of Textron, Inc., whose principal place of business is 240 East 12<sup>th</sup> Street, Traverse City, Michigan is a "person" as that term is defined in Section 301(g) of Part 3 of NREPA.

6.11 By letters dated November 7, 1972, September 16, 1988, and February 12, 1997, the MDEQ notified CDT and/or its predecessors of their status as a person that is liable for the



release or threat of a release of a hazardous substance at the Facility.

6.12 In order to protect public health, safety, and welfare and the environment, and to abate the danger or threat, it is necessary and appropriate that response activity be taken. The response activity consists of the performance of all activities required by this order and the work specified in Attachment 2. On the basis of the Findings of Fact, the MDEQ and the Attorney General make the determination that CDT will properly implement and expedite effective response activities required by this Order and that this Consent Order is in the public interest and will minimize litigation.

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

## **VII. IMPLEMENTATION OF RESPONSE ACTIVITIES**

7.1 In accordance with this Order, CDT shall implement the work outlined in Attachment 2, the Remedial Investigation (RI) work plan, according to the time schedule contained therein.

7.2 By January 15, 1999, CDT shall submit, in accordance with the provisions of Section XIV, a Draft RI report which details and summarizes the results of sampling and tests and other data received by CDT during the RI.

7.3 Within forty-five (45) days, CDT shall submit to MDEQ, for review and approval, a Quality Assurance Project Plan (QAPP) which describes the quality control, quality assurance, sampling protocol and chain of custody procedures that shall be implemented in carrying out the tasks required by this Order. The QAPP shall be developed in accordance with the U.S.

EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80, EPA-600/4-83-004; NTIS PB 83-170514; the MDEQ QAPP Guidance dated February 1993.

7.4 Within forty-five (45) days; CDT shall submit to MDEQ a Health and Safety Plan developed in accordance with the standards promulgated pursuant to the National Contingency Plan, 40 CFR 300.150, the Occupational Safety and Health Act of 1970, 20 CFR 1910.120, and the Michigan Occupational Safety and Health Act. The Health and Safety Plan is not subject to MDEQ approvals required in Section XIV (Submissions and Approvals) of this Order.

7.5 Interim Response Activities:

a. Within forty-five (45) days after the completed test pit installations described in Attachment 2, CDT shall submit to the MDEQ for review and approval a work plan for Interim Response activities (IR) designed to remove reasonably recoverable free phase liquid hazardous substances in soil and groundwater (subject to CDT's reservation of rights in Paragraph 4.2 regarding divisibility) on an on-going basis to reduce the potential for increased exposure or environmental damage. Within seven (7) days of receiving MDEQ approval of the IR work plan, CDT shall implement the plan in accordance with the approved time schedule contained therein.

*(amended)* b. If at any time during implementation of the tasks outlined in the RI Work Plan (Attachment 2), CDT finds that hazardous substances in groundwater from CDT operations in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) and (17) of NREPA that originate on the east side of the Cone Drive Textron building and/or other hazardous substances in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) and (17) of NREPA where they are commingled with the groundwater containing hazardous substances from CDT's operations are venting into Boardman Lake at concentrations that exceed applicable Groundwater Surfacewater Interface (GSI) criteria, CDT shall, within

thirty (30) days of discovery of the exceedance, submit a request to the MDEQ for a determination of the Mixing-Zone criteria for each contaminant that exceeds the GSI criteria. If additional information is necessary to complete a Mixing Zone criteria determination, CDT shall provide the requested information within thirty (30) days of the request from MDEQ. No such additional information shall be required to be submitted by CDT if the hazardous substances in groundwater from CDT operations do not exceed the GSI criteria. If, within forty-five (45) days of receiving the determination of Mixing-Zone criteria, it is found that contaminants from CDT operations are venting to Boardman Lake above the Mixing-Zone criteria, CDT shall submit, for MDEQ review and approval, a work plan for Surfacewater Interim Response designed to bring the discharge into compliance with Part 201 of NREPA and other state and federal laws and regulations. Within thirty (30) days of receipt of MDEQ approval of the Surfacewater Interim Response Work Plan, CDT shall implement the Surfacewater Interim Response Work Plan in accordance with the approved schedule contained therein. CDT's obligations under the Surfacewater Interim Response Work Plan shall terminate when the concentrations of hazardous substances from CDT operations venting into Boardman Lake meet the applicable Mixing Zone adjusted GSI criteria.

*amended* 7.6 Within one hundred twenty (120) days of receipt of MDEQ approval of the final RI, CDT shall submit a Conceptual RAP which addresses contamination from CDT operations at the Facility and hazardous substances denoted as subject to this Order in Paragraph 4.2, subject to CDT's reservation of rights in Paragraph 4.2 regarding divisibility. CDT shall submit a Conceptual RAP in compliance with Part 201 and the Part 201 Rules. The Conceptual RAP shall address hazardous substances from CDT operations in sediments that are part of the Facility if the MDEQ has established applicable sediment cleanup criteria that are being applied statewide. The Conceptual RAP shall also address hazardous substances from CDT operations in surfacewater which are in excess of the criteria for GSI as adjusted by any mixing zone determination. A Conceptual RAP that is in whole or in part limited residential may call for a restriction on land use that excludes residential development.

a. If, as submitted, the Conceptual RAP meets the requirements of Part 201 and the Part 201 Rules, CDT shall have meet the requirements of this Paragraph and the Conceptual RAP shall be considered a Remedial Action Plan (RAP) pursuant to Part 201 of NREPA. If, as submitted, the Conceptual RAP is not in compliance with Part 201 and the Part 201 Rules, for reasons other than failure to obtain the necessary land use or resource use restrictions, MDEQ shall notify CDT in writing. The notice shall include the reasons for its decision. CDT shall submit a revised Conceptual RAP within thirty (30) days after receipt by CDT of such notice. If, after the resubmission of the Conceptual RAP by CDT or after such thirty (30) days lapse without a resubmission by CDT, the Conceptual RAP does not meet Part 201 and the Part 201 Rules, then it shall be denied and CDT is deemed to be in violation of this Order.

b. If the Conceptual RAP submitted to MDEQ relies in part or in whole on cleanup criteria pursuant to Section 20120a(1)(f) to (j) or (2), then land use or resource use restrictions to assure the effectiveness and integrity of any containment, exposure barrier or other land use or resource use restrictions to assure the effectiveness and integrity of the Conceptual RAP shall be sufficiently described for the DEQ to make its decision. Within 150 days of submittal of the Conceptual RAP, CDT shall submit all land use or resource use restrictions including either the expressed written permission of the property owner(s), or a municipal ordinance. If CDT is unable to obtain expressed written permission for land use or resource use restrictions, or the ordinance, or if the land use or resource use restriction does not meet the requirements of Part 201 or the Part 201 Rules, the Conceptual RAP will be denied. However, a denial of the Conceptual RAP due to inability to obtain either the expressed written permission of property owners or an ordinance of the municipality, shall constitute a Force Majeure event, if an action against the property owners to obtain authority to impose the resource use or land use restrictions is filed in a court of competent jurisdiction within thirty (30) days of receipt of written denial of the Conceptual RAP and CDT shall not be deemed in violation under this paragraph.

c. Within one hundred and twenty (120) days after the issuance, by a court, of a final, nonappealable judgement resolving the land use or resource use restrictions, CDT shall submit a revised Conceptual RAP which complies with Part 201, the Part 201 Rules and the final judgment of the court. If CDT fails to submit a revised Conceptual RAP, CDT is deemed to be in violation of this Order. If, upon resubmission pursuant to this paragraph, the Conceptual RAP is not in compliance with Part 201 and the Part 201 Rules, MDEQ shall notify CDT in writing stating the reasons for its decision. CDT shall submit a revised Conceptual RAP within thirty (30) days after receipt by CDT of such notice. If, after the submission of the revised Conceptual RAP by CDT or after such thirty (30) days lapse without a resubmission by CDT, the Conceptual RAP does not meet Part 201 and the Part 201 Rules, then it shall be denied and CDT is deemed to be in violation of this Order.

