

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

ITT Automotive, Inc.

**ITT Automotive Avon Plant
Rochester, Oakland County, Michigan**

MDEQ Reference No.: AOC-ERD-98-004

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

**ADMINISTRATIVE ORDER BY CONSENT
FOR RESPONSE ACTIVITY**

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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 ITT Automotive, Inc. ("ITTA") pursuant to the authority vested in the MDEQ by Sections 20119 and 20134(1) of Part 201 and Section 3112(2) of Part 31 of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended. The Order concerns the performance by ITTA of certain response activities at the Avon Plant formerly owned by ITTA, located in the City of Rochester, Oakland County, Michigan.

II. ADMISSION/DENIAL OF LIABILITY

The execution of this Order by ITTA 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 or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon ITTA and its successors and assigns. No change in ownership or corporate or legal status shall in any way alter ITTA's responsibilities under this Order. ITTA shall provide a copy of this Order to the current owner of the Property within five (5) business days of execution.

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

3.3 Notwithstanding the terms of any such contract, ITTA 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

In entering into this Order, it is the mutual intent of the Parties to: (a) determine the full nature, extent and impact of contamination at the facility and develop and implement an MDEQ approved RAP, (b) bring the Facility to closure under Part 201, (c) reimburse the State for past and future response costs as described in Section XXI (Reimbursement of Past Costs and Civil Penalties), (d) resolve ITTA's liability for past costs described in Section XII (Reimbursement of Past Costs and Civil Penalties) through the payment of fines and penalties, and, (e) to minimize litigation.

V. DEFINITIONS

5.1 "Approvable" means the referenced document or report is consistent with this Order and Part 201 of NREPA and provides the information necessary or required for the MDEQ to make its decision with respect to the document or report.

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

5.3 "Facility" means the Property identified in Attachment B and any area, place, or property where a Hazardous Substance which migrated from the Property in excess of the concentrations which satisfy the requirements of Section 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" means costs that are related to the State's oversight, enforcement, monitoring and documentation of compliance with this Order. Oversight Costs may include lawfully incurred 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. Oversight Costs do not include the costs incurred by the State in response to any requests by Frank Rewold and Son, Inc. ("Rewold"), the current owner of the Property, or any non-Party, for meetings or information relating to matters other than response activities at the Facility. Oversight Costs include costs incurred by the State for communications with Rewold relating to response activities at the Facility, provided that the State notifies ITTA in advance of such communications, when possible, to allow ITTA to participate in conference calls and/or meetings.

5.6 "Parties" refers to ITTA and the State.

5.7 "Past Response Activity Costs" shall mean those costs incurred and paid by the State prior to the dates set forth in the attached Final Summary Report (Attachment C).

5.8 "Property" means the property located at 301 E. Third Street, Rochester, Michigan, and described in the legal description provided in Attachment B.

5.9 The term "State" and the "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 "ITTA" shall mean ITT Automotive, Inc. and its successors and assigns.

5.11 "Rewold" shall mean Frank Rewold and Son, Inc. and its successors and assigns.

5.12 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 201 of NREPA and the Part 201 Rules.

VI. FINDINGS OF FACT/DETERMINATIONS

6.1 The MDEQ makes the following findings of fact and determinations:

6.2 The ITT Automotive Avon Plant is located in downtown Rochester, Oakland County, at 301 E. Third Street. Paint Creek, a tributary of the Clinton River, crosses the 7.6 acre Property. The Property has been vacant since operations at the ITT Automotive Avon Plant were discontinued in 1994. The ITT Automotive Avon Plant is a "Facility" as that term is defined in Section 20101(1)(o) of NREPA.

6.3 On November 21, 1997, ITTA sold the Avon Plant to Rewold.

6.4 Based on information provided by ITTA, the Facility was first operated as a knitting mill from the late 1800's until 1939. McAleer Manufacturing Company occupied the property in approximately 1942 and manufactured phosphorous and

magnesium flares for the military and later manufactured tubing and automotive push rods. In approximately 1950, McAleer was purchased by Higbie Manufacturing Company which continued manufacturing tubing and automotive push rods. Higbie Manufacturing Company became ITT Higbie Manufacturing Company in approximately 1972 and continued to manufacture tubing and automotive push rods as well as conduct a variety of additional operations. These included, but were not limited to, a tin/leadterne coating operation and vapor degreasing, which utilized trichloroethylene ("TCE").

6.5 "Hazardous substance(s)" as that term is defined in Section 20101(1)(t) of NREPA, including lead, TCE, 1,2-dichloroethene (cis and trans) ("DCE") and vinyl chloride have been identified at the Facility.

6.6 Hazardous substances in soils present at or near the surface that may migrate and be discharged, and contamination of groundwater discharging to Paint Creek constitutes a "release or threatened release" within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of NREPA.

6.7 The presence of hazardous substances at or from the Facility poses a potential exposure of hazardous substances to human health and the environment. These substances may pose an imminent and substantial endangerment to the public health, safety, or welfare or the environment within the meaning of Section 20119 of NREPA.

6.8 There has been and continues to be a direct or indirect discharge of injurious substances to the waters of the state. This is evidenced by the presence of TCE, 1,2-DCE, and vinyl chloride in the groundwater which is discharging into Paint

Creek. These hazardous substances continue to leach into the waters of the state in violation of Section 3109(1) of the NREPA.

6.9 ITTA is a "person" as that term is defined in Section 301(g) of Part 3 of NREPA.

6.10 ITTA is a person who is liable within the meaning of Sections 20119 and 20126(1) of NREPA.

(a) ITTA is the successor corporation to Higbie Manufacturing Company ("Higbie") who was a former owner and operator of the Facility. Higbie used hazardous substances known to exist at the facility. As the successor to Higbie, ITTA is liable pursuant to Section 20126(1)(b) of the NREPA.

