Original - Court 1st copy - Defendant 2nd copy - Plaintiff 3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 28th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 05-18853-CE

Court Address: Wexford County Circuit Court, 437 E. Division St., Cadillac, MI 49601 — Court telephone no.: (231) 779-9490

Plaintiff name(s), address(es) and telephone no(s).
Michigan Dep't of Environmental Quality
525 W. Allegan, 5th Floor, South Tower, Constitution Hall
Lansing, MI 48913

V

Defendant name(s), address(es), and telephone no(s).
AAR CORP
Resident Agent Arthur C. Richards
17515 West Nine Mile Road
Southfield, MI 48075

RECEIVED
APR 0 6 2005
RRD COMPLIANCE & ENFORCEMENT

Plaintiff attorney, bar no., address, and telephone no.
Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
525 W. Ottawa, 6th Floor, Williams Building
P.O. Box 30755 Lansing, MI 48909
(517) 373-7540

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
3/31/2005	6/30/2005	Eleen L. Richardson

*This summons is invalid unless served on or before its expiration date.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

mily Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Wexford County Circuit Court.

The action ☐ remains ☒ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
83-5771-CE	Honorable Charles D. Corwin	

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Lansing, Michigan	Cadillac, Michigan

Place where action arose or business conducted: Cadillac, Michigan

I declare that the **complaint information above and attached** is true to the best of my information, knowledge, and belief.

3-31-05 — Signature of attorney/plaintiff

...u require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

SUMMONS AND COMPLAINT
Case No. 05- 18853 CE

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing. Yo must make and file your return with the court clerk. If you are unable to complete service you must return this original a all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE

☐ OFFICER CERTIFICATE	OR	☐ AFFIDAVIT OF PROCESS SERVER
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notary not required)		Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notary required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____

_____ on the defendant(s):

Defendant's Name	Complete address(es) of service	Day, date, time
Waterous Company		

☐ After diligent search and inquiry, I have been unable to find and serve the following defendant(s):

_____

I have made the following efforts in attempting to serve the defendant(s): _____

_____

☐ I have personally attempted to serve the summons and complaint, together with _____
Attachment

_____ on _____
Name

at _____ and have been unable to complete service because
Address

the address was incorrect at the time of filing.

Service Fee	Miles Traveled	Mileage Fee	Total Fee
$		$	$

_____
Signature

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary Public)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with: _____
Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 28TH JUDICIAL CIRCUIT
WEXFORD COUNTY

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,

Plaintiff,

v

AAR CADILLAC MANUFACTURING, a division of AAR MANUFACTURING GROUP, INC., an Illinois corporation, and AAR CORP., a Delaware corporation,

Defendants.

File No. 05-18853-CE

A TRUE COPY
31 March 2005
Elaine I. Richardson
WEXFORD COUNTY CLERK
Kathryn L Andrews
DEPUTY

Robert P. Reichel (P31878)
Kathleen L. Cavanaugh (P38006)
Assistant Attorneys General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
Attorneys for Plaintiff

A related civil action between these parties has been previously filed in this Court, where it was given File No. 83-5771-CE and assigned to Honorable Charles D. Corwin.

COMPLAINT

Plaintiff Michigan Department of Environmental Quality (MDEQ), by its attorneys, Michael A. Cox, Attorney General of the State of Michigan, and Robert P. Reichel and Kathleen L. Cavanaugh, Assistant Attorneys General, says:

STATEMENT OF THE CASE

1. This is a civil action to enforce an Administrative Order for Response Activity issued by the MDEQ on August 7, 2003 pursuant to § 20119 of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20119. The Administrative Order requires Defendant AAR Cadillac Manufacturing, the current owner and operator of a manufacturing facility located in the City of Cadillac, Wexford County, Michigan, to take specific actions to abate and remedy releases of hazardous substances from that facility into the environment. Defendant AAR Cadillac Manufacturing has failed, without sufficient cause, to comply with the Administrative Order. Plaintiff seeks judicial enforcement of the Administrative Order and civil fines and exemplary damages for violation of the Administrative Order. Plaintiff also seeks from Defendants AAR Cadillac Manufacturing and AAR CORP., the former facility owner and operator, the recovery of all costs lawfully incurred by the State of Michigan in undertaking response activities at the facility and a declaratory judgment, pursuant to § 20137(1)(d) of the NREPA, MCL 324.20137(1)(d), that those Defendants are liable for all future response costs incurred by the State at the facility. Further, Plaintiff seeks civil fines for Defendant AAR Cadillac Manufacturing's violation of its statutory obligations under § 20114(1) of the NREPA, MCL 324.20114(1).

JURISDICTION AND VENUE

2. This Court has jurisdiction in this matter pursuant to § 20137(1) of the NREPA, MCL 324.20137(1).

3. Venue is proper in this Court pursuant to § 20137(3) of the NREPA, MCL 324.20137(3).

PARTIES

4. Plaintiff Michigan Department of Environmental Quality is the state agency mandated to protect and conserve the natural resources of the state in the interest of the health, safety, and welfare of the people as the successor to the Michigan Department of Natural Resources (MDNR) under Executive Order 1995-16, effective October 1, 1995. MCL 324.503; MCL 324.99903. The MDEQ has primary responsibility for implementation of Part 201, MCL 324.20101 *et seq*, and is mandated to coordinate all activities required under Part 201, MCL 324.20104 *et seq*, and Executive Order 1995-16. Accordingly, references to the MDEQ relating to events or actions prior to October 1, 1995 should be understood as having been taken by or involving the MDNR.

5. Defendant AAR Cadillac Manufacturing is a division of AAR Manufacturing Group, Inc. (collectively "AAR Manufacturing"), an Illinois corporation. It does business at 201 Haynes Street, Cadillac, Michigan.

6. Upon information and belief, Defendant AAR Manufacturing was incorporated in 1982 as AAR Brooks & Perkins Corporation and has used various names since that date, including AAR Cadillac Manufacturing. At all times relevant to this action, AAR Manufacturing has been a subsidiary of AAR CORP.

7. Defendant AAR CORP. (AAR CORP) is a Delaware corporation.

COMMON ALLEGATIONS

8. This action involves environmental contamination emanating from property located at 201 Haynes Street, Cadillac, Michigan (Property).

9. Upon information and belief, from approximately 1962 until August, 1981, Brooks & Perkins, Inc., a Delaware corporation, owned the Property. It operated a

manufacturing facility on the Property that produced air cargo pallets from aluminum, wood, and adhesives.

10. On or about August 12, 1981, Defendant AAR CORP succeeded to all the assets, liabilities, and ongoing business of Brooks & Perkins, Inc., including the Property and the manufacturing operation at the location. Defendant AAR CORP directly continued Brooks & Perkins, Inc.'s operations and business under the names "Brooks & Perkins Division of AAR CORP." and "Brooks & Perkins, Inc." Defendant AAR CORP is a successor corporation to Brooks & Perkins, Inc.

11. Since on or about October 20, 1982, Defendant AAR CORP has operated the manufacturing business at the Property through and with its subsidiary, Defendant AAR Manufacturing (f/k/a AAR Brooks & Perkins Corporation).

12. In 1985, Defendant AAR CORP conveyed the Property to Defendant AAR Manufacturing, the current owner of the Property.

13. As part of its air cargo pallet manufacturing process at the Property, Brooks & Perkins, Inc. used various chemicals, including a solvent containing trichloroethylene [sometimes spelled trichloroethene] (TCE) to degrease aluminum parts before assembly. Upon information and belief, the degreasing solvent may also have contained 1,1,1-trichloroethane (1,1,1-TCA). The aluminum parts were degreased by immersion in a vapor-cycle degreaser containing TCE. The TCE degreasing operation was conducted by Brooks & Perkins, Inc. in a particular aluminum cleaning area located near the center of the main plant building (Old Degreaser Area).

14. Upon information and belief, Brooks & Perkins, Inc. also used, among other chemicals, an adhesive thinner containing ethylene dichloride, also known as 1,2-dichloroethane (1,2-DCA).

15. Between 1981 and 1991, Defendants AAR CORP and AAR Manufacturing continued substantially the same manufacturing process as Brooks & Perkins, Inc. at the Property.

16. Between 1981 and 1991, Defendants AAR CORP and AAR Manufacturing continued to use solvents containing TCE and 1,1,1-TCA for cleaning aluminum in the Old Degreaser Area.

17. Between 1981 and at least 1985 (and possibly later), Defendants AAR CORP and AAR Manufacturing continued to use adhesive thinner containing 1,2-DCA at the Property.

18. In 1981, the MDNR, the predecessor of the MDEQ, collected groundwater samples from a water supply well at the Property. Laboratory analyses of the samples revealed toxic organic chemicals, including TCE; 1,1,1-TCA; and 1,2-DCA, as well as perchloroethylene (PCE) and 1,1-dichloroethane (1,1-DCA).

19. In 1981, MDNR staff notified Defendant AAR CORP of the data and requested that AAR CORP investigate the nature and extent of groundwater contamination at the Property and remedy it.

20. In partial response to MDNR's request, Defendant AAR CORP retained a hydrogeological consultant to collect additional data regarding groundwater contamination. Defendants' consultant, Environmental Data, Inc. (EDI), conducted a two-phase hydrogeological study in 1982 and 1983. EDI, on behalf of Defendants, compiled and evaluated the data collected in two reports, dated March, 1982 (Phase I) and February, 1983 (Phase II).

21. Defendants' consultant, EDI, found, among other things:

(a) Both the upper and lower aquifers beneath the Property were contaminated with organic chemicals, including, but not limited to, TCE; 1,1,1-TCA; 1,2-DCA; PCE; and 1,1-DCA.

