



Michigan Department of Environmental Quality
Environmental Response Division

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

The Mitchell Corporation of Owosso

The Mitchell Cadillac Facility

MDEQ Reference No.: AOC-ERD-99-004

514 Wright Street, Cadillac, Michigan 49601

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"), Jennifer M. Granholm, Attorney General for the State of Michigan, and the Mitchell Corporation of Owosso ("Mitchell"), pursuant to the authority vested in the MDEQ and the Department of Attorney General by Sections 20119 and 20134(1) of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.*, MSA 13A.20101 *et seq.* This Order concerns the performance by Mitchell of certain response activities at the Mitchell Cadillac Facility, Wexford County, Michigan.

II. DENIAL OF LIABILITY

The execution of this Order by Mitchell is neither an admission or denial of liability with respect to any issue dealt with in this Order nor 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 Mitchell and the State and their successors and assigns. No change in ownership or corporate or legal status of Mitchell, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Mitchell's responsibilities under this Order. Mitchell shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility and shall provide a copy of this Order to any subsequent owners or successors prior to the transfer of any ownership rights. Mitchell shall comply with the requirements of Section 20116 of the NREPA, MCL 324.20116.

3.2 Mitchell shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants that are retained to conduct any portion of the response activities performed pursuant to this Order within five (5) business days of the effective date of such retention.

3.3 Notwithstanding the terms of any contract that Mitchell may enter with respect to the performance of response activities pursuant to this Order, Mitchell is responsible for compliance with the terms of this Order and shall ensure that 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) implement Interim Response Activities; prevent contaminated groundwater from migrating into the City of Cadillac's municipal well field; completely capture, treat, and remediate groundwater at the Facility to generic residential criteria; (b) reimburse Plaintiffs for future response costs as described in Section XIX (Reimbursement of Costs); and (c) minimize litigation.

V. DEFINITIONS

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

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

5.3 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on their behalf.

5.4 "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 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 otherwise enforce, monitor and document compliance with this Order.

5.5 "Parties" means Mitchell and the State.

5.6 "Property" means the property located at 514 Wright Street, Cadillac, Michigan 49601 and described in the legal description provided in Attachment A.

5.7 "Remediate" or "Remediation" means to perform the response activities that meet the cleanup criteria as described in paragraph 7.1, namely, that groundwater shall be captured and treated in accordance with state law until such time as there is no longer any tetrachloroethene (PCE) or any degradation compounds of PCE remaining anywhere at the Facility above the generic residential groundwater criteria defined in Part 201 of the NREPA.

5.8 The terms "State" and "State of Michigan" mean the Department of Attorney General (MDAG) and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

5.9 "Mitchell" means the Mitchell Corporation and its successors and assigns.

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

VI. FINDINGS OF FACT AND DETERMINATIONS

The State makes the following Findings of Fact and Determinations.

6.1 The Mitchell Cadillac Facility is located at 514 Wright Street in Cadillac, Michigan. Mitchell manufactured automobile seats on the Property from approximately 1969 to 1989. Mitchell has owned and operated the Property since 1969. In 1989, Mitchell ceased manufacturing operations at the site, but recently rented one of their buildings for seat cover manufacturing operations.

6.2 In January 1992, Advanced Environmental Concepts, Ltd. (AEC) conducted a Phase II Environmental Site Assessment of the facility for Mitchell, which revealed the presence of PCE in the soil and groundwater on the Mitchell Property. In 1995 QST Environmental's groundwater investigation showed that a plume of contaminated groundwater was migrating in a northerly direction toward the City of Cadillac's municipal well field. By letter dated July 21, 1995, the MDEQ notified Mitchell of Mitchell's apparent noncompliance with Section 20114(1)(g) of NREPA. This apparent noncompliance was due to Mitchell's failure to undertake response measures that would address the PCE contamination in groundwater at the Facility. Through subsequent investigations, Mitchell characterized the extent of PCE contamination in groundwater at the Facility.

6.3 Response activities are needed to Remediate groundwater contamination located at the Facility and to intercept the flow of contaminated groundwater that is moving toward the Cadillac municipal well field. Pursuant to this Order, Mitchell will design, install and operate groundwater recovery wells to prevent PCE and its degradation products at levels above general residential standards from migrating into and impacting municipal wells in the Cadillac well field.

6.4 The Mitchell Cadillac Facility is a "facility" as that term is defined in Section 20101(1)(o) of the NREPA.

6.5 "PCE", a "hazardous substance" as that term is defined in Section 20101(1)(t) of the NREPA, is present at the Facility.

6.6 The presence of PCE in soils and groundwater at the Facility constitutes a "release or threatened release" within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of the NREPA.