(b) Until November 21, 1997, ITTA was the owner and operator of the Facility and had owned and operated the Facility since approximately 1972 when it became a successor to Higbie Manufacturing Company. ITTA used lead and TCE, the two hazardous substances identified at the Facility, during the time it owned and operated the facility. ITTA is responsible for an activity causing a release or threat of release pursuant to Section 20126(1)(a) of the NREPA.

6.11 By letters dated March 29, 1993, and April 9, 1996, the MDEQ notified ITTA of its status as a person liable for 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 the response activities specified in Section VII (Implementation of Response Activities) of this Administrative Order by Consent which includes the implementation of an MDEQ approved remedial

action plan at the Facility by ITTA or its consultant. On the basis of the Findings of Fact, the MDEQ and the Attorney General make the determination that ITTA 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 ITTA HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VII. IMPLEMENTATION OF RESPONSE ACTIVITIES

7.1 In accordance with this Order, ITTA shall submit work plans for the performance of a Remedial Investigation ("RI"), a Remedial Action Plan ("RAP") and any proposed Interim Remedial Action ("IRA"), which fully comply with Part 201. Each work plan shall include a detailed description of the tasks to be conducted during the response activity, including the methodology, specifications, and a schedule for implementation and completion of the response activity(ies) and submission of a final report. ITTA shall implement each work plan upon approval of each plan pursuant to the procedures provided for in this Order. As approved, each component of each work plan, and approved modifications thereto, shall be deemed incorporated into this Order and made an enforceable part.

7.2 Within ninety (90) days of the effective date of this Order, ITTA shall submit to MDEQ 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 US EPA's "Interim Guidelines and Specifications for

Preparing Quality Assurance Project Plans" QAMS-005/80, EPA-600/4-83-004; NTIS PB 83-170514; MDEQ QAPP Guidance in Operational Memorandum 13 dated February 1993; MDEQ Model Quality Assurance Project Plan dated November, 1995; and the DNR Guidance Document Verification of Soil Remediation dated April 1994, Revision 1. Laboratory sample analysis shall be in accordance with sample methodologies and detection limits outlined in MDEQ Operational Memorandum 6, Revision 4 and shall include all sampling for the air sparging/soil vapor extraction system ("AS/SVES").

All permanent monitoring wells that are installed shall be constructed in accordance with generally accepted industry standards such as standards proposed by the American Society of Testing, and Materials. Vertical delineation of the contaminant plume shall be done using either nested wells or with the use of vertical aquifer sampling techniques.

7.3 Within ninety (90) days of the effective date of this Order, ITTA shall submit to MDEQ a Health and Safety Plan ("HASP") 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 HASP is not subject to MDEQ approvals required in Section XV (Submissions and Approvals) of this Order.

7.4 Within thirty (30) days of the effective date of this order, ITTA shall submit the following existing information:

(a) ITTA shall submit a report containing all available facility information regarding analytical data, groundwater flow determinations, and investigative and remedial activities not previously submitted to MDEQ. This report shall include, but is

not limited to, all groundwater sampling results from all permanent monitor wells numbered MW 2 to 17, as identified and numbered in the Radian Report of March 28, 1997, complete boring logs and "as built" diagrams of the same wells; as well as boring logs and "as built" diagrams of all other monitoring wells present at the Facility not previously provided to MDEQ.

(b) An SVES has been operational at the Facility since June 4, 1997. ITTA shall submit all available information regarding the installation and operation of this system not previously submitted to MDEQ.

(c) An AS system has been operational at the Facility in Area 2 since December 26, 1997.

(d) ITTA shall undertake reasonable efforts to investigate and submit all existing engineering drawings which show the location of underground conduits, including underground utilities, pipes and storage tanks.

(e) ITTA shall submit a report regarding all actions pursuant to the identification and remediation of all source locations at the Facility that have not been previously identified and reported. This report shall include, but not be limited to, all relevant information concerning quantity, location, date of release interim actions taken to abate the source, current status and how each existing source is to be addressed.

7.5 Operation, maintenance, shutdown and termination of AS/SVES.

(a) Within thirty (30) days of the effective date of this Order, ITTA shall commence operation of an air sparging system.

(b) ITTA shall thereafter continuously operate the AS/SVES unless:

- (i) MDEQ provides prior written approval to terminate operation of the AS/SVES, or,
- (ii) MDEQ approves a temporary shutdown of the AS/SVES for sampling, operation or maintenance, or,
- (iii) the Parties mutually agree in writing to shut down the AS/SVES system for a stated period of time for other purposes.

In the event of an AS/SVES shutdown for any reason, ITTA or its contractor shall notify MDEQ within twenty-four (24) hours of the shutdown, unless some event that would come within the definition of Force Majeure precluded ITTA from notifying MDEQ within twenty-four (24) hours. In such cases, ITTA will notify MDEQ within twenty-four (24) hours of its first knowledge of a shutdown. This notice shall include time of shutdown, reason for shutdown, and a schedule for resumption of operation. Notice shall be to the district office at 313-953-8905 for reporting during normal business hours (8:00 am to 5:00 p.m. Monday through Friday), and at the Pollution Emergency Alerting System at 1-800-292-4706 during other hours or weekends. The original notice shall be by phone, followed within ten (10) business days by a written notice that includes all the above information.

(c) Within sixty (60) days of the effective date of this Order, ITTA shall submit for review and approval an operation and maintenance plan for the existing AS/SVES.

