MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

D-M-E Company
6342 Ferry Road, Charlevoix
Charlevoix County, Michigan

MDEQ Reference No.: AOC-ERD-02-003

Proceeding under Section 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, Fairchild Corporation ("Fairchild") and D-M-E Company ("DME") pursuant to the authority vested in the MDEQ and the Department of Attorney General by §20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20101 *et seq*. This Order concerns the performance by Fairchild and DME of certain response activities at the DME facility, Charlevoix County, Michigan ("Facility").

II. DENIAL OF LIABILITY

The execution of this Order by Fairchild and DME is neither an admission nor 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 Fairchild, DME and the State and their successors. Any change in ownership or corporate or legal status of Fairchild or DME, including, but not limited to, any transfer of assets or of real or personal property, shall in no way alter Fairchild's or DME's responsibilities under this Order. DME 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. DME shall comply with the requirements of § 20116 of NREPA, MCL 324.20116.

3.2 Fairchild and DME 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 to be performed pursuant to this Order within three (3) calendar days of the effective date of such retention.

3.3 Notwithstanding the terms of any contract that Fairchild and DME may enter with respect to the performance of response activities pursuant to this Order, Fairchild and DME are responsible for compliance with the terms of this Order and shall ensure that their 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 this Order and to 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) complete a Remedial Investigation to determine the nature, extent and impact of hazardous substances and any threat to the public health, safety or welfare, or the environment caused by the release or threatened release of hazardous substances from the Facility and to support the selection of appropriate response activity and remedial action for the Facility; (b) provide documentation of compliance with § 20107a of NREPA; (c) perform Interim Response Activities to immediately address the groundwater contamination emanating from the DME property, (d) develop and submit to the MDEQ an approvable Remedial Action Plan that complies with Part 201; (e) perform a MDEQ-approved Remedial Action Plan in accordance with its approved implementation schedule; (f) reimburse the State for Past and Future Response Activity Costs as described in Section XVI (Reimbursement of Costs and Payment of Civil Penalties); (g) resolve the State's claims for civil fines for "Past Violations" pursuant to paragraph 16.7; (h) provide contribution protection as provided in Section XXIII; and (i) minimize litigation.

V. DEFINITIONS

5.1 "Day" or "day" means a calendar day, unless otherwise specified in this Order.

5.2 "DME" means D-M-E Company and its successors.

5.3 "Effective Date" means the date the ERD Division Chief signs this Order. All dates for the performance of obligations under this Order shall be calculated from the Effective Date.

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

5.5 "Facility" means any area of the Property identified in Attachment A where a hazardous substance, in concentrations that exceed the requirements of § 20120a(1)(a) or (17), MCL 324.20120a(1)(a) or (17), of NREPA or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of NREPA, has been released, deposited, disposed of or otherwise comes to be located; and any other area, place or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property.

5.6 "Fairchild" means Fairchild Corporation and its predecessors, including Fairchild Holding Corporation, Fairchild Industries and RHI Holdings, and its successors.

5.7 "Future Response Activity Costs" means costs incurred by the State to oversee, enforce, monitor and document compliance with this Order and to perform response activities required by this Order, including, but not limited to, 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 perform response activities pursuant to Section XI (Emergency Response) and paragraph 8.18 (MDEQ's Performance of Response Activities).

5.8 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities and those authorized persons or entities acting on its behalf. Environmental functions formerly assigned to the Michigan Department of Natural Resources ("MDNR") were transferred to the MDEQ by Executive Order 1995-18, effective October 1, 1995.

5.9 "Part 31" means Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.3101 *et seq* and the Administrative Rules promulgated thereunder.

5.10 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq* and the Administrative Rules promulgated thereunder.

5.11 "Party" means Fairchild Corporation, D-M-E Company or the State. "Parties" means Fairchild Corporation, D-M-E Company and the State.

5.12 "Past Response Activity Costs" means those costs that the State incurred and paid prior to and during the dates set forth in the attached Summary Report (Attachment B).

5.13 "Property" means the property located at 6342 Ferry Road, Charlevoix and described in the legal description provided in Attachment A.

5.14 "Remedial Action Plan" or "RAP" means a plan for the Facility that satisfies the requirements of Part 201, including, but not limited to, §§ 20118, 20120a, 20120b and 20120d and the Part 201 Administrative Rules.

5.15 The term "Settling Parties" means the Fairchild Corporation and D-M-E Company.

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

5.17 "Submissions" means all plans, reports, schedules and other submittals that Fairchild and DME are required to submit to the State pursuant to this Order. "Submissions" does not include the notifications set forth in Section XII (Delays in Performance, Violations and *Force Majeure*) or a Request for Approval of Performance [(paragraph 8.12(a)].

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

VI. FINDINGS OF FACT AND DETERMINATIONS

The State makes the following Findings of Fact and Determinations.

6.1 The Facility is a manufacturing plant in Charlevoix that produces steel ejector pins, which are used in the plastic molds industry.

6.2 The Facility has been in use as a manufacturing plant since 1955. As part of the manufacturing process, Fairchild and DME have used tetrachloroethene ("PCE") as a solvent in a vapor degreaser to remove oil and debris from the ejector pins. Fairchild and DME and their predecessors have used a degreaser in the manufacturing process at the Facility since 1955.

6.3 From 1955 to approximately 1978, an on-site disposal pond located directly east of the DME building was used for the disposal of process waste water and other solid and liquid wastes containing PCE, mineral spirits, lubricant oils and coolants.

6.4 The disposal pond was backfilled and graded in about 1978, and wastes were then disposed of in an on-site landfill located north of the DME buildings and adjacent to privately owned property.

6.5 A limited hydrogeological investigation, which was completed in 1981 by Fairchild, confirmed that groundwater in the area of the landfill was contaminated with PCE exceeding 200,000 parts per billion (ppb). Trichloroethene (TCE) and toluene were also detected at 18,000 ppb and 57,000 ppb, respectively. In 1982, Fairchild performed a limited removal action in the former landfill area, but did not adequately address groundwater contamination.

6.6 The DME Facility is a "facility" as that term is defined in § 20101(1)(o) of NREPA.

6.7 PCE, TCE, cis-1,2-dichloroethylene ("DCE") and vinyl chloride are present at the Facility and are "hazardous substance(s)" as that term is defined in § 20101(1)(t) of NREPA.

6.8 High concentrations of volatile organic compounds, including PCE, TCE and cis-1,2-DCE, in soil excavated and removed from beneath the degreaser and from the former landfill area constitute a "release or threatened release" within the meaning of §§ 20101(1)(bb) and 20101(1)(ii) of NREPA.

6.9 Groundwater beneath DME's property has been confirmed to be contaminated with various organic chemicals. Contaminant concentrations in groundwater underneath DME's property exceed the generic industrial criteria, which were established pursuant to Part 201 of NREPA, for drinking water, volatilization to indoor air, groundwater contact and

groundwater/surface water interface ("GSI"). As contaminated groundwater migrates from its source on DME's property, it migrates under seven privately owned lots and three residential homes. Investigations performed by the MDEQ and DME have confirmed that concentrations of vinyl chloride in the groundwater beneath the residential properties consistently exceed criteria for drinking water, groundwater volatilization to indoor air and groundwater contact. Vinyl chloride concentrations in contaminated groundwater discharging into Lake Charlevoix also exceed criteria protective of surface water.

6.10 DME is a Delaware corporation. Fairchild is a Delaware Corporation. Fairchild and DME are each a "person" as that term is defined in § 301(g) of Part 3 of NREPA.

6.11 On January 26, 1996, the DME manufacturing plant in Charlevoix was transferred to DME from VSI Corporation, as part of an overall sale of the entire DME business by VSI Corporation's parent, Fairchild Corporation, to Cincinnati Milacron, Inc. Cincinnati Milacron, Inc., is now known as Milacron, Inc. DME is a wholly-owned subsidiary of Milacron, Inc.

6.12 Fairchild, through its subsidiaries and predecessors, was an owner and operator of the Facility from 1961 to January 26, 1996, and used the degreaser during its operation of the manufacturing plant. The MDEQ determines that Fairchild is legally liable for the Facility pursuant to § 20126(1)(b)(i) of NREPA.

6.13 DME became an owner and operator of the Facility after June 5, 1995. The MDEQ requested DME's baseline environmental assessment ("BEA"), but it had not been

submitted. A person who purchases property that is a facility after June 5, 1995, and fails to submit a BEA to the MDEQ is liable for the facility. Therefore, the MDEQ determines that DME is legally liable for the Facility pursuant to § 20126(1)(c)(i) of NREPA.

6.14 By letters dated October 11,1996, February 9, 1998, and July 2, 1999, the MDEQ notified DME of its status as a person that may be liable ("potentially responsible party" or "potentially liable party") for the Facility.

6.15 In order to protect public health, safety and welfare and the environment and to abate the danger or threat caused by the release or threat of release of hazardous substances at the Facility, it is necessary and appropriate that response activities be performed at the Facility. The response activities that must be performed are specified in Sections VIII (Performance of Response Activities) and XI (Emergency Response) of this Administrative Order by Consent.

On the basis of these Findings of Fact, the MDEQ and the Attorney General have determined that entry of this Order will expedite the performance of effective response activities, that Fairchild and DME will properly perform the 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 AND THE ATTORNEY GENERAL HEREBY ORDER AND FAIRCHILD AND DME HEREBY AGREE TO PERFORM RESPONSE ACTIVITIES AND TO PAY RESPONSE ACTIVITY COSTS AND CIVIL PENALTIES TO THE STATE AS SPECIFIED IN THIS ORDER.

VII. 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, rules and regulations, including, but not limited to, Part 201, the Part 201 Administrative 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.

VIII. PERFORMANCE OF RESPONSE ACTIVITIES

8.1 Performance Objectives

The Settling Parties shall perform all necessary response activities to comply with the requirements of Part 201 and to meet the performance objectives outlined in this Order at the Facility as follows.