(b) The upper aquifer is a water table aquifer in sandy soils that extends to the surface and is highly susceptible to contaminants from surface activities.

(c) Contaminants have reached the lower aquifer from the upper aquifer.

(d) Based on data from a monitoring well designated Well 6A, installed adjacent to the aluminum cleaning area, contamination existed in the shallow aquifer in that area, including up to 250,000 parts per billion (ppb) of TCE. A contaminant plume from that area extended to a location to the northeast where it enters the lower aquifer.

22. Defendants' consultant, EDI, also found that soils above the water table at the location of Well 6A were contaminated with 4,100 ppb of TCE; 520 ppb of 1,1,1-TCA; and 410 ppb of 1,2-DCA. These data demonstrate a past and continuing source of groundwater contamination in the Old Degreaser Area.

23. Although Defendants ultimately stopped using TCE in the Old Degreaser Area in 1991, Defendants neither removed nor treated contaminated soils from the Old Degreaser Area and have, thus, maintained a continuing source of groundwater contamination in that area since 1981.

24. In 1983, after Defendants refused repeated requests by MDNR to remedy groundwater contamination through plans acceptable to the MDNR, the State filed a civil lawsuit

against what is now Defendant AAR Manufacturing, *Frank J. Kelley, Attorney General, et al v AAR Brooks & Perkins Corporation*, Wexford County Circuit Court File No. 83-5771-CE (*Kelley* action). The Complaint alleged violations of then-existing law, specifically, the former Water Resources Commission Act, MCL 323.1 *et seq*, the former Michigan Environmental Protection Act, MCL 691.1201 *et seq*, and the common law of public nuisance. The Complaint sought injunctive relief, civil penalties, and damages.

25. The parties in the *Kelley* action ultimately negotiated a Consent Decree that was entered by the Wexford County Circuit Court on February 13, 1985.

26. Among other things, "in order to capture and remove the volatile organic contaminants in the groundwater emanating from the Defendants' plant site" (Consent Decree, ¶ 3), the Consent Decree required that AAR Manufacturing install and continuously operate at specified pumping rates a groundwater purge system comprised of two wells located in the upper aquifer and one well located in the lower aquifer for a period of at least five years. (Consent Decree, ¶¶ 3, 10, 12.) In order to measure the levels of contamination and the effect of the groundwater purge system on groundwater quality and flow direction, the Consent Decree also required AAR Manufacturing to collect certain groundwater monitoring data and report it to the MDNR. (Consent Decree, ¶¶ 8, 9.)

27. Monitoring data collected and reported by AAR Manufacturing showed that, as of 1990, elevated concentrations of contaminants, including TCE, were still present in groundwater at the Property.

28. In 1990, pursuant to paragraph 12(b) of the Consent Decree, the MDNR requested, and AAR Manufacturing stipulated, that AAR Manufacturing would continue to

operate the groundwater purge system beyond the initial and minimum five-year period specified in the Consent Decree.

29. Although AAR Manufacturing installed and operated the groundwater purge system described in the Consent Decree, Defendants have not continuously operated all elements of the specified system as required in paragraph 3 of the Consent Decree.

30. Defendants' failures to continuously operate the specified purge wells at the minimum pumping rates prescribed in paragraph 3 of the Consent Decree included, but are not necessarily limited to, the following:

(a) Purge Well-1 (PW-1) and PW-6 were not consistently operated at an aggregate rate of 5-10 gallons per minute (gpm) up to 1995.

(b) Defendants ceased operation of PW-6 in late 1995 and did not replace it with a new purge well until 2002.

(c) With relatively few exceptions, Defendants failed to operate PW-3 at an average monthly rate of at least 150 gpm until 2002.

31. Based upon review of the available data, MDNR staff became concerned that the existing groundwater purge system might not be effectively capturing all contaminated groundwater emanating from the Property. Between 1990 and 1992, the MDNR repeatedly requested that AAR Manufacturing further investigate the nature and extent of the contamination, demonstrate the effectiveness of the existing purge system, and, if necessary, implement remedial actions. The State's communications on this subject included, but were not limited to, a July 31, 1992 written notice to AAR Manufacturing's counsel that AAR Manufacturing was legally responsible for the performance of such response activities under the

Michigan Environmental Response Act, MCL 299.601 *et seq*, as then recently amended by 1990 PA 233 and 234.

32. AAR Manufacturing failed to implement the additional response activities requested by MDNR.

33. In October, 1991, Defendants installed a new aluminum degreaser (New Degreaser) at a location separate from the Old Degreaser Area and near the southeast corner of the plant building (New Degreaser Area). Upon information and belief, the New Degreaser was installed over clean fill several feet thick. Between 1991 and 1996, Defendants used TCE-based solvents in the New Degreaser Area.

34. Water quality data collected by AAR Manufacturing in 1996 and 1997 showed a substantial increase in concentrations of TCE in the lower aquifer beneath the Property at Monitor Well-2 (MW-2). Specifically, while TCE concentrations at this location had previously declined to a range of between 100 and 200 ppb, the water quality data collected in 1996 indicated TCE concentrations over 27,000 ppb.

35. MDEQ staff inferred from this abrupt change in water quality data that there had been a new or additional release of TCE into groundwater beneath the Property.

36. In a letter dated August 14, 1997 and again at a September, 1997 meeting with AAR Manufacturing representatives, MDEQ notified AAR Manufacturing that based upon evidence of a recent release of TCE, AAR Manufacturing was legally responsible under Part 201 of the NREPA for investigating and remedying the contamination and for all other response activities necessary to address contamination emanating from the Property. In so notifying AAR Manufacturing, MDEQ requested that it perform certain response activities pursuant to MCL 324.20114.

37. After AAR Manufacturing refused to perform the response activities requested in MDEQ's August 14, 1997 letter, MDEQ, through its contractor, Malcolm Pirnie, Inc., undertook some of the requested activities at public expense. Those activities included the installation of soil borings and groundwater wells and the collection and analysis of soil and groundwater samples.

38. The results of the first phase of the MDEQ Malcolm Pirnie, Inc. investigation were immediately shared with AAR Manufacturing and ultimately compiled in the *Technical Memorandum for Phase I Site Evaluations at AAR Cadillac Site, July, 1998.*

39. By letter dated April 17, 1998, the MDEQ notified AAR Manufacturing that Malcolm Pirnie, Inc.'s Phase I investigation confirmed a recent release in the New Degreaser Area and that groundwater contamination in the lower aquifer was not being fully captured by AAR Manufacturing's purge well system.

40. Among other things, the Phase I investigation showed that soil samples in the previously clean fill in the New Degreaser Area were contaminated down to the water table, including TCE concentrations as high as 4,800 ppb, 48 times greater than MDEQ's established residential cleanup criteria for soils. Likewise, groundwater samples in the New Degreaser Area showed TCE concentrations up to 6,500 ppb, 1,300 times greater than the health-based cleanup criteria for groundwater.

41. MDEQ's April 17, 1998 letter also requested, pursuant to MCL 324.20114, that AAR Manufacturing perform additional response activities to address the contamination. Apart from later installing a soil vapor extraction system to remove some of the contamination from soils in the New Degreaser Area, AAR Manufacturing failed and refused to perform the response activities requested by MDEQ.

42. By letter dated May 29, 1998, MDEQ notified AAR Manufacturing that if it failed to perform necessary, additional response activities, MDEQ intended to undertake at least some of the activities and to recover all costs it incurred in doing so. The MDEQ also demanded reimbursement of $126,200.00 in response activity costs incurred by MDEQ.

43. As a result of AAR Manufacturing's continuing refusal to perform necessary response activities between 1998 and 2000, MDEQ, through its contractor, Malcolm Pirnie, Inc., performed further investigations and evaluations of the nature and extent of contamination emanating from the Property. The results of those investigations were summarized in the *Technical Memorandum for Phase II Supplement Sampling at AAR Cadillac Site (November, 1998)*; *Technical Memorandum for Phase III Supplemental Sampling at AAR Cadillac Site (October, 1999)*; and *Summary Report, AAR Cadillac Facility (May, 2000)* prepared by Malcolm Pirnie, Inc.

44. By letter dated June 12, 2000, MDEQ transmitted the *Summary Report* to AAR Manufacturing. Among other things, MDEQ noted that its recent investigation confirmed that: (a) AAR Manufacturing had caused releases of TCE from the New Degreaser Area into soils and groundwater sometime after it was installed in 1991; (b) contamination from the New Degreaser had commingled with contamination that originated prior to the 1985 Consent Decree; and (c) AAR Manufacturing's existing groundwater purge and treatment system was not capturing all of the commingled contamination emanating from the AAR Manufacturing facility. As a result, MDEQ requested that AAR Manufacturing take specific, additional response activities necessary to comply with Part 201 of the NREPA.

45. Apart from beginning operation of a soil vapor extraction system on April 25, 2000 to address some of the soil contamination in the New Degreaser Area and stating its

intention to make or investigate improvements in existing purge wells installed under the 1985 Consent Decree, AAR Manufacturing again refused to perform the response activities requested by MDEQ.

46. By letter dated June 14, 2002, MDEQ again notified AAR Manufacturing that it was liable, under Part 201 of the NREPA, for response activities, reimbursement of response costs, and payment of civil fines. The MDEQ identified and requested AAR Manufacturing to perform specific response activities to address contamination emanating from the Property, including a remedial investigation to define the horizontal and vertical extent of contamination in the source areas and the groundwater. MDEQ further requested that AAR Manufacturing enter a legally binding agreement with MDEQ to address those issues and invited AAR Manufacturing to meet with MDEQ.