The operation and maintenance plan shall include a monitoring plan that shall demonstrate the effectiveness of the AS/SVES. At a minimum the monitoring plan shall include groundwater sampling in the area of the operation of the AS/SVES and downgradient of the system, and vapor influent and effluent sampling. The monitoring

plan shall include wells installed as close to the groundwater/surface water interface as practical. The wells shall be installed along the west bank of Paint Creek at a spacing of no more than fifty (50) feet (unless ITTA has submitted a written rationale to support some greater interval that is approved by MDEQ) as measured along the bank across the plume currently subject to treatment. Specific monitoring well locations must be approved by the MDEQ prior to installation. Existing and future monitor wells used to determine system compliance shall be sampled in accordance with the sampling schedule in the approved operation and maintenance plan, and analyzed for the parameters identified in Paragraph 7.7.

7.6 Commencing sixty (60) days after the effective date of this Order, ITTA shall submit monthly performance reports forty-five (45) days after end of the subject month for as long as the AS/SVES is required to be operational by MDEQ. These reports shall contain the laboratory results of the samples collected during the subject month; system test data collected; and any excursions from the approved operation and maintenance plan under Paragraph 7.5(c). After six (6) consecutive months of reporting, ITTA can petition MDEQ and request a longer reporting frequency (e.g., quarterly reporting) and MDEQ's approval will not be unreasonably withheld. MDEQ will make its decision to approve or disapprove of ITTA's petition within forty-five (45) days of receipt of the petition.

7.7 Within ninety (90) days of the effective date of this Order, ITTA shall submit to the MDEQ for review and approval a work plan for implementation of an RI. The work plan shall include a description of the Facility history and characteristics. Within thirty (30) days of receiving MDEQ approval of the work plan, ITTA shall

implement the plan in accordance with the approved time schedule. The work plan shall describe at a minimum the following items:

(a) The RI work plan shall include, for the purposes of characterizing contaminant impact on Paint Creek and collection of additional groundwater samples along the western edge of Paint Creek north of the northernmost groundwater sample showing contaminant impact and south of MW 14 or the southernmost groundwater sample showing contaminant impact. ITTA shall define the extent of contamination, above applicable Part 201 criteria, in groundwater both vertically and horizontally to the north of the northern most groundwater sample showing contaminant impact and south of the southernmost groundwater sample showing contaminant impact. Groundwater sampling parameters shall include:

Tetrachloroethene (PERC or PCE)

Trichloroethene (TCE)

Tetrachlorethane (PCA)

1, 1, 1 -Trichloroethane (1, 1, 1 -TCA)

1,1-Dichloroethane (1,1-DCA)

1,1-Dichloroethene (1,1-DCE)

cis-1,2-Dichloroethene (cis-1,2-DCE)

trans-1,2-Dichlorethene (trans-1,2-DCE)

Chloroethane (CA)

Vinyl chloride (VC)

(b) The work plan shall include measures to determine the nature and extent of any contamination that may have migrated off site. This shall include additional

investigation beyond the south property boundary of the ITTA property to determine the extent of the plume that exceeds generic residential exposure criteria.

(c) All permanent monitoring wells identified in the approved RI work plan shall have been sampled two (2) times with an interval of not less than ninety (90) days and not more than one hundred twenty (120) days between sampling events. Static water level readings of all wells shall be taken prior to sampling.

(d) Within thirty (30) days of MDEQ approval of the RI work plan required in Paragraph 7.7, ITTA shall initiate the work plan according to the schedule in the approved plan. Once installed, the wells shall be sampled according to appropriate sampling protocol identified in the RI work plan and QAPP required in Paragraph 7.2, and the results submitted within one hundred fifty (150) days of MDEQ approval of the work plan. If additional work is necessary to complete the delineation, ITTA shall submit a work plan addendum and rationale for the additional work to MDEQ for approval, and the work shall be completed according to the approved schedule in this work plan addendum for the additional work.

(e) A Final RI Report shall be submitted in accordance with the schedule provided in the approved RI work plan (or in accordance with the schedule in any later submitted approved plan for additional work) submitted pursuant to Paragraph 7.7.

7.8 If appropriate, within thirty (30) days of approval of the Final RI Report submitted pursuant to Paragraph 7.7(e), ITTA shall submit for approval a mixing zone determination request to MDEQ in accordance with MDEQ procedures.

7.9 Within ninety (90) days of receiving MDEQ approval of the Final RI report, or within ninety (90) days of receiving a response from MDEQ to ITTA's request for a

mixing zone determination, whichever is later, ITTA shall submit a Remedial Action Plan ("RAP"). Within thirty (30) days of receiving MDEQ approval of the RAP, ITTA shall implement the plan in accordance with the approved time schedule. ITTA acknowledges that if a RAP is submitted pursuant to Sections 20120a(1)(b) through 20120a(2) of NREPA, then additional administrative requirements as described in Sections 20120b(2),(3) and (4) of NREPA may apply. All the required legal, technical and administrative components, which in combination constitute an MDEQ-approved RAP, shall become attachments to this Order and become an enforceable part of this Order.

The RAP shall comply with the requirements of Part 201 of NREPA and include, but not be limited to:

(a) A description of the existing AS/SVES that has been in operation since June 4, 1997.

(b) A proposal for an alternative treatment and/or containment system or existing AS/SVES expansion, if necessary, to prevent groundwater impact to Paint Creek above Water Quality Based Effluent Limits ("WQBEL").

(c) An approvable Operation and Maintenance ("O&M") plan for the alternate groundwater treatment and/or contaminant system or for the AS/SVES proposal in subparagraph (b) and a plan for modification to the O&M plan to account for any expansion of the existing AS/SVES, if appropriate.

(d) If necessary, a proposal for an alternate treatment system(s) or containment system to prevent groundwater impact off the Property above applicable

Part 201 standards if reliable resource use restrictions cannot be implemented or if surface waters of the State are impacted above applicable Part 201 criteria.

