

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

CWC Division of Textron Inc.  
Muskegon River Pipeline-Bridgeton  
Newaygo County

MDEQ Reference No. AOC-RRD-14-001

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

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**ADMINISTRATIVE ORDER BY CONSENT  
FOR RESPONSE ACTIVITIES AND PAYMENT OF COSTS**

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## **I. JURISDICTION**

This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ); the Michigan Department of Attorney General (MDAG); and Respondent, pursuant to the authority vested in the MDEQ and the MDAG by law, including Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This Order concerns the performance by Respondent of certain response activities at the Muskegon River Pipeline-Bridgeton Site, Newaygo County, Michigan and the payment of response activity costs.

## **II. DENIAL OF LIABILITY**

The execution of this Order by Respondent is neither an admission or denial of liability with respect to any issue dealt with in this Order nor an admission or denial of any factual allegations, fact findings, fact determinations, or legal determinations stated or implied herein.

## **III. PARTIES BOUND**

3.1 This Order shall apply to and be binding upon Respondent (including its predecessors) and the State and their successors. Any change in ownership, corporate, or legal status of Respondent including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter Respondent's responsibilities under this Order.

3.2 Notwithstanding the terms of any contract that Respondent may enter with respect to the performance of response activities pursuant to this Order, Respondent is responsible for compliance with the terms of this Order and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Order.

3.3 The signatories to this Order certify that they are authorized to execute this Order and to legally bind the parties they represent.

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

The purpose of Order is for the Respondent to obtain compliance with Part 201 of the NREPA, by agreeing to perform the Response Activities outlined in Section VIII (Performance of Response Activities), to resolve the State's claim for Past and Future Response Activity Costs as described in Section XIII (Reimbursement of Costs) and Section XVI (Covenants Not to Sue by the State), and to resolve the State's claims for response activities.

#### **V. DEFINITIONS**

5.1 "Day" means a calendar day.

5.2 "Effective Date" means the date the Remediation and Redevelopment Division Chief signs this Order.

5.3 "Muskegon River Pipeline-Bridgeton Site" or the "Site" means the area of the pipeline that crosses the Muskegon River (GPS Coordinates at North end: N 43° 20' 50"; W 085° 57' 30.6" and at South end: N 43° 20' 47.6"; W 085° 57' 32.6".) in Grant, MI, where a hazardous substance, in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use, may have been released, deposited, or disposed of, or otherwise may come to be located.

5.4 "Past and Future Response Activity Costs" means all past and future costs incurred by the State regarding the Site, which include, but are not limited to, obtaining the necessary permits for performance of response activities by Respondent and pipeline removal by MDEQ.

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

5.6 "Part 201" means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq.*, criteria developed pursuant to MCL 324.20120a(1), and the Part 201 Administrative Rules.

5.7 "Party" means either Respondent or the State. "Parties" means Respondent and the State.

5.8 "Pipeline" means the portion of the pipeline which crosses the Muskegon River at the Site.

5.9 "Respondent(s)" means CWC Division of Textron Inc., and its successors and predecessors.

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

5.11 "State" or "State of Michigan" means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

5.12 "Submissions" means all plans, reports, schedules, and other submissions that Respondent is required to provide to the State or the MDEQ pursuant to this Order.

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

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

In Accordance with MCL 324.20134, The State makes the following Findings of Fact and Determinations.

6.1 On June 29, 2014, the MDEQ received a citizen's complaint of a release of petroleum from the Pipeline approximately one-half mile downstream from where the Bridgeton Bridge crosses the Muskegon River extending out of the south bank of the Muskegon River on property located at 6105 West South River Drive, Grant, Michigan. On July 9 and July 14, 2014, as follow up to the citizen's complaint, RRD staff conducted inspections. RRD staff observed petroleum in the Muskegon River and in the river sediments and soils and noted a

strong petroleum odor in the area. This constitutes a "release or threatened release" within the meaning of MCL 324.20101(1)(mm) and MCL 324.20101(1)(vv).

6.2 MDEQ asserts that the Site is a "facility" as that term is defined in MCL 324.20101(1)(s).

6.3 MDEQ further contends that petroleum is present at the Site and is a "hazardous substance" as that term is defined in MCL 324.20101(1)(y).

6.4 Respondent is a "person" as that term is defined in Section 301(h) of Part 3 of the NREPA. "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

6.5 DEQ alleges that Respondent, successor to the Campbell Wyant & Cannon Foundry Company was an owner and operator of the Pipeline at the time of disposal of hazardous substances at the Site and that Respondent is responsible for an activity causing a release or threat of release at the Site pursuant to MCL 324.20126(1)(b).

