

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

National Motor Casting Site  
1070 Indiana Street  
South Haven, Van Buren County, Michigan  
Site ID No. 80000195

MDEQ Reference No. AOC-RRD-2009-001

Proceeding under Section 20132 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

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**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER BY CONSENT**

**I. JURISDICTION**

1.1 This Administrative Settlement Agreement and Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Attorney General (MDAG), collectively referred to as “State” and “Textron, Inc.,” a Delaware corporation (Textron), pursuant to the authority vested in the MDEQ and the MDAG by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.*

**II. DENIAL OF LIABILITY**

2.1 The execution of this Order by Textron is neither an admission of liability with respect to any issue covered under this Order, nor an admission or denial of any findings of fact, allegations, assertions, or legal determinations stated or implied herein.

### **III. PARTIES BOUND**

3.1 This Order shall apply to and be binding upon the State and Textron and their successors and assigns. No change or changes in the ownership or corporate status of Textron shall alter in any way Textron's obligations under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

### **IV. STATEMENT OF PURPOSE**

4.1 This Order concerns the settlement between the State and Textron of the State's claims for Response Activity Costs and Textron's alleged responsibility to address the releases or threats of release of hazardous substances at the Facility that are associated with the release of hazardous substances at the property located at 1070 Indiana Street, South Haven, Van Buren County, Michigan.

4.2 Settlement of these claims is in the public interest and will minimize litigation.

### **V. DEFINITIONS**

5.1 "Day" shall mean a calendar day unless otherwise specified in this Order.

5.2 "Effective Date" means the date that this Order is signed by all of the Parties.

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

exacerbation caused by Textron after the Effective Date, Facility includes any area, place, or property where hazardous substances released prior to the Effective Date come to be located after the Effective Date of this Order due to migration or leaching.

5.4. “Matters Addressed” means the matters subject to the State’s Covenant Not to Sue in Paragraph 8.1 of Section VIII (Covenant Not to Sue by the State).

5.5. “MDAG” means the Michigan Department of Attorney General, and any successor departments or agencies of the State of Michigan.

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

5.7 “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*, and the Part 201 Administrative Rules.

5.8 “Part 201 Rules” means the administrative rules promulgated under Part 201.

5.9 “Parties” shall mean the State and Textron.

5.10 “Property” means the property located at 1070 Indiana Street, South Haven, Michigan, and described in the legal description provided in Attachment A.

5.11 “Remedial Action Plan” or “RAP” means the Remedial Action Plan for the Facility that was prepared by Fishbeck, Thompson, Carr & Huber, Inc., and entitled “Remedial Action Plan for Former National Motor Castings South Haven Michigan,” dated January 1998, and submitted to the MDEQ on behalf of Textron on January 23, 1998. The RAP includes addenda dated July, 1999; June, 2002; and November 6, 2002. The RAP, which was based on generic industrial criteria, was approved by MDEQ on November 15, 2002.

5.12 “Response Activity Costs” means all response activity costs associated with the Facility that have been incurred by the State prior to the Effective Date of this Order, including all accrued interest, and all response activity costs that may be incurred by the State after the Effective Date of this Order, including interest, to address releases and threats of releases of hazardous substances at the Facility that occurred prior to the Effective Date of this Order.

5.13 “State” or “State of Michigan” means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

5.14 “Textron” means Textron, Inc., a Delaware corporation.

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

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

6.1 The National Motor Casting site is located at 1070 Indiana Street, South Haven, in Van Buren County, Michigan.

6.2 The Property is a former gray iron foundry formerly owned and operated by Textron and by others from the 1920s until 1983.

6.3 Site investigations and assessment activities conducted at the Property in 1991, 1992, 1993, and 1994 confirmed that hazardous substances consistent with hazardous substances used in foundry operations, had been released at the Property in concentrations that exceeded Section 20120a(1) or (17) criteria of the NREPA, MCL 324.20120a(1) or (17). The hazardous substances identified are “hazardous substances” as that term is defined in Section 20101(1)(t) of the NREPA, MCL 324.20101(1)(t) and include, but are not limited to, lead, petroleum products,

cadmium, selenium, zinc arsenic, naphthalene, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenals (PCBs), and 1, 2, 4, trimethylbenzene.

6.4 In 2001, the MDEQ conducted state-funded response activities at the Facility, including, but not limited to: demolition of buildings, foundry quench pits, and the concrete floor slab; removal of water, debris, and sediment from the foundry quench pits; and removal of asbestos containing material. During the demolition, the MDEQ discovered one (1) above ground storage tank (AST), two (2) underground storage tanks (USTs), and the presence of free product in the tanks and the surrounding soil. The presence of free product in the surrounding soil constituted a “release” within the meaning of Sections 20101(1)(bb) and 20101(1)(ii) of the NREPA, MCL 324.20101(1)(bb) and MCL 324.20101(1)(ii). The two USTs, petroleum contaminated soil, an area of green-stained concrete and soil associated with the AST, and other areas of impacted soil were excavated. Closure samples collected in these cleanup areas and samples collected below the old quench pits by the MDEQ met the generic residential cleanup criteria with the exception of selenium, which exceeded the soil criteria for the groundwater surface water interface protection at some locations.