(e) An approvable monitoring plan that shall, when implemented, demonstrate compliance with WQBEL at Paint Creek as determined by MDEQ's mixing zone determination, if applicable, including both the east and west sides of Paint Creek. The monitoring plan shall include wells installed as close to the groundwater/surface water interface as practical. The wells shall be installed along the west bank of Paint Creek at a spacing of no more than fifty (50) feet (unless ITTA has submitted a written rationale to support some greater interval that is approved by MDEQ) as measured along the bank across the width of the plume. Sampling shall be in accordance with the schedule in the monitoring plan. After one (1) year of operation ITTA may petition MDEQ to reduce the frequency of monitoring for WQBEL compliance.

All permanent monitoring wells that are installed shall be constructed in accordance with generally accepted industry standards such as standards proposed by the American Society of Testing and Materials. Sampling and analysis shall be done in accordance with the approved QAPP identified in Paragraph 7.2.

(f) An approvable monitoring plan that will, when implemented, demonstrate the effectiveness of the remedial action to remove source area contamination and if applicable, demonstrate remedial effectiveness of the remedial action for groundwater contamination beyond the Property boundary. The monitoring plan, when implemented, shall be capable of verifying that the remedial action has achieved the target clean up levels consistent with the proposed closure category for each of the respective areas of the facility.

(g) If the RAP includes any portion of the existing structures as part of its remedial actions, then the RAP shall identify needed action, if any. Sampling and analysis shall be done in accordance with the approved QAPP identified in Paragraph 7.2.

(h) An approvable plan to properly abandon all monitor wells which were installed as part of the remedial investigation and interim response actions at or related to the Facility which will not be utilized for long term monitoring at the Facility. The plan shall include a schedule for completion. Proper well abandonment procedures described in the Michigan Well Construction Code, 1994 AACCS R 325.1601 et seq., shall be utilized by ITTA in removing and plugging all wells.

7.10 ITTA shall use its best efforts to obtain the written approval of Rewold and to file within twenty-one (21) days of the approval of the RAP with the Oakland County Register of Deeds the appropriate deed restriction in the form included herewith as Attachment D in the RAP. If after using its best efforts, ITTA is unable to secure the approval of Rewold within twenty-one (21) days after the approval of the RAP, ITTA shall promptly notify the MDEQ. A true copy of the recorded restrictive covenant shall be provided to the MDEQ within ten (10) days of receiving a copy from the Register of Deeds. If institutional controls are included in the approved RAP, then ITTA shall take all steps within its control to assure that institutional controls are implemented. A true copy of documentation that such institutional controls have been implemented shall be provided to MDEQ within ten (10) days of implementation.

7.11 Within thirty (30) days of the approval of the RAP, ITTA shall notify the zoning authority of the local unit of government that includes the Facility of the land use restrictions.

7.12 Modification of RI, RAP or O&M Plan.

(a) In the event that the MDEQ determines that modifications to the work specified in the RI, RAP or O&M Plan are 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(s) be incorporated in the RI, RAP or O&M Plan. 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, RAP or O&M Plan.

(b) For the purposes of this Section, the scope of the remedial approach outlined in the approved RI, RAP and O&M Plan is:

- (i) Define the nature and extent of the contamination at the ITTA Facility.
- (ii) To capture and treat the VOC groundwater plume that is discharging to the Paint Creek above applicable Part 201 standards.
- (iii) To achieve a land-use based closure pursuant to Part 201.
- (iv) To insure that no human or environmental receptors are impacted above applicable Part 201 exposure criteria on or off the ITTA property.

(c) If ITTA objects to any modification determined by the MDEQ to be necessary pursuant to this Section, it may seek dispute resolution pursuant to Section XX (Dispute Resolution). The RI, RAP and O&M Plan shall be modified in accordance with the final resolution of the dispute.

(d) ITTA shall implement any work required by any modification incorporated in the RI, RAP and O&M Plan in accordance with this Section.

(e) 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. FINANCIAL ASSURANCE MECHANISM

8.1 ITTA shall provide a financial assurance mechanism ("FAM") in the form of a financial test/corporate guarantee to assure ITTA's ability to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action but only for the period of time until MDEQ approves of ITTA's Certificate of Completion according to the procedures set forth in Section XXVIII (Certification).

8.2 The Parties have agreed that ITTA shall submit, together with the RAP required in Paragraph 7.9, the documentation necessary to meet the MDEQ's requirements for a financial test using the criteria set forth in Attachment A.

8.3 Within ninety (90) days of the end of ITTA's 1999 fiscal year and of the end of each succeeding fiscal year, ITTA shall submit to the MDEQ the necessary forms and supporting documents to demonstrate to the satisfaction of the MDEQ that ITTA can continue to satisfy the requirements for the financial test as defined in Attachment A, or, if ITTA can no longer pass the financial test, ITTA must submit a proposal for an

alternate FAM to satisfy its financial obligations with respect to this Order. Any alternate FAM established pursuant to this Order shall be secured in an amount that reflects the estimated costs for implementation of the operation and maintenance ("O&M") plan as set forth in the RAP and for oversight, monitoring, and other costs necessary to assure the effectiveness and integrity of the remedial action until the MDEQ approves ITTA's Certificate of Completion as referenced in Paragraph 8.1. The alternate FAM shall be written and executed in accordance with the forms and procedures prescribed by the MDEQ and shall be in place within thirty (30) days of receipt of approval by the MDEQ. Submittals provided to MDEQ pursuant to this paragraph shall be reviewed and approved or disapproved in accordance with the procedure set forth in paragraphs 15.1-15.3 (Submissions and Approvals Section) of this Order. If it is determined that an alternate FAM must be established, final approval of the alternate FAM must be obtained from the MDEQ ERD Division Chief.