6.7 Remedial investigations conducted at the Facility show that PCE contaminated groundwater is migrating toward the City of Cadillac's municipal well field and will probably reach the well field as early as the spring of 1999. If allowed to flow unhindered into the well field, the contaminant plume could potentially impact municipal wells in the well field. Hence, the release or threatened release of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, or welfare, or the environment within the meaning of Section 20119 of the NREPA.

6.8 Mitchell Corporation is a corporation in good standing with the State of Michigan. Mitchell is a "person" as that term is defined in Section 301(g) of Part 3 of the NREPA.

6.9 Mitchell is an owner and was an operator of the Facility.

6.10 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 activities be taken. The response activity objectives that must be met in the performance of Interim Response Activities ("IRA") at the Facility are specified in Paragraph 7.1 of this Order.

On the basis of the Findings of Fact, the MDEQ and the Attorney General make the determination that Mitchell will properly implement and expedite effective response activities required by this Order and that this Order is in the public interest and will minimize litigation.

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

VII. IMPLEMENTATION OF RESPONSE ACTIVITIES

7.1 The objectives of the response activities under this order are to:

(a) Design and construct a groundwater capture and treatment system that will completely capture and treat all PCE and any degradation compounds of PCE above generic residential groundwater criteria found at the Facility and that will prevent all PCE and any degradation compounds of PCE above generic residential criteria from migrating into the City of Cadillac's well field.

(b) Operate and maintain the groundwater capture and treatment system until such time as the groundwater samples collected from the monitoring wells identified in the Monitoring Plan are at or below the current generic residential groundwater criteria for PCE (5 ppb) and any degradation compounds of PCE that may be found in the groundwater at the Facility for six (6) consecutive quarters as set forth in the State of Work (SOW).

This order requires Mitchell to implement interim response activities in accordance with this order and the attached SOW (attachment B) at the Facility.

7.2 Mitchell shall submit the IRA Work Plans referenced in Paragraphs 7.3-7.8. "IRA Work Plans" as used in this Order refer collectively to the following plans: a plan for the design and construction of the groundwater remediation systems to be installed at the Facility; a Quality Assurance Project Plan; a Health and Safety Plan; an Operation and Maintenance Plan and a Monitoring Plan for those remediation systems; and a plan for the removal or plugging of monitor wells at the conclusion of the response activity at the Facility. Mitchell shall incorporate into the schedules for these plans the schedule for implementation of specific plan elements. Mitchell shall implement the work plan upon approval of the plan pursuant to the

procedures provided for in this Order. Upon MDEQ approval, the component of the work plan and approved modifications thereto shall be deemed incorporated into and made an enforceable part of this Order.

7.3 Within sixty (60) days of the effective date of this Order, Mitchell shall submit to the MDEQ for review and approval a work plan for the design and construction of the groundwater systems to be installed at the Facility that will meet the response activity objectives defined in Paragraph 7.1. The work plan shall include those elements specified in the attached SOW and a detailed description of the specific tasks to be conducted during the implementation of the work plan, including the methodology and rationale for the design and construction specifications for groundwater systems and a schedule for the implementation and completion of the work plan.

7.4 Within thirty (30) days of the effective date of this Order, Mitchell shall submit to the 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 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.

7.5 Within thirty (30) days of the effective date of this Order, Mitchell shall submit to the 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 the MDEQ's approval as required by Section XIV (Submissions and Approvals) of this Order.

7.6 Within thirty (30) days of the approval of the workplan for Paragraph 7.3,

Mitchell shall submit to the MDEQ for review and approval an Operation and Maintenance (O&M) Plan and a Monitoring Plan. These Plans shall describe the activities necessary to operate, maintain, and monitor the performance of the groundwater remediation systems as defined in the SOW and the response activity objectives set forth in Paragraph 7.1. The monitoring plan shall include wells located throughout the Facility and shall designate which of these wells will be used for closure sampling. The monitoring plan shall also include performance monitoring wells which shall be located outside of the capture zone of the extraction wells. The performance monitoring wells shall be sampled on an approved schedule to insure that no PCE or degradation compounds of PCE above general residential criteria escape the capture system as set forth in the SOW. These Plans also shall include a detailed description of the specific tasks to be conducted during the implementation of these Plans, including the methodology, specifications, and rationale for the design of the O&M and Monitoring Plans and for sampling locations; a description of the nature and amount of waste materials that are expected to be generated during implementation of the work plan and the specific facilities that Mitchell proposes to use for the off-site transfer, storage, treatment or disposal of those waste materials; and a schedule for implementation.