47. On or about July 16, 2002, AAR Manufacturing submitted a proposed Scope of Work for limited, additional investigation and writings intended to document AAR Manufacturing's claimed compliance with due care obligations under Part 201.

48. On August 27, 2002, MDEQ representatives met with AAR Manufacturing representatives to discuss possible settlement.

49. By letter dated October 10, 2002, MDEQ notified AAR Manufacturing that its proposed Scope of Work lacked sufficient information necessary for MDEQ to evaluate the proposed investigation. MDEQ requested that AAR Manufacturing confirm, not later than October 21, 2002, whether it would commit to entering into an Administrative Order by Consent requiring compliance with Part 201.

50. Instead of directly responding to MDEQ's October 10, 2002 correspondence, AAR Manufacturing attempted to legally preempt MDEQ's anticipated enforcement action. On

or about October 21, 2002, AAR Manufacturing filed a "Motion to Enforce Consent Decree" in the *Kelley* action. Therein, AAR Manufacturing alleged that MDEQ's June 14, 2002 and October 10, 2002 "Demand Letters" violated the 1985 Consent Decree. In so alleging, AAR Manufacturing sought a "bill of peace" enjoining the State from pursuing litigation related to the Demand Letters and a declaration that it complied with the Consent Decree.

51. In its response in opposition to AAR Manufacturing's Motion to Enforce Consent Decree, the State asserted that: (a) the 1985 Consent Decree did not vest the Wexford County Circuit Court with exclusive jurisdiction over claims relating to violations of the Consent Decree; (b) pursuant to MCL 324.20137(4), the Court lacked subject matter jurisdiction over AAR Manufacturing's challenges to MDEQ's response activities under Part 201, including the Demand Letters; and (c) the 1985 Consent Decree did not resolve any Part 201 claims, including claims based upon contamination that existed in 1985.

52. On June 9, 2003, the Wexford County Circuit Court issued its ruling from the bench denying AAR Manufacturing's Motion to Enforce Consent Decree and agreeing with each of MDEQ's arguments noted in paragraph 51 above.

53. AAR Manufacturing filed an Application for Leave to Appeal from the Circuit Court's June 19, 2003 Order denying AAR Manufacturing's motion. By Order dated September 15, 2003, the Michigan Court of Appeals denied AAR Manufacturing's Application for Leave to Appeal for lack of merit on the grounds presented.

54. On August 7, 2003, MDEQ issued an Administrative Order for Response Activity to AAR Cadillac Manufacturing (MDEQ Docket No. AO-RRD-03-002) (hereinafter "AO") under § 20119 of the NREPA, MCL 324.20119. (Copy attached as Exhibit 1.)

55. In the AO, MDEQ made the following specific findings of fact and determinations regarding activities at the Property and environmental conditions at the site:

(a) Actual or threatened "releases" as defined in Part 201 of hazardous substances, including TCE, have occurred at the Property, both from the Old Degreaser (AO, ¶ 4.8) and the New Degreaser (AO, ¶ 4.11).

(b) The AAR Manufacturing Property is a "facility" as defined in Part 201. (AO, ¶ 4.12.)

(c) AAR Manufacturing is liable under Part 201 as the owner and operator of the facility and was responsible for an activity causing the release of hazardous substances into the environment. (AO, ¶ 4.13.)

(d) The actual or threatened releases of hazardous substances at or from the facility may pose an imminent and substantial endangerment to the public health, safety, welfare, or the environment within the meaning of § 20119 of the NREPA. (AO, ¶ 4.14.) In that regard, MDEQ found that the existing groundwater extraction system does not capture all of the TCE contamination from releases at the Property; TCE contaminant concentrations near the Property and outside the influence of AAR Manufacturing extraction wells have been measured at 132 times above acceptable residential cleanup criteria and continue to migrate downgradient of the Property, potentially to areas where residents depend upon groundwater from wells; and TCE is a suspected carcinogen that may cause various other adverse health effects. (AO, ¶¶ 4.14a – d.)

56. Based upon its findings and determinations as set forth in the AO, MDEQ directed AAR Manufacturing to implement response activities necessary to specific performance objectives. (AO, ¶¶ 5.1 – 5.2.)

57. Specifically, the AO required AAR Manufacturing to:

(a) Conduct a remedial investigation to assess environmental conditions at the facility in order to select an appropriate remedial action for the entire facility consistent with Part 201.

(b) Perform interim response activities, including the continued operation and maintenance of the groundwater purge and treatment system required under the 1985 Consent Decree, the operation of a soil vapor extraction system in the New Degreaser Area, and a determination whether it is necessary to provide alternate water in areas downgradient from the facility.

(c) Conduct a feasibility study to evaluate remedial options for the entire facility.

(d) Develop and implementing an MDEQ-approved remedial action plan to adequately address the entire facility, consistent with Part 201.

58. In accordance with § 20119(3) of the NREPA, the AO required that, within 30 days, AAR Manufacturing advised MDEQ in writing whether it would comply with the AO (AO, § XVII) and provided AAR Manufacturing with an opportunity to confer with the MDEQ. (AO, § XVIII.)

59. On September 2, 2003, MDEQ representatives met with AAR Manufacturing representatives to discuss the background for issuance of the AO, respond to AAR

Manufacturing's questions, and provide AAR Manufacturing an opportunity to present information.

60. In its September 8, 2003 written response to MDEQ's AO, AAR Manufacturing denied all legal obligations and, subject to certain conditions, only proffered compliance with the AO "to the extent it applies to allegations that there was a release from the new degreaser." AAR Manufacturing further stated: "AAR does not intend to comply with the AO to the extent it orders AAR to perform response activity based on or in connection with claims that were resolved by the 1985 Consent Decree." (Emphasis added.)

61. Although AAR Manufacturing has performed some response activities, ostensibly in partial compliance with the AO, it has failed to fully comply with several requirements of the AO, including, but not necessarily limited to, the following:

(a) **Remedial Investigation Obligations Under Paragraph 5.1(a)** – Paragraph 5.1(a) requires AAR Manufacturing to conduct a comprehensive, facility-wide investigation of soil contamination, groundwater contamination, and hydrogeologic conditions, including "defining the source or sources of any contamination at and emanating from the Property and defin[ing] the nature and extent of contamination originating from that source." (Emphasis added.) AAR Manufacturing has repeatedly stated that it intends only to perform response activities pertaining to one source area, the New Degreaser. With that arbitrary limitation, AAR Manufacturing has refused to comprehensively investigate contamination emanating from other source areas, including the Old Degreaser Area. The data collected and submitted by AAR

Manufacturing and its consultant, Earth Tech, Inc., since the AO was issued, including the November, 2004 report entitled *Groundwater Investigation At and Near AAR Mobility Systems Haynes Street Property, Cadillac, Michigan*, are inadequate, incomplete, and do not satisfy paragraph 5.1(a) of the AO. In an e-mail dated December 22, 2004, and a letter dated February 22, 2005, AAR Manufacturing informed MDEQ that it did not intend to further investigate the condition of the groundwater at and near the Property under the AO. The deadline for completion of the remedial investigation – 18 months after the effective date of the Order – passed on February 7, 2005. Both AAR Manufacturing's statements, and the incomplete, inadequate work undertaken by its consultant to date, clearly demonstrate that AAR Manufacturing has not satisfied the requirements of paragraph 5.1(a).

(b) **Interim Response Obligations Under Paragraph 5.1(b)(iii)** – Paragraph 5.1(b)(iii) requires AAR Manufacturing to "operate a soil vapor extraction (SVE) in the area affected by New Degreaser until [AAR Manufacturing] demonstrates . . . that contaminant concentrations have been reduced at or below the drinking water protection criterion provided in the Part 201 Administrative Rules." AAR Manufacturing stopped operating its SVE system in December, 2003. AAR Manufacturing's Progress Reports submitted to MDEQ to date have not demonstrated that the SVE system has reduced contaminant concentrations in the New Degreaser Area to acceptable levels.

(c) **Interim Response Obligations Under Paragraph 5.1(b)(iv)(a)** – Paragraph 5.1(b)(iv)(a) required AAR Manufacturing, within 45 days, to collect samples from certain private wells and analyze the samples for TCE and its breakdown products "and any TCE additives, such as acid receptors, metal inhibitors, or antioxidant agents." The sample results from residential wells submitted to MDEQ do not contain any analytical results for compounds that are "TCE additives."

(d) **Interim Response Obligations Under Paragraph 5.1(b)(iv)(b)** – Paragraph 5.1(b)(iv)(b) required AAR Manufacturing, within 60 days of the effective date of the AO, to identify "the existence and location of private wells within the projected path of the contaminant." AAR Manufacturing has not complied with this requirement.

62. As a result of AAR Manufacturing's failure to fully comply with the AO, MDEQ has undertaken, and is continuing to undertake, further response activities at the facility. Those activities include, but are not limited to, collection of additional hydrogeologic data at the site by MDEQ's contractors.

63. Some of the data collected by MDEQ after issuance of the AO indicated that the contaminated plume from the AAR Manufacturing facility is migrating in a slightly more northerly direction than originally anticipated. Based upon that new information, on February 9, 2004, the MDEQ issued a Modification of the AO. (Attachment 2 to this Complaint.) The Modification changed the interim response activity requirements of paragraph 5.1(b)(iv)(a) regarding sampling of private wells in the projected path of the contaminated plume, and

paragraph 5.1(b)(v) regarding monitoring residential wells in a specified geographic area, and any private wells identified as being in the projected path of the contaminated plume.