*Amended* 7.7 Notwithstanding any other provision of this order, CDT possesses the sole authority to determine which remedial action it chooses to propose in any and all Conceptual RAPs required to be submitted to the MDEQ under this Order. CDT's selection of the proposed remedial action is binding upon the MDEQ if it meets the requirements of Part 201 of NREPA and its rules, as clarified by paragraph 7.6, and is not subject to Section XIX (Dispute Resolution) of this Order. The MDEQ's determination as to whether a conceptual RAP, proposed by CDT pursuant to Paragraph 7.6, complies with the provisions of Part 201 of NREPA and its rules is subject to Section XIX (Dispute Resolution).

*Amended* 7.8 Submittal of the Conceptual RAP shall not initiate the MDEQ's obligations to grant or deny approval of the Conceptual RAP within six months of submittal pursuant to 324.30114(8), nor shall failure of MDEQ to make a decision result in the Conceptual RAP being considered approved or denied.

#### 7.9 Modification of RI and IR Work Plans.

a. In the event that the MDEQ determines that Modifications to the work specified in the RI and IR work plans is necessary to meet and maintain the performance standards

described in Part 201 of NREPA and its administrative rules, or CERCLA and the National Contingency Plan, MDEQ may require that such modification be incorporated in the RI and IR work plans. Provided, however, that a modification may only be required pursuant to this paragraph to the extent that it is consistent with the scope of the remedial approach outlined in the approved-RI (attached hereto as Attachment 2) and IR work plans.

b. If CDT objects to any modification determined by the MDEQ to be necessary pursuant to this Section, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution). The RI and IR work plans shall be modified in accordance with the final resolution of the dispute.

c. CDT shall implement any work required by any modification incorporated in the RI/IR in accordance with this Section.

d. Nothing in this Section shall be construed to limit MDEQ's authority to require performance of further remedial activities as otherwise provided in this Order.

## **VIII. SAMPLING AND ANALYSIS**

8.1 CDT, or its consultant(s) or subcontractor(s), shall provide the MDEQ ten (10) days notice prior to any sampling activity undertaken pursuant to this Order to allow the ERD Project Coordinator, or his/her authorized representative, to take split or duplicate samples and/or to observe the sampling procedures. In circumstances where ten (10) days notice is not possible, CDT, or its consultant(s) or subcontractor(s) shall provide notice of the planned sampling activity as soon as possible to the ERD Project Coordinator and explain why earlier notification was not possible. If the ERD Project Coordinator concurs with the explanation provided, CDT may forego the 10-day notification period.

8.2 CDT shall provide the MDEQ with the results of all environmental sampling, treatment system sampling, effectiveness of any system constructed as part of IR activities aquifer pump tests and other data generated in the performance or monitoring of any requirement

under this Order, Parts 201, 211 or 213 of NREPA, or other relevant authorities. Said results shall be included in progress reports as set forth in Section XV (Progress Reports).

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

## **IX. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES**

9.1 Each party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Mr. John Vanderhoof. CDT's Project Coordinator is Ms. Donna Koltuniak. Whenever notice is required to be given or a communication, report, sampling data, analysis of data or other technical 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. All documents required to be submitted to MDEQ pursuant to this Order shall reference the Facility name and MDEQ reference number of this Order. 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 XIII (Record Retention/Access to Information):

Chief, Compliance and Enforcement Section  
Environmental Response Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909  
Telephone: 517-373-7818  
FAX: 517-373-2637

(Via courier)  
300 South Washington Square  
Lansing, MI 48933

B. For all payments pertaining to this Order:

Revenue Control Unit  
Michigan Department of Environmental Quality  
300 South Washington Square, Suite 457  
P.O. Box 30657  
Lansing, MI 48909-8157

To ensure proper credit, all payments made pursuant to this order must reference the Cone Drive/Textron site, the MDEQ Reference No. AOC-ERD-98-002, and the ERD Account Number 2026.

C. For all other matters pertaining to this Order:

Mr. John Vanderhoof, Project Coordinator  
Environmental Response Division  
Cadillac District  
Michigan Department of Environmental Quality  
120 W. Chapin Street  
Cadillac, MI 49601  
Telephone No.: 616-775-3960  
Fax No.: 616-775-1511

As to CDT:

Ms. Donna Koltuniak  
240 East 12<sup>th</sup> Street,  
Traverse City, Michigan 49685  
Telephone No.: 616-929-8226  
Fax No.: 616-929-8317

9.2 CDT's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Order.

9.3 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.

## **X. ACCESS**

10.1 Upon reasonable notice to CDT 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 or property is controlled by, or available to CDT, 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 response activities 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 response activities 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 nonprivileged records, operating logs, contracts or other documents related to this Order; and
- (h) Interviewing employees, contractors, agents, or representatives of CDT.

10.2 To the extent that the Facility or any other area where the response activities are to be performed by CDT under this Order is owned or controlled by persons other than CDT, CDT shall use its best efforts to secure from such persons access for the parties and their authorized employees, agents, representatives, contractors and consultants. CDT 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, CDT is unable to obtain access within forty-five (45) days of the effective date of this Order, CDT shall promptly notify the MDEQ.

10.3 Any lease, purchase, contract or other agreement entered into by CDT, which transfers to another party a right of control over the Property or a portion of the Property, shall contain a provision preserving for the MDEQ or another party undertaking the response activities and their authorized representatives, the access provided under Section X (Access) and Section XIII (Record Retention/Access to Information).

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

## **XI. CREATION OF DANGER**

Upon obtaining information concerning the occurrence of any event in connection with performance of response activities conducted pursuant to this Order that causes a release or threat of 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, or welfare or the environment, CDT shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat, 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 CDT shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the HASP. Within ten (10) days of notifying the MDEQ of such occurrence, CDT shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release, threat, or endangerment caused or threatened by the incident and to prevent recurrence of such an incident. Regardless of whether CDT notifies the MDEQ

under this Section, if response activities 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, or welfare or to the environment, the MDEQ may: (a) require CDT to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment; (b) require CDT 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, CDT shall reimburse the State for all response activity costs lawfully incurred by the State. Payment of such costs shall be made in the manner provided in Paragraph 20.4.

## **XII. COMPLIANCE WITH STATE AND FEDERAL LAWS**

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable state and federal laws and regulations, including Part 201 of NREPA, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the conduct of response activities under this Order. Further, CDT must designate, in a report to the MDEQ, any facilities that CDT proposes to use for the off-site transfer, storage, treatment or disposal of any waste material managed by CDT under this Order. Notwithstanding any provision of this Order, CDT shall comply with all state and federal laws and regulations including, but not limited to, provisions of Part 31 of NREPA and the Part 31 Rules.

## **XIII. RECORD RETENTION/ACCESS TO INFORMATION**

13.1 CDT and its representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of ten (10) years after its termination, all records, sampling or test results, charts and other documents relating to releases of hazardous substances or the disposal, treatment or handling activities at the Facility or any records that are

maintained or generated pursuant to any requirement of this Order. After the ten (10)-year period of document retention, CDT and its successors and assigns shall obtain the MDEQ's written permission prior to the destruction of such documents and, upon request, CDT and/or its successors and assigns shall relinquish custody of all documents to the MDEQ. CDT's request shall be accompanied by a copy of this Order and sent to the address listed in Section IX (Project Coordinators and Communications/Notices) or at such other address as may subsequently be designated in writing by the MDEQ.