8.4 In the event that an alternate FAM must be secured, the Parties shall modify this Section of this Order as set forth in Section XVIII (Modifications). Modification of this Section shall include, but is not limited to, the type of FAM and amount of funds to be secured by the alternate FAM and any time schedules needed to implement the FAM.

8.5 Within ninety (90) days after each succeeding five (5) year anniversary date of the end of ITTA's fiscal year, in addition to submitting the information required in paragraph 8.3, ITTA also shall submit to the MDEQ the following: (a) an updated O&M plan; (b) if necessary, a plan for other additional response activities needed to assure the effectiveness and integrity of the remedial action as set forth in the RAP; and (c) an

updated cost estimate for implementing the O&M Plan, and any other necessary response activities, and for oversight, monitoring and other costs, including documentation of the actual costs for those activities for the previous five (5) year period. The submittal shall include a certification that the data is true and correct and be signed by an officer representing ITTA. Submittals provided to the MDEQ pursuant to this paragraph shall be reviewed and approved and/or disapproved in accordance with the procedure set forth in paragraphs 15.1-15.3 of this Order.

8.6 The MDEQ may, based on a reasonable belief that ITTA might no longer be able to pass the financial test specified in Attachment A, require reports of financial condition at any time from ITTA in addition to the information specified in Attachment A and paragraph 8.3. If the MDEQ finds, on the basis of such reports or other information, that ITTA no longer meets the requirements for the financial test, ITTA shall provide an alternate financial assurance mechanism as specified in paragraph 8.3 within thirty (30) days after notification of such finding.

8.7 If, at any time, ITTA does not comply with the requirements of section 20120b(3)(e) of the NREPA, the MDEQ's approval of the FAM and the RAP becomes void from the time of the violation, unless the violation is corrected to the satisfaction of the MDEQ. ITTA may be subject to stipulated penalties and/or other remedies available to the MDEQ as provided for in this Order for the violation.

8.8 In the event that ITTA fails at any time to adequately implement the O&M Plan, other response activities provided for in a plan approved by the MDEQ, or oversight and monitoring of the remedial action, the MDEQ, at its discretion, may choose to implement those response activities that ITTA has failed to perform or to seek

other available remedies as specified by this Order. ITTA shall reimburse the State its costs for implementing those response activities within sixty (60) days of receiving a written detailed summary of costs incurred by the State.

IX. SAMPLING AND ANALYSIS

9.1 All sampling and analysis conducted to implement this Order shall follow the methodologies prescribed by the Part 201 Rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits and analytical methods.

9.2 ITTA, 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, ITTA, 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, ITTA may forego the ten (10)-day notification period.

9.3 ITTA shall provide the MDEQ with the results of all environmental sampling, treatment system sampling, underground storage tank ("UST") system tightness tests, 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 XVI (Progress Reports).

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

X. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

10.1 Each Party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Mr. Ben Mathews, Environmental Response Division, Southeast Michigan District Office. ITTA's Project Coordinator is Mr. James Kolanek. 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 XIV (Record Retention/Access to Information) and Financial/Escrow matters pursuant to Section VIII (Financial Assurance Mechanism):

Ms. Patricia McKay, Chief
Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: (517) 335-3398
FAX: (517) 373-2637

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

B. For all payments pertaining to this Order:

Cashier's Office
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, MI 48909

(Via courier)
Cashier's Office
Michigan Department of Environmental Quality
Knapp's Office Centre, Suite 457
300 South Washington Square
Lansing, MI 48933

To ensure proper credit, all payments made pursuant to this order must reference ITT Automotive, Inc., the MDEQ Reference No. AOC-ERD-98-004, and the ERD Settlement ID No. ERD3002.

C. For all other matters pertaining to this Order:

Mr. Ben Mathews, Project Coordinator
Environmental Response Division
Southeast Michigan District
Michigan Department of Environmental Quality
38980 Seven Mile Road
Livonia, Michigan 48152
Telephone No: (313) 953-1447
FAX: (313) 953-1544

As to ITTA:

Mr. James Kolanek
ITT Automotive, Inc.
3000 University Drive
Auburn Hills, MI 48326
Telephone No: (248) 340-3723
FAX: (248) 340-3053

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

10.3 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.

XI. ACCESS

11.1 Upon reasonable notice to ITTA from the effective date of this Order, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Order, to the extent access to the Facility is controlled by, or available to ITTA, 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 non-privileged records, operating logs, contracts or other documents; and

(h) Interviewing employees, contractors, agents, or representatives of ITTA.

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

11.3 Any lease, purchase, contract or other agreement entered into by ITTA, 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 XIV (Record Retention/Access to Information).

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

XII. CREATION OF DANGER

Upon obtaining information concerning the occurrence of any event during, 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, ITTA 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 ITTA 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, ITTA 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 ITTA notifies the MDEQ under this Subsection, 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 ITTA 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 ITTA 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, ITTA 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 21.4.

XIII. 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 or relevant and appropriate state and federal laws and regulations, including without limitation, Parts 31 and 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, ITTA must designate, in a report to the MDEQ, any facilities that ITTA proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XIV. RECORD RETENTION/ACCESS TO INFORMATION

14.1 ITTA shall preserve and retain, during the pendency of this Order and for a period of five (5) years after its termination:

(a) 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 that are maintained or generated pursuant to any requirement of this Order, and

(b) any other records that are maintained or generated pursuant to any requirement of this Order, whether such records are maintained or generated by ITTA or by ITTA's representatives, consultants or contractors. After the five (5)-year period of document retention, ITTA and its successors and assigns shall obtain the MDEQ's

written permission prior to the destruction of such documents and, upon request, ITTA and/or its successors and assigns shall relinquish custody of all documents to the MDEQ. ITTA's request shall be accompanied by a copy of this Order and sent to the address listed in Section X (Project Coordinators and Communications/Notices) or at such other address as may subsequently be designated in writing by the MDEQ.