(a) The Settling Parties shall achieve and maintain compliance with § 20107a(1)(a)-(c) of NREPA and Part 10 of the Part 201 Administrative Rules.

(b) The performance objective of the Interim Response Activities ("IRA") is to: reduce the concentrations of vinyl chloride in all groundwater downgradient of Mathews Lane to levels that are at least below the Part 201 groundwater contact value of 570 parts per billion by October 1, 2002, and thereafter maintain vinyl chloride levels below Part 201 groundwater contact values, except as provided in paragraph 8.6.

(c) The Settling Parties shall fully define the nature and extent of the release or threat of release at the Facility sufficiently to evaluate all relevant hazardous substances and exposure pathways in accordance with Part 201 and to support the development of an MDEQ approvable

Remedial Action Plan ("RAP") for the Facility, including all hazardous substances and pathways addressed by the IRA.

(d) The performance objectives of the RAP are to:

(i) assure the effectiveness and integrity of the remedial action as approved in an MDEQ-approved RAP;

(ii) comply with the appropriate cleanup criteria established under § 20120a(1) or 20120a(2) and § 20120a(15) and § 20120a(17) of NREPA and comply with all applicable technical and administrative requirements of §§ 20118, 20120a, 20120b, and 20120d of NREPA and the Part 201 Administrative Rules for the Facility; and

(iii) allow for the continued use of the Property consistent with local zoning.

8.2 In accordance with this Order, the Settling Parties shall assure that all work plans for conducting response activities are designed to achieve the performance objectives identified in paragraph 8.1(a)-(d). The Settling Parties shall develop each work plan and perform the response activities contained in each work plan in accordance with the requirements of Part 201 and this Order. Upon MDEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Order and made an enforceable part of this Order. If there is a conflict between the requirements of this Order and any MDEQ-approved work plan, the requirements of this Order shall prevail.

8.3 Quality Assurance Project Plan ("QAPP")

Sampling and analytical activities shall be developed and performed 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; and with Part 201 and the MDEQ QAPP Guidance dated February 1993.

8.4 Section 20107a Due Care Documentation ("Due Care Documentation")

Within thirty (30) days of the Effective Date of this Order, DME shall submit Due Care Documentation for a MDEQ compliance review that includes the required documentation of compliance and that fully complies with § 20107a and Part 10 of the Part 201 Administrative Rules.

8.5 Interim Response Activities ("IRA")

The Interim Response Plan for groundwater treatment, including the implementation schedule, dated August 2001 and approved by the MDEQ with modifications on October 5, 2001, is incorporated into this Order by reference. The Settling Parties shall perform the response activities contained in the plan and submit progress reports in accordance with the approved implementation schedule. For purposes of the IRA, the Part 201 groundwater contact value of 570 ppb applies to the groundwater downgradient of Mathews Lane and upgradient of the GSI compliance monitoring wells.

8.6 Beach Monitoring Plan

Within 15 days from the Effective Date of this Order, the Settling Parties shall submit for MDEQ approval a plan to monitor water quality along Lake Charlevoix, specifically in front of Lots 5, 6, & 7 on Mathews Lane. The Beach Monitoring Plan shall include biweekly sampling and analysis for vinyl chloride every month between May 1 and October 1,unless alternative

time frames are approved pursuant to Paragraph 8.15 or the MDEQ-approved RAP. Beach sampling shall be conducted every year as provided in the MDEQ-approved Beach Monitoring Plan until the levels of vinyl chloride in all the current GSI compliance monitoring wells (MW 13S & 13D, MW 20RS & 20RD and MW 21S & 21D) or subsequently designated GSI compliance monitoring wells are at or below the site specific direct contact criteria for vinyl chloride for twelve consecutive months for a beach exposure pathway of 89 parts per billion or other subsequent value the MDEQ may consider protective for a beach pathway. Upon MDEQ approval, the Settling Parties shall perform the response activities in the plan and submit progress reports in accordance with the approved schedule within the plan. The Beach Monitoring Plan may be modified in accordance with paragraph 8.10 and 8.15 of the Order, or as provided in the MDEQ-approved RAP.

8.7 Remedial Investigation ("RI")

The Settling Parties shall complete the remainder of the RI to define the nature and extent of the release or threat of release of hazardous substances at the Facility sufficiently to evaluate all relevant hazardous substances and exposure pathways in accordance with Part 201 and to support the MDEQ's approval of a RAP. The RI shall be completed and the final report submitted to the MDEQ within 90 days of the Effective Date of the Order.

8.8 Remedial Action Plan

(a) The Settling Parties shall submit a RAP to the MDEQ for review and approval within six (6) months of the MDEQ's approval of the final RI report. The RAP shall provide for the following:

(i) All technical and administrative components required by §§ 20118, 20120a, 20120b and 20120d of NREPA and the Part 201 Administrative Rules.

(ii) A description and supporting documentation of how the results of the remedial investigation and other response activities that have been performed at the Facility support the selection of the remedial action contained in the RAP.

(iii) If the RAP submitted by the Settling Parties rely on the cleanup criteria established under § 20120a(1)(b)-(j) or (2) of NREPA and the RAP provides for land and resource use restrictions, monitoring, operation and maintenance or permanent markers, as prescribed by § 20120b(3)(a)-(d), the RAP shall include documentation from property owners or local units of government that the necessary access to these properties has been or will be obtained and that any proposed land or resource use restrictions can or will be placed or enacted. The RAP shall also provide for the Effectiveness Report described in paragraph 8.11 of the Order.

(b) Within thirty (30) days of receiving the MDEQ's approval of the RAP, the Settling Parties shall commence performance of the RAP and submit progress reports in accordance with the MDEQ-approved RAP. All technical and administrative requirements submitted to the MDEQ, which in combination constitute the MDEQ-approved RAP, shall become incorporated into this Order and become an enforceable part of this Order. The technical and administrative components of an MDEQ-approved RAP may include, but are not limited to, the following:

(i) Notices of Approved Environmental Remediation ("NAERs")

If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(b)-(e) of NREPA, the Settling Parties shall record any

NAERs that are required by § 20120b(2) and the RAP with the Charlevoix County Register of Deeds within 21 days after MDEQ approval of the RAP or within 21 days after completion of construction of the remedial action provided for in the RAP, as appropriate under the circumstances. The form and content of the NAER must be approved by the MDEQ. The Settling Parties shall provide a true copy of the recorded NAER and the liber and page to the MDEQ within ten (10) days of the Settling Parties' receipt of a copy from the Register of Deeds.

(ii) Restrictive Covenants

If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(f)-(j) or (2) of NREPA and that RAP provides for the placement of restrictive covenants, the Settling Parties shall record or cause to be recorded the appropriate restrictive covenants required by the RAP with the Charlevoix County Register of Deeds within 21 days after MDEQ approval of the RAP or within 21 days after completion of construction of the remedial action provided for in the RAP, as appropriate under the circumstances. The Settling Parties shall provide a true copy of the recorded restrictive covenant and the liber and page to the MDEQ within ten (10) days ofthe Settling Parties' receipt of a copy from the Register of Deeds.

(iii) Institutional Controls

If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(f)-(j) or (2) of NREPA and that RAP provides for the enactment of institutional controls, the Settling Parties shall arrange for the placement of institutional controls in accordance with the implementation schedule in the MDEQ-

approved RAP. The Settling Parties shall provide a true copy of documentation that such institutional controls have been enacted to the MDEQ within ten (10) days of enactment.

(iv) Land Use Restrictions

If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(b)-(j) or (2) of NREPA and that RAP provides for land use restrictions, within thirty (30) days of the MDEQ's approval of the RAP, the Settling Parties shall provide notice of the land use restrictions to the zoning authority of the local unit of government within which the Facility is located. The Settling Parties shall provide a true copy of documentation that such notification has been provided to the Charlevoix Township zoning authority within ten (10) days of the notification.

(v) Financial Assurance Mechanisms ("FAMs")

If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(f)-(j) or (2) of NREPA and a FAM is a necessary component of that RAP, DME shall establish and maintain financial assurance that will assure the Settling Parties' ability to pay for monitoring, operation and maintenance, oversight and other costs (collectively referred to as "O&M Costs") that are determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action as set forth in an MDEQ-approved RAP. The proposed FAM shall be submitted to the MDEQ with the RAP pursuant to paragraph 8.8(a) and shall be in an amount sufficient to cover O&M Costs at the Facility for a thirty (30)-year period. If a FAM is a component of an MDEQ approved RAP, every five (5) years after the MDEQ's initial approval of the FAM, DME shall provide to the MDEQ an update of the thirty (30) year O&M Costs estimate. The updated cost estimate shall include documentation of O&M

Costs for the previous five-year period and be signed by an authorized representative of DME who shall confirm the data. DME shall revise the amount of funds secured by the FAM in accordance with that updated five-year cost estimate unless otherwise directed by the MDEQ. If at any time the MDEQ determines that the FAM does not adequately secure sufficient funds, DME shall capitalize or revise the existing FAM or establish a new FAM acceptable to the MDEQ. After a FAM has been established, if DME can demonstrate that the FAM provides funds in excess of those needed to cover O&M Costs for the Facility, DME may submit a request to the MDEQ to reduce the amount of funds secured by the FAM. DME shall maintain the FAM in perpetuity or until the Settling Parties can demonstrate to the MDEQ that such FAM is no longer necessary to protect the public health, safety or welfare or environment and is no longer necessary to assure the effectiveness and integrity of the remedial action as set forth in the MDEQ-approved RAP. Any modification of a FAM will be considered to be a modification of a RAP, and any such modification must be made in accordance with Section XXV (Modifications).