64. AAR Manufacturing has failed to fully comply with the Modification. In its March 4, 2004 response to the modified AO, AAR Manufacturing stated that, according to the City of Cadillac, the City's water served the properties described in paragraph 5.1(b)(v). AAR Manufacturing's unsupported assertion aside, its cursory inquiry to the City of Cadillac does not negate that water supply wells exist in the area specified in paragraph 5.1(b)(v), or in other areas of the contaminated plume's path. In fact, it is common for private wells to continue to exist in older residential areas that predate municipal water systems, particularly if, as is the case in Cadillac, there is no ordinance mandating well abandonment and connection to the municipal water system. To definitively establish whether private wells exist in this area, it is necessary to: (a) check with the local health department for the existence of any well logs in the area; (b) review municipal water billing records to assure that all addresses receive a water bill and that such bills reflect normal water usage, not merely a hook-up fee; and (c) perform a survey (by mail or door-to-door) of all area properties, explaining that a contaminated plume exists in the area, that groundwater should not be used for any purpose, and then ask if there is a well on the property. There is no indication that AAR Manufacturing has taken any such steps.

65. AAR Manufacturing has failed, without sufficient cause, to comply with both the original and the modified AO.

COUNT I

DEFENDANTS' LIABILITY UNDER PART 201

66. Plaintiff incorporates by reference paragraphs 1 through 65 of this Complaint.

67. Section 20126(1) of the NREPA, MCL 324.20126(1), provides, in part:

(1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

68. "Hazardous substances" as defined in § 20101(1)(q) of the NREPA, MCL 24.20101(1)(q), have been released or threaten to be released from the Property into the environment.

69. The AAR Manufacturing site, consisting of the Property and areas to which contamination has migrated from the Property, is a "facility" as defined in § 20101(1)(l) of the NREPA, MCL 324.20101(1)(l).

70. Releases of hazardous substances at and from the AAR Manufacturing facility have caused the Plaintiff to incur response activity costs, including the costs of investigation and enforcement.

71. Defendant AAR CORP is the successor to the liabilities of Brooks & Perkins, Inc., which owned and operated the Property until August, 1981, and was responsible for disposal of hazardous substances and causing a release or threat of release.

72. Defendant AAR CORP directly owned the Property between August, 1981 and 1985, and directly operated the manufacturing business at the Property between August, 1981 and October, 1982, during which time hazardous substances were disposed and AAR CORP was responsible for an activity causing a release or threat of release.

73. Defendant AAR Manufacturing has directly operated the Property and the facility since October, 1982, and is responsible for activities causing a release or threat of release.

74. Each Defendant is a person liable under § 20126 of the NREPA, MCL 324.20126.

COUNT II

ENFORCEMENT OF ADMINISTRATIVE ORDER

75. Plaintiff incorporates by reference paragraphs 1 through 74 of this Complaint.

76. Section 20119 of the NREPA, MCL 324.20119, provides, in part:

(1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

77. The MDEQ determined that there may be an imminent and substantial endangerment to the public health, safety, welfare, or the environment because of the release or threatened release of hazardous substances from the AAR Manufacturing facility.

78. The MDEQ issued Administrative Order for Response Activity, MDEQ Docket No. AO-RRD-03-002, requiring Defendant AAR Manufacturing to perform response activities necessary to abate the danger or threat that may be presented by the AAR Manufacturing facility.

79. Defendant AAR Manufacturing, without sufficient cause, has violated or failed to fully comply with the AO.

80. As a direct result of AAR Manufacturing's failure to comply with the AO, the State has incurred, and is continuing to incur, response activity costs.

81. Section 20137(1) of the NREPA, MCL 324.20137(1), provides, in pertinent part:

> (1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:
>
> * * * *
>
> (b) Recovery of state response activity costs pursuant to section 20126a.
>
> * * * *
>
> (d) A declaratory judgment on liability for future response costs and damages.
>
> (e) A civil fine of not more than $1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.
>
> (f) A civil fine of not more than $10,000.00 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.
>
> (g) A civil fine of not more than $25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.
>
> (h) Enforcement of an administrative order issued pursuant to section 20119.

82. Defendant AAR Manufacturing is subject to a judicial order enforcing full compliance with the AO, civil fines of up to $25,000.00 for each day of its violation or failure to comply properly with the AO, and exemplary damages under § 20119(4)(b) of the NREPA.

COUNT III

CIVIL FINES FOR VIOLATION OF PART 201

83. Plaintiff incorporates by reference paragraphs 1 through 82 of this Complaint.

84. Section 20114(1) of the NREPA, MCL 324.20114(1), provides, in part:

> (1) Except as provided in subsection (4), an owner or operator of property who has knowledge that the property is a facility and who is liable under section 20126 shall do all of the following:
>
> * * *
>
> (d) Immediately implement source control or removal measures to remove or contain hazardous substances that are released after the effective date of the 1995 amendments to this section if those measures are technically practical, cost effective, and provide protection to the environment. At a facility where hazardous substances are released after the effective date of the 1995 amendments to this section, and those hazardous substances have not affected groundwater but are like to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and provide protection to the environment.
>
> * * *
>
> (g) Diligently pursue response activities necessary to achieve the cleanup criteria specified in this part and the rules promulgated under this part. For a period of 2 years after the effective date of the 1995 amendments to this section, fines and penalties shall not be imposed under this part for a violation of this subdivision.
>
> (h) Upon written request by the department, take the following actions:
>
> (i) Provide a plan for and undertake interim response activities.
>
> (ii) Provide a plan for and undertake evaluation activities.
>
> (iii) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(iv) Submit to the department for approval a remedial action plan that, when implemented, will achieve the cleanup criteria specified in this part and the rules promulgated under this part.

(v) Implement an approved remedial action plan in accordance with a schedule approved by the department pursuant to this part.

85. Defendant AAR Manufacturing has, since June 5, 1995, failed to comply with its obligations to immediately implement source control or removal measures, in violation of its affirmative obligations under MCL 324.20114(d).

86. Defendant AAR Manufacturing has, since June 5, 1995, continuously failed to diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201 and the Part 201 rules, in violation of its affirmative obligations under MCL 324.20114(g).

87. Defendant AAR Manufacturing has repeatedly and without sufficient cause failed to comply with MDEQ's written requests for compliance pursuant to § 20114(1)(h), including MDEQ's requests dated August 14, 1997; April 17, 1998; May 29, 1998; June 12, 2000; and June 14, 2002.

88. Defendant AAR Manufacturing is liable for civil fines of up to $10,000.00 for each day for each of its violations of Part 201.

COUNT IV
COST RECOVERY

89. Plaintiff incorporates by reference paragraphs 1 through 88 of this Complaint.

90. Section 20126a of the NREPA, MCL 324.20126a, provides, in pertinent part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

91. Plaintiff has lawfully incurred, and is continuing to lawfully incur, response activity costs arising from the AAR Manufacturing facility, including investigation and enforcement costs.

92. Defendants AAR CORP and AAR Manufacturing are liable for all response activity costs lawfully incurred by the State relating to the releases or threatened releases of hazardous substances from the AAR Manufacturing facility.

COUNT V
DECLARATORY JUDGMENT UNDER NREPA

93. Plaintiff incorporates by reference paragraphs 1 through 92 of this Complaint.

94. An actual, substantial, legal controversy exists between Plaintiff and Defendants, and Plaintiff is entitled to a judicial declaration of its rights and legal relations with Defendants. Pursuant to §§ 20126a and 20137(1)(d) of the NREPA, MCL 324.20126a and MCL 324.20137(1)(d), Plaintiff is entitled to a declaratory judgment that Defendants are jointly and severally liable to Plaintiff for the future response activity costs to oversee and undertake the design, construction, implementation, operation, maintenance, and monitoring of the response activities at the site.

95. A declaratory judgment for recovery of such response activity costs is appropriate and in the public interest because it will: (a) prevent the need for multiple lawsuits as Plaintiff incurs future response costs and damages; (b) provide a final resolution of the issues of liability for these costs; and (c) insure a prompt and effective response.

RELIEF REQUESTED

Plaintiff requests this Honorable Court to provide the following relief:

A. Order Defendant AAR Manufacturing to comply fully with all the requirements of Administrative Order for Response Activity No. AO-RRD-03-002, including all requirements established in paragraphs 5.1 through 5.2 of that Administrative Order.

B. Impose upon Defendant AAR Manufacturing civil fines of up to $25,000.00 for each day of violation or failure to comply, without sufficient cause, with the Administrative Order.

C. Enter judgment against Defendant AAR Manufacturing requiring Defendant AAR Manufacturing to pay Plaintiff exemplary damages three times the amount of any response activity costs incurred by Plaintiff as a result of Defendants' failure to comply with the Administrative Order.

D. Impose upon Defendant AAR Manufacturing civil fines of up to $10,000.00 for each day of its failure to implement source control or removal measures, in violation of MCL 324.20114(1)(d), and for each day of its failure to diligently pursue response activities, in violation of MCL 324.20114(1)(g).

E. Impose upon Defendant AAR Manufacturing civil fines of up to $1,000.00 for each day of its noncompliance without sufficient cause with MDEQ's written requests pursuant to MCL 324.20114(1)(h).

F. Enter judgment against Defendants AAR CORP and AAR Manufacturing requiring Defendants to pay Plaintiff all response activity costs incurred by the State, together with prejudgment interest.