13.2 CDT shall, upon request by the MDEQ, 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 response activities 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 response activities. CDT shall also, upon request, make available to the MDEQ, upon reasonable notice, CDT's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the response activities.

13.3 CDT may designate, in accordance with Section 20117(10) and (11) of NREPA information CDT believes to be entitled to protection or confidentiality. If no such claim accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to CDT. Information described in subsections 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by CDT. Information or data generated under this Order shall not be subject to Part 148 of NREPA, MCL 324.14801 et. seq.

#### **XIV. SUBMISSIONS AND APPROVALS**

14.1 All plans, reports, schedules, and submittals (collectively "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 Submission 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."

14.2 Upon receipt of any Submission, other than a <sup>limited</sup> ~~Conceptual~~ RAP, relating to the response activities 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 CDT of deficiencies; or (c) approve the Submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, CDT shall proceed to take any action required by the Submission as approved or as modified, and shall submit a new cover page and the modified pages of the plan marked "Final."

14.3 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, CDT shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the Submission for approval. Notwithstanding a notice of disapproval, CDT shall proceed to take any response activity not directly related to the deficient portion of the Submission. If, upon resubmission, the Submission is not approved, the MDEQ shall so advise CDT and CDT shall be deemed to be in violation of this Order.

14.4 Any Submission and attachments to Submissions required by this Order are, upon approval by the MDEQ, incorporated into this Order and made an enforceable pursuant to the terms of this Order.

14.5 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 Submissions or

warrants that the Submission comports with law.

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

14.7- 14.8

## **XV. PROGRESS REPORTS**

CDT shall provide to the MDEQ Project Coordinator written monthly progress reports relating to response activities including the IR that shall: (a) describe the activities that have been taken toward achieving compliance with this Order during the previous thirty (30) day period; (b) describe data collection and activities scheduled for the next thirty (30) day period; and (c) include all results of sampling and tests and other data received by CDT, its employees or authorized representatives during the previous thirty (30) day period relating to the response activities performed pursuant to this Order. The first Monthly report(s) shall be submitted to the MDEQ on the fifteenth day of the month following the effective date of this Order and Monthly thereafter until the issuance of the Certificate of Completion as provided in Section XXVI (Certification).

## **XVI. INDEMNIFICATION AND INSURANCE**

16.1 CDT shall indemnify and hold harmless the State of Michigan and its departments, with the exception of the Michigan Department of Transportation ("MDOT"), 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 CDT, 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 CDT in carrying out actions pursuant to this Order. Neither CDT nor any contractor shall be considered an agent of the State. CDT shall not, however, indemnify and hold the State of Michigan, its Departments, agencies, officials, agents, employees, or

representatives harmless against any actions of the State of Michigan, its Departments, agencies, officials, agents, employees, or representatives which are grossly negligent, including reckless, willful or wanton misconduct, or which constitute intentional misconduct or as to response activity contractors, any negligent, grossly negligent or intentional misconduct.

16.2 The State shall Notify CDT's Project Coordinator of any such claims or action promptly after receipt of notice that a claim or action is anticipated or has been filed.

16.3 CDT waives any and all claims or causes of action against the State of Michigan and its departments, with the exception of the Michigan Department of Transportation MDOT, 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 CDT and any person for performance of response activities at the Facility, including claims on account of construction delays.

16.4 CDT shall indemnify and hold harmless the State of Michigan and its departments, with the exception of the Michigan Department of Transportation MDOT, 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 CDT and any person for performance of response activities at the Facility, including claims on account of construction delays.

16.5 Prior to commencing any response activities pursuant to this Order which are performed after the effective date of this Order, CDT shall secure, and maintain for the duration of this Order, comprehensive general liability insurance with limits of five million dollars (\$5,000,000) combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties related to CDT's obligations pursuant to this Order. If CDT 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, CDT 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, and prior to commencement of response activities, after the effective date of this Order, CDT shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Order, CDT 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 activities on behalf of CDT in furtherance of this Order.

#### **XVII. MODIFICATIONS**

This Order may only be modified according to the terms of this Section. Any Submission which requires approval under this Order or attachment to such Submissions required by this Order, excluding the Conceptual RAP, may be modified by written agreement between CDT's designated Project Coordinator or other authorized representative and the MDEQ's Project Coordinator. The Conceptual RAP is not subject to modification under this Order. Modification of any other provision of this Order shall be made by written agreement between CDT, the MDEQ and the Michigan Department of Attorney General.

#### **XVIII. DELAYS IN PERFORMANCE**

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

18.2 For the purpose of this Order, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of and without the fault of CDT, such as: an Act of God; untimely review of permit applications or Submissions by the



MDEQ or other applicable authority; non-availability of final applicable sediment cleanup criteria that are being applied statewide; strikes or other work stoppages; denial of access by third party property owners, if CDT is in compliance with paragraph 10.2; and acts or omissions of third parties that could not have been avoided or overcome by CDT's due diligence and that delay the performance of an obligation under this Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of CDT's actions or omissions.

18.3 CDT shall notify the MDEQ by telephone or telefax within forty-eight (48) hours of discovering any event which causes a delay in its compliance with any provision of this Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe in detail the anticipated length of delay; the precise causes of the delay; the measures taken and to be taken by CDT to avoid, minimize or overcome the delay; and the timetable by which those measures shall be implemented. CDT shall adopt all reasonable measures to avoid or minimize any such delay.

18.4 Failure of CDT to comply with the notice requirements of subparagraph 18.3, above, shall render this Section XVIII void and of no force and effect as to the particular incident involved. The MDEQ may, in its sole discretion and in appropriate circumstances, waive the notice requirements of subparagraph 18.3 of this Order.

18.5 If the parties agree that a delay or anticipated delay was beyond the control of CDT, this may be so stipulated and this Order will be modified according to the procedure set forth in Paragraph 18.2. If the parties to this Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section XIX (Dispute Resolution) of this Order. CDT shall have the burden of proving that any delay was beyond the reasonable control of CDT, and that all the requirements of this Section XVIII have been met by CDT.

18.6 An extension of one compliance date based upon a particular incident does not

necessarily mean that CDT qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

### **XIX. DISPUTE RESOLUTION**

19.1 The dispute resolution procedures of this Section shall apply without limitation to all provisions of this Order, except where expressly stated otherwise. If CDT objects to any notice of disapproval, modification or decision concerning a requirement of Sections VII (Implementation of Response Activities), VIII (Sampling and Analysis), XIV (Submissions and Approvals), XVII (Modifications) and XX (Reimbursement of Costs and Civil Penalties) of this Order, CDT shall notify the MDEQ, in writing, of its objections within seven (7) days of receipt of the notice. The MDEQ and CDT 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 written statement of its decision to CDT and in the absence of initiation of formal dispute resolution by either party under Paragraph 19.2, the MDEQ position shall be binding on the Parties.

19.2 If CDT and MDEQ cannot informally resolve a dispute under Paragraph 19.1, then CDT may initiate formal dispute resolution by requesting review of disputed issues by the MDEQ ERD Division Chief. This written request must be filed with the MDEQ ERD Division Chief and the MDEQ Project Coordinator within ten (10) days of receipt by CDT of the MDEQ statement of decision issued as part of the informal dispute resolution process as set forth in Paragraph 19.1. The request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation on which the party relies. CDT may, after the written request has been submitted, request a meeting with the MDEQ ERD Division Chief to discuss the disputed item. The MDEQ shall, within ten (10) days after receiving the written request for review by the MDEQ ERD Division Chief, or ten (10) days from a meeting with representatives of CDT, if one is so requested, provide a written reply to CDT stating its understanding of the issues in dispute, the

relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation on which the party relies. The decision of the MDEQ ERD Division Chief shall be binding on the parties.