6.5 Textron conducted response activities at the Facility in accordance with the RAP, as necessary to achieve the cleanup criteria required for a generic industrial cleanup category under Section 20120a(1)(d) of the NREPA, MCL 324.20120a(1)(d).

6.6 The generic industrial cleanup achieved through implementation of the RAP was superseded on December 28, 2004, when the MDEQ approved a Limited Residential Interim Response Designed to Meet Criteria (IRDC) for the Property. The IRDC included the construction of engineered exposure barriers to prohibit direct contact with soils containing residual contamination at the Property.

6.7 The National Motor Castings Facility is a “facility” as that term is defined in Section 20101(l)(o) of the NREPA.

6.8 Textron is a “person” as that term is defined in Section 301(h) of the NREPA, MCL 324.301(h).

6.9 The State asserts that Textron and its legal predecessors were owners and operators of the Facility at the time of disposal of hazardous substances, were responsible for an activity causing a release or threat of release at the Facility, and that Textron is liable under Part 201 pursuant to Section 20126(1)(b) of the NREPA, MCL 324.20126(1)(b).

6.10 Pursuant to Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a), a person who is liable under Section 20126 is liable for all response activity costs lawfully incurred by the State. Further, pursuant to Section 20137(1)(a) of the NREPA, MCL 324.20137(1)(a), the State may commence an action to compel a liable party to take the necessary response activity to protect public health, safety, or welfare, or the environment from the release or threat of release.

6.11 The State asserts that it has incurred Response Activity Costs as defined by Part 201 of the NREPA relating to the selection and implementation of response activities at the former National Motor Castings Site in the amount of One Million Nine Hundred Seventy-Four Thousand Seven Hundred Eighty-Seven Dollars (\$1,974,787.00).

6.12 By letter dated December 4, 2007, the MDEQ notified Textron of its assertion that Textron is a liable person in accordance with Section 20126 of the NREPA, MCL 324.20126. The MDEQ demanded that Textron commit, in a legally binding agreement, to reimburse the State for past and future costs incurred for responding to the release or threatened release of hazardous substances at the Facility.

BASED UPON THE FOREGOING, THE MDEQ AND THE ATTORNEY GENERAL  
HEREBY ORDER, AND TEXTRON HEREBY AGREES TO, THE FOLLOWING:

**VII. REIMBURSEMENT OF RESPONSE ACTIVITY COSTS**

7.1 Within sixty (60) days of the Effective Date of this Order, Textron shall pay the MDEQ Four Hundred Twenty-Five Thousand Dollars (\$425,000.00) to resolve all State claims for Response Activity Costs against Textron related to the National Motor Castings Facility, except those reserved by the State in paragraph 9.1 of Section IX (Reservation of Rights).

7.2 Payment is to be made by certified check payable to the “State of Michigan – Environmental Response Fund” and shall be sent by first class mail to:

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

**Via Courier:**

Revenue Control Unit  
Financial and Business Services Division  
Michigan Department of Environmental Quality  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933-2125

7.3 To ensure proper credit, payment made pursuant to this Order must reference the National Motor Castings Site, the MDEQ Reference No. AOC-RRD-2009-001, and the RRD Account Number RRD-2246. Copies of the transmittal letter and the certified check shall be provided simultaneously to:

Darren Bowling, Environmental Quality Analyst  
Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
Constitution Hall  
525 West Allegan Street  
P.O. Box 30426  
Lansing, MI 48909-7926  
Phone: 517-241-7603  
Fax: 517-241-9581

and to:

Celeste R. Gill, Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
525 West Ottawa Street  
P.O. Box 30755  
Lansing, MI 48909  
Phone: 517-373-7540  
Fax: 517-373-1610

7.4 Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA, MCL 324.20108(3).

7.5 If Textron fails to make full payment to the MDEQ as specified in Paragraph 7.1, Textron shall also pay interest at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3). If Textron's payment is more than thirty (30) days past due, Textron shall also pay the MDEQ stipulated penalties of Five Hundred Dollars (\$500.00) per day for every day of its noncompliance with Paragraph 7.1.



### **VIII. COVENANTS NOT TO SUE BY THE STATE**

8.1 In consideration of the response activities that Textron performed pursuant to the RAP and the payment to be made by Textron under the terms of this Order, and except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against Textron and its successors for:

- (a) Response Activity Costs; and
- (b) Performance of response activities to address releases and threats of releases of hazardous substances at the Facility that occurred prior to the Effective Date of this Order.

8.2 The State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from Textron for the amount specified in Paragraph 7.1 and any associated interest and penalties that may have accrued pursuant to Paragraph 7.5. The covenant not to sue shall extend only to Textron and its successors and does not extend to any other person.