6.6 By letter dated August 12, 2014, the MDEQ notified Respondent of MDEQ's allegations regarding its status as a liable person in accordance with MCL 324.20126. This letter demanded that Respondent immediately conduct response activities to address releases of petroleum into the Muskegon River and into the river sediments and soils.

The State has determined that entry of this Order will expedite the performance of response activities that are necessary and appropriate to protect public health, safety, or welfare, or the environment, that the Respondent will properly perform the response activities required by this Order, and that entry of this Order is in the public interest and will minimize litigation.

## **VII. COMPLIANCE WITH STATE AND FEDERAL LAWS**

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate permit requirements, state and federal laws, rules, and regulations, including, but not limited to, Part 201, and laws relating

to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Order.

## **VIII. PERFORMANCE OF RESPONSE ACTIVITIES**

### **8.1 Remedial Investigation**

(a) Within five (5) days of MDEQ notifying Respondent of issuance of necessary permits to perform work, Respondent will implement the following response activities with respect to the sediment/soil contamination associated with petroleum releases from the Pipeline:

(i) The Respondent will retain a consultant to conduct sampling of the soil and sediment beneath/adjacent to the Pipeline. The sampling will include collection of an estimated 15 samples as described below:

(A) River Sediment - Five samples will be collected from beneath the submerged Pipeline and two samples approximately 10 feet downstream of the Pipeline. Sediment along the Pipeline will be visually inspected for visual evidence of possible hydrocarbon impact. If evidence is observed, samples will be collected of the suspect sediment. If no evidence is observed, the samples will be distributed evenly along the submerged section of the pipe. The samples will be collected from the upper 6 inches of sediment with a hand auger or comparable device.

(B) South Bank Soil -- An estimated four to eight hand auger borings will be conducted around the small-diameter pipe that extends upward from the main Pipeline where evidence of leakage has been noted. The borings will be advanced approximately 1 to 1.5 feet below the water table. Additional borings will be performed if the sample screening indicates the presence of hydrocarbon impact.

(C) All sediment and soil samples will be inspected for visual and olfactory evidence of hydrocarbons. Representative samples from each location will also be inspected under ultraviolet light ("black box") for evidence of hydrocarbon fluorescence.

### **8.2 Response Activities**

(a) Within five (5) days of completing the sampling set forth in Paragraph 8.1, Respondent shall perform the following response activities.

(i) Respondent will remove and properly dispose up to 20 cubic yards of petroleum contaminated (based on visual observation) sediment/soil around the small-

diameter formerly leaky pipe, below the submerged Pipeline, or downstream of the Pipeline if required under Part 201.

(ii) Respondent will retain an experienced environmental contractor to cut the Pipeline at both river banks, flush and clean the section of Pipeline that crosses the river, test/inspect the Pipeline as necessary for evidence of leaks, permanently cap the landward ends (two) of the cut section of Pipeline and place an absorbent sock in each of the two ends of the Pipeline to remain in place in the Muskegon River prior to removal by the MDEQ. The Pipeline contents and cleaning fluids will be removed and properly disposed at a licensed facility.

(iii) Respondent will prepare and implement measures to address (prevent or remove/recover) any release of any contaminated sediments/soil or Pipeline contents during the cutting and cleaning process, during testing/inspection by Respondent, during sediment/soil excavation by Respondent, and during Pipeline removal activities. This work includes, but is not limited to, the deployment of absorbent booms on the river and the onsite presence and use of vacuum equipment during the Pipeline cleaning and capping work performed by Respondent. Respondent will also provide for continued deployment of the absorbent booms and on-call vacuum truck services during actual pipeline removal activities by MDEQ.

(iv) Respondent will restore any upland property, including any vegetation, that was damaged by the Respondent and place 15 cubic yards of rip rap limestone or other equivalent material at the south shore location where the soil/sediment removal is done, provided the permits to be obtained by the MDEQ require such placement.

### 8.3 Weather Delay

(a) Respondent shall perform the remedial investigation and response activities within the time frames established above, unless performance is prevented or delayed, despite Respondent's best efforts, by adverse weather conditions. If such conditions exist, Respondent shall immediately notify MDEQ, and if MDEQ concurs with the need for a delay, the schedule shall be modified by the Parties in order to complete any remaining investigation and response activities as expeditiously as possible.