19.3 If CDT seeks to challenge any decision or notice issued by the MDEQ or the Attorney General under this Order, other than those addressed in paragraph 19.1, CDT shall send a written notice of objections to both the MDEQ Project Coordinator and the Assistant Attorney General assigned to this matter, within ten (10) days from receipt of the notice or decision by the MDEQ or Attorney General. The MDEQ, Attorney General and CDT shall have fourteen (14) days from the receipt by the MDEQ and Attorney General of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, the MDEQ and the Attorney General shall provide a written statement of its decision to CDT.

19.4 In the event CDT does not commence the activities required by this Order that are the subject of the MDEQ decision under paragraph 19.2 or the Attorney General decision under paragraph 19.3 above within the fourteen (14) days after the decision, the Department of

Attorney General, on behalf of the MDEQ, may take such civil enforcement actions against CDT as may be provided for by Sections 20119(4) and 20137(1) of NREPA, 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 response activities and to recover the costs thereof from CDT. Engagement of a dispute resolution among the parties shall not be cause for the delay of any response activities.

19.5. Notwithstanding this Section, CDT 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 XX (Reimbursement of Costs and Civil Penalties) and XXI (Stipulated Penalties), as appropriate.

19.6. 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 CDT 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. Nothing in this Order shall expand CDT's ability to obtain pre-enforcement review of this Order.

## **XX. REIMBURSEMENT OF COSTS**

20.1 Within thirty (30) days after the effective date of this Order, CDT shall pay the MDEQ Fifty Six Thousand dollars (\$56,000) to resolve all claims for Past Response Activity Costs relating to matters covered in this Order.

20.2 CDT shall also pay response activity costs: (a) incurred by the State prior to the dates set forth in the attached Final Summary Report (Attachment 3) but not paid by the State or (b) not accounted for in the attached summary sheet, including staff costs in negotiating and preparing settlement documents with CDT, overseeing response activities at the Facility prior to execution of this Order, and contractor costs. Said costs shall be documented and included in the first demand for Oversight Costs as set forth in paragraph 20.3 and shall be prepared according to generally accepted accounting principles.

20.3 CDT shall reimburse the State for all Oversight Costs incurred by the State in overseeing the remedial activities of CDT for matters covered in this Order. As soon as possible after each anniversary of the effective date of this Order, pursuant to Sections 20119(4) and 20137(1) of NREPA, the MDEQ will provide CDT with a written demand of oversight costs lawfully incurred by the State. Any such demand shall be prepared according to generally accepted accounting principles and will be set forth with reasonable specificity the nature of the costs incurred.

20.4 CDT 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. Provision of these documents by the MDEQ may result in the MDEQ incurring additional oversight costs which will be included in the annual demand of Oversight Costs. Except as provided by Section XIX (Dispute Resolution), CDT shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ. 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. In any challenge by CDT to a demand for recovery of costs by the MDEQ, CDT shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(1)(a) of NREPA. All payments made pursuant to this Order shall be by certified check payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first-class mail to the address listed in Section IX (Project Coordinators and Communications/Notices). The Cone Drive/Textron site, the MDEQ Reference No. AOC-ERD-98-002 and the ERD Account Number 2026 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, Suite 315, 300 South Washington Square, Lansing, Michigan 48913. Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

## **XXI. STIPULATED PENALTIES**

21.1 Except as provided by Section XIX (Dispute Resolution) and XVIII (Delays in Performance), if CDT fails or refuses to comply with the following terms or conditions of this Order, CDT shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

(a) Paragraph 7.2: CDT shall pay a stipulated penalty of \$1000 per day for each of the first fifteen (15) days for failure to submit a Draft RI report within the timeframes required in said Paragraph, \$2,500 per day for the sixteenth (16th) through the thirtieth (30th) day, and \$10,000 per day for each succeeding day.

(b) Paragraph 7.5: CDT shall pay a stipulated penalty of \$1000 per day for each of the first fifteen (15) days for failure to submit or implement an Interim Response (IR) activities work plan within the timeframes required in said Paragraph, \$2,500 per day for the sixteenth (16th) through the thirtieth (30th) day, and \$10,000 per day for each succeeding day.

(c) Paragraph 7.6: CDT shall pay a stipulated penalty of \$1000 per day for each of the first fifteen (15) days for failure to submit a Conceptual RAP in the manner described in Paragraph 7.6 and within the timeframes required in said Paragraph, \$2,500 per day for the sixteenth (16th) through the thirtieth (30th) day, and \$10,000 per day for each succeeding day.

(d) Section X: CDT shall pay a stipulated penalty of \$500 per day for each calendar day that it fails to comply with Section X.

(e) Section XV: CDT shall pay a stipulated penalty of \$500 per day for each calendar day that it fails or refuses to submit Progress Reports within the timeframes required in said Section.

21.2 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.

21.3 Except as provided in Section XX (Reimbursement of Costs and Civil Penalties), stipulated penalties owed to the MDEQ shall be paid no later than thirty (30) days after receiving a written demand from the MDEQ. Payment shall be made in the manner provided in Paragraph 20.4. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 20126(4) of NREPA, MCL 324.20126(4). Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitute an independent violation of the terms and conditions of this Order and is subject to a penalty of

\$5000 per day for each day of failure to submit payment.

21.4 The amount of stipulated penalties paid pursuant to this Section by CDT for a particular violation of this Order shall be credited against any civil penalties which may be assessed by the MDEQ for the same violation.

21.5 Liability for or payment of stipulated penalties are not MDEQ's exclusive remedy in the event CDT violates this Order. MDEQ 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 CDT 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 (3) times the costs incurred by the State of Michigan as a result of CDT's violation of or failure to comply with this Order pursuant to Sections 20119(4) and 20137(1) of NREPA and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

## **XXII. COVENANT NOT TO SUE BY THE STATE**

22.1 In consideration of the actions that will be performed and the payments that will be made by CDT under the terms of this Order, and except as specifically provided in this Section or Section XXV (Reservation of Rights), the State of Michigan hereby covenants not to sue or to take further judicial or administrative action against CDT for claims arising for:

- (a) Performance of the approved response activities by CDT under the Order;
- (b) Reimbursement of Past Response Activity Costs incurred by the State as set forth in Paragraph 20.1 of this Order;
- (c) Payment of response activity costs incurred by the State as set forth in Paragraphs 20.2 and 20.3 of this Order; and
- (d) Civil Penalties which existed prior to the effective date of this Order.

22.2 With respect to liability for Facility response activity costs incurred prior to the dates

set forth in the attached Final Summary Report (Attachment 3), this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraph 20.1. With respect to liability for performance of response activities required to be performed under this Order, settlement of civil penalty claims, and payment of response activity costs pursuant to Paragraphs 20.2 and 20.3 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 XXVI. The covenant not to sue is conditioned upon the complete and satisfactory performance by CDT of its obligations under this Order. The covenant not to sue extends only to CDT and does not extend to any other person.

### **XXIII. COVENANT NOT TO SUE BY THE CDT**

23.1 CDT hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies or their authorized representatives, with the exception of the Michigan Department of Transportation MDOT, for any claims or cause of action against the State with respect 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, or any other provision of law.

23.2 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, CDT 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 XXII (Covenant Not to Sue by the State).