7.7 Within thirty (30) days after Mitchell submits to the MDEQ a Progress Report documenting that all activities set forth in the O&M Plan and Monitoring Plan have been completed, Mitchell shall submit a proposed plan and implementation schedule to the MDEQ for the removal or plugging of monitor wells. This plan shall identify monitor wells at or related to the Facility that will not be utilized for long term monitoring at the Facility under this order and that will be abandoned. Upon receiving MDEQ approval, Mitchell shall properly remove or plug the monitor wells in accordance with the approved plan and the well abandonment procedures described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning Groundwater Wells, Vadose Zone Monitoring Devices, Boreholes and Other Devices for Environmental Activities). Mitchell shall report to the MDEQ the status of the plugging and abandonment of monitor wells in the Progress Reports to be submitted pursuant to Paragraph 7.9 of this Order.

7.8 Modification of the IRA Work Plans

(a) If the MDEQ determines that a modification to the work specified in a IRA Work Plan is necessary to meet and maintain the performance standards described in this order or Part 201 of the NREPA and its administrative rules, the MDEQ may require that such modification be incorporated into the IRA Work Plan. Alternatively, if the necessary modifications are extensive, the MDEQ may require Mitchell to submit a new, modified IRA Work Plan to the MDEQ for review and approval. However, such modifications may only be required pursuant to this Paragraph to the extent that those modifications are consistent with the response activity objectives set forth in Paragraph 7.1.

(b) If Mitchell objects to any modification determined by the MDEQ to be necessary pursuant to this Section, it may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The IRA Work Plans shall be modified in accordance with the final resolution of the dispute.

(c) Mitchell shall implement any work required by any modification incorporated into the IRA Work Plans in accordance with this Section.

(d) Nothing in this Section shall be construed to limit the MDEQ's authority to require performance of further response activities as otherwise provided in this Order or for MDEQ to perform the necessary response activity.

7.9 Progress Reports

Mitchell shall provide to the MDEQ Project Coordinator written monthly Progress Reports regarding response activities and other matters at the Facility related to the implementation of this Order. Upon submission of Progress Reports that report the completion of the design and construction of the Remediation systems as required by Paragraph 7.3 and the successful and effective operation of those systems as provided for in the O&M and Monitoring Plans, and upon the approval of the MDEQ Project Manager, Mitchell may commence a quarterly schedule for the submission of its written Progress Reports. These Progress Reports shall include: (a) a description of the activities that have been taken toward achieving compliance with this Order during the previous reporting period; (b) a description of data collection and other activities scheduled for the next reporting

period; (c) all results of sampling and tests and other data received by Mitchell, its employees or authorized representatives during the previous reporting period relating to the response activities performed pursuant to this Order; (d) a description of the nature and amount of waste materials that were generated and the name of the facilities that were used for the off-site transfer, storage, treatment and disposal of those waste materials; and (e) any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Order. The first quarterly report shall be submitted to the MDEQ within thirty (30) days following the effective date of this Order and thereafter in accordance with the terms of this Paragraph until the issuance of the Certification of Performance of Required Response Activities as provided in Section XXV (Certification). The Parties to this Order may request, based on the phase of work being conducted at the Facility or other relevant circumstances, a modification to the schedule for submittal of Progress Reports, provided that modification of such schedule is agreed to in writing by both Project Coordinators.

VIII. SAMPLING AND ANALYSIS

8.1 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.

8.2 Mitchell, or its consultants or subcontractors, shall provide the MDEQ five (5) business days notice prior to any groundwater sampling activity undertaken pursuant to this Order to allow the ERD Project Coordinator, or his or her authorized representative, to take split or duplicate samples and to observe the sampling procedures. In circumstances where five (5) business days notice is not possible, Mitchell, or its consultants or subcontractors 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, Mitchell may forego the 5 business day

notification period.

8.3 Mitchell shall provide the MDEQ with the results of all environmental sampling, treatment system sampling, aquifer pump tests and other data generated in the performance or monitoring of any requirement under this Order, Parts 201, 211 or 213 of the NREPA, or other relevant authorities. These results shall be included in progress reports as set forth in Paragraph 7.10.

8.4 Mitchell shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory, which is used by Mitchell 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 Dan Darnell. Mitchell's Project Coordinator is Peter Neithercut. Whenever notices are required to be given or progress reports, information on the collection and analysis of samples, or sampling data, or work plan submittals, approvals, or disapprovals or other technical submissions are required to be forwarded by one party to the other party under this Order, or other communications between the parties is needed, such communications shall be directed to the Project Coordinators at the below listed addresses. All documents required to be submitted to the MDEQ pursuant to this Order shall reference the Facility name and the 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 the 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 (including stipulated penalties) 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 Mitchell Cadillac Facility, the MDEQ Reference No. AOC-ERD- 99-004, and be remitted with a copy of the invoice.