8.9 Public Notice and Public Meeting Requirements under § 20120d of NREPA

If the MDEQ determines there is significant public interest in the proposed RAP required by this Order, if the Settling Parties propose a RAP pursuant to § 20120a(1)(f)-(j) or (2) of NREPA, or if § 20118(5) or (6) of NREPA applies to the proposed RAP, the MDEQ will make the RAP available for public comment. When the MDEQ determines that the proposed RAP is acceptable for public review, a public notice regarding the availability of the RAP will be published, and the RAP shall be made available for review and comment for a period of not less than thirty (30) days. The dates and the length of the public comment period shall be established

by the MDEQ. If the MDEQ determines that there is significant public interest or the MDEQ receives a request for a public meeting, the MDEQ will hold such public meeting in accordance with §§ 20120d(1) and (3) of NREPA. Following the public review and comment period or a public meeting, the MDEQ may refer the proposed RAP back to the Settling Parties for revision to address public comments and the MDEQ's comments. The MDEQ will prepare the final responsiveness summary document that explains the reasons for the selection or approval of a remedial action plan in accordance with the provisions of §§ 20120d(5) and (6) of NREPA. Upon the MDEQ's request, the Settling Parties shall provide information to the MDEQ for the final responsiveness summary document, or the Settling Parties shall prepare portions of the draft responsiveness summary document.

8.10 Groundwater/Surface Water Interface Report

(a) At least 180 days prior to the five year anniversary of MDEQ approval of the RAP, as provided in paragraph 8.8 of this Order, the Settling Parties shall submit to the MDEQ for review and approval a Groundwater/Surface Water Interface Report ("GSI Report"). The Settling Parties shall submit subsequent GSI Reports every five (5) years thereafter for the duration of the remedial action or until the Settling Parties can demonstrate to the satisfaction of the MDEQ that monitoring of the GSI is no longer required to assure the protection of public health, safety or welfare or the environment. The GSI Report shall provide all information and data concerning the discharge of contaminated groundwater venting from the Facility to the surface water that is necessary to assess the Settling Parties' on-going compliance with Part 31, Water Resources Protection, of NREPA and the administrative rules promulgated thereunder. The GSI Report shall, at a minimum, include the following information:

1. Identity of the Facility and MDEQ reference number.

2. The name (if any) of the receiving surface water body and the location of the venting groundwater contaminant plume. This information should be provided in narrative, including a quarter-quarter section description and map form.

3. The location, nature and chemical characteristics of the past and ongoing source(s) of the groundwater contaminant plume, including a description of whether the source has been removed or is still present. In the event the source is still present, identify the type, concentration and mobility of the source contaminants and the amount of recharge from precipitation over the source area in inches/year.

4. A summary of all GSI monitoring data collected over the previous five years. The summary shall include (i) the Chemical Abstract Service ("CAS") Number, (ii) the worst case maximum concentrations of the contaminants in the groundwater contaminant plume at the GSI and (iii) the identification of all (light and dense) non-aqueous phase liquids, if present. If source contaminants have not yet reached the groundwater, but are expected to do so, contaminant source concentrations shall also be included. This information shall be provided in narrative, tabular and map form that includes both a plan view showing groundwater contaminant concentration contours and a cross-sectional view at the GSI.

5. An analysis of the contaminant plume's general chemistry parameters (e.g., chemical oxygen demand, dissolved carbon dioxide, pH, redox potential and dissolved oxygen).

6. The discharge rate in cubic feet per second ("cfs") of the groundwater contaminant plume (the discharge rate of the groundwater plume shall be calculated using

that portion of the contaminant plume which is, or may become, contaminated above the generic GSI criteria).

7. The location of any other groundwater contaminant plumes entering the same surface water body in the vicinity of the Facility and their constituents and concentrations, if available.

8. If the groundwater contaminant plume contains bioaccumulative contaminants, a description of the alternative to eliminate those contaminants from the discharge.

9. (a) A work plan, including an implementation schedule and submittal of progress reports, of contingent response activities that the Settling Parties will implement to regain compliance in the event the MDEQ determines that, based upon the GSI Report, the ongoing venting groundwater contaminant plume does not comply with the current Part 31 water quality standards and the resulting GSI criteria developed pursuant to Part 201 of NREPA.

(b) The MDEQ shall review the GSI Report and determine if the GSI performance objectives specified in paragraph 8.1(d)(ii) and the MDEQ-approved RAP provided in paragraph 8.8 of this Order are being met and maintained. The MDEQ shall provide written notification of its determination to the Settling Parties.

(c) Within thirty (30) days of receipt of the MDEQ's written notification that implementation of contingent response activities is necessary to meet and maintain the GSI performance objective specified in paragraph 8.1(d)(ii) and the MDEQ-approved RAP provided in paragraph 8.8 of this Order, the Settling Parties shall implement the contingent response activities specified in the GSI Report, as approved and/or modified

by the MDEQ pursuant to paragraph 8.15 (Modification of a Response Activity Work Plan) and Section XV (Submissions and Approvals).

8.11 Five-Year Remedial Effectiveness Report

(a) At least 180 days prior to the five-year anniversary of the MDEQ approval of the RAP provided in paragraph 8.8 of this Order, the Settling Parties shall submit to the MDEQ for review and approval a Five-Year Remedial Effectiveness Report ("Effectiveness Report"). The Effectiveness Report shall provide all information and data concerning the hazardous substance levels off the Property emanating from the Facility that are necessary to assess the Settling Parties' remedial effectiveness in all the relevant pathways identified in the RAP.

(b) If the remediation has not met the clean-up criteria provided in § 20120a(1)(a) of NREPA for the relevant pathways identified in the RAP, except the indoor air criteria, which must meet the site-specific concentration pursuant to Section 20120a(2) of NREPA, or those levels cannot be maintained, the Settling Parties shall provide in the Effectiveness Report:

(i) a work plan for MDEQ review and approval, including an implementation schedule and submittal of progress reports, for additional response activities that the Settling Parties will implement to meet the clean up criteria provided in § 20120a(1)(a) or site-specific criteria for indoor air pursuant to Section 20120a(2) of NREPA within two (2) years of MDEQ approval of this work plan, or

(ii) in a manner acceptable to the MDEQ, for the placement of restrictive covenants or institutional controls that reliably restrict exposure to hazardous substances for any relevant pathway where contaminant levels exceed the clean-up criteria provided in § 20120a(1)(a) or site-specific criteria for indoor air, including an implementation

schedule. If placing a restrictive covenant, the Settling Parties shall provide a true copy of the recorded restrictive covenant and the liber and page to the MDEQ and Charlevoix Township zoning authority within ten (10) days of the Settling Parties' receipt of a copy from the Register of Deeds. If providing for the enactment of an institutional control, the Settling Parties shall provide a true copy of documentation that such institutional control has been enacted to the MDEQ within ten (10) days of enactment, or

(iii) a work plan for MDEQ review and approval, including an implementation schedule and submittal of progress reports, for contingent response activities that can be incorporated into the MDEQ-approved RAP.

8.12 MDEQ Approval of the Settling Parties' Performance of Response Activities

(a) The Settling Parties may apply to the MDEQ for an "Approval of Performance of Response Activities" when the Settling Parties have satisfactorily performed the response activities required by the MDEQ-approved work plans, pursuant to paragraphs 8.4-8.8 and 8.11, and any MDEQ-approved modifications to those plans, with the exception of the performance of response activities to implement any long-term requirements of a RAP that are needed to assure the effectiveness and integrity of a remedial action. For the purposes of this Order, the "long-term requirements of a RAP that are needed to assure the effectiveness and integrity of a remedial action" include, but are not limited to, the following: ensuring that any land and resource use restrictions are maintained and enforced; performing operation and maintenance and long-term monitoring activities; maintaining financial assurance; permanent markers; and providing the GSI Report(s) and implementing any additional MDEQ required response activities pursuant to Paragraph 8.10. When the Settling Parties have met the criteria stated in

this paragraph, the Settling Parties may send a "Request for Approval of Performance of Response Activities" and a draft Performance Report (collectively "Request for Approval of Performance") to the MDEQ. The draft Performance Report shall summarize all response activities conducted pursuant to the MDEQ-approved work plans and shall include or reference any supporting documentation.

(b) After receipt of the Request for Approval of Performance Submission, if the MDEQ determines that the Settling Parties has met the criteria specified in paragraph 8.12(a), the ERD Division Chief will so notify the Settling Parties. Upon the Settling Parties' delivery of a final Performance Report, the ERD Division Chief will issue an Approval of Performance of Response Activities ("Approval of Performance"). The MDEQ's issuance of an Approval of Performance does not relieve the Settling Parties of their obligations to achieve and maintain the performance objectives specified in paragraph 8.1 and to continue to comply with this Order, including the long-term requirements as defined in paragraph 8.12(a).

8.13 Interim Well Abandonment

Within thirty (30) days after receipt of the MDEQ's Approval of Performance pursuant to paragraph 8.12(b), the Settling Parties shall submit to the MDEQ for review and approval a work plan for the proper plugging and abandonment of any monitor wells that will not be used for long-term monitoring at the Facility ("Interim Well Abandonment Work Plan"). The work plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receipt of MDEQ approval of the work plan, the Settling Parties shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications set forth in the ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other

Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the well abandonment work plan, the Settling Parties shall submit an Interim Well Abandonment Report to the MDEQ.

8.14 Final Well Abandonment

Upon completion of the monitoring activities as set forth in an MDEQ-approved RAP, including operation and maintenance and long-term monitoring, the Settling Parties shall submit to the MDEQ for review and approval a work plan for the final identification, plugging and abandonment of all remaining monitor wells at or related to the Facility ("Final Well Abandonment Work Plan"). The Final Well Abandonment Work Plan shall identify the monitor wells that will be plugged and abandoned and an implementation schedule for performing the work. Upon receiving MDEQ approval of the Final Well Abandonment Work Plan, the Settling Parties shall properly plug and abandon monitor wells in accordance with the approved plan and the specifications described in ASTM Standard D 5299-92 (Standard Guide for Decommissioning Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities) or other relevant or applicable standards that are in effect at the time the wells are abandoned. Within thirty (30) days of completing the well abandonment work plan, the Settling Parties shall submit a Final Well Abandonment Report to the MDEQ.