#### **XXIV. CONTRIBUTION PROTECTION**

Pursuant to Section 20129(5) of NREPA, Section 113 (f) (2) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607 and 9613 and to the extent provided in Section XXII (Covenant Not to Sue by the State), CDT shall not be liable for claims for contribution for the matters set forth in Paragraph 22.1 of this Order. Entry of this Order does not discharge the liability of any other person(s) that may be liable under Section 20126 of NREPA, and/or CERCLA, 42 U.S.C. 9607 and 9613, to the extent allowable by law. In any action by CDT for contribution from any person not a party to this Order, CDT's cause of action shall be subordinate to the rights 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(9) of NREPA.

#### **XXV. RESERVATION OF RIGHTS BY THE STATE**

25.1 The MDEQ and the Attorney General reserve the right to bring an action against CDT under federal and state law for any matters that are not set forth in Paragraph 22.1.

25.2 The State reserves the right to take action against CDT if it discovered that any information provided by CDT was intentionally false or misleading.

25.3 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 CDT, including the MDEQ's right both to disapprove of response activities performed by CDT, except those response activities already approved by MDEQ and to require CDT to perform tasks in addition to those detailed in this Order.

25.4 Notwithstanding any other provision of this Order, including paragraph 7.6, the MDEQ retains all authority and reserves all rights to take any and all actions, including response activity(ies), authorized by law. In the event the MDEQ determines that CDT 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 response activity(ies) as the MDEQ determines necessary and to recover response activity costs.

25.5 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 CDT's 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.

25.6 The covenant not to sue set forth in Section XXII (Covenant Not to Sue by the State), does not pertain to any matters other than those expressly specified in Paragraph 22.1. The State reserves, and this Order is without prejudice to, all rights against CDT with respect to all other matters, including, but not limited to, the following: (a) liability arising from a violation by CDT of a requirement of this Order, including conditions of an approved submission required herein; (b) liability for any other response activities required to address environmental contamination at the Facility; (c) liability for response activity costs other than those referred to in Section XX (Reimbursement of Costs and Civil Penalties); (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 XVI (Indemnification and Insurance), of this Order; and (i) liability arising from releases of hazardous substances or violations federal or state law which occur during or after implementation of the response activities required by this Order.

25.7 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 CDT (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 response activities: (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 response activity(ies) are not protective of the public health, safety or welfare or the environment.

25.8 For purposes of Paragraph 25.7, 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 response activities, and any information received by the MDEQ pursuant to the requirements of this Order prior to Certification of Completion of response activities.

25.9 The parties acknowledge and agree that this Order does not constitute a warranty or representation of any kind by the MDEQ that the response activity(ies) performed in accordance herein will result in the achievement of the remedial criteria as established by law.

25.10 Except as provided in Section XXII (Covenant Not To Sue By The State), the MDEQ and the Attorney General shall retain all of their information gathering, inspection, access and enforcement authorities and rights under Part 201 of NREPA and any other applicable statute or regulation.

25.11 Except as provided in Section XXII (Covenant Not To Sue By The State), nothing in this Order shall limit the power and authority of the MDEQ or 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 a release or threatened release of hazardous

substances, pollutants or contaminants on, at or from the Facility.

## **XXVI. CERTIFICATION**

26.1 When CDT determines that it has completed all the response activities required by this Order, it shall submit to the MDEQ a Notification of Completion and a draft Final Report. The draft Final Report shall summarize all response activities performed under this Order. The draft Final Report shall include or reference any supporting documentation.

26.2 Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion, the draft Final Report, any supporting documentation and the actual response activities performed pursuant to this Order. Within ninety (90) days of receipt of the Notification of Completion, the MDEQ will determine whether CDT has satisfactorily completed all requirements of this Order, including, but not limited to, completing the response activities required by this Order, complying with all terms and conditions of this Order and paying any and all cost reimbursement and penalties owed to the MDEQ. If the MDEQ determines that all requirements have been satisfied, the MDEQ will so notify CDT, and upon receipt of a Final Report in accordance with Section XIV (Submissions and Approvals), shall issue a Certificate of Completion.

## **XXVII. TERMINATION**

Upon completion of the response activities required to be performed under this Order and issuance of a Certificate of Completion in accordance with Section XXVI (Certification), CDT's obligations as set forth in this Order shall automatically terminate.

## **XXVIII. 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. This Order may be executed in duplicate original form.

#### **XXIX. SEVERABILITY**

The provisions of this Order 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 Order shall remain in full force and effect.

#### **XXX. EFFECTIVE DATE**

This Order is effective upon Signature of the Director's designee. 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.

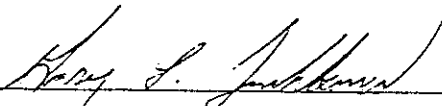
IT IS SO AGREED AND ORDERED BY:



Alan J. Howard, Chief  
Environmental Response Division  
Michigan Department of Environmental Quality

10/28/98

Date

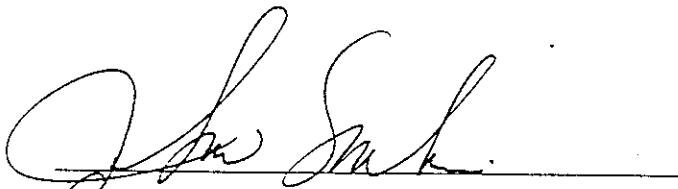


Gary L. Finkbeiner (P25363)  
Assistant Attorney General  
Natural Resources Division  
Michigan Department of Attorney General

10/27/98

Date

IT IS SO AGREED BY:

A handwritten signature in dark ink, appearing to read "John Melvin", is written over a horizontal line.

Cone Drive Operations, Inc.  
John Melvin, President  
240 East 12<sup>th</sup> Street  
Traverse City, Michigan 49685

22 - Oct. 98

Date

ATTACHMENT 1  
Property Description

That part of Government Lots 2 and 10, T27N, R11W, described as commencing at the NE corner of Lot 18, Hannah, Lay & Co's 14<sup>th</sup> Addition; thence S 858 ft to S line of vacated Griffen Street; thence E on street line 200 ft; thence N 33 ft; thence E 42.5 ft; thence NE'y to a point 5 ft N of SW corner of Lot 1, Block 4 of said Addition; thence NE'y to NE corner Lot 1; thence N 33 ft; thence E 33 ft; thence N on centerline of Lake Avenue (vacated) 396 ft to S line of 12<sup>th</sup> Street; thence W 483 ft to point of beginning. This description being part of Block 1 & Block 4 of Hannah, Lay & Co's 14<sup>th</sup> Addition; also that part of Lots 8 to 15 including Block 5 of Hannah, Lay & Co's 14<sup>th</sup> Addition lying N 25 ft and parallel with the centerline of N spur of Chessie Railroad; and

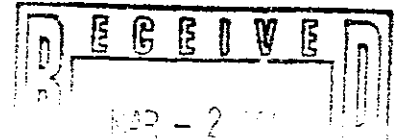
Lot 14 & S 20 ft of Lot 13, Block 19 of Hannah, Lay & Co's 2<sup>nd</sup> Addition and vacated 12<sup>th</sup> Street E of Lake Avenue and that portion of Government Lot 2, Section 10, T27N, R11W, described as commencing at NW corner of Block 1 Hannah, Lay & Co's 14<sup>th</sup> Addition; thence E 716 ft to point of beginning; thence E 170 ft; thence N 216 ft; thence W 80 ft; thence S 70 ft; thence W 90 ft; thence S to point of beginning; also parts of Lots 1-2-3-4-5-6 & 7 and N 20 ft Lot 8, Block 7 of Hannah, Lay & Co's 14<sup>th</sup> Addition and part of Government Lot 2 and E ½ of vacated Lake Avenue adjacent W of said Lots described as commencing at the NW corner of Block 1 of Hannah, Lay & Co's 14<sup>th</sup> Addition; thence E 683 ft to point of beginning; thence E 203 ft; thence S 14 degree 5' 33" W 247.45 ft; thence W 20 ft; thence S 16 degree 45' 14" W 208.87 ft; thence W 50 ft; thence N 0 degree 3' 35" E 440 ft to point of beginning.