C. For all other matters pertaining to this Order:

Dan Darnell, Project Coordinator
Environmental Response Division
Cadillac District
Michigan Department of Environmental Quality
120 West Chapin Street
Cadillac, MI 49601-2158
Telephone: 616-775-3960
Fax No.: 616-775-1511

As to Mitchell:

Peter Neithercut, P.E.
Project Coordinator
QST Environmental
7985 Mackinaw Trail, Suite 200A

Cadillac, MI 49601
Telephone: 616-775-3560
Fax No.: 616-775-3691

With copies to:

Mark E. Wilson, Esq.
Cox, Hodgman & Giarmarco, PC
Fifth Floor Columbia Center
201 West Big Beaver
Troy, MI 48084-4160
Telephone: 248-528-4463
Fax No.: 248-528-2773

Helen Malik
Mitchell Corporation of Owosso
123 Chipman Street
Owosso, Michigan 48867
Telephone: 517-725-2172
Fax No.: 517-725-9831

9.2 Mitchell'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 Mitchell, upon 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 owned, controlled by, or available to Mitchell, for the purpose of conducting any activity

authorized by this Order or to otherwise fulfill 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 under this Order;
- (d) Obtaining samples;
- (e) Assessing the need for or planning or implementing response activities as defined in the SOW at or near the Facility;
- (f) Assessing compliance with requirements for the implementation of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of a remedial action detailed in the SOW or plans;
- (g) Inspecting and copying non-privileged records, operating logs, contracts or other documents; or
- (h) Communicating with Mitchell's Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Order.

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

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

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

XI. CREATION OF DANGER

If Mitchell, during the performance of response activities conducted pursuant to this Order, becomes aware of information concerning the occurrence of any event that causes a release or threat of release of a hazardous substance from the Facility or that poses or threatens to pose an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare or the environment, Mitchell 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, the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any actions taken by Mitchell 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 an event, Mitchell 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 event and to prevent recurrence of such an event. Regardless of whether Mitchell notifies the MDEQ under this Section, if response activities undertaken under this Order cause a release or threat of release or pose or threaten to pose an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare or the environment, the MDEQ may: (a) require Mitchell 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 Mitchell to undertake any such activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; 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, Mitchell 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 19.3.

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 or relevant and appropriate state and federal laws and regulations, including Part 201 of the 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.

XIII. RECORD RETENTION/ACCESS TO INFORMATION

13.1 Mitchell 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 the release or threatened release of hazardous substances and the storage, generation, disposal, treatment or handling of hazardous substances at the Facility, and any records that are maintained or generated pursuant to any requirement of this Order. After the ten (10)-year period of document retention, Mitchell may seek the MDEQ's written permission to destroy the documents. In the alternative, Mitchell may make a written commitment, with the MDEQ's approval, to continue to preserve and retain the documents for a specified period of time, or Mitchell may offer to relinquish custody of all documents to the MDEQ. In any

event, Mitchell shall obtain the MDEQ's written permission prior to the destruction of any documents. Mitchell'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 to such other address as may subsequently be designated in writing by the MDEQ.

13.2 Upon request, Mitchell shall 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 response activities at the Facility or to the implementation of this Order, including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, correspondence or other documents or information related to response activities. Upon request, Mitchell also shall make available to the MDEQ, upon reasonable notice, Mitchell's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of response activities.

13.3 Mitchell may designate, in accordance with Section 20117(10) and (11) of the NREPA, information that Mitchell believes it is entitled to protect or keep confidential. 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 Mitchell. Information described in subsections 20117(11)(a)-(h) of the NREPA shall not be claimed as confidential or privileged by Mitchell. Information or data generated under this Order shall not be subject to Part 148 of the 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 and its attachments. 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 that 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 relating to response activities, which is required to be submitted for approval pursuant to this Order, the MDEQ Project Coordinator shall in writing: (a) approve the Submission; (b) disapprove the Submission and notify Mitchell of the deficiencies in the Submission; or (c) approve the Submission with modifications. Upon receipt of a notice of approval or approval with modifications from the MDEQ, Mitchell 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 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2, Mitchell shall correct the deficiencies and resubmit the Submission for approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Notwithstanding a notice of disapproval, Mitchell 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 Mitchell and Mitchell shall be deemed to be in violation of this Order.

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

14.5 Any delay in the submittal of a Submission or noncompliance with a Submission or attachment to this Order shall subject Mitchell to penalties pursuant to Section XX (Stipulated Penalties) or other remedies available to the State

pursuant to this Order.