14.2 ITTA shall, upon request, provide to the MDEQ all documents and information within its possession, or within the possession or control of its employees, contractors, agents or representatives relating to the 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 routine, correspondence or other documents or information related to the response activities, to the extent that any such documents are not protected by attorney-client privilege. ITTA shall also, upon request, make available to the MDEQ, upon reasonable notice, ITTA's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the response activities.

14.3 ITTA may designate, in accordance with Sections 20117(10) and (11) of NREPA information ITTA 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 ITTA. Information described in subsections 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by ITTA. Information or data generated under this Order shall not be subject to Part 148 of NREPA, MCL 324.14801 et. seq.

XV. SUBMISSIONS AND APPROVALS

15.1 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 report submitted to the MDEQ for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the Michigan Department of Environmental Quality ("MDEQ"). This document was prepared pursuant to a governmental Administrative Order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

15.2 Upon receipt of any Submission other than the 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 ITTA of deficiencies; or (c) approve the Submission with modifications. Upon receipt of a notice of approval or modification from the MDEQ, ITTA shall proceed to take the action required by the Submission as approved or as modified, unless ITTA has invoked the dispute resolution procedures under Section 20.1 below with regard to any modification(s), in which case ITTA shall take action in accordance with the final outcome as determined by the dispute resolution procedures, and shall submit a new cover page and the modified pages of the plan marked "Final."

15.3 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, ITTA shall, within thirty (30) days thereafter, correct the

deficiencies and resubmit the Submission for approval. Notwithstanding a notice of disapproval, ITTA 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 ITTA and ITTA shall be deemed to be in violation of this Order.

15.4 Upon receipt of any RAP or request for approval of a RAP, within six (6) months the Environmental Response Division Chief will in writing: (a) approve the RAP, or (b) deny approval of the RAP, and provide ITTA the reasons necessary to obtain approval. The MDEQ may not add additional items to this statement after it has been issued. Upon receipt of a notice of approval from the MDEQ, ITTA shall proceed to take any action required by the RAP as approved, and shall submit a new cover page marked "Final".

15.5 Within thirty (30) days of receipt of a denial of approval of a RAP, ITTA shall correct the deficiencies identified in the written reasons for denial, and resubmit the RAP for approval. The time frame for resubmission may be extended by the MDEQ, upon request by ITTA. If, upon resubmission, the RAP is not approved, the MDEQ shall so advise ITTA and will consider ITTA to have failed to complete the submittal in a timely manner or failed to have provided a RAP of acceptable quality.

15.6 Failure of the MDEQ to act within the specified time period set forth in paragraph 15.4 shall result in the request described in paragraph 15.4 being considered approved. The time frame for decision may be extended by the mutual consent of the Parties.

15.7 Any Submission and attachments to Submissions required by this Order are, upon approval by the MDEQ, incorporated into this Order and made an enforceable part thereof. Any delay or noncompliance with such Submissions or attachments of this Order and shall subject ITTA to penalties pursuant to Section XXII (Stipulated Penalties), except as otherwise excused or excepted under provisions within this Order.

15.8 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.

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

XVI. PROGRESS REPORTS

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

XVII. INDEMNIFICATION AND INSURANCE

17.1 ITTA shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of ITTA, 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 ITTA in carrying out actions pursuant to this Order. Neither ITTA nor any contractor shall be considered an agent of the State.

17.2 ITTA waives any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for damages, reimbursement or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement or arrangement between ITTA and any person for performance of response activities at the Facility, including claims on account of construction delays.

17.3 ITTA shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, agreement or arrangement between ITTA and any person for performance of response activities at the Facility, including claims on account of construction delays.

17.4 Prior to commencing any response activities pursuant to this Order, ITTA shall secure, and maintain for the duration of this Order, comprehensive general liability insurance with limits of one million dollars (\$1,000,000), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If ITTA 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, ITTA 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 pursuant to this Order, ITTA 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, ITTA 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 ITTA in furtherance of this Order.

XVIII. MODIFICATIONS

This Order may only be modified according to the terms of this Section. Any Submission or attachment to Submissions required by this Order, excluding the RAP, may be modified by written agreement between ITTA's designated Project Coordinator or other authorized representative and the MDEQ's Project Coordinator. The RAP may only be modified by written agreement between the ITTA's Project Coordinator and the MDEQ ERD Division Chief or his or her representative.

XIX. DELAYS IN PERFORMANCE

19.1 ITTA 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 ITTA's obligations under this Order in accordance with this Section.

19.2. For the purpose of this Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of and without the fault of ITTA, such as: an Act of God, untimely review of permit applications or Submissions by the MDEQ or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by ITTA'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 ITTA's actions or omissions.

19.3 ITTA 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) business 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 ITTA to avoid, minimize or overcome the delay; and the timetable by which those measures shall be implemented. ITTA shall adopt all reasonable measures to avoid or minimize any such delay. Within

thirty (30) days of receipt of the written notice from ITTA, the MDEQ will notify ITTA whether the MDEQ agrees that the delay was beyond the control of ITTA.

19.4 Failure of ITTA to comply with the notice requirements of subparagraph 19.3, above, shall render this Section XIX 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 19.3.

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

19.6 An extension of one compliance date based upon a particular incident does not necessarily mean that ITTA 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.