ATTACHMENT 2

GZA  
GeoEnvironmental, Inc.

Engineers and  
Scientists



December 8, 1997  
Revised February 27, 1998  
File No. 97206



Ms. Donna Koltuniak  
EHS Manager  
Cone Drive Operations, Inc./Subsidiary of Textron, Inc.  
240 East 12<sup>th</sup> Street, P.O. Box 272  
Traverse City, Michigan 49685

38019 Schoolcraft Road  
Livonia, Michigan  
48150  
313-462-0207  
FAX 313-462-0508

Re: Work Plan  
Remedial Investigation on CSXT and MDOT Properties  
Traverse City, Michigan

Dear Ms. Koltuniak:

Pursuant to our recent meetings and telephone conversations, GZA GeoEnvironmental, Inc. (GZA) is pleased to present Cone Drive Operations, Inc./ Subsidiary of Textron, Inc. (CD/T) with this Work Plan to perform a remedial investigation of groundwater quality adjacent to your facility located in Traverse City, Michigan ("Site"). This Work Plan has been revised to incorporate the recommendations of the Michigan Department of Environmental Quality (MDEQ) as discussed in their January 8, 1998 letter to CD/T concerning the draft version of this plan.

#### BACKGROUND

The CD/T site has been the subject of ongoing environmental investigations based upon historic waste disposal practices. Impact to the soil and groundwater beneath your facility has been identified and Site remediation activities, including soil-vapor extraction (SVE) and air sparging, have been operating satisfactorily for more than one year to address the identified impacts. Additionally, MDEQ personnel performed hand auger borings in October, 1997 on the CSX Transportation, Inc. (CSXT) property, encountering free product on the groundwater approximately 30 feet west of Boardman Lake.

The purpose of the proposed remedial investigation (RI) is to:

- determine the vertical and horizontal extent of the contaminant plume emanating from CD/T operations, or other hazardous substances where they are co-mingled with the plume from CD/T operations; and,
- determine the location and extent of any hazardous substance from CD/T operations that is in a liquid phase not dissolved in water.

A Subsidiary of GZA  
GeoEnvironmental  
Technologies, Inc.

## SCOPE OF WORK

The following describes the scope of work to be performed to accomplish the above-stated objectives.



### Task 1.0: Groundwater Modeling

GZA will utilize the U.S. Geological Survey (USGS) groundwater flow modeling program (MODFLOW) for evaluating groundwater flow from the Site area and for optimizing placement of groundwater monitoring wells based upon the flow regime. Prior to use, the input parameters (including boundary conditions) will be submitted to MDEQ for review and comment. Existing hydrogeologic data will be compiled within a database for review and incorporation within the model and updated as new information is collected. Flow model calibrations will be performed using groundwater elevation data obtained from the monitoring wells located on CD/T, MDOT, and CSXT property.

Following calibration of the groundwater flow model as indicated above, GZA will further evaluate the transport of impacted groundwater. Historic analytical data of volatile organic chemicals (VOCs) detected on CD/T's property will be used to calibrate the transport model. GZA will utilize a modular three-dimensional transport model (MT3D) developed by S.S. Papadupulos & Associates, Inc. and distributed by the U.S. Environmental Protection Agency (EPA) for these transport simulations. The purpose of this transport modeling effort is to further establish a basis for positioning monitoring well locations.

Upon completion of the proposed subsurface evaluation in Task 2.0, including groundwater sampling and analysis, further flow model calibration will be reviewed as well as the transport of impacted groundwater to evaluate movement beneath the Site and areas downgradient of the Site.

Additionally, GZA will perform a Groundwater/Surfacewater Interface (GSI) evaluation at the lake utilizing the existing and subsequent groundwater analytical data and modeling results to be obtained under Task 2.0. We will evaluate the groundwater discharge to Boardman Lake in accordance with the draft MDEQ Interim Environmental Response Division Operational Memorandum #17: *Instructions for Obtaining Determinations on Mixing Zone-Based Groundwater Surfacewater Interface Criteria for Inclusion in Remedial Action Plans and Monitoring Compliance with Criteria for Discharges of Groundwater Contaminants to Surface Water*, dated December 23, 1997; and *New Groundwater/Surface Water Interface (GSI) Cleanup Criteria - Addendum to Operational Memorandum 8, Revision 4 and Operational Memorandum 14, Revision 2*, dated August 18, 1997.

Our overall objective with this modeling effort is to reasonably predict groundwater movement and contaminant transport in the subject site area and optimize placement of groundwater monitoring wells and sampling locations.

## **Task 2.0: Subsurface Evaluation**

The following tasks comprise the subsurface explorations for the Site area. Please note that to complete the off-Site evaluation phase, access agreements with MDOT and CSXT will need to be completed with CD/T. Refer to the attached Figure No. 1 for approximate exploration locations.



### **SubTask 2.1: Geophysical Survey**

If weather and ground surface conditions permit, GZA will perform a geophysical survey on the CSXT property near Boardman Lake. We believe methods such as subsurface electrical resistivity, ground penetrating radar (GPR) or other similar technique will assist with delineation of free product (if present) near the lakefront. Free product is suspected to be present in the vicinity of the former interceptor trench on the CSXT property. As free product is anticipated to be highly resistive (i.e., low electrical conductance), we believe its presence (or absence) can be evaluated using a non-invasive geophysical technique.

The geophysical survey will be performed near the lake front to evaluate the presence of free product and identify subsequent exploration locations (i.e., test pits, hand probes, etc.) The electrical resistivity survey will consist of horizontal profiling using one or two electrode spacing configurations, with profile lines running parallel and perpendicular to the lakefront. The electrode spacing distances will be selected based upon field measurements. Note however, we anticipate the spacing distances to be on the order of 10 to 15 feet (or less) due to the shallow groundwater depth near the lake. Similarly, the GPR survey lines will be performed parallel and perpendicular to the lakefront along established gridlines.

We will evaluate the effectiveness of these geophysical techniques and make modifications accordingly. The findings of this survey will be field verified with test pits, geoprobe borings, or other similar subsurface exploration.

### **SubTask 2.2: Test Pit Explorations**

We will perform a sufficient number of test pits (assumed 6, TP-1 to TP-6) to evaluate the extent of free product at the lakefront. The test pits/trenches will be excavated using a rubber-tired backhoe on the eastern portion of the CSXT property. The test pits will be performed by a local subcontractor and will be located perpendicular and/or parallel to the lakefront. Test pit locations and size will be based upon the geophysical survey noted above, exploration results from CSXT, and similar field information. Likely locations are shown on Figure 1. Note, test pit TP-4 will be located as close as possible to the "vee" of the former interceptor trench while maintaining the integrity of monitoring wells MW-5S and MW-5D.

Observations of the test pits will be made concerning depth to groundwater, the presence or absence of free product, the geology of the Site soils, and the construction of the former interceptor trench. Two representative "smear zone" soil samples will be collected from the test pits for laboratory analyses. Excavated soil will be segregated and stockpiled (one pile of

overburden soil, one pile of "smear zone" soil) and, at the conclusion of test pitting, replaced in the excavation in the reverse order in which it was removed.

No recovery of free product from the test pits is planned. The data obtained from test pit activities will be assimilated to facilitate preparation of the Interim Response (IR) Work Plan for free product recovery.