14.6 If Mitchell fails to correct a lapse or violation of its implementation of a response activity work plan or of the schedule for such implementation under this Order, or fails to diligently commence to correct the lapse or violation under this Order, within thirty (30) days of written notification of such lapse or violation from the MDEQ and subject to Section XVIII of this Order (Dispute Resolution), the MDEQ, at its option, may perform the response activities that Mitchell has failed to perform. However, the MDEQ is not required to provide thirty days notice prior to undertaking response activities if those activities are determined to be necessary pursuant to Section XI (Creation of Danger) of this Order, or if the facility migrates beyond the capture system and that causes a release or threat of release to the City's wellfield, or that poses or threatens to pose an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare or the environment. Mitchell shall reimburse the State for costs the State incurs to perform those response activities within thirty (30) days of Mitchell's receipt of a cost summary report.

14.7 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 any Submission or warrants that the Submission comports with law.

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

XV. INDEMNIFICATION AND INSURANCE

15.1 Mitchell 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 Mitchell, its officers, employees, agents or any persons acting on its behalf or under its control in carrying out response activities pursuant to this Order.

15.2 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 Mitchell in carrying out actions pursuant to this Order. Neither Mitchell nor any contractor shall be considered an agent of the State. This Order shall not be construed to be an indemnity by the State for the benefit of Mitchell or any other person.

15.3 Mitchell 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 Mitchell and any person for the performance of response activities at the Facility, including claims on account of construction delays.

15.4 Mitchell 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 Mitchell and any person for performance of response activities at the Facility, including claims on account of construction delays.

15.5 Prior to commencing any response activities pursuant to this Order, Mitchell 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 Mitchell 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, Mitchell 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, Mitchell 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, Mitchell 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 Mitchell in furtherance of this Order.

XVI. MODIFICATIONS

16.1 This Order may only be modified according to the terms of this Section. Any Submission or attachment to Submissions required by this Order, may be modified by written agreement between Mitchell's designated Project Coordinator or other authorized representative and the MDEQ's Project Coordinator.

16.2 Modification of any other provision of this Order shall be made by written agreement between Mitchell's Project Coordinator, the MDEQ, ERD Division Chief, and the Michigan Department of Attorney General.

XVII. DELAYS IN PERFORMANCE

17.1 Mitchell shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Mitchell's obligations under this Order in accordance with this Section.

17.2 For the purpose of this Order, "Force Majeure" means an occurrence

arising from causes not foreseeable, beyond the control of and without the fault of Mitchell, including, but not limited to: an Act of God; untimely review of permit applications or Submissions by the MDEQ or other applicable authority; or acts or omissions of third parties that could not have been avoided or overcome by Mitchell'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 Mitchell's actions or omissions.

17.3 When circumstances occur that Mitchell believes constitute a Force Majeure, Mitchell shall notify the MDEQ by telephone or telefax within forty-eight (48) hours of discovering the occurrence if that occurrence causes or may cause a delay in Mitchell's 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 the delay; the precise causes of the delay; the measures taken or to be taken by Mitchell to avoid, minimize or overcome the delay; and the timetable by which those measures shall be implemented. Mitchell shall adopt all reasonable measures to avoid or minimize any such delay. Within thirty (30) days of receipt of written notice from Mitchell, the MDEQ will notify Mitchell whether the MDEQ agrees that the delay was beyond the control of Mitchell.

17.4 Failure of Mitchell to comply with the notice requirements of Paragraph 17.3 shall render this Section XVII 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 Paragraph 17.3 of this Order.

17.5 If the parties agree that a delay or anticipated delay was beyond the control of Mitchell, this may be so stipulated and this Order will be modified according to the procedure set forth in Paragraph 16.2. If the parties to this Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVIII (Dispute Resolution) of this Order. Mitchell shall have the burden of

proving that any delay was beyond the reasonable control of Mitchell and that all the requirements of this Section XVII have been met by Mitchell.

17.6 An extension of one compliance date based upon a particular occurrence does not necessarily mean that Mitchell qualifies for an extension of a subsequent compliance date without demonstrating the need for an extension for each incremental step or other requirement for which an extension is sought.

XVIII. DISPUTE RESOLUTION

18.1 The dispute resolution procedures of this Section shall apply without limitation to all provisions of this Order, except where expressly stated otherwise. If Mitchell objects to any notice of disapproval, modification or decision concerning a requirement of Sections VII (Implementation of Response Activities), VIII (Sampling and Analysis), or XIV (Submissions and Approvals) of this Order, Mitchell shall notify the MDEQ, in writing, of its objections within seven (7) days of receipt of the notice. The MDEQ and Mitchell shall have ten (10) days from the receipt by the MDEQ of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this ten (10)-day period, the MDEQ shall provide a written statement of its decision to Mitchell and in the absence of initiation of formal dispute resolution by either party under Paragraph 18.2, the MDEQ position shall be binding on Mitchell.