8.15 Modification of a Response Activity Work Plan

(a) If the MDEQ determines that a modification to a response activity work plan is necessary to comply with Part 201, to meet and maintain the applicable performance objectives specified in paragraph 8.1, or to meet any other requirement of this Order, the MDEQ may

require that such modification be incorporated into a previous MDEQ-approved response activity work plan. If extensive modifications are necessary, the MDEQ may require the Settling Parties to develop and submit a new draft work plan. The Settling Parties may request that the MDEQ consider a modification to a response activity work plan by submitting such request for modification along with the proposed change in the response activity work plan and the justification for that change to the MDEQ for review and approval. Any such request for modification by the Settling Parties must be forwarded to the MDEQ at least thirty (30) days prior to the date that the performance of any affected response activity is due. Any work plan modifications or any new work plans shall be developed in accordance with the applicable requirements of this Section and shall be submitted to the MDEQ for review and approval in accordance with the procedures set forth in Section XV (Submissions and Approvals).

(b) Upon MDEQ approval, the Settling Parties shall perform response activities that are provided for in a modified response activity work plan or a new work plan in accordance with MDEQ-approved implementation schedules.

8.16 Progress Reports

(a) The Settling Parties shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Order. These progress reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Order during the previous reporting period;

(ii) All results of sampling and tests and other data received by the Settling Parties, their employees or authorized representatives during the previous reporting period relating to the response activities performed pursuant to this Order;

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how the Settling Parties propose to resolve those issues;

(iv) A description of data collection and other activities scheduled for the next reporting period; and

(v) 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.

(b) The first progress report shall be submitted to the MDEQ within sixty (60) days following the Effective Date of this Order. Thereafter, progress reports shall be submitted quarterly until otherwise specified in the MDEQ-approved work plans. Pursuant to paragraph 8.15, either the MDEQ may modify or the Settling Parties may request to modify a schedule for the submittal of progress reports contained in an MDEQ-approved work plan.

8.17 Voidance of the MDEQ's Approval of a RAP

(a) If the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(f)-(j) or (2) of NREPA and the Settling Parties allow a lapse of, or do not comply with, any of the provisions of this Order or an MDEQ-approved RAP with respect to the requirements of § 20120b(3)(a)-(e) of NREPA, the MDEQ's approval of the RAP is void from the time of the lapse or noncompliance until the lapse or noncompliance is corrected to the satisfaction of the MDEQ in accordance with paragraph 8.17(b). With respect to a land or

resource use restriction, a lapse of or noncompliance with this Order or an MDEQ-approved RAP includes the following: (i) a court of competent jurisdiction determines that a land or resource use restriction is unlawful; (ii) a land or resource use restriction is not filed or enacted in accordance with this Order or the MDEQ-approved RAP; (iii) a land or resource use restriction is violated or is not enforced by the controlling entity; or (iv) a land or resource use restriction expires or is modified or revoked without MDEQ approval.

(b) Within thirty (30) days of the Settling Parties becoming aware of a lapse or noncompliance under paragraph 8.17(a), the Settling Parties shall provide to the MDEQ a written notification of such lapse or noncompliance. This notification shall include a description of the nature of the lapse or noncompliance, an evaluation of the impact or potential impact of the lapse or noncompliance on the effectiveness and integrity of the RAP, and one of the following:

(i) If the Settling Parties have corrected the lapse or noncompliance, a written demonstration of how and when the lapse or noncompliance was corrected;

(ii) If the Settling Parties have not yet corrected the lapse or noncompliance, a work plan and implementation schedule for addressing the lapse or noncompliance; or

(iii) If the Settling Parties believe they will not be able to correct the lapse or noncompliance, an action plan and implementation schedule outlining the response activities the Settling Parties will take to comply with the cleanup criteria of Part 201 and to assure that the Facility does not pose a threat to public health, safety or welfare or the environment.

The action plan and implementation schedule identified in paragraph 8.17(b)(iii) shall include provisions for the development of any response activity work plans and associated implementation schedules that are necessary to assure protection of public health, safety and welfare and the environment, including work plans for interim response activities, a remedial

investigation to provide additional information to support the selection and approval of an alternate remedial action plan and an approvable alternate remedial action plan that meets the performance objectives specified in paragraph 8.1. The Settling Parties shall develop those response activity work plans pursuant to the requirements specified in this Order and shall submit those plans in accordance with the schedule established in an MDEQ-approved action plan. The MDEQ will review and approve any plans submitted pursuant to this Section in accordance with the procedures set forth in Section XV (Submissions and Approvals). Upon receipt of MDEQ approval, the Settling Parties shall perform the response activities in accordance with the MDEQ-approved work plans.

(c) If the Settling Parties do not comply with all of the requirements of paragraph 8.17(b), stipulated penalties as specified in paragraph 17.2 shall begin to accrue the day the lapse or noncompliance under paragraph 8.17(a) occurred and continue to accrue until the lapse or noncompliance is corrected to the satisfaction of the MDEQ.

8.18 MDEQ's Performance of Response Activities

If the Settling Parties cease to perform the response activities required by this Order, is not performing response activities in accordance with this Order or is performing response activities in a manner that may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to the Settling Parties, take over the performance of those response activities. However, the MDEQ is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section XI (Emergency Response). If the MDEQ finds it necessary to take over the performance of response activities that the Settling Parties are

obligated to perform under this Order, the Settling Parties shall reimburse the State its costs to perform those response activities plus accrued interest. Interest shall begin to accrue on the State's costs at the rate specified in § 20126a(3) of NREPA on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this paragraph shall be considered to be "Future Response Activity Costs", and the Settling Parties shall provide reimbursement of these costs and any associated interest to the State in accordance with paragraphs 16.3, 16.5, and 16.6 (Reimbursement of Costs and Payment of Civil Penalties).

IX. ACCESS

9.1 Upon the Effective Date of this Order, the Settling Parties shall allow the MDEQ staff and its authorized employees, agents, representatives, contractors and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated property is owned, controlled by or available to the Settling Parties. MDEQ staff and its authorized employees, agents, representatives, contractors and consultants shall be allowed to enter the Facility and associated properties, upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, for the purpose of conducting any activity for which access is required for the implementation of this Order or to otherwise fulfill any responsibility under federal or State laws with respect to the Facility, including, but not limited to, the following:

(a) Monitoring response activities or any other activities taking place pursuant to this Order at 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 or conducting response activities at or near the Facility;

(f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance or 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;

(h) Communicating with the Settling Parties' Project Coordinator or other personnel, representatives or consultants for the purpose of assessing compliance with this Order;

(i) Determining whether the Facility or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Order; and

(j) Assuring the protection of public health, safety and welfare and the environment.

9.2 To the extent that the Facility, or any other property where the response activities are to be performed by the Settling Parties under this Order, is owned or controlled by persons other than the Settling Parties, the Settling Parties shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants. The Settling Parties 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, providing reasonable consideration acceptable to the owner or

taking judicial action to secure such access. If judicial action is required to obtain access, the Settling Parties shall provide documentation to the MDEQ that such judicial action has been filed in a court of appropriate jurisdiction no later than sixty (60) days after the Settling Parties' receipt of MDEQ approval of the work plan for which such access is needed. If the Settling Parties have not been able to obtain access within sixty (60) days after filing judicial action, the Settling Parties shall promptly notify the MDEQ of the status of its efforts to obtain access and provide an assessment of how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delay in the performance of response activities unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XII (Delays in Performance, Violations and *Force Majeure*).

9.3 Any lease, purchase, contract or other agreement entered into by the Settling Parties, 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 any other person undertaking the response activities and their authorized representatives, the access provided under this Section IX (Access) and Section XIII (Record Retention/Access to Information).

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

X. SAMPLING AND ANALYSIS

10.1 All sampling and analysis conducted pursuant to this Order shall be in accordance with the QAPP specified in paragraph 8.3 and MDEQ-approved work plans.

10.2 The Settling Parties, or their consultants or subcontractors, shall provide the MDEQ ten (10) days notice prior to any sampling activity to be conducted pursuant to this Order to allow the ERD Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where ten (10) days notice is not possible, the Settling Parties, or their 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, the Settling Parties may forego the 10-day notification period for that particular sampling event.

10.3 The Settling Parties shall provide the MDEQ with the results of all environmental sampling and other analytical 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 the Progress Reports set forth in paragraph 8.16.

10.4 For the purpose of quality assurance monitoring, the Settling Parties shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory that is used by the Settling Parties in implementing this Order.

XI. EMERGENCY RESPONSE

11.1 If, in the course of the Settling Parties' performance of response activities pursuant to this Order, an act or the occurrence of an event causes a release or threat of release of a hazardous substance at or from the Facility or causes exacerbation of existing contamination at the Facility, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety or welfare or the environment, the Settling Parties shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat of release, exacerbation or endangerment and shall immediately notify the MDEQ's Project Coordinator. In the event of his or her unavailability, the Settling Parties shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any actions taken by the Settling Parties shall be in accordance with all applicable health and safety laws and regulations.

11.2 Within ten (10) days of notifying the MDEQ of such an act or event, the Settling Parties shall submit a written report setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, exacerbation or endangerment caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether the Settling Parties notify the MDEQ under this Section, if an act or event causes a release, threat of release or exacerbation, which poses or threatens to pose an imminent and substantial endangerment to public health, safety or welfare or the environment, the MDEQ may: (a) require the Settling Parties to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat of release, exacerbation or endangerment; (b) require the Settling Parties to undertake any actions that the

MDEQ determines are necessary to prevent or abate any such release, threat of release, exacerbation or endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, exacerbation or endangerment. This Section is not subject to the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

XII. DELAYS IN PERFORMANCE, VIOLATIONS, AND *FORCE MAJEURE*

12.1 The Settling Parties 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.*" The Settling Parties shall not be deemed to be in violation of this Order if the State agrees that a delay in performance is attributable to a *Force Majeure* event pursuant to paragraph 12.4(a) or if the Settling Parties' position prevails at the conclusion of a dispute resolution proceeding between the Parties regarding an alleged *Force Majeure* event. If the Settling Parties otherwise fail to comply with or violate any requirement of this Order and such noncompliance or violation is not attributable to a *Force Majeure* event, the Settling Parties shall be subject to the stipulated penalties set forth in Section XVII (Stipulated Penalties).