### SubTask 2.3: Monitoring Well Installation

Approximately ten borings with monitoring wells installed will be performed adjacent to and west of Boardman Lake (MW-16S, MW-16D, MW-17S, MW-17D, MW-18S, and MW-18D), and along the adjacent bluff (MW-14S, MW-14D, MW-15S and MW-15D). The monitoring wells will be installed at two depth intervals to evaluate: free product (if present) and dissolved constituents at the groundwater table surface; and, dissolved constituents approximately 15 to 20 feet below the groundwater table surface (i.e., "shallow" (S) and "deep" (D), respectively, similar to Site monitoring wells). The approximate locations of the wells are shown on Figure 1.

To establish the vertical depth interval for the "deep" monitoring well screen interval, two Geoprobe will be initially drilled for collection of groundwater samples: at the lakefront (GP-05), and upgradient along the adjacent bluff (GP-07). The groundwater samples will be collected at 10-foot depth intervals and field-screened using portable gas chromatograph (GC) equipment. Groundwater samples will be collected using temporary well sampling devices and new Tygon tubing at the appropriate depth and transferred directly into pre-cleaned sample containers. Groundwater samples will be kept cool until field screening is performed. The vertical sampling will continue until two successive depth samples indicate no impact using the field GC. The field GC results will be confirmed by fixed laboratory analyses.

Subsequently, we anticipate the borings will be advanced to the depth of groundwater (approximately 2 to 8 feet below ground surface [bgs] adjacent to Boardman Lake and approximately 20 to 25 feet bgs on the bluff area) for the "shallow" wells. The "deep" monitoring wells will be set approximately 15 to 20 feet below the groundwater table, or as established by the vertical Geoprobe sampling. Hollow-stem augers, 4-1/4 inch inside diameter (I.D.), will be used to advance the borings to the desired sampling interval. The drilling equipment (augers, rods, split spoons) will be steam-cleaned between borings. The excess soil cuttings will be staged and covered with plastic sheeting adjacent to the borehole for subsequent disposal.

Groundwater monitoring wells will be installed within the test borings, with a groundwater sample (and/or free product sample) collected from each well. The "shallow" monitoring well will be constructed using flush-coupled, 2-inch I.D., Schedule 40, polyvinyl chloride (PVC) screen and riser pipe. The assembled screen (No. 10 slot) will be 5 feet in length, with the top of the screen positioned approximately 2 feet above the surface of the groundwater table encountered during drilling. Similar techniques will be used to install "deep" monitoring wells.



Note, predrilling and grouting of boreholes encountering free product may be conducted prior to installation of a "deep" monitoring well. Additionally, soil sampling above the groundwater table to evaluate the "smear zone" will be conducted using standard split-spoon sampling techniques. We anticipate two soil samples from the "smear zone" will be collected for analyses from test borings along the bluff.

Silica sand (medium grain size) will be used to backfill from the bottom of the boring to about 1 to 2 feet above the top of the screen. A 1-foot bentonite pellet seal will then be placed on top of the sand. Cement/bentonite grout will be used to backfill the remainder of the borehole and to provide a surface-set for the protective casing. A lockable above-ground protective casing will be used to cover the wellhead.

#### **SubTask 2.4: Groundwater/Free Product Sampling**

Groundwater sampling will include the ten new monitoring wells, six additional geoprobe locations, and the following off-Site wells (if accessible and well integrity confirmed by MDOT and/or CSXT): DOT07, DOT08, DOT09, DOT10, MW05S and MW05D. Prior to sampling, the monitoring wells will be purged by first removing at least three times the volume of groundwater measured in the well. Measurements of pH, specific conductance, and temperature will be made at regular intervals during well purging. Once these parameters become consistent (i.e., pH, conductance within  $\pm 10$  percent between two consecutive readings), or three well volumes have been removed, well purging will be considered complete. Purged water will be containerized and properly disposed.

Groundwater samples will also be obtained using a geoprobe. Geoprobe sampling locations (GP-01 to GP-06) are shown on Figure 1. Purging prior to sampling will be based upon the response from the aquifer. Purged water will also be containerized and properly disposed.

Free product samples will be collected (where encountered) from the monitoring wells using a disposable bailer. Groundwater samples will be collected using low flow sampling techniques and/or with disposable bailers, as appropriate. Groundwater samples for metals analyses will be field filtered using a 0.045 micron filter in accordance with standard U.S. EPA and MDEQ protocol. Samples will be placed into pre-cleaned glass jars with Teflon®-lined lids, preserved as necessary, and kept cool prior to transport under chain-of-custody to an analytical laboratory.

#### **SubTask 2.5: Laboratory Analyses**

The soil ("smear zone"), groundwater, and free product samples (if encountered) will be transported under chain-of-custody to the analytical laboratory for analysis. Selected soil, groundwater, and free product samples will be analyzed for: volatile organic compounds using U.S. EPA Method 8260 (i.e., MDEQ Method 8260 plus for water and Method 5035 [methanol extraction] for soil); polynuclear aromatic hydrocarbons using U.S. EPA Method 8270; and, dissolved metals using appropriate U.S. EPA Method 6000/7000 series protocol. "Fingerprint" analysis of free product will be performed using a modified gas chromatography/mass spectrometer

method and library data search. The attached Table 1 provides a summary of the anticipated sample media, analyses and frequency.

#### SubTask 2.6: Elevation Survey



A survey will be completed at the Site to measure the relative elevation at ground surface and the top of the monitoring well risers at exploration locations. The elevations will be referenced to the U.S. Geological Survey (USGS) benchmark to be established at the CSXT/MDOT sites by Earth Tech.

#### Task 3.0: Draft RI Report

Based on the results of Tasks 1.0 and 2.0, GZA will prepare a Draft RI Report summarizing the findings of the remedial investigation (RI). Analytical data will be tabulated and incorporated within the Site database and groundwater model. Data comparisons will be made to generic criteria adjusted for a mixing zone (and more Site-specific risk assessment data if necessary). The data will be used to assess the groundwater impact, including free product, between the Site and Boardman Lake. The Draft RI Report will include a description of the field methods used in the subsurface explorations, presentation of the findings of the modeling effort, and the analytical data. The RI Report will also include an attachment which can be submitted separately to the MDEQ for a mixing-zone determination.

#### PROJECT SCHEDULE

The project schedule is attached. The schedule begins with signature of the AOC.

We appreciate the opportunity to be of continued service to CD/T and trust this Work Plan satisfies your current needs. Please contact the undersigned should you have any questions.

Very truly yours,

GZA GEOENVIRONMENTAL, INC.

A handwritten signature in cursive script, reading 'Walter Kosinski'.