18.2 If Mitchell and the MDEQ cannot informally resolve a dispute under Paragraph 18.1, Mitchell or the MDEQ 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) business days of receipt by Mitchell of the MDEQ statement of decision that is issued as part of the informal dispute resolution process as set forth in Paragraph 18.1. 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 Mitchell relies.

The MDEQ shall, within ten (10) days after receiving the written request for review by the MDEQ, ERD Division Chief, provide a written reply to Mitchell 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 MDEQ relies. The decision of the MDEQ, ERD Division Chief shall be binding on Mitchell.

18.3 If Mitchell seeks to challenge any decision or notice issued by the MDEQ or the Attorney General under this Order, other than those specified in Paragraph 18.1 or 18.2, Mitchell shall send a written notice of objection to both the MDEQ Project Coordinator and the Assistant Attorney General assigned to this matter within ten (10) business days of receipt of the notice or decision by the MDEQ or Attorney General. The MDEQ, Attorney General and Mitchell shall have fourteen (14) days from the date of receipt by the MDEQ and Attorney General of the notification of objection to reach an agreement. If agreement cannot be reached on any issue within the fourteen- (14) day period, the MDEQ and the Attorney General shall provide a written statement of its decision to Mitchell.

18.4 If Mitchell does not comply with the MDEQ decision under Paragraph 18.2 or the MDEQ and Attorney General decision under Paragraph 18.3 within fourteen (14) days of such decision, the Department of Attorney General, on behalf of the MDEQ, may take such civil enforcement actions against Mitchell as may be provided for by Sections 20119(4) and 20137(1) of the NREPA and other statutory and equitable authorities, including, but not limited to, the assessment of civil penalties or damages as authorized by law. In such an event, the MDEQ retains the right to perform the necessary response activities and to recover the costs from Mitchell. Engagement of a dispute resolution among the parties shall not be cause for Mitchell to delay the implementation of any response activity.

18.5 Notwithstanding this Section, Mitchell shall pay to the MDEQ that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the

manner provided in Sections XIX (Reimbursement of Costs) and XX (Stipulated Penalties), as appropriate.

18.6 No action or decision of the MDEQ or the Attorney General shall constitute a final agency action giving rise to any rights of judicial review prior to the Attorney General's initiation of judicial action to compel Mitchell to comply with this Order or to enforce a term, condition or other action required by this Order in accordance with Section 20137 of the NREPA. Nothing in this Order shall expand Mitchell's ability to obtain pre-enforcement review of this Order.

XIX. REIMBURSEMENT OF COSTS

19.1 Mitchell shall reimburse the State for all oversight costs incurred by the State in overseeing the response activities of Mitchell for matters covered in this Order up to a total of \$5,000 per year. As soon as possible after each anniversary of the effective date of this Order, pursuant to Sections 20119(4) and 20137(1) of the NREPA, the MDEQ will provide Mitchell with a written demand for payment of oversight costs that have been covered by this Order and have been lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

19.2 Mitchell 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 to Mitchell by the MDEQ may result in the MDEQ incurring additional oversight costs that will be included in the annual demand for payment of Oversight Costs. Except as provided by Section XVIII (Dispute Resolution), Mitchell 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 the NREPA. In any challenge by Mitchell to a demand for recovery of costs by the MDEQ, Mitchell shall have the burden of establishing that the costs were not

lawfully incurred in accordance with Section 20126a(1)(a) of the NREPA.

19.3 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 (B) (Project Coordinators and Communications/Notices). The Mitchell Cadillac Facility, the MDEQ Reference No. AOC-ERD-99-004, and shall be identified on each check and shall be remitted with a copy of the invoice. 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 the NREPA.

XX. STIPULATED PENALTIES

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

(a) Paragraph 7.3: Mitchell shall pay a stipulated penalty of \$1000.00 per day for each of the first fifteen (15) days it fails to submit or implement the MDEQ-approved IRA work plan for the design and construction of the groundwater and soil Remediation systems as specified in Paragraph 7.4, \$2,000.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$3,000.00 per day for each succeeding day.

(b) Paragraph 7.6: Mitchell shall pay a stipulated penalty of \$500.00 per day for each of the first fifteen (15) days it fails to submit or implement the MDEQ-approved O&M plan or Monitor Plan as specified in Paragraph 7.5, \$1,000.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$2,000.00 per day for each

succeeding day.