12.2 For the purposes of this Order, a "*Force Majeure*" event is defined as any event arising from causes beyond the control of and without the fault of the Settling Parties, of any person controlled by the Settling Parties or of the Settling Parties' contractors that delays or prevents the performance of any obligation under this Order despite the Settling Parties' "best efforts to fulfill the obligation." The requirement that the Settling Parties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *Force Majeure*

event and to address the effects of any potential *Force Majeure* event as it is occurring and following the potential *Force Majeure* event, such that any delay is minimized to the greatest extent possible. A *Force Majeure* event does not include, among other things, unanticipated or increased costs, changed financial circumstances, labor disputes or failure to obtain a permit or license as a result of the Settling Parties' acts or omissions.

12.3 If either (a) an event occurs that causes or may cause a delay in the performance of any obligation under this Order, whether or not such delay is caused by a *Force Majeure* event, or (b) a delay in performance or other violation occurs due to the Settling Parties' failure to comply with this Order, the Settling Parties shall do the following:

(i) Notify the MDEQ by telephone or telefax within two (2) business days of discovering the event or violation; and

(ii) Within ten (10) days of providing the two (2) business days notice, provide a written notice, action plan and supporting documentation to the MDEQ that includes the following:

(1) A description of the event, delay in performance or violation and the anticipated length and precise causes of the delay, potential delay or violation;

(2) The specific obligations of this Order that may be or have been affected by the delay in performance or violation;

(3) The measures that the Settling Parties have taken or propose to take to avoid, minimize or mitigate the delay in performance or the effect of the delay, or to cure the violation, and an implementation schedule for performing those measures;

(4) If the Settling Parties intend to assert a claim of *Force Majeure*, the Settling Parties' rationale for attributing a delay or potential delay to a *Force Majeure* event;

(5) Whether the Settling Parties are requesting an extension for the performance of any of their obligations under this Order and, if so, the specific obligations for which they are seeking such an extension, the length of the requested extension and its rationale for needing the extension; and

(6) A statement as to whether, in the opinion of the Settling Parties, the event, delay in performance or violation may cause or contribute to an endangerment to public health, safety or welfare or the environment and how the measures taken or to be taken to address the event, delay in performance or violation will avoid, minimize or mitigate such endangerment.

12.4 The State will provide written notification of its approval, approval with modifications or disapproval of the Settling Parties' written notification under paragraph 12.3 and will notify the Settling Parties of one of the following:

(a) If the State agrees with the Settling Parties' assertion that a delay or potential delay is attributable to a *Force Majeure* event, the MDEQ's written notification will include the length of the extension, if any, for the performance of specific obligations under this Order that are affected by the *Force Majeure* event and for which the Settling Parties are seeking an extension. An extension of the schedule for performance of a specific obligation affected by a *Force Majeure* event shall not, by itself, extend the schedule for performance of any other obligation.

(b) If the State does not agree with the Settling Parties' assertion that a delay or anticipated delay has been or will be caused by a *Force Majeure* event, the State will notify the Settling Parties of its decision. If the Settling Parties disagree with the State's decision, the Settling Parties may initiate the dispute resolution process specified in Section XVIII (Dispute Resolution) of this Order. In any such proceeding, the Settling Parties shall have the burden of demonstrating by the preponderance of the evidence that: (i) the delay or anticipated delay has been or will be caused by a *Force Majeure* event; (ii) the duration of the delay or of any extension sought by the Settling Parties were or will be warranted under the circumstances; (iii) the Settling Parties exercised their best efforts to fulfill the obligation; and (iv) the Settling Parties have complied with all the requirements of this Section.

(c) If the Settling Parties' notification pertains to a delay in performance or other violation that has occurred because of their failure to comply with the requirements of this Order, the Settling Parties shall undertake those measures determined to be necessary and appropriate by the MDEQ to address the delay in performance or violation and shall pay stipulated penalties upon receipt of the MDEQ's demand for payment, as set forth in Section XVII (Stipulated Penalties). Penalties shall accrue as provided in Section XVII (Stipulated Penalties) regardless of when the MDEQ notifies the Settling Parties or when the Settling Parties notify the MDEQ of a violation.

12.5 This Order shall be modified as set forth in Section XXV (Modifications) to reflect any modifications to the implementation schedule of the applicable response activity work plan that are made pursuant to paragraph 12.4(a) or that are made pursuant to the resolution of a dispute between the Parties under Section XVIII (Dispute Resolution).

12.6 The Settling Parties' failure to comply with the applicable notice requirements of paragraph 12.3 shall render this Section void and of no force and effect with respect to an assertion of *Force Majeure* by the Settling Parties; provided, however, that the State may waive these notice requirements in its sole discretion and in appropriate circumstances. The State will provide written notice to the Settling Parties of any such waiver.

12.7 The Settling Parties' failure to notify the MDEQ as required by paragraph 12.3 constitutes an independent violation of this Order and shall subject the Settling Parties to stipulated penalties as set forth in Section XVII (Stipulated Penalties).

XIII. RECORD RETENTION/ACCESS TO INFORMATION

13.1 The Settling Parties and their representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of ten (10) years after completion of operation and maintenance and long-term monitoring at the Facility, 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. However, if the Settling Parties choose to perform a RAP that relies on the cleanup criteria established under § 20120a(1)(f)-(j) or (2) and that RAP provides for land or resource use restrictions, the Settling Parties shall retain any records pertaining to those land or resource use restrictions in perpetuity or until the MDEQ determines that land and resource use restrictions are no longer needed. After the ten (10)-year period of document retention

following completion of operation and maintenance and long-term monitoring at the Facility, the Settling Parties may seek the MDEQ's written permission to destroy any documents that are not required to be held in perpetuity. In the alternative, the Settling Parties 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 the Settling Parties may offer to relinquish custody of all documents to the MDEQ. In any event, the Settling Parties shall obtain the MDEQ's written permission prior to the destruction of any documents. The Settling Parties' request shall be accompanied by a copy of this Order and sent to the address listed in Section XIV (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ.

13.2 Upon request, the Settling Parties shall provide to the MDEQ copies of all documents and information within their possession, or within the possession or control of their employees, contractors, agents or representatives, relating to the performance of response activities or other requirements 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 or other correspondence, documents or information related to response activities. Upon request, the Settling Parties also shall make available to the MDEQ, upon reasonable notice, the Settling Parties' employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of response activities.

13.3 If the Settling Parties submit to the MDEQ documents or information that the Settling Parties believe are entitled to protection, as provided for in § 20117(10) and (11) of

NREPA, the Settling Parties may designate in that submittal the documents or information to which it believes it is entitled such protection. The requirements of this Section do not abrogate attorney-client privilege as recognized by law. If no such designation 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 the Settling Parties. Information described in § 20117(11)(a)-(h) of NREPA shall not be claimed as confidential or privileged by the Settling Parties. Information or data generated under this Order shall not be subject to Part 148 of NREPA, MCL 324.14801 *et seq.*

XIV. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

14.1 Each Party shall designate one or more Project Coordinators. Whenever notices are required to be given or Progress Reports, information on the collection and analysis of samples, sampling data, 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 whenever other communications between the parties are needed, such communications shall be directed to the designated Project Coordinator at the address listed below. 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.

A. As to MDEQ:

(1) For all matters pertaining to this Order, except those specified in paragraphs 14.1A(2), (3) and (4) below:

Elaine Pelc, Project Coordinator
Environmental Response Division
Cadillac District, Gaylord Field Office
Michigan Department of Environmental Quality
2100 West M-32
Gaylord, MI 49734-5830
Telephone: 989-731-4920
Fax No.: 989-731-6181

This Project Coordinator will have primary responsibility for overseeing the performance of response activities at the Facility and other requirements specified in this Order for the MDEQ.

(2) For all matters specified in this Order that are to be directed to the ERD Division Chief:

Chief, Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-335-1104
FAX: 517-373-2637

(Via courier)
525 West Allegan
Constitution Hall
South Tower, 4th Floor
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the ERD shall also be provided to the MDEQ Project Coordinator designated in paragraph 14.1A(1).

(3) For Record Retention pursuant to Section XIII (Record Retention/Access to Information), and questions concerning financial matters pursuant to 8.8(b)(v) of Section VIII (Performance of Response Activities), Section XVI (Reimbursement of Costs and Payment of Civil Penalties), and Section XVII (Stipulated Penalties):

Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-373-7818
FAX: 517-373-2637

(Via courier)
525 West Allegan
Constitution Hall
South Tower, 4th Floor
Lansing, MI 48933

A copy of all correspondence that is sent to the Chief of the Compliance and Enforcement Section, ERD, shall also be provided to the MDEQ Project Coordinator designated in paragraph 14.1A(1).

(4) For all payments pursuant to Section XVI (Reimbursement of Costs and Payment of Civil Penalties) and Section XVII (Stipulated Penalties):

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

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

To ensure proper credit, all payments made pursuant to this Order must reference the DME Facility, the MDEQ Reference No. AOC-ERD-02-003 and the ERD Account Number ERD 3004.

A copy of all correspondence that is sent to the Revenue Control Unit shall also be provided to the MDEQ Project Coordinator designated in paragraph 14.1A(1), the Chief of the Compliance and Enforcement Section designated in paragraph 14.1A(3) and the Assistant Attorney General in Charge designated in paragraph 14.1B.