Walter Kosinski, P.E.  
Principal and District Manager

G:\PROPOSAL\97000\201-250\97206-WP.doc

Attachments: Figure No. 1 - Site Plan/Monitoring Well Locations  
Table 1 - Summary of Anticipated Laboratory Analyses  
Table 2 - Project Schedule

cc: Mr. John Vanderhoof, MDEQ - Cadillac  
Mr. Jamieson Schiff, Textron  
Mr. Mike Robinson, Warner Norcross & Judd LLP  
Mr. Larry Elmleaf, MDEQ - Lansing

TABLE 1

## SUMMARY OF ANTICIPATED LABORATORY ANALYSES

EXPLORATION LOCATION	MEDIA TYPE	VOCs <sup>1</sup>	PNAs <sup>2</sup>	Metals <sup>3</sup>	Fingerprint <sup>4</sup>
Test Pits (TP-1 to TP-6)	Soil ("Smear Zone")	2	2	0	--
	Groundwater	1	1	1	--
	Product (if present)	--	--	--	1
Monitoring Wells (New) (MW-14S to MW-18S) (MW-14D to MW-18D)	Soil ("Smear Zone")	2	2	0	--
	Groundwater	10	(lakefront and bluff) 10	10	--
	Product (if present)	--	--	--	2
Monitoring Wells (Existing) (DOT-7 to DOT-10, MW-05S and MW-05D)	Groundwater	6	(MW-05S and MW-05D) 2	--	--
	Product (if present)	--	--	--	1
Geoprobe (GP-01 to GP-07)	Groundwater	7	(lakefront) 4	(lakefront) 4	--
QA/QC Samples	Groundwater	4	1	1	1

1. VOCs refers to volatile organic compounds identified by U.S. EPA Method 8260 including MDEQ listing of parameters (eg. 8260 plus) (see attached listing).
2. PNAs refers to polynuclear aromatic hydrocarbons identified by U.S. EPA Method 8270 or 8310 (see attached listing).
3. Metals refers to arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, silver, and zinc detectable by the appropriate U.S. EPA 6000/7000 series method.
4. Fingerprint refers to analysis of organic fraction by appropriate gas chromatography/mass spectrometry (GC/MS) techniques.

TABLE 1 (CONTINUED)

## VOC SUMMARY LIST

COMPOUND	CAS NUMBER
Acetone	67-64-1
Acrylonitrile	107-13-1
Benzene	71-43-2
Bromobenzene	108-86-1
Bromochloromethane	74-97-5
Bromodichloromethane	75-27-4
Bromoform	75-25-2
Bromomethane	74-83-9
2-Butanone	78-93-3
Carbon Disulfide	75-15-0
Carbon Tetrachloride	56-23-5
Chlorobenzene	108-90-7
Chloroethane	75-00-3
Chloroform	67-66-3
Chloromethane	74-87-3
1,2-Dibromo-3-chloropropane	96-12-8
Dibromochloromethane	124-48-1
Dibromomethane	74-95-3
1,2-Dichlorobenzene	95-50-1
1,3-Dichlorobenzene	541-73-1
1,4-Dichlorobenzene	106-46-7
Dichlorodifluoromethane	75-71-8
1,1-Dichloroethane	75-34-3
1,2-Dichloroethane	107-06-2
1,1-Dichloroethylene	75-35-4
cis-1,2-Dichloroethylene	156-59-2
trans-1,2-Dichloroethylene	156-60-5
1,2-Dichloropropane	78-87-5
cis-1,3-Dichloropropylene	10061-01-5
trans-1,3-Dichloropropylene	10061-02-6
Diethyl ether	60-29-7
Ethylbenzene	100-41-4
Ethylene Dibromide	106-93-4
Hexachloroethane	67-72-1
2-Hexanone	591-78-6
Isopropylbenzene	98-82-8
Methyl Iodide	74-88-4
2-Methylnaphthalene	91-57-6
4-Methyl-2-Pentanone	108-10-1
Methyl-tert-butyl-ether	1634-04-4
Methylene Chloride	75-09-2
Naphthalene	91-20-3
n-Propylbenzene	103-65-1
Styrene	100-42-5
1,1,1,2-Tetrachloroethane	630-20-6



TABLE 1 (CONTINUED)

## VOC SUMMARY LIST

COMPOUND	CAS NUMBER
1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene	127-18-4
Toluene	108-88-3
trans-1,4-Dichloro-2 butene	110-57-6
1,2,4-Trichlorobenzene	120-82-1
1,1,1-Trichloroethane	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,2,3-Trichloropropane	96-18-4
1,2,4-Trimethylbenzene	95-63-6
1,3,5-Trimethylbenzene	108-67-8
Vinyl Acetate	108-05-4
Vinyl Chloride	75-01-4
Xylenes	1330-20-7

TABLE 1 (CONTINUED)

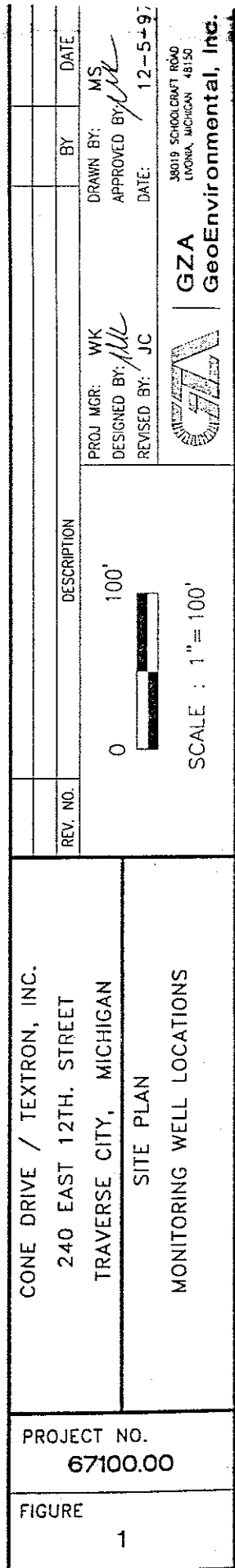
## PNA SUMMARY LIST

COMPOUND	CAS NUMBER
Acenaphthene	83-32-9
Acenaphthylene	208-96-8
Anthracene	120-12-7
Benzo(a)anthracene	56-55-3
Benzo(a)pyrene	50-32-8
Benzo(b)fluoranthene	205-99-2
Benzo(g,h,i)perylene	191-24-2
Benzo(k)fluoranthene	207-08-9
Chrysene	218-01-9
Dibenzo(a,h)anthracene	53-70-3
Fluoranthene	206-44-0
Fluorene	86-73-7
Indeno(1,2,3-C,D)pyrene	193-39-5
2-Methylnaphthalene	91-57-6
Naphthalene	91-20-3
Phenanthrene	85-01-8
Pyrene	129-00-0

**TABLE 2**  
**PROJECT SCHEDULE**

TASK/MILESTONE	DAYS AFTER AOC SIGNED	APPROXIMATE DATE
Signed AOC	0	February 27, 1998
Final RI Work Plan	0	February 27, 1998
Draft QAPP to MDEQ	45	April 13, 1998
H & S Plan to MDEQ	45	April 13, 1998
MDEQ Comments to QAPP	75	May 13, 1998
Final QAPP to MDEQ	105	June 12, 1998
Field Activities	115 - 205	June 22, 1998 - September 18, 1998
Test Pits	115 - 130	June 22, 1998 - July 7, 1998
Draft IR Work Plan to MDEQ*	175	August 21, 1998
MDEQ Approval of IR Work Plan*	205	September 18, 1998
IR Activities*	212	September 25, 1998
Draft RI Report to MDEQ	235	October 20, 1998
MDEQ Approval of Draft RI Report	265	November 19, 1998
Final RI Report	295	December 18, 1998

\*Tasks not included in this Work Plan.



ATTACHMENT 3  
SUMMARY REPORT

Site Name      CONE DRIVE TEXTRON  
County          Grand Traverse  
Site ID Number   280057

Total for Employee Salaries and Wages	\$23,137.70
Period Covered: 7/1/91 - 7/26/97	
Indirect Dollars	<u>\$3,711.29</u>
Sub-Total	<u>\$26,848.99</u>
 Total for Employee Travel Expenses	
Period Covered: 7/1/91 - 5/17/97	\$582.12
 Total for Miscellaneous Expenses	
Period Covered: 7/1/91 - 11/30/96	\$4,270.32
 Attorney General Expenses	
Period Covered: 7/1/91 - 8/30/95	\$5,360.00
 Total Combined Expenses for Site	<u>\$37,061.43</u>

Run Date 8/27/97