XX. DISPUTE RESOLUTION

20.1 The dispute resolution procedures of this Section shall apply without limitation to all provisions of this Consent Order except where expressly stated otherwise. If ITTA objects to any notice of disapproval, modification, or any decision concerning a requirement of Sections VII (Implementation of Response Activities), IX (Sampling and Analysis), XV (Submissions and Approvals), and XVIII (Modifications) of this Consent Order, ITTA shall notify the MDEQ, in writing, of its objections within

fourteen (14) days of receipt of the notice. The MDEQ and ITTA shall have fourteen (14) days from the receipt by the MDEQ of the notification of objection to reach agreement, subject to reasonable extensions of time as mutually agreed between the Parties. If agreement cannot be reached on any issue within this fourteen (14) day period, as may be amended by the Parties, the MDEQ shall provide a written statement of its decision to ITTA and, in the absence of initiation of formal dispute resolution by either party under paragraph 20.2, the MDEQ position shall be binding on the Parties.

20.2 If ITTA and the MDEQ cannot informally resolve a dispute under paragraph 20.1, then ITTA may initiate formal dispute resolution by requesting review of disputed issues by the Chief of the MDEQ's Environmental Response Division. This written request must be filed with the Chief of the MDEQ's Environmental Response Division and the MDEQ Project Coordinator within fourteen (14) days of receipt by ITTA of the MDEQ statement of decision issued as part of the informal dispute resolution process as set forth in paragraph 20.1. 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. The MDEQ shall, within fourteen (14) days after receiving the written request for review by the Chief of the MDEQ's Environmental Response Division, provide a written reply to ITTA 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 Chief of the MDEQ's Environmental Response Division shall be binding on the Parties.

20.3 If ITTA seeks to challenge any decision or notice issued by the MDEQ or the Attorney General under this Consent Order, other than those addressed in paragraph 20.1, ITTA shall send a written notice of objections to both the MDEQ Project Manager and the Assistant Attorney General assigned to this matter, within fourteen

(14) days from receipt of the notice or decision by the MDEQ or the Attorney General. The MDEQ, the Attorney General, and ITTA shall have fourteen (14) days from the receipt by the MDEQ and the 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 ITTA.

20.4 In the event ITTA does not commence the activities required by the MDEQ decision under paragraph 20.2 or the Attorney General decision under paragraph 20.3 above within fourteen (14) days after receipt of that decision, the Department of Attorney General, on behalf of the MDEQ, may take such civil enforcement actions against ITTA as may be provided for by Sections 20119(4) and 20137(I) of NREPA, MCL 324.20119(4) and MCL 324.20137(I), and other statutory and/or equitable authorities, to enforce the terms of this Consent Order. In such an event, the MDEQ retains the right to perform necessary response activities and to recover the costs thereof from ITTA. Engagement of a dispute resolution among the Parties shall not be cause for the delay of any response activities not the subject of or related to the dispute resolution proceeding.

20.5 Notwithstanding this Section, ITTA 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 resolution in accordance with and in the manner provided in Sections XXI (Reimbursement of Costs) and XXII (Stipulated Penalties), as appropriate.

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

XXI. REIMBURSEMENT OF COSTS AND CIVIL PENALTIES

21.1 Within thirty (30) days of the effective date of this Order, ITTA shall pay the MDEQ \$66,355.93 to resolve all claims for Past Response Activity Costs relating to matters covered in this Order.

21.2 ITTA shall also pay response activity costs incurred by the State prior to the dates set forth in the attached Final Summary Report (Attachment C) but not paid by the State or not accounted for in the attached summary report, including staff costs in negotiating and preparing settlement documents with ITTA, performing 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 21.3.

21.3 ITTA shall reimburse the State for all Oversight Costs incurred by the State in performing the response activities of ITTA 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(I) of NREPA, the MDEQ will provide ITTA with a written demand of oversight costs lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

21.4 ITTA 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 XX (Dispute Resolution), ITTA shall reimburse the MDEQ for such costs within sixty (60) days of receipt of a written demand from the MDEQ. In any challenge by ITTA to a demand for recovery of costs by the MDEQ, ITTA 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 X (Project Coordinators and Communications/Notices). The ITT Automotive Avon Plant, the MDEQ Reference No. AOC-ERD-98-004 and the ERD Settlement ID No. ERD3002 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. Interest shall accrue on the unpaid balance at the end of the sixty (60) day period at the rate provided for in Section 20126a(3) of NREPA.

21.5 Within sixty (60) days of the effective date of this Order, ITTA shall pay the MDEQ one hundred thousand dollars (\$100,000) to resolve all claims for civil fines under Sections 3109(1) and 20114(1) (f), (g), and (h) of NREPA relating to past violations for matters covered under this Order. "Past violations" shall mean violations prior to the effective date of this Order. Payment shall be made pursuant to the provisions in paragraph 21.4.

XXII. STIPULATED PENALTIES

22.1 Except as provided by Sections XX (Dispute Resolution) and XIX (Delays in Performance), if ITTA fails or refuses to comply with any term or condition in Sections VII (Implementation of Response Activities), XII (Creation of Danger), VIII (Financial Assurance Mechanism), XVIII (Modifications) and XXII (Stipulated Penalties), ITTA shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

Period of Delay	Penalty Per Violation Per Day
1 st through 15 th day	\$ 1000
16 th through 30 th day	\$ 2000
Beyond 30 Days	\$ 3000

22.2 Except as provided in Sections XIX (Delays in Performance) and XX (Dispute Resolution), if ITTA fails or refuses to comply with any other term or condition of this Order, ITTA shall pay the MDEQ stipulated penalties of \$500 a day for each and every failure or refusal to comply.

22.3 ITTA shall notify the MDEQ, in writing, of any violation of this Order no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this Paragraph constitutes an independent violation of this Order.