B. As to the Department of Attorney General:

Assistant Attorney General in Charge
Natural Resources and Environmental Quality Division
Department of Attorney General
525 West Allegan
Constitution Hall
South Tower, 5th Floor
Lansing, MI 48933
Telephone: 517-373-7540
FAX: 517-373-1610

C. As to DME:

Bruce Wasilewski
6342 Ferry Road
Charlevoix, MI 49720
Telephone: 231-547-6578
FAX : 231-547-4618
Alternative FAX: 231-547-2895

D. As to Fairchild:

Michael Hodge
Associate General Counsel
The Fairchild Corporation
45025 Aviation Drive, Suite 400
Dulles, VA 20166
Telephone : 703-478-5858
FAX : 703-478-5767

14.2 The Settling Parties' Project Coordinator is Donald Conway, Gosling Czubak Engineering Sciences, and shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Order for the Settling Parties.

14.3 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.

XV. SUBMISSIONS AND APPROVALS

15.1 All Submissions required by this Order shall comply with all applicable laws and regulations and the requirements of this Order and shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. All Submissions delivered to the MDEQ pursuant to this Order shall include a reference to the DME Facility and MDEQ Reference No.: AOC-ERD-01-[#]. Any Submission delivered to the MDEQ for approval also 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 approval 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 With the exception of the submittal of a RAP, after receipt of any Submission relating to response activities that is required to be submitted for approval pursuant to this Order, the MDEQ District Supervisor will in writing: (a) approve the Submission; (b) approve the

Submission with modifications; or (c) disapprove the Submission and notify the Settling Parties of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, the Settling Parties shall proceed to take the actions and perform the response activities required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the Submission marked "Final."

15.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to paragraph 15.2(c), the Settling Parties shall correct the deficiencies and resubmit the Submission for MDEQ review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, the Settling Parties shall proceed to take the actions and perform response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)- day period or other time period for the Settling Parties to resubmit the Submission, but shall not be payable unless the resubmission is also disapproved. The MDEQ will review the resubmitted Submission in accordance with the procedure set forth in paragraph 15.2. If a resubmitted Submission is disapproved, the MDEQ will so advise the Settling Parties and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until the Settling Parties deliver an approvable Submission.

15.4 Within six (6) months of receipt of a RAP, the ERD Division Chief will make a decision regarding the RAP and will in writing: (a) approve the RAP; (b) reject the RAP as insufficient if the RAP lacks any information necessary or required by the MDEQ to make a

decision regarding RAP approval; or (c) deny approval of the RAP. If the MDEQ denies approval of the RAP, it will provide the Settling Parties with a complete and specific statement of the conditions or requirements necessary to obtain approval to which the MDEQ may not add additional items after it has been issued. If the MDEQ fails to approve, reject, or deny approval of the RAP within six (6) months from the date the RAP is received, the RAP shall be considered approved. The time frame for a decision regarding the submitted RAP may be extended by the mutual consent of the Parties. Upon receipt of a notice of approval from the MDEQ, the Settling Parties shall proceed to take the actions and perform the response activities required by the MDEQ-approved RAP and submit a new cover page marked "Final."

15.5 Within thirty (30) days of receipt of a rejection or denial of approval of a RAP from the MDEQ pursuant to paragraph 15.4(b) or (c), the Settling Parties shall resubmit the RAP for MDEQ review and approval. The time frame for resubmission may be extended by the MDEQ. If the RAP is not approved upon resubmission, the MDEQ will so advise the Settling Parties. Any stipulated penalties applicable to the delivery of the RAP shall accrue during the thirty (30)-day period or other time period for the Settling Parties to submit another RAP, but shall not be payable unless the resubmitted RAP also is rejected or approval is denied. The MDEQ will review the resubmitted RAP in accordance with the procedure stated in paragraph 15.4. If the MDEQ rejects or denies a resubmitted RAP, the MDEQ will so advise the Settling Parties and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original RAP Submission and continue to accrue until the Settling Parties deliver an approvable RAP.

15.6 If the initial submittal of any Submission, including a RAP, contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by the Settling Parties to deliver an acceptable Submission that complies with Part 201 and this Order, the MDEQ will notify the Settling Parties of such and will deem the Settling Parties to be in violation of this Order. Stipulated penalties as set forth in Section XVII (Stipulated Penalties) shall begin to accrue on the day after the Submission was due until an approvable Submission is submitted to the MDEQ. Any other delay in the delivery of a Submission, noncompliance with a Submission or attachment to this Order, or failure to cure a deficiency of a Submission in accordance with paragraphs 15.3 or 15.5, shall subject the Settling Parties to penalties pursuant to Section XVII (Stipulated Penalties) or other remedies available to the State pursuant to this Order.

15.7 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Order shall be considered to be part of this Order and are enforceable pursuant to the terms of this Order. If there is a conflict between the requirements of this Order and any Submission or an attachment to a Submission, the requirements of this Order shall prevail.

15.8 An approval or approval with modifications shall not be construed to mean that the MDEQ concurs with any of the conclusions, methods or statements in any Submission or warrants that the Submission comports with law.

15.9 No informal advice, guidance, suggestions or comments by the MDEQ regarding any Submission provided by the Settling Parties shall be construed as relieving the Settling Parties of their obligation to obtain such formal approval as may be required by this Order.

XVI. REIMBURSEMENT OF COSTS AND PAYMENT OF CIVIL PENALTIES

16.1 The Settling Parties shall pay to the MDEQ the sum of $272,688.00 to resolve all State claims for Past Response Activity Costs relating to matters covered in this Order. Payment shall be made in eight quarterly payments to be paid as follows: The first payment of $34,086 shall be due within fifteen (15) days of the Effective Date of this Order. Subsequent quarterly payments shall be due October 15, January 15, April 15 and July 15 for the next two years until eight payments have been made. The last payment shall be due April 15, 2004. Payments shall be made pursuant to the provisions of paragraph 16.5.

16.2 The Settling Parties shall also pay: (a) response activity costs the State incurred prior to and on the dates set forth in the attached Summary Report (Attachment B), which have been paid since the dates set forth in the Summary Report; and (b) response activity costs the State has incurred and paid since the dates set forth in the Summary Report, excluding staff costs in negotiating and preparing settlement documents with the Settling Parties, but including overseeing response activities at the Facility prior to the Effective Date of this Order and contractor costs. Said costs shall be documented and included in the first demand for Future Response Activity Costs as set forth in paragraph 16.3.

16.3 The Settling Parties shall reimburse the State for all Future Response Activity Costs incurred by the State. As soon as possible after each anniversary of the Effective Date of this Order, the MDEQ will provide the Settling Parties with a written demand for payment of Future Response Activity Costs that have been lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred. Except as provided by Section XVIII (Dispute Resolution), the Settling Parties shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ.

16.4 The Settling Parties shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to the Settling Parties may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

16.5 All payments made pursuant to this Order shall be by certified check, made payable to the "State of Michigan - Environmental Response Fund," and shall be sent by first class mail to the Revenue Control Unit at the address listed in paragraph 14.1A(4) of Section XIV (Project Coordinators and Communications/Notices). The DME Facility, the MDEQ Reference No. AOC-ERD-02-003 and the ERD Account Number ERD 3004 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the Chief of the Compliance and Enforcement Section, ERD, at the address listed in paragraph 14.1A(3) the MDEQ Project Coordinator at the address listed in paragraph 14.1A(1) and to the

Assistant Attorney General in Charge at the address listed in paragraph 14.1B. Costs recovered pursuant to this Section, payment of stipulated penalties pursuant to Section XVII and payment of civil fines for violations of Part 201 pursuant to paragraph 16.7 shall be deposited into the Environmental Response Fund in accordance with the provisions of § 20108(3) of NREPA.

16.6 If the Settling Parties fail to make full payment to the MDEQ for Past Response Activity Costs or Future Response Activity Costs as specified in paragraphs 16.1 and 16.3, or for civil penalties as specified in paragraph 16.7, interest shall begin to accrue on the unpaid balance at the rate specified in § 20126a(3) of NREPA on the day after payment was due until the date upon which the Settling Parties make full payment of those costs and the accrued interest to the MDEQ. In any challenge by the Settling Parties to a MDEQ demand for reimbursement of costs, the Settling Parties shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with § 20126a(1)(a) of NREPA.

16.7 Within thirty (30) days of the Effective Date of this Order, the Settling Parties shall pay the MDEQ sixty-five thousand dollars ($65,000) to resolve all claims for civil fines under Parts 31 and 201 of NREPA relating to Past Violations for matters covered under this Order. "Past Violations" shall mean violations of the following sections of NREPA that occurred prior to the Effective Date of this Order: § 3109(1), § 3112(1), § 20107a(1)(b), § 20114(1)(a), § 20114(1)(c), § 20114(1)(e), § 20114(1)(g) and § 20114(h). Payment shall be made pursuant to the provisions of paragraph 16.5.

XVII. STIPULATED PENALTIES

17.1 The Settling Parties shall be liable for stipulated penalties in the amounts set forth in paragraphs 17.2, 17.3 and 17.4 for failure to comply with the requirements of this Order, unless excused under Section XII (Delays in Performance, Violations and Force Majeure). "Failure to Comply" by the Settling Parties shall include failure to deliver Submissions and notifications, failure to complete response activities in accordance with MDEQ-approved plans and this Order and failure to pay costs and penalties in accordance with all applicable requirements of law and this Order within the specified implementation schedules established by or approved under this Order.

17.2 The following stipulated penalties shall accrue per violation per day for violations pursuant to Section XI (Emergency Response) or failure to meet the following compliance milestones:

Penalty Per Violation Per Day	Period of Noncompliance
$ 500.00	1st through 14th day
$ 1,000.00	15th through 30th day
$ 2,000.00	31st day and beyond

Compliance Milestones

(a) Submission of MDEQ-approvable Due Care Documentation within 30 days of the Effective Date of this Order.