(c) Paragraph 7.7: Mitchell shall pay a stipulated penalty of \$300.00 per day for each of the first fifteen (15) days it fails to properly remove or plug monitor wells as specified in Paragraph 7.7, \$500.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$1,000.00 per day for each succeeding day.

(d) Paragraph 7.8: Mitchell shall pay a stipulated penalty of \$500.00 per day for each of the first fifteen (15) days it fails to implement any modifications required by the MDEQ as specified in Paragraph 7.8, \$1,000.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$1,500.00 per day for each succeeding day.

(e) Paragraph 14.3: Mitchell shall pay a stipulated penalty of \$300.00 per day for each of the first fifteen (15) days it fails to resubmit an approvable submission within the time frames specified in Paragraph 14.3, \$500.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$1,000.00 per day for each succeeding day.

(f) Paragraphs 19.1 and 19.2: Mitchell shall pay a stipulated penalty of \$300.00 per day for each of the first fifteen (15) days it fails to make payment for Oversight Costs as specified in Paragraph 19.1 and 19.2, \$500.00 per day for the sixteenth (16th) through thirtieth (30th) day, and \$1,000.00 per day for each succeeding day.

20.2 Except as provided in Paragraph 20.1, Mitchell shall pay the MDEQ stipulated penalties of \$500.00 a day for each and every failure or refusal to comply with any other term or condition of this Order.

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

20.4 Stipulated penalties shall begin to accrue on the day performance is due,

or other failure or refusal to comply occurred, and shall continue to accrue until the day the noncompliance is corrected. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Order.

20.5 Except as provided in Section XVIII (Dispute Resolution), Mitchell shall pay stipulated penalties owed to the State no later than thirty (30) days after receiving a written demand from the State. Payment shall be made in the manner provided in Paragraph 19.3. 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 the NREPA. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

20.6 The imposition of stipulated penalties is not the State's exclusive remedy in the event Mitchell violates this Order. The State reserves the right to pursue any other remedy or remedies to which it is entitled under this Order or any applicable law for any failure or refusal of Mitchell to comply with the requirements of this Order, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, cost reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan as a result of Mitchell's violation of or failure to comply with this Order pursuant to Sections 20119(4) and 20137(1) of the NREPA, and sanctions for contempt of court, provided that the stipulated penalties set forth above for a specific violation shall be credited against any such civil penalties for that violation.

XXI. COVENANTS NOT TO SUE BY THE STATE

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

- (a) Performance of the MDEQ-approved response activity by Mitchell

under this Order;

(b) Payment of oversight costs incurred by the State as set forth in Paragraphs 19.1 and 19.2 of this Order.

21.2 The covenants not to sue shall take effect upon the complete and satisfactory performance by Mitchell of its obligations under this Order as follows:

(a) With respect to liability for the performance of MDEQ-approved response activities required to be performed under this Order, the covenant not to sue shall take effect upon issuance of the Certification of Performance of Required Response Activities.

(b) With respect to liability for Facility oversight costs incurred by the State, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

21.3 These covenants not to sue extend only to Mitchell, its president William Mitchell, and do not extend to any other person.

XXII. COVENANT NOT TO SUE BY MITCHELL

22.1 Mitchell 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 causes 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 the NREPA or any other provision of law.

22.2 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, Mitchell 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 that are 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 XXI (Covenant Not to Sue by the State).

XXIII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of the NREPA and Section 9613(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC (CERCLA) and to the extent provided in Section XXI (Covenant Not to Sue by the State), Mitchell shall not be liable for claims for contribution for the matters set forth in Paragraph 21.1 of this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or the CERCLA, 42 USC 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by Mitchell for contribution from any person not a party to this Order shall be subordinate to the rights of the State of Michigan, if the State files an action pursuant to the NREPA or other applicable federal or state law.

XXIV. RESERVATION OF RIGHTS BY THE STATE

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

24.2 The State reserves the right to take action against Mitchell if it discovers that any information provided by Mitchell was intentionally false or misleading.

24.3 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 Mitchell, including the MDEQ's right both to disapprove of response activities performed by Mitchell or to require Mitchell to perform work in addition to those detailed in this Order, provided that such work is consistent with the response activity objectives as defined in Paragraph 7.1 of this Order.

24.4 Notwithstanding any other provision of this Order, the MDEQ retains all authority and reserves all rights to take response activity authorized by law, including the right to perform or contract to have performed any and all portions of the response activities that the MDEQ determines are necessary and to pursue recovery of response costs under state law. Prior to conducting such activities, the MDEQ will comply with section 14.6.

24.5 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 Mitchell'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 to seek any other remedy provided by law.