(b) Respondent shall perform the response activities required by this Order within the time limits established herein, unless performance is prevented or delayed because a property owner refuses or withdraws access consent from the Respondent. The Respondent



must use best efforts to obtain access, which includes but is not limited to, obtaining court ordered access. In the event the delay exceeds a timeframe acceptable to the MDEQ, the MDEQ may perform the response activities pursuant to Paragraph 8.4 of the Order; however the thirty (30) day timeframe to provide written notice to the Respondent shall not apply.

#### **8.4 The MDEQ's Performance of Response Activities**

If Respondent i) ceases to perform the response activities required by this Order to be performed by Respondent; ii) is not performing response activities in accordance with this Order; or iii) is performing response activities in a manner that causes or may cause an endangerment to human health or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to Respondent, take over the performance of those response activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section XI (Emergency Response) of this Order. If the MDEQ finds it necessary to take over the performance of response activities that Respondent is obligated to perform under this Order, Respondent shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Respondent shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 14.4, of Section XIV (Reimbursement of Costs) of this Order.

### **IX. SAMPLING AND ANALYSIS**

9.1 Respondent, or its consultants or subcontractors, shall provide the MDEQ a ten (10) day notice prior to any sampling activity to be conducted pursuant to this Order to allow the MDEQ Project Manager, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10) 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 MDEQ Project Manager and explain why earlier notification was not possible. If the MDEQ Project Manager concurs with the explanation provided, Respondent may forego the ten (10) day notification period for that particular sampling event.

9.2 Respondent shall provide the MDEQ with the results of all environmental sampling, and other analytical data generated by Respondent relating to the Site in the performance or monitoring of any requirement under this Order. These results shall be submitted to the MDEQ upon receipt by the Respondent's experienced environmental contractor.

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

#### **X. EMERGENCY RESPONSE**

10.1 If during the course of Respondent performing response activities pursuant to this Order, an act or the occurrence of an event causes a release or threat of release of a hazardous substance at or from the Site, or causes exacerbation of existing contamination at the Site, 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, or exacerbation; and shall immediately notify the MDEQ Project Manager. In the event of the MDEQ Project Manager'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.

10.2 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, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether Respondent notifies the MDEQ under this Section, if an act or event causes a release, threat of release, or exacerbation, the MDEQ may: (a) require Respondent to stop response activities at the Site for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require Respondent to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat

of release, or exacerbation; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation.

#### **XI. RECORD RETENTION/ACCESS TO INFORMATION**

11.1 Respondent shall preserve and retain, for a period of ten (10) years after completion of all response activities required under this Order, sampling and test results, charts, and other documents relating to the release or threatened release of petroleum, and the storage, generation, disposal, treatment, and handling of petroleum at the Site; and any other records that are maintained or generated pursuant to any requirement of this Order, including records that are maintained or generated by representatives, consultants, or contractors of Respondent. Respondent shall obtain the MDEQ's written permission prior to the destruction of any documents covered by this Paragraph. Respondent's request shall be accompanied by a copy of this Order and sent to the address listed in Section XII (Project Managers and Communications/Notices) of this Order, or to such other address as may subsequently be designated in writing by the MDEQ.

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

11.3 If Respondent submits documents or information to the MDEQ that Respondent believes are entitled to protection as provided for in MCL 324.20117(10) of the NREPA, Respondent may designate in that submission the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the MDEQ may provide the information to the public without further notice to Respondent. Information described in MCL 324.20117(11)(a)-(h), 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.*

## **XII. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES**

12.1 Each Party shall designate one or more Project Managers. Whenever notices, progress reports, information on the collection and analysis of samples, sampling data, 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 is needed, such communications shall be directed to the designated Project Managers at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable. The Project Manager for each party shall have primary responsibility for overseeing the performance of the response activities at the Site and other requirements specified in this Order for Respondent.

**A. As to the MDEQ:**

Ms. Darlene Stringer, Project Coordinator  
Grand Rapids District Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
350 Ottawa Avenue NW, Unit 10  
Grand Rapids, Michigan 49503-2341  
Telephone: 616-356-0023  
Facsimile: 616-356-0202  
StringerD2@Michigan.gov

**B. As to Respondent:**

Robert Meacham, Manager EHS  
Textron Automotive Functional Components  
1085 West Sherman Boulevard  
Muskegon, MI 49441-3588  
Phone: 231-739-2794  
Fax: 231-739-2649  
E-mail Address: bob.meacham@kautex.textron.com

12.2 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.

### **XIII. REIMBURSEMENT OF COSTS**

13.1 Within 30 days of MDEQ notice to Respondent of removal of the