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

9.1 The covenants not to sue apply only to those matters specified in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State). The State expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Textron with respect to the following:

- (a) Releases or threats of releases of hazardous substances at the Facility that occur after the Effective Date of this Order, for which Textron is liable under Section 20126 of the NREPA, MCL 324.20126.

(b) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and is not attributable to the Facility for which Textron is liable under Section 20126 of the NREPA, MCL 324.20126.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility, for which Textron is liable under Section 20126(1)(d) or (1)(e) of the NREPA, MCL 324.20126(1)(d) or (1)(e), as a transporter or arranger.

(d) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.

(e) Criminal acts.

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

9.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Order.

9.4 Except as provided in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State), nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, MCL 324.20132(8), to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

## **X. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY TEXTRON**

10.1 Textron hereby covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA, MCL 324.20119(5), or any other provision of law.

10.2 After the Effective Date of this Order, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs or Response Activity Costs, or other appropriate relief relating to the Facility, Textron agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by the State) or Textron's ability to defensively enforce the Covenants Not to Sue by the State.

10.3 Nothing in this Order shall be construed as releasing or discharging any liability of any person not a party to this Order to Textron, and Textron specifically reserves its rights against such persons.

## **XI. TOLLING**

11.1 Textron agrees that the Tolling Agreement dated May 28, 2008 and extensions of the same shall continue in effect until Textron has fully complied with the terms of this Order.

## **XII. CONTRIBUTION**

12.1 The Parties agree that this Order constitutes an administrative settlement pursuant to Section 20129(5) of the NREPA, MCL 324.20129(5) and Section 113(f)(2) of CERCLA, 42 USC § 9613, and to the extent provided in Paragraph 8.1, Textron shall not be liable for claims for contribution for the matters addressed in this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, MCL 324.20126, or Sections 107 and 113 of the CERCLA, 42 USC §§ 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, MCL 324.20129(9), any action by Textron for contribution from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 or other applicable federal or state laws.

12.2 The Parties agree that this Order also constitutes an administrative settlement for purposes of Section 20129(8) of the NREPA, MCL 324.20129(8) and Section 113(f)(3)(B) of CERCLA, 42 USC § 9613(f)(3)(B), pursuant to which Textron has, as of the Effective Date, resolved its liability to the State for the Matters Addressed in this Order.

12.3 The Parties agree that except as provided in Paragraph 12.1:

(a) Nothing in this Order precludes Textron from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Order; and

(b) Nothing in this Order diminishes the right of the State, pursuant to Section 20129(7) of the NREPA, MCL 324.20129(7) and Sections 113(f)(2) and (3) of CERCLA, 42 USC § 9613(f)(2) and (3), to pursue any such person to obtain additional response costs or response action and to enter into settlement agreements that give rise to contribution protection

pursuant to Section 20129(8) of the NREPA, MCL 324.20129(8) and Section 113(f)(2) of CERCLA, 42 USC § 9613(f)(2).

### **XIII. MODIFICATIONS**

13.1 Modification of any provision of this Order shall be made only by written agreement between the Parties.

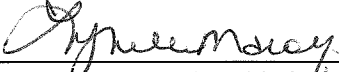
### **XIV. SEPARATE DOCUMENTS**

14.1 The Parties may execute this Order in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.


### **XV. SEVERABILITY**

15.1 The provisions of this Order shall be severable. If a court of competent jurisdiction declares that any provision of this Order is inconsistent with state or federal law and therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect, unless the severance causes this Order to fail in its essential purposes.

IT IS SO AGREED TO AND ORDERED BY:

  
~~Andrew W. Hogarth, Chief~~ *Dyanelle Marolf, Acting Chief*  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

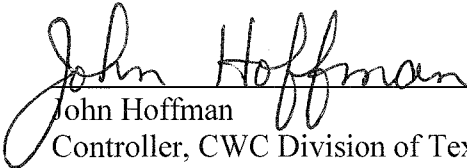
9/30/09  
Date

  
Celeste R. Gill (P52484)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

9/30/09  
Date

IT IS SO AGREED BY:

Textron, Inc.

  
John Hoffman  
Controller, CWC Division of Textron, Inc.  
1085 West Sherman Boulevard  
Muskegon, Michigan 49441-3588

9-23-09  
Date

**ATTACHMENT A**

Property Description:

State of Michigan

County of Van Buren

City of South Haven

Elkenburg Addition

Beg at SE cor of Elkenburg St & St Joseph St th S alg E L St Joseph St to N L Aylworth Ave th E alg sd N L to W L Indiana Ave th N alg sd W L 430.43 ft th W at rt ang to RR th NLY alg sd RR to Elkenburg St th W to beg Ex RR row being pt of Blk 4 of Elkenburg Add & pt of Unplatted Section 10 Court