24.6 The covenant not to sue set forth in Section XXI (Covenant Not to Sue by the State), does not pertain to any matters other than those expressly specified in Paragraph 21.1. The State reserves, and this Order is without prejudice to, all rights against Mitchell with respect to all other matters, including, but not limited to, the following:

- (a) liability arising from a violation by Mitchell of a requirement of this Order, including any conditions of an approved submission required herein;
- (b) liability for any other response activities that are required to address environmental contamination at the Facility; including, but not limited to, soil contamination.
- (c) liability for response activity costs other than those referred to in Section XIX (Reimbursement of Costs); including, past costs, oversight costs which exceed those covered by this order, and other response activity costs not reimbursed under this order.
- (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 substances taken from the Facility;

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

(g) liability for criminal acts;

(h) liability for any matters for which the State is owed indemnification under Section XIV (Indemnification and Insurance) of this Order; and

(i) liability arising from release or threatened release of hazardous substances or violations of federal or state law that occur during or after implementation of the response activities required by this Order.

24.7 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 Mitchell to: (a) perform further response activities relating to the Facility or (b) reimburse the State of Michigan for additional costs of response subsequent to issuance of the Certification of Performance of Required Response Activities if the following occur:

(i) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the MDEQ's issuance of the Certification of Performance of Required Response Activities; or

(ii) Information is received, in whole or in part, after the MDEQ's issuance of the Certification of Performance of Required Response Activities; and

(iii) These previously unknown conditions or this information, together with any other relevant information, indicates additional response activity is needed to fully satisfy the response activities objectives set forth in Paragraph 7.1 or to protect public health, safety, or welfare, or the environment.

24.8 For purposes of Paragraph 24.7, 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 response activities performed at the Facility and any information received by the MDEQ

pursuant to the requirements of this Order prior to the MDEQ's issuance of the Certification of Performance of Required Response Activities.

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

24.10 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 the NREPA and any other applicable statute or regulation.

24.11 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 or 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.

XXV. CERTIFICATION

25.1 When Mitchell determines that it has completed all of the MDEQ-approved response activities required by this Order, it shall submit to the MDEQ a draft Notification of Performance of Required Response Activities 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.

25.2 Upon receipt of the draft Notification of Performance of Required Response Activities, the MDEQ will review the draft Notification of Performance, the draft Final Report, any supporting documentation and the response activities that were performed pursuant to this Order. Within ninety (90) days of receipt of

the draft Notification of Performance, the MDEQ will determine whether Mitchell has satisfactorily completed all requirements of this Order, (except Section XIII, record retention/access to information) including, but not limited to, completing the response activities required by this Order, proper plugging and abandonment of monitor wells in accordance with the MDEQ approved plan, paying any and all cost reimbursement, and stipulated penalties owed to the MDEQ, and complying with all other terms and conditions of this Order. If the MDEQ determines that all requirements have been satisfied, the MDEQ, ERD Division Chief will notify Mitchell, and upon receipt of a final Final Report in accordance with Section XIV (Submissions and Approvals), shall issue a Certification of Performance of Required Response Activities to Mitchell.

XXVI. TERMINATION

Upon completion of all MDEQ-approved response activities required under this Order in connection with the Facility and issuance of a Certification of Performance of Required Response Activities in accordance with Section XXV (Certification), Mitchell's obligations as set forth in this Order shall automatically terminate, except for the requirements of Paragraph 13.1 regarding record retention.

XXVII. SEPARATE DOCUMENTS

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


XXIII. 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.

XXIX. EFFECTIVE DATE

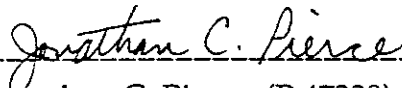
This Order is effective upon signatures of the Director's designee and the Attorney General's designee. All dates for the performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day.

IT IS SO AGREED AND ORDERED BY:


_____, Chief

Environmental Response Division
Michigan Department of Environmental Quality

6/4/99
Date


Jonathan C. Pierce (P 47339)

Assistant Attorney General
Natural Resources Division

JUN 4, 1999
Date

IT IS SO AGREED BY:

William F. Mitchell
Mitchell Corporation of Owosso
William F. Mitchell, President & CEO

5/27/99
Date

Land located in State of Michigan, County of Wexford described as follows:

All of Blocks 152, 153, 154, 156, 157, and the West 150 feet of Block 155, except the North 195 feet thereof; now abandoned Fourth Street, Fourth Avenue, Fifth Avenue between Blocks 152 through 157, both inclusive, except the North 195 feet of Fourth Avenue between Blocks 155 and 156; now abandoned alleys in Blocks 156 and 157, all according the Plat of the Improvement Board's Addition to the City of Cadillac, Wexford County, Michigan.