G. Enter a declaratory judgment that Defendants AAR CORP and AAR Manufacturing must reimburse Plaintiff for all future response activity costs to be incurred by the State.

H. Award Plaintiff enforcement costs, including attorneys' fees, MDEQ staff costs, and all costs of this action.

I. Grant Plaintiff any further relief deemed appropriate and just.

Respectfully submitted,

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Attorney General

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Dated: 3-31-05
AAR Cadillac/2001012098/Complaint

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:
AAR Cadillac Manufacturing

MDEQ Docket No. AO-RRD-03-002

201 Haynes Street, Cadillac,
Wexford County, Michigan
Respondent.

Proceeding Under Section 20119 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20119

ADMINISTRATIVE ORDER FOR RESPONSE ACTIVITY

ADMINISTRATIVE ORDER FOR RESPONSE ACTIVITY

INDEX

I. JURISDICTION

This Administrative Order (Order) is issued pursuant to the authority vested in the Michigan Department of Environmental Quality (MDEQ) by Section 20119 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20119.

II. PARTIES BOUND

This Order shall apply to and be binding upon AAR Cadillac Manufacturing, a division of AAR Manufacturing Group, Inc. (Respondent or AAR), and its successors. No change in ownership or corporate status shall in any way alter Respondent's responsibilities under this Order. Respondent 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) days of the effective date of such retention. Notwithstanding the terms of any such contract, Respondent is responsible for compliance with the terms of this Order, and shall ensure that such contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Order.

III. DEFINITIONS

3.1 "AAR" or "Respondent" means AAR Cadillac Manufacturing, a division of AAR Manufacturing Group, Inc.

3.2 "AAR Facility" or "Facility" means the Property identified in Attachment A and any area, place, or property where a hazardous substance, which originated at the Property and is emanating or has emanated from the Property and is present at concentrations that exceed the cleanup criteria established pursuant to

Section 20120a(1)(a) of the NREPA or other requirements provided in Section 20120a(17) of the NREPA, MCL 324.20120a(1)(a) or (17), or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited, or disposed of, or has otherwise come to be located.

3.3 "AAR Property" or "Property" means the real property located at 201 Haynes Street, Cadillac, Michigan, and legally described in Attachment A.

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

3.5 "Effective Date" means the date the MDEQ Director issues this Order. All dates for the performance of obligations under this Order shall be calculated from the Effective Date.

3.6 "IRA" means interim response activity as defined in Section 20101(1)(u) of the NREPA and the Part 201 Administrative Rules, and specifically provided in Paragraph 5.1(b) of this Order.

3.7 "MDAG" means the Michigan Department of Attorney General, its successor entities, and those authorized persons or entities acting on its behalf.

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

3.9 "New Degreaser" means the degreaser installed at the Property in a former truck loading dock near the southeast corner of the plant building in October 1991.

3.10 "Old Degreaser" means the degreaser formerly located at the Property near the center of the manufacturing building, and abandoned or removed in 1991.

3.11 "Order" means this Administrative Order, No. AO-RRD-03-002, issued to AAR to perform response activities relating to the AAR Facility.

3.12 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*, MSA 13A.20101 *et seq.*, and the Administrative Rules promulgated thereunder.

3.13 "Part 201 Rules" means the Administrative Rules effective on December 21, 2002, that were promulgated under Part 201 of the NREPA, and any rules promulgated in the future pursuant to Part 201.

3.14 "Parties" means AAR Cadillac Manufacturing and the State.

3.15 "RAP" means a remedial action plan, as defined in Section 20101(1)(dd) of the NREPA, described in the Part 201 Administrative Rules, and that meets the requirements of Sections 20118, 20120a, 20120b, and 20120d of the NREPA.

3.16 "RI" means a remedial investigation that meets the requirements of the Part 201 Administrative Rules and Paragraph 5.1(a) of this Order.

3.17 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

3.18 "State" and "State of Michigan" mean the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

3.19 "Submissions" means all plans, reports, schedules, and other submittals that Respondent is required to submit to the MDEQ pursuant to this Order.

3.20 "TCE" means trichloroethylene, also spelled trichloroethene.

3.21 Unless otherwise stated herein, all terms used in this Order, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Administrative Rules, shall have the same meaning in this document as in Part 3, Part 201, and the Part 201 Administrative Rules.

IV. FINDINGS OF FACT AND DETERMINATIONS

4.1 The Property has been used for manufacturing since the 1880s.

4.2 According to title documents, in 1981, AAR Corporation purchased the Property from Brooks & Perkins, Inc., and later conveyed the property to AAR Brooks & Perkins Corporation in 1985.

4.3 According to Michigan Department of Consumer and Industry Services' records, AAR Corporation is the parent corporation to AAR Brooks & Perkins Corporation, whose name is now AAR Manufacturing Group, Inc. Although Respondent's name changed numerous times, it continued to be the same corporate entity. Therefore, Respondent is a "person" as that term is defined in Section 301(g) of the NREPA, MCL 324.301(g).

4.4 Currently the Facility is owned by AAR Manufacturing Group, Inc. (formerly AAR Brooks & Perkins Corporation), and operated by AAR Cadillac Manufacturing, a division of AAR Manufacturing Group, Inc.

4.5 Respondent manufactures products for aviation and other industries at the Facility, including aluminum and balsa wood composite air cargo pallets and containers.

4.6 Prior to 1997, TCE was used in vapor degreasers to clean parts manufactured by the Respondent at the Property.

4.7 TCE is a "hazardous substance" as that term is defined in Section 20101(1)(t) of the NREPA, MCL 324.20101(1)(t).

4.8 A release of TCE at the Property was suspected as early as 1980, with an investigation concluding in 1983 that a release had occurred from the Old Degreaser.

4.9 As a result, the Respondent entered into a consent decree with the State in 1985 to operate a purge system to remove TCE and other volatile organic compounds related to the release from the Old Degreaser from the groundwater and place a deed restriction on the Property to maintain an impermeable barrier on a certain portion of the Property.

4.10 Respondent discontinued use of the Old Degreaser in 1991, and installed and operated the New Degreaser until it was replaced with a different cleaning process in 1997.

4.11 "Releases" or "threatened release" within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of the NREPA have occurred at the Property.

a. Water quality data collected by Respondent in 1996 and 1997 showed a sudden increase in concentrations of TCE in MW-2 after many years of steady decline, indicating a new release had

occurred. TCE concentrations had been ranging between 100 and 200 parts per billion (ppb), and then jumped to over 27,000 ppb.

b. Soil samples taken in the New Degreaser area were contaminated with TCE from immediately below the concrete floor slab to the water table, in an area where clean fill had been placed during the installation of the New Degreaser.

c. Prior to 1996, sample analyses of contamination from the AAR Facility contained a mix of both TCE and methyl chloroform (1,1,1-Trichloroethane (TCA)). Concentrations of TCE in the air stripper influent started increasing in 1996 after hovering at around 100 ppb, but concentrations of 1,1,1-TCA have remained relatively constant at less than 100 ppb. The difference in the composition of the chemicals detected demonstrates that a new significant release occurred.

d. AAR installed a soil vacuum extraction (SVE) system in the new degreaser area in July 2000, tacitly acknowledging that TCE had been released into the soil in the vicinity of the new degreaser by attempting to remediate the TCE.

4.12 The AAR Property is a "Facility" as that term is defined in Section 20101(1)(o) of the NREPA, MCL 324.20101(1)(o).

a. Remedial investigations in 1998 and 1999 discovered concentrations of TCE at the Property in the soil as high as 4,800 ppb in soil and as high as 8,200 ppb in the groundwater in the New Degreaser source area. Concentrations of TCE were as much as 48 times the acceptable levels pursuant to Section 20120a(1)(a) or (17) of the NREPA or the cleanup criteria for unrestricted residential use under Part 213 in soils and 1,640 times the acceptable levels in groundwater.

b. Groundwater sample analyses as early as 1981 showed concentrations of TCE in excess of acceptable levels.

c. The MDEQ's May 2000 investigation summary also showed: (1) groundwater in the upper aquifer flows variably from the north to the northeast to the east, influenced by seasonal variations and operation of the purge wells; (2) groundwater in the lower aquifer flows in a more westerly direction than had been reported in earlier investigations conducted by AAR; (3) a clay layer separating the upper and lower aquifers on the AAR Property appears to pinch out and disappear off the Property to the east and possibly the north; and (4) contaminated groundwater escapes the purge wells at the Property and migrates to the west beyond the Property boundary.

4.13 Respondent is a person that is liable within the meaning of Section 20126(1) of the NREPA, MCL 324.20126(1).

a. Respondent is the owner and operator of the Facility.

b. The hazardous substances present in soils and groundwater at the Facility are proximate to the New Degreaser's location and consistent with the TCE used in the New Degreaser.

c. Respondent was an owner and operator of the Facility at the time of release of hazardous substances at the Facility, and responsible for an activity causing the release of hazardous substances into the environment.

4.14 The actual or threatened releases of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare, or the environment within the meaning of Section 20119 of the NREPA, MCL 324.20119.

a. Based on the MDEQ's 1999 investigation and a groundwater model for the Facility, it was determined that:

(i) The existing groundwater monitoring network does not fully define the contamination plume west of production well PW-3 or monitor well MW-205, nor does it adequately monitor plume migration and/or escape.

(ii) The existing groundwater extraction system captures some, but not all, of the TCE contamination from releases at the AAR Property.