(b) Achieving concentrations of vinyl chloride below Part 201 groundwater contact values in all groundwater downgradient of Mathews Lane by October 1, 2002, consistent with Paragraph 8.5 of this Order.

(c) Submission of a MDEQ-approvable Beach Monitoring Plan within fifteen (15) days of the Effective Date of the Order.

(d) Submission of the final RI report with ninety (90) days of the Effective Date of the Order. The MDEQ may provide a written extension if further investigation is necessary based on information collected in the initial investigation.

(e) Submission of an administratively complete, MDEQ-approvable RAP within six (6) months of the MDEQ's approval of the final RI report .

(f) Submission of the RAP report detailing how all elements of the RAP, except long-term operation and maintenance, have been finished pursuant to the MDEQ-approved schedule.

(g) Performance of the required response activities in accordance with the schedule in any MDEQ-approved work plan, including, but not limited to, the RAP.

(h) Achievement and maintenance of the performance objectives specified in paragraph 8.1 of this Order.

(i) Failure to comply with all of the requirements of paragragh 8.17(b) upon voidance of a MDEQ-approved RAP.

17.3 The following stipulated penalties shall accrue, per violation, per day for failure to submit timely or adequate plans or reports pursuant to paragraphs 8.5, 8.6, 8.7, 8.8, 8.10, 8.11, 15.3 and 15.5.

Penalty Per Violation Per Day	Period of Noncompliance
$ 100.00	1st through 14th day
$ 300.00	15th through 30th day
$ 500.00	31st day and beyond

17.4 Except as provided in paragraphs 17.2 and 17.3 and Section XII (Delays in Performance, Violations and *Force Majeure*) and Section XVIII (Dispute Resolution), if the Settling Parties fail or refuse to comply with any other term or condition of this Order, the Settling Parties shall pay the MDEQ stipulated penalties of $ 100.00 a day for each and every failure or refusal to comply.

17.5 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

17.6 Except as provided in Section XVIII (Dispute Resolution), the Settling Parties 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 set forth in paragraph 16.5 in Section XVI (Reimbursement of Costs and Payment of Civil Penalties). Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in § 20126a(3) of NREPA on the day after payment was due until the date upon which the Settling Parties make full payment of those stipulated penalties and the accrued interest to the MDEQ. 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.

17.7 The payment of penalties shall not alter in any way the Settling Parties' obligation to complete the performance of response activities required by this Order.

17.8 If the Settling Parties fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if the Settling Parties violate this Order. For any failure or refusal of the Settling Parties to comply with the requirements of this Order, the State also reserves the right to pursue any other remedies to which it is entitled under this Order or any applicable law including, but not limited to, seeking civil penalties, injunctive relief, the specific performance of response activities, reimbursement of costs, invoking the provisions of § 20119 of NREPA, and sanctions for contempt of court.

17.9 Notwithstanding any other provision of this Section, the State may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVIII. DISPUTE RESOLUTION

18.1 Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order, except for paragraph 8.17(a) (Voidance of the MDEQ's Approval of a RAP) and Section XI (Emergency Response), which are not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce obligations

of the Settling Parties that have not been disputed in accordance with this Section. Engagement of a dispute resolution between the Parties shall not be cause for the Settling Parties to delay the performance of any response activity required under this Order.

18.2 The State shall maintain an administrative record of any disputes that are initiated pursuant to this Section. The administrative record shall include the information the Settling Parties provide to the State under paragraphs 18.3-18.7, and any documents the MDEQ and State rely on to make the decisions set forth in paragraphs 18.3-18. 7. The Settling Parties shall have the right to request that the administrative record be supplemented with other material involving matters in dispute pursuant to § 20137(5) of NREPA.

18.3 Any dispute that arises under this Order with respect to the MDEQ's disapproval, modification or other decision concerning the requirements of paragraphs 8.1 - 8.8 and 8.10 - 8.18, of Section VIII (Performance of Response Activities), Section X (Sampling and Analysis) or Section XV (Submissions and Approvals) shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the Parties. A dispute shall be considered to have arisen on the date that a Party to this Order receives a written Notice of Dispute from the other Party. This Notice of Dispute 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 upon which the Party bases its position. The period of negotiations shall not exceed ten (10) days from the date a Party receives a Notice of Dispute, unless the period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within ten (10) days, the ERD District Supervisor will

thereafter provide a written ERD Statement of Decision to the Settling Parties. In the absence of initiation of formal dispute resolution by the Settling Parties under paragraph 18.4, the MDEQ's position as set forth in the ERD Statement of Decision shall be binding on the Parties.

18.4 If the Settling Parties and the MDEQ cannot informally resolve a dispute under paragraph 18.3 or if the dispute involves a RAP, the Settling Parties may initiate formal dispute resolution by submitting a written request for review of the disputed issues (Request for Review) to the ERD Division Chief. The Settling Parties must file the Request for Review with the ERD Division Chief and the MDEQ Project Coordinator within ten (10) days of the Settling Parties' receipt of the ERD Statement of Decision issued pursuant to paragraph 18.3. The Settling Parties' 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 upon which the Settling Parties base their position. Within twenty (20) days of the ERD Division Chief's receipt of the Settling Parties' Request for Review, the ERD Division Chief will provide a written Final ERD Statement of Decision to the Settling Parties, which will include a statement of his or her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting his or her position; and all supporting documentation relied upon by the ERD Division Chief in making his or her decision. The period for the ERD Division Chief's review of the Request for Review may be extended by written agreement between the Parties. The Final ERD Statement of Decision shall be binding on the Parties.

18.5 If the Settling Parties seek to challenge any decision or notice issued by the MDEQ or the State under this Order, except for any decision or notice regarding matters covered by paragraph 8.17(a) (Voidance of the MDEQ's Approval of a RAP), Section XI (Emergency Response) and paragraph 18.2 or 18.3, the Settling Parties shall send a written Notice of Dispute to both the ERD Division Chief and the Assistant Attorney General assigned to this matter within ten (10) days of receipt of the decision or notice by the MDEQ or the State. The Notice of Dispute shall include the relevant facts upon which the dispute is based; any factual data, analysis or opinion supporting its position; and all supporting documentation upon which the Settling Parties base their position. The Parties shall have fourteen (14) days from the date of the State's receipt of the Notice of Dispute to reach an agreement. If an agreement is not reached on any issue within the fourteen (14) day period, the State will thereafter issue, in writing, the State's Statement of Decision to the Settling Parties, which shall be binding on the Parties.

18.6 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order, but payment shall be stayed pending resolution of the dispute. If, within fourteen days after the MDEQ's issuance of the ERD or Final ERD Statement of Decision under paragraphs 18.3 or 18.4, respectively, or after the State's issuance of the State's Statement of Decision under paragraph 18.5, the Settling Parties do not comply with these decisions, the MDEQ may demand payment of stipulated penalties and the Settling Parties shall pay stipulated penalties as set forth in paragraph 17.6 (Stipulated Penalties). The Settling Parties shall not be assessed stipulated penalties for disputes that are resolved in their favor. The Department of Attorney General, on behalf of the MDEQ, may take civil enforcement action against the Settling

Parties to seek the assessment of civil penalties or damages pursuant to § 20137(1) of NREPA or other statutory and equitable authorities.

18.7 Notwithstanding this Section and in accordance with Sections XVI (Reimbursement of Costs and Payment of Civil Penalties) and XVII (Stipulated Penalties), as appropriate, the Settling Parties shall pay to the MDEQ that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an on-going dispute resolution proceeding.

18.8 As provided for in § 20137(4) of NREPA, 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 the Settling Parties to comply with this Order or to enforce a term, condition or other action required by this Order. Nothing in this Order shall expand the Settling Parties' ability to obtain pre-enforcement review of this Order.

XIX. INDEMNIFICATION AND INSURANCE

19.1 The State of Michigan does not assume any liability by entering into this Order. This Order shall not be construed to be an indemnity by the State for the benefit of the Settling Parties or any other person.

19.2 The Settling Parties shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of the Settling

Parties, their officers, employees, agents or any persons acting on their behalf, or under their control, in performing the activities required by this Order.

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

19.4 The State shall provide the Settling Parties notice of any claim for which the State intends to seek indemnification pursuant to paragraphs 19.2 and 19.3.

19.5 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 that is entered into by or on behalf of the Settling Parties for the performance of response activities required by this Order. Neither the Settling Parties nor any contractor shall be considered an agent of the State.

19.6 The Settling Parties waive 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 the

Settling Parties and any other person for the performance of response activities at the Facility, including claims on account of construction delays.

19.7 Prior to commencing any response activities pursuant to this Order and for the duration of this Order, the Settling Parties shall secure and maintain comprehensive general liability insurance with limits of one million dollars ($ 1,000,000.00), combined single limit, which names the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If the Settling Parties demonstrate 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, the Settling Parties need 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, prior to commencement of response activities pursuant to this Order, the Settling Parties shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing such 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, the Settling Parties 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 the Settling Parties in furtherance of this Order.

XX. COVENANTS NOT TO SUE BY THE STATE

20.1 In consideration of the actions that will be performed and the payments that will be made by the Settling Parties under the terms of this Order, and except as specifically provided

for in this Section and Section XXI (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action against the Settling Parties for:

(a) Response activities, excluding the long-term requirements specified in paragraph 8.12(a) of this Order, that the Settling Parties perform pursuant to MDEQ-approved work plans under this Order.

(b) Response activities, including the long-term requirements specified in paragraph 8.12(a) of this Order that the Settling Parties perform pursuant to MDEQ-approved work plans under this Order.

(c) Reimbursement of Past Response Activity Costs incurred by the State as set forth in paragraphs 16.1 and 16.6 of this Order.