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

22.5 Except as provided in Section XX (Dispute Resolution), stipulated penalties owed to the State shall be paid no later than sixty (60) days after receiving a written demand from the State. Payment shall be made in the manner provided in Section XXI (Reimbursement of Costs). Interest shall accrue on the unpaid balance at the end of the sixty (60) day period at the rate provided for in Section 20126a(3) of NREPA. Failure to pay the stipulated penalties within sixty (60) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

22.6 Liability for or payment of stipulated penalties are not the State's exclusive remedy in the event ITTA violates this Order. The State reserves the right to pursue any other remedy or remedies that it is entitled to under this Order or any applicable law for any failure or refusal of ITTA 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 ITTA'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.

XXIII. COVENANT NOT TO SUE BY THE STATE

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

- (a) Performance of the approved response activity by ITTA under the Order;
- (b) Reimbursement of past costs incurred by the State as set forth in Paragraph 21.1 of this Order;
- (c) Payment of oversight costs incurred by the State as set forth in Paragraphs 21.2 and 21.3 of this Order; and
- (d) Payment of penalties for past violations of Sections 3109(1) and 20114(1) (f), (g), and (h) of NREPA as set forth in Paragraphs 6.7 and 21.5 of this Order.

23.2 With respect to liability for Facility response activity costs incurred prior to the effective date of this Order, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraph 21.1. With respect to liability for performance of response activities required to be performed under this Order, and response activity costs incurred by the State after the effective date of this Order and reimbursement of those costs by ITTA pursuant to Section XXI (Reimbursement of Costs) 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 XXVIII. The

covenant not to sue is conditioned upon the complete and satisfactory performance by ITTA of its obligations under this Order. The covenant not to sue extends only to ITTA and ITT Industries, Inc. and does not extend to any other person.

XXIV. COVENANT NOT TO SUE BY ITTA

24.1 ITTA hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies or their authorized representatives, for any claims or cause of action against the State with respect to the Facility arising from this Order including, 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.

24.2 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, ITTA 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 XXIII (Covenant Not to Sue by the State).

XXV. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of NREPA, MCL 324.20129(5), and to the extent provided in Section XXIII (Covenant Not to Sue by the State), ITTA shall not be liable for claims for contribution for the matters set forth in Paragraph 23.1 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 the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607 and 9613, to the extent allowable by law. In any action by, ITTA for contribution from any person not a Party to this Order, ITTA's cause of action shall be subordinate to the right of the State of Michigan if the State files an action pursuant to NREPA or other applicable federal or state law, in accordance with Section 20129(9) of NREPA.

XXVI. RESERVATION OF RIGHTS BY THE STATE

26.1 The MDEQ and the Attorney General reserve the right to bring an action against ITTA under federal and state law for any matters that are not set forth in Paragraph 23.1.

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

26.3 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 ITTA, including the MDEQ's right both to disapprove of response activities performed by ITTA and to require ITTA to perform tasks in addition to those detailed in this Order.

26.4 Notwithstanding any other provision of this Order, the MDEQ retains all authority and reserves all rights to take any and all response activity(ies) authorized by law. In the event the MDEQ determines that ITTA 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.

26.5 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 ITTA'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.

26.6 The covenant not to sue set forth in Section XXIII (Covenant Not to Sue by the State), does not pertain to any matters other than those expressly specified in Paragraph 23.1. The State reserves, and this Order is without prejudice to, all rights against ITTA with respect to all other matters, including, but not limited to, the following:

(a) liability arising from a violation by ITTA 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 referred to in Section XXI (Reimbursement of Costs); (d) liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances 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 XVII (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.

26.7 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 ITTA (1) to perform further response activities relating to the Facility, or (2) to reimburse the State of Michigan for additional costs of response if, prior 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.

26.8 For purposes of Paragraph 26.6, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in 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.

26.9 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.

26.10 Notwithstanding any provision of this Order, 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.

26.11 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.

XXVII. PUBLIC REVIEW OF REPORTS

When the MDEQ determines that the RAP required under this Order is acceptable for public review, the RAP shall be made available by the MDEQ for public comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by the MDEQ. Following the public review and comment period, the MDEQ may refer the RAP back to ITTA for revision pursuant to public comments and MDEQ comments. In addition, ITTA shall provide information for the responsiveness summary as required by the MDEQ. ITTA shall prepare all portions of a draft responsiveness summary specified by the MDEQ. The MDEQ will prepare the final responsiveness summary for the RAP.

XXVIII. CERTIFICATION

28.1 When ITTA 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.

28.2 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 ITTA 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 stipulated penalties owed to the MDEQ. If the MDEQ determines that all requirements have been satisfied, the MDEQ will so notify ITTA, and upon receipt of a final report in accordance with Section XV (Submissions and Approvals), shall issue a Certificate of Completion. The financial assurance mechanism established pursuant to Section VIII (Financial Assurance Mechanism) may be dissolved after issuance of the Certificate of Completion.

XXIX. TERMINATION

Upon completion of the response activities addressing the existing contamination in connection with the Facility and issuance of a Certificate of Completion in accordance with Section XXVIII (Certification), ITTA's obligations as set forth in this Order shall automatically terminate.

XXX. 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.

XXXI. 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.

XXXII. 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:


MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Alan J. Howard, Chief
Environmental Response Division

5/5/98
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

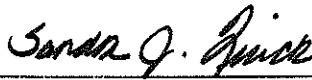


Robert P. Reichel [P31878]
Assistant Attorney General
Natural Resources Division

May 5, 1998
Date

IT IS SO AGREED BY:

ITT AUTOMOTIVE, INC.



By: Sandra J. Quick
Its: Senior Counsel

April 30, 1998
Date