(iii) TCE contamination is likely escaping to the west of the AAR Property in the lower aquifer.

b. Based on the MDEQ's consultant's April 11, 2000, analysis and understanding of groundwater flow and contaminant transport rates at the Facility, the TCE contamination is likely to extend up to one-half (1/2) mile downgradient of the Property, to an area where residents depend on groundwater from their private wells for domestic purposes. Given enough time, unless the plume is captured, the plume length could extend to 10 miles before stabilizing at levels below residential criteria.

c. TCE groundwater contaminant concentrations near the Property boundary and outside of the influence of the AAR capture wells have been measured at 132 times above acceptable residential levels, and continue to migrate downgradient of the Property.

d. TCE is a suspected carcinogen, and may cause liver or lung cancer. Skin contact for short periods may cause rashes. Ingesting large amounts of TCE may cause nausea, liver damage, unconsciousness, impaired hearing function, or death.

4.15 In order to protect public health, safety, and welfare, and the environment, and to abate the danger or threat, it is necessary and appropriate that response activity(ies) be taken.

V. ORDER

Based upon the Section IV (Findings of Fact and Determinations), Respondent is hereby ordered to perform the response activities and other actions set forth in this Order.

5.1 Performance Objectives

Respondent shall: (1) conduct a remedial investigation of the Facility that fulfills the performance objectives of Paragraph 5.1(a) of this Order; (2) perform the IRAs required in Paragraph 5.1(b) of this Order, and demonstrate and document the effectiveness of the implemented IRAs as provided in Paragraph 5.2 of this Order; (3) conduct a feasibility study at the Facility; and (4) submit to the MDEQ and receive approval for a RAP that, when fully implemented: (i) is protective of public health, safety, welfare, and the environment; (ii) will achieve the cleanup criteria specified in Part 201; and (iii) ensures the effectiveness and integrity of the RAP. Respondent shall comply with the requirements of Part 201 and meet the performance objectives specified in this Paragraph 5.1 with respect to the AAR Facility.

(a) Remedial investigation performance objectives are to assess environmental conditions at the Facility, including gathering data to supplement existing data, in order to select an appropriate remedial action that adequately addresses those conditions to protect the public health, safety, welfare, and the environment consistent with Part 201. This includes, but is not limited to, the following:

(i) Defining the source or sources of any contamination at and emanating from the Property and define the nature and extent

of contamination originating from that source and present in soil, groundwater, surface water, and sediments.

(ii) Defining the risks to the public health, safety, and welfare, and the environment and natural resources, including, but not limited to, the identification of any water wells and wellhead protection zones in the vicinity of the Facility and an evaluation of the impact of the Facility on any such wells or zones.

(iii) Determining the relevant exposure pathways.

(iv) Defining the amount, concentration, hazardous properties, environmental fate, persistence, location, mobility, and physical state of the hazardous substances present at the Facility, including the location and fate of the area with the highest contaminant concentrations within the plume.

(v) Defining the extent to which hazardous substances, including TCE, any additives or breakdown products, have migrated or are expected to migrate from the area of release, including the potential for hazardous substances to migrate along preferential pathways.

(vi) Defining the geology, hydrogeology, groundwater flow, and hydraulic gradients at the Facility, particularly to the north, northwest, and west of the AAR Property.

(vii) Defining the extent to which natural barriers currently contain the hazardous substances and the adequacy of the barriers, including the vertical and lateral extent and competence of the Gray Clay Confining Unit for the upper aquifer.

(viii) Determining current and potential groundwater use.

(ix) Determining the likelihood of future releases, if hazardous substances continue to be used at the AAR Property.

(b) IRA performance objectives are:

(i) Continuing to perform the response activities provided in the 1985 Consent Decree between the State and Respondent, File No. 83-5771-CE.

(ii) Operating and maintaining a groundwater treatment system for the groundwater purged from PW-1A, PW-6S, and PW-3 until terminating operation of the system is consistent with the final remedy or the system is modified by the MDEQ-approved RAP.

(iii) Operating a soil vacuum extraction (SVE) system in the area affected by the New Degreaser until Respondent demonstrates by conducting soil sampling representative of the area affected by the release within the area of influence of the SVE system that contaminant concentrations have been reduced to levels at or below the drinking water protection criteria provided in the Part 201 Administrative Rules or alternate standard approved by the MDEQ. This demonstration must provide to the MDEQ's satisfaction documentation that shows the relationship of the response activity to the release, defines the area of influence of the SVE system, and considers whether any soils in the vicinity of the New Degreaser exceed the Part 201 drinking water protection criteria.

(iv) Determining whether it is necessary, pursuant to the Part 201 Rules, to provide alternate water, and, if so, providing alternate water consistent with Rule 526(4)(a) of the Part 201 Rules. This includes, but is not limited to:

a. Within forty-five (45) days of the Effective Date of this Order, sampling the private wells provided in Attachment B for TCE and its breakdown products using Scan 8260 and any TCE additives, such as acid acceptors, metal inhibitors, or antioxidant agents.

b. Within sixty (60) days of the Effective Date of this Order, identifying the existence and location of private wells in the projected path of the contaminant.

(v) Quarterly monitoring residential wells identified in Attachment B, the private wells identified pursuant to Paragraph 5.1(b)(iv)(b), and as identified by the MDEQ or the Respondent as being in the projected path of the contaminant plume to those areas where alternate water is not provided, and continuing to evaluate the need to provide alternate water, and comply with Rule 526(4)(a) of the Part 201 Rules until the remedial investigation objectives of 5.1(a) of the Order have been achieved.

(vi) If, in the course of the remedial investigation, Respondent or the MDEQ discovers conditions of free phase liquids or non-aqueous phase liquid (NAPL), implementing source control measures within sixty (60) days of discovery to remove reasonably recoverable free phase liquids or NAPL on an ongoing basis.

(vii) Providing notice to the MDEQ and property owners affected by contamination migrating from the Facility as provided in Rule 522(2) and (4) of the Part 201 Rules.

(viii) Implement any other IRA determined by the Respondents or the MDEQ to be appropriate based on the factors provided in the Part 201 Rules.

(c) Feasibility study performance objectives are to evaluate a range of alternatives that reflect the practical options, the level of complexity of the contamination problem, and the remedial actions needed to address the problem, and comply with the Part 201 Rules.

(d) Remedial action plan performance objectives are to address all releases of hazardous substances in all environmental media at the

Facility consistent with Sections 20118, 20120a, 20120b, and 20120d of the NREPA, and the Part 201 Rules. This includes, but is not limited to, the following:

(i) Identifying which of the pathways, risks, and conditions provided in the Part 201 Rules are relevant for the Facility.

(ii) An analysis of source control measures as required by Section 20118(8) of the NREPA, including evaluating the need to provide source control to improve the reliability and effectiveness of the final remedy.

(iii) Documenting that the cleanup criteria in the RAP are appropriate to the Facility, including, but not limited to, land use, activity patterns anticipated at the Facility, and identification of any wellhead protection zone that may be affected.

(iv) Identifying the category or categories of cleanup criteria that are being proposed or relied upon at the Facility.

(v) Assuring the effectiveness and integrity of the remedial action as approved in an MDEQ-approved RAP.

(vi) Obtaining all necessary permits, including a permit authorizing the discharge of water from the groundwater treatment system to the surface water, if applicable.

(vii) Achieving the remedial objective proposed by Respondent, as reflected by the selection of categorical cleanup criteria under Section 20120a(1) of the NREPA or site-specific cleanup criteria under Section 20120(2) of the NREPA, together with applicable technical and administrative requirements, that results in compliance at the Facility with Sections 20118, 20120a, 20120b, and 20120d of the NREPA, the Part 201 Rules, and is protective of public health, safety, and welfare, and the environment.

(viii) Allowing for the continued use of the Property consistent with local zoning.

5.2 The Respondent shall provide the MDEQ the following submissions:

(a) Within sixty (60) days after the Effective Date of this Order, and quarterly thereafter until a RAP for the Facility has been approved by the MDEQ, Respondent shall submit an IRA Progress Report to the MDEQ for review. The IRA Progress Report shall document how the IRA performance objectives of Paragraph 5.1 of this Order are being met, including:

(i) A description of the objectives of the response activity and how they were or will be achieved.

(ii) A detailed description of the response activities undertaken, including all data that is relevant to the conclusions drawn. Information supplied shall include sufficient documentation of the nature and extent of contamination to support any conclusions about the effectiveness of the response activity.

(iii) A schedule for implementation of the activities proposed for the next quarter.

(b) Within 18 months of the Effective Date of this Order, Respondent shall provide to the MDEQ for review and comment a preliminary submittal that will be incorporated into the RAP for the Facility, which contains the following elements:

(i) A remedial investigation report for the Facility that includes the information required by Rule 528(3) of the Part 201 Rules and complies with Section 5.1(a) of this Order.

(ii) A feasibility study for the Facility that includes the information required by Rule 530 of the Part 201 Rules and complies with Section 5.1(c) of this Order.

(iii) The remedial objective that will be proposed in the RAP, as reflected by the selection of categorical cleanup criteria under Section 20120a(1) of the NREPA or site specific cleanup criteria under Section 20120(2) of the NREPA, which together with applicable technical and administrative requirements, shall result in compliance at the Facility with Sections 20118, 20120a, 20120b, and 20120d of the NREPA, and the Part 201 Rules.

(iv) A plan for obtaining access, as described in Section 6.2 of this Order, to any properties not owned or controlled by Respondent that is needed to perform the response activities to be contained in the RAP. If Respondent proposes to perform a remedial action that relies on the cleanup criteria established under Section 20120a(1)(b) through (j) or (2) of the NREPA and that RAP will provide for land and resource use restrictions, monitoring, operation and maintenance, or permanent markers as prescribed by Section 20120b(3)(a) through (d) of the NREPA, Respondent 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.