(d) Reimbursement of response activity costs and Future Response Activity Costs that are incurred by the State and paid by the Settling Parties as set forth in paragraphs 16.2, 16.3, and 16.6 of this Order.

(e) Payment of civil penalties and any applicable interest for violations of NREPA as set forth in paragraphs 16.6 and 16.7 of this Order.

20.2 The covenants not to sue shall take effect under this Order as follows:

(a) With respect to the Settling Parties' liability for response activities that it has satisfactorily performed in compliance with MDEQ–approved work plans, excluding the long-term requirements specified in paragraph 8.12(a) under this Order, the covenant not to sue shall take effect upon issuance by the MDEQ of the Approval of Performance of Response Activities pursuant to Section VIII (Performance of Response Activities).

(b) With respect to the Settling Parties' liability for response activities that it has satisfactorily performed in compliance with MDEQ–approved work plans, including the long-term requirements specified in paragraph 8.12(a) under this Order, the covenant not to sue shall take effect upon issuance by the MDEQ of the Certification of Completion of Remedial Action pursuant to Section XXIV (Certification of Completion of Remedial Action).

(c) With respect to the Settling Parties' liability for Past Response Activity Costs, response activity costs identified in Paragraph 16.2 of this Order, and Future Response Activity Costs incurred by the State and paid by the Settling Parties, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs.

(d) With respect to civil penalties for Past Violations, as defined in paragraph 16.7 of this Order, the covenant not to sue shall take effect upon the State's receipt of payment for those penalties.

20.3 The covenants not to sue extend only to the Settling Parties and do not extend to any other person.

XXI. RESERVATION OF RIGHTS BY THE STATE

21.1 The covenants not to sue apply only to those matters specified in paragraph 20.1. These covenants not to sue do not apply to, and the State reserves its rights on, the matters specified in paragraph 20.1 until such time as these covenants become effective as set forth in paragraph 20.2. The MDEQ and the Attorney General reserve the right to bring an action against the Settling Parties under federal and state laws for any matters for which the Settling Parties have not received a covenant not to sue as set forth in Section XX (Covenants Not to Sue by the

State). The State reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against the Settling Parties with respect to all other matters, including, but not limited to, the following:

(a) the performance of any other response activities that are required to address the release or threat of release of hazardous substances at the Facility, including, but not limited to, any response activities that may be required if the MDEQ's approval of the RAP becomes void pursuant to Section VIII (Performance of Response Activities) of this Order;

(b) response activity costs other than those referred to in Section XVI (Reimbursement of Costs and Payment of Civil Penalties);

(c) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility;

(d) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances taken from the Facility;

(e) damages for injury to, destruction of, or loss of natural resources and the costs for any natural resource damage assessment;

(f) criminal acts;

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

(h) the release or threatened release of hazardous substances or violations of federal or state law that occur during or after the performance of response activities required by this Order.

21.2 The State reserves the right to take action against the Settling Parties if it discovers at any time that any material information provided by the Settling Parties prior to or after entry of this Order was false or misleading.

21.3 The MDEQ and the Attorney General expressly reserve all rights and defenses pursuant to any available legal authority that they may have to enforce this Order or to compel the Settling Parties to comply with NREPA.

21.4 In addition to, and not as a limitation of any other provision of this Order, the MDEQ retains all authority and reserves all rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

21.5 In addition to, and not as a limitation of any provision of this Order, the MDEQ and the Attorney General retain all of their information gathering, inspection, access and enforcement authorities and rights under Part 201 and any other applicable statute or regulation.

21.6 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 the Settling Parties' 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.

21.7 This Order does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by the Settling Parties in accordance with the MDEQ-approved work plans required by this Order will result in the achievement of the performance objectives stated in paragraph 8.1 or the remedial criteria established by law, or that those response activities will assure protection of public health, safety or welfare or the environment.

21.8 Except as provided in paragraph 20.1, nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to § 20132(8) of NREPA, to direct or order all appropriate action to protect the public health, safety or welfare 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.

XXII. COVENANT NOT TO SUE BY FAIRCHILD AND DME

22.1 Fairchild and DME hereby covenant not to sue or to 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 that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to § 20119(5) of NREPA or any other provision of law.

22.2 After the Effective Date of this Order, if the Attorney General initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs or other appropriate relief relating to the Facility, Fairchild and DME agree not to assert and shall

not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion or claim-splitting or that are based upon a defense that contends any claims raised by the MDEQ or the Attorney General in such a 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 XX (Covenants Not to Sue by the State).

XXIII. CONTRIBUTION PROTECTION

Pursuant to § 20129(5) of NREPA and § 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC 9613(f)(2), and to the extent provided in Section XX (Covenants Not to Sue by the State), Fairchild and DME shall not be liable for claims for contribution regarding matters addressed in this Order to the extent allowable by law. Entry of this Order does not discharge the liability of any other person that may be liable under § 20126 of NREPA, or CERCLA, 42 USC 9607 and 9613. Pursuant to § 20129(9) of NREPA, any action by Fairchild or DME for contribution from any person that is 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 NREPA or other applicable federal or state law.

XXIV. CERTIFICATION OF COMPLETION OF REMEDIAL ACTION

24.1 For the purposes of this Order, "Completion of Remedial Action" shall mean that all response activities have been completed and Part 201 remedial criteria pursuant to § 20120a(1)(a), (15) and (17) have been attained at the Facility such that the Facility is no longer a "facility" as that term is defined in § 20101(1)(o) of NREPA. The completion of all response

activities and attainment of § 20120a(1)(a), (15) and (17) remedial criteria of Part 201 shall mean that all technical and administrative components of a RAP are no longer needed, including, but not limited to, land and resource use restrictions, operation and maintenance and long-term monitoring activities and the maintenance of financial assurance; and that any data collection and verification sampling required to verify that the Facility is no longer a "facility" have been fully completed and have demonstrated that the Facility meets the remedial criteria as defined in § 20120a(1)(a), (15) and (17) of NREPA.

24.2 When the Settling Parties believe they have completed all response activities at the Facility, the Settling Parties shall assess the need for the additional collection of data and verification sampling in order to determine whether § 20120a(1)(a), (15) and (17) remedial criteria have been attained at the Facility. The Settling Parties shall then provide that assessment to the MDEQ. If the Settling Parties believe that no additional data collection or sampling is needed, they shall provide with their assessment the rationale and supporting documentation for that position. If the Settling Parties believe additional data collection or verification sampling is needed or, if the MDEQ, after its review of the assessment, determines that the Settling Parties must collect additional data and conduct sampling to further assess whether it has met the requirements for the issuance of a Certification of Completion of Remedial Action for the Facility, the Settling Parties shall provide a work plan for the collection of the data and sampling to the MDEQ for review and approval. That work plan shall include a detailed description of the specific work tasks to be conducted, a description of how these work tasks will provide the data needed to determine whether the requirements for issuance of a Certification of Completion of Remedial Action for the Facility have been met and a schedule for performing the work plan.

The work tasks in the work plan also shall meet the requirements of any relevant and applicable laws or regulations or MDEQ-guidance that are in effect at the time the work plan is submitted. Upon the MDEQ's approval of the work plan, the Settling Parties shall perform the response activities in accordance with the MDEQ-approved work plan.

24.3 When the Settling Parties determine that they have completed the remedial action as defined in paragraph 24.1, paid all outstanding response activity costs and stipulated penalties owed to the State and complied with all other terms and conditions of this Order, they may submit to the MDEQ a Notification of Completion of Remedial Action and a draft Completion Report (collectively the "Notification of Completion"). The draft Completion Report shall summarize all response activities performed under this Order and shall include or reference any supporting documentation.

24.4 Upon receipt of the Completion Submission, the MDEQ will review the Submission. If the MDEQ determines that the Settling Parties have submitted sufficient information to demonstrate that it has satisfactorily completed all requirements of this Order and that the Settling Parties are in compliance with all other terms and conditions of this Order, the ERD Division Chief will so notify the Settling Parties. Upon the Settling Parties' delivery of a final Completion Report, the ERD Division Chief will issue a Certification of Completion of Remedial Action to the Settling Parties and will release any FAM that may have been provided by the Settling Parties. After issuance of the Certification of Completion of Remedial Action, the Settling Parties shall arrange for the rescission or revocation of any notices of environmental

remediation and land or resource use restrictions that may have been placed or enacted and remove any permanent markers that may have been placed at the Facility.

24.5 If, upon review of the Completion Submission, the MDEQ determines that the Settling Parties have not completed the remedial action as defined in paragraph 24.1 or the MDEQ determines that the Settling Parties have not complied with all other terms or conditions of this Order, the ERD Division Chief will so notify the Settling Parties.

XXV. MODIFICATIONS

25.1 This Order may only be modified according to the terms of this Section. Any Submission required by this Order, excluding the RAP, may be modified by the MDEQ's Project Coordinator. The RAP may only be modified by the ERD Division Chief or his or her authorized representative.

25.2 Modification of any other provision of this Order shall be made by written agreement between the Settling Parties' Project Coordinator, the ERD Division Chief and the designated representative of the Michigan Department of Attorney General.

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 Completion of the Remedial Action in accordance with Section XXIV (Certification of Completion of Remedial Action), the Settling Parties' 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.

XXVIII. SEVERABILITY

The provisions of this Order shall be severable. 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.

IT IS SO AGREED TO AND ORDERED BY:

7/16/02

Andrew W. Hogarth, Acting Chief
Environmental Response Division
Michigan Department of Environmental Quality

Date

6/27/02

Christopher D. Dobyns (P27125)
Assistant Attorney General
Natural Resources and Environmental Quality Division

Date

IT IS SO AGREED BY:

J. Lirette 7-10-02

D-M-E Company
Jerry Lirette
President

Date

Donald E. Miller July 2, 2002

The Fairchild Corporation
By Donald Miller, Executive
Vice President and General Counsel

Date

S: NR/cases/2000064893/DME/AOC 6-27-02