(v) A detailed description of the specific work tasks to be conducted; a description of how these work tasks will achieve the remedial objective identified in Paragraph 5.1(b)(iii) of this Order and the following Part 201 Rules: Rule 532(1), (6) through (8), (11)(a through h), (11)(j), and (11)(k); Rule 538; Rule 540; Rule 705 (1), (5), and (6); and Rules 706 through 752; and a description and supporting documentation of how the results of the remedial investigation or other response

activities that have been performed at the Facility support the selection of the remedial action to be contained in the RAP.

(vi) Implementation schedules for conducting the response activities and for submission of RAP progress reports and a RAP Closure Report.

(vii) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities Respondent proposes to use for the off-site transfer, storage, treatment, or disposal of those waste materials.

(c) Within four (4) months after Respondent's receipt of the MDEQ's comments on the preliminary submittal described above, Respondent shall submit a RAP for the Facility to the MDEQ for review and approval. The RAP shall meet the performance objectives in Paragraph 5.1 of this Order, including a detailed schedule for implementation of the response activities contained in the RAP, and any engineering design plans and construction plans necessary to implement the response activity. The RAP shall be subject to MDEQ review and approval in accordance with Section XI (Submissions and Approvals).

VI. ACCESS

6.1 Upon the Effective Date of this Order and to the extent access to the Facility and any associated property is owned, controlled by, or available to Respondent, the MDEQ, its authorized employees, agents, representatives, contractors, and consultants, upon presentation of proper credentials and providing reasonable notice to Respondent, shall have access at all reasonable times to the Facility and any associated property for the purpose of conducting any activity to which access is required for the implementation of this Order or to otherwise fulfill any

responsibility under federal or State law with respect to the Facility, including, but not limited to:

(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 the interim response activities;

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

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

(i) Determining whether the Facility 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.

6.2 To the extent that the Facility is owned or controlled by persons other than Respondent, Respondent shall use its best efforts, as provided in the Part 201 Rules, to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Respondent shall provide the MDEQ with a copy of each access agreement secured pursuant to this

section. For purposes of this paragraph, "best efforts" include, but are not limited to, providing compensation acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Respondent 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 Respondent's receipt of the MDEQ's approval of the work plan for which such access is needed, but has been denied reasonable access. If Respondent has not been able to obtain access within sixty (60) days after filing judicial action, Respondent 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.

6.3 Any lease, purchase, contract, or other agreement entered into by Respondent, which transfers to another person a right of control over 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 VI (Access) and Section VIII (Record Retention/Access to Information).

6.4 Any person granted access to the Facility where the response activities are to be performed by Respondent under this Order shall comply with all applicable health and safety laws and regulations.

6.5 Notwithstanding any provision of this Order, the MDEQ shall retain all of its information gathering, inspection, enforcement, and access authorities under Part 201 and any applicable statute or regulation.

VII. QUALITY ASSURANCE/SAMPLING

7.1 Quality Assurance Sampling and Analytical Requirements

Sampling and analytical activities shall be developed and performed in accordance with the United States Environmental Protection Agency's (USEPA or EPA) "EPA Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," American National Standard ANSI/ASQC E4-1994. Respondent shall utilize recommended sampling methods and analytical methods and analytical detection levels specified in "Operational Memo No. 6, Analytical Method Detection Level Guidance for Environmental Contamination Response Activities under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Revision 6, January 2001)." Respondent shall utilize the MDEQ 2002 Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria to determine the number of samples collected for the purposes of verifying the cleanup. Respondent shall comply with the above documents or documents that supersede or amend these documents, or may utilize other methods demonstrated by the Respondent to be appropriate, as approved by the MDEQ.

7.2 All sampling and analysis conducted pursuant to this Order shall follow the methodologies specified in Paragraph 7.1 of this Order; the rules promulgated under Part 31, Water Resources Protection, of the NREPA; and guidance provided by the MDEQ on sampling locations, collection methods, parameters, detection limits, and analytical methods.

7.3 Respondent, or its consultants or subcontractors, shall provide the MDEQ a fourteen-day (14-day) notice prior to any sampling activity to be conducted pursuant to this Order to allow the RRD Project Coordinator, or his or her authorized

representative, the opportunity to take split or duplicate samples, to take additional samples, or to observe the sampling procedures. In circumstances where a fourteen-day (14-day) notice is not possible, Respondent, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the RRD Project Coordinator and explain why earlier notification was not possible. If the RRD Project Coordinator concurs with the explanation provided, Respondent may forego the fourteen-day (14-day) notification period for that particular sampling event.

7.4 Respondent shall provide the MDEQ with the results of all environmental sampling and other analytical data generated regarding the Facility in the performance or monitoring of any requirement under this Order included in Part 31; Part 111, Hazardous Waste Management, of the NREPA; Part 115, Solid Waste Management, of the NREPA; Part 201; Part 211, Underground Storage Tank Regulations, of the NREPA; or Part 213, or other relevant authorities. Said results shall be included in the preliminary submittal that will be incorporated into the RAP for the Facility and the RAP set forth in Section V (Access) of this Order.

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

VIII. RECORD RETENTION/ACCESS TO INFORMATION

8.1 Respondent and its representatives, consultants, and contractors shall preserve and retain, during the pendancy of this Order and for a period of ten (10) years after RAP approval, all records, electronic documents or databases, sampling or test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant to any requirement of this Order. After the ten-year

(10-year) period of document retention, Respondent and its successors shall obtain the MDEQ's written permission prior to the destruction of such documents and, upon request, Respondent and/or its successors shall relinquish custody of all documents to the MDEQ. Respondent's request shall be accompanied by a copy of this Order and sent to the following address:

Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926

8.2 Upon request, Respondent shall provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives relating to the response activities at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the response activities. Respondent shall also, upon request, make available to the MDEQ, upon reasonable notice, Respondent's employees, contractors, agents, or representatives with knowledge of the relevant facts concerning the performance of the response activities.

8.3 If Respondent submits to the MDEQ documents or information that Respondent believes is entitled to protection as provided for in Section 20117(10) and (11) of the NREPA, Respondent may designate in that submittal which documents or information it believes is entitled to such protection. 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 Respondent. Information described in Section 20117(11)(a) through (h) of the NREPA shall not be claimed as confidential or privileged by Respondent. Information or data generated

under this Order shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

IX. EMERGENCY RESPONSE

9.1 If, during the pendancy of 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, Respondent 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 Project Coordinator. In the event of the MDEQ Project Coordinator's unavailability, Respondent shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Respondent shall be in accordance with all applicable health and safety laws and regulations.

9.2 Within ten (10) days of notifying the MDEQ of such an act or event, Respondent 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. If an act or event causes a release, threat of release, or exacerbation, or poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, the MDEQ may: (a) require Respondent 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 Respondent 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.

X. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

10.1 Within thirty (30) days of the Effective Date of this Order, Respondent shall designate and provide contact information to a project coordinator who shall have primary responsibility for overseeing the performance of the response activities at the Facility and other requirements specified in this Order for Respondent. The MDEQ Project Coordinator shall be James Skipper, who can be contacted as follows:

Mr. James Skipper, Project Coordinator
Cadillac District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
120 West Chapin Street
Cadillac, Michigan 49601-2158
Telephone: 231-775-3960, Extension 6304
Facsimile: 231-775-1511

The MDEQ Project Coordinator will be the primary designated representative for the MDEQ for the Facility. 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 MDEQ Project Coordinator at the address listed above. 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 practical.

10.2 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.

10.3 This paragraph does not relieve Respondent from other reporting obligations under the law.

XI. SUBMISSIONS AND APPROVALS

11.1 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 schedules set forth in this Order. All Submissions delivered to the MDEQ pursuant to this Order shall include a reference to the AAR Facility and MDEQ Reference No. AO-RRD-03-002. 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.

Upon receipt of a notice of approval or approval with modifications from the MDEQ, the Respondent 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."

11.2 Upon review of the RAP, the RRD Division Chief 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 Respondent with a complete and specific statement of the conditions or requirements necessary to obtain approval.

11.3 Within ninety (90) days after receipt of a rejection or denial of approval of a RAP from the MDEQ pursuant to Paragraph 11.2(b) or (c), Respondent shall resubmit the RAP to the MDEQ for review and approval. The time period for resubmission may be extended by the MDEQ. The MDEQ will review the resubmitted RAP in accordance with the procedure stated in Paragraph 11.2. If the MDEQ does not approve the RAP upon resubmission, the MDEQ will so advise Respondent, and the MDEQ will deem Respondent to be in violation of this Order.

11.4 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 Respondent to deliver an acceptable Submission that complies with Part 201 and this Order, the MDEQ will notify Respondent of such and will deem Respondent to be in violation of this Order. 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 this Section XI may also place Respondent in violation of this Order. Violation of this Order may subject Respondent to penalties for non-compliance as provided in Section XIV (Penalties for Non-Compliance) of the Order or to other remedies available to the State.

11.5 An approval 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.

11.6 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Respondent shall not be construed as relieving Respondent of its obligation to obtain any formal approval required under this Order.

XII. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 31 and Part 201, and laws relating to occupational safety and health, and other state environmental laws. Other agencies may also be called upon to review the conduct of response activities under this Order.

XIII. AMENDMENTS/MODIFICATIONS/INCORPORATION BY REFERENCE

This Order may only be amended in writing by signature of the Director of the MDEQ. The RAP prepared pursuant to Paragraph 5.2(c) of this Order, or any other required response activity, may be modified only by the RRD Division Chief or his or her authorized representative.

XIV. PENALTIES FOR NON-COMPLIANCE

Pursuant to Sections 20119(4) and 20137(1) of the NREPA, MCL 324.20119(4) and MCL 324.20137(1), Respondent is advised that if, without sufficient cause, Respondent violates or fails to satisfactorily comply with this Order, or any portion thereof, Respondent may be: (a) fined in a civil action brought in circuit court up to twenty-five thousand dollars ($25,000) for each day in which such violation occurs or such failure to comply continues; and/or (b) subject to liability for exemplary damages in the amount of three (3) times the amount of any costs incurred by the State of Michigan as a result of Respondent's violation or failure to comply with this Order.

XV. DISCLAIMERS

The State of Michigan, including the MDEQ and its employees, agents, and consultants, shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, its officers, employees, agents, or contractor(s)

in carrying out activities pursuant to this Order. The State of Michigan, including the MDEQ, shall not be held as a party to any contract entered into by Respondent or its officers, employees, agents, or contractor(s) in carrying out activities pursuant to this Order.

XVI. RESERVATION OF RIGHTS BY THE MDEQ

16.1 The MDEQ expressly reserves all rights and defenses that it may have, including the MDEQ's right both to disapprove of work performed by Respondent and to request or order Respondent to perform response activities in addition to those detailed in this Order. In addition, the MDEQ reserves the right to undertake response activities at any time and to perform any and all portions of the response activities required by this Order that Respondent has failed or refused to perform properly or promptly. The MDEQ, in cooperation with the MDAG, reserves any and all rights to take any enforcement action pursuant to Part 201, or any other available legal authority, including the right to seek injunctive relief, monetary costs, damages or penalties, or punitive damages for any violation of law or of this Order.

16.2 Nothing in this Order shall be deemed to limit the power and authority of the MDEQ or the State of Michigan to take, direct, or order all appropriate action to protect the public health, safety, or welfare, or the environment or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, contaminants, or hazardous wastes on, at, or from the Facility.

XVII. RESPONDENT'S INTENT TO COMPLY WITH THIS ORDER

In accordance with Section 20119(3) of the NREPA, MCL 324.20119(3), Respondent is advised that within thirty (30) days of the Effective Date of this Order, Respondent is required to indicate to the MDEQ in writing whether or not Respondent intends to comply with this Order to:

Mr. Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926

XVIII. OPPORTUNITY TO CONFER

Respondent may, by orally notifying the MDEQ Project Coordinator within seven (7) days after receipt of this Order, request a conference with the MDEQ to discuss the correctness of any factual determinations upon which the Order is based, the applicability of this Order to Respondent, and the appropriateness of any action Respondent is ordered to take. If Respondent requests a conference, such conference shall be held either Wednesday, August 27, 2003, or Tuesday, September 2, 2000. At any conference held pursuant to Respondent's request, Respondent may appear in person or through an attorney or other representative for the purpose of orally presenting any objections, defenses, or contentions that Respondent may have regarding this Order, provided that such presentations shall not be a part of the administrative record upon which this Order is based.

XIX. SEVERABILITY

The provisions of this Order shall be severable. If any provision of this Order is declared by a court of competent jurisdiction to be inconsistent with state law, and therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect.

XX. EFFECTIVE DATE

This Order is effective on the date of its issuance.

IT IS SO ORDERED BY:

Issued at Lansing, Michigan, this 7 day of August, 2003.

Steven E. Chester, Director
Michigan Department of Environmental Quality

APPROVED AS TO FORM:

Robert P. Reichel (P31878)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

Date: 8/5/03

ATTACHMENT A

Property Description

00560001200

AAR CADILLAC MANUFACTURI

201 HAYNES STREET

CADILLAC MI 49601

SCHOOL DIST:	103
CLASS:	301
ASSESSED VALUE:	361,500
EQUALIZED VALUE:	361,500
TAXABLE VALUE:	361,500
LIBER:	
PAGE:	
% DECLARED AS HOMESTEAD:	0

DESCRIPTION:

COM. AT INTERSECTION OF TOWNLINE AND E LINE OUTLOT 7; W ALONG TOWNLINE 700 FT; N AT RT. ANG. 116.84 FT; N 10DEG 03MIN W 116.84 FT TO S LINE OF HAYNES ST; NELY ALONG S LINE HAYNES ST TO W LINE AARR; SELY ALONG W LINE AA-RR TO E LINE OUTLOT 7; S ALONG E LINE OUTLOT 7 TO BEG. AND THAT PART OF LOTS 4 & 5 LYING W OF AA RR. AND COM AT N 1/4 COR. SEC 4-21-9W W ALONG TOWNLINE 478.95 FT S PAR. WITH 1/4 LINE 120 FT; E PAR WITH TOWNLINE 100 FT; S PAR WITH 1/4 LINE 180 FT; E PAR WITH TOWNLINE TO A POINT 220 FT W OF E LINE OUTLOT 7; N PAR WITH 1/4 LINE 120 FT; E PAR WITHTOWNLINE 180 FT TO A POINT 40 FT W OF E LINE OUTLOT 7; N PAR WITH E LINE OF OUTLOT 7 180 FT TO TOWNLINE; W ALONG TOWNLINE 160 FT. TO BEG. CUMMER & HAYNES ADDN. CORRESPONDING I.F.T. #201-00-020-01, #201-00-020-03

ATTACHMENT B

List of Private Wells to Sample

441 Allen St.

446 Allen St.

450 Allen St.

451 Colfax St.

1112 Cummer St.

1201 Cummer St.

445 Donnelly St.

450 Donnelly St.

431 Donnelly St.

822 Elmer St.

609 Leeson Ave.

505 Waldo St.

911 West Division St.

912 West Division St.

1002 West Division St.

1007 West Division St.

1107 West Division St.

1119 West Division St.

1201 West Division St.

1204 West Division St.

1217 West Division St.

1224 West Division St.

1411 West Division St.

1508 West Division St.

JENNIFER M. GRANHOLM
GOVERNOR

LANSING

STEVEN E. CHESTER
DIRECTOR

February 9, 2004

Mr. Karl Tomaszewski
AAR Mobility Systems
201 Haynes Street
P.O. Box 550
Cadillac, Michigan 49601

Mr. Michael L. Robinson
Warner, Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, Michigan 49503-2487

Dear Messrs. Tomaszewski and Robinson:

SUBJECT: Modification of the Administrative Order for Response Activity (Order)
MDEQ Docket No. AO-RRD-03-002
AAR Facility, 201 Haynes Street, Cadillac, Michigan
Site ID No. 83000036

Recent data collected by the Department of Environmental Quality (DEQ), which has been provided to AAR Cadillac Manufacturing (AAR), indicates that the contaminant plume from the AAR facility (Facility) is migrating in a slightly more northerly direction than originally anticipated. Because of this new information, the DEQ is modifying the Order to reflect currently known conditions at the Facility. The Modification of the Order is attached and becomes effective upon February 9, 2004.

AAR and its environmental consultant should feel free to contact the project manager, Mr. James Skipper, Cadillac District Office, Remediation and Redevelopment Division, at 231-775-3960, extension 6304, regarding any technical issues concerning the Facility. We wish to emphasize that all other aspects of the Order as originally issued on August 7, 2003, remain in full force and effect.

Sincerely,

Steven E. Chester
Director
517-373-7917

Attachment

cc: Mr. Robert P. Reichel, Department of Attorney General
Mr. Jim Sygo, Deputy Director, DEQ
Ms. JoAnn Merrick, Senior Executive Assistant to the Director, DEQ
Ms. Patricia Spitzley, Press Secretary, DEQ
Ms. Carol Linteau, Legislative Liaison, DEQ
Ms. Patricia A. McKay, DEQ
Mr. Philip L. Schrantz, DEQ
Mr. John Alford, DEQ
Mr. Stephen Cunningham, DEQ

Modification of the Administrative Order for Response Activity
AAR Facility, 201 Haynes Street, Cadillac, Wexford County, Michigan
MDEQ Docket No. AO-RRD-03-002

Based upon data collected after the Administrative Order for Response Activity (Order) was issued on August 7, 2003, the Order is modified as follows:

All references to Attachment B are deleted from the Order.

Paragraph 5.1(b)(iv)(a) of the Order is deleted and replaced in its entirety as follows:

> Within forty-five (45) days of the Effective Date of this Order, sampling of private wells in the projected path of the contamination plume for TCE and its breakdown products using Scan 8260 and any TCE additives, such as acid acceptors, metal inhibitors, or antioxidant agents.

Paragraph 5.1(b)(v) of the Order is deleted and replaced in its entirety as follows:

> Quarterly monitoring of residential wells identified in an area bounded by Farrar Street and Lake Street on the east, Chestnut Street on the south, a line connecting Green Street and 4th Street on the west, and 7th Street on the north, and any private wells as identified by the MDEQ or the Respondent as being in the projected path of the contaminant plume to those areas where alternate water is not provided, and continued evaluation of the need to provide alternate water, and comply with Rule 526(4)(a) of the Part 201 Rules until the remedial investigation objectives of Paragraph 5.1(a) of the Order have been achieved.

All other aspects of the Order as originally issued on August 7, 2003, remain in full force and effect.

This modification shall take effect on February 9, 2004.

Steven E. Chester, Director
Michigan Department of Environmental Quality

Approved as to form:

Robert P. Reichel [P31878]
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
Michigan Department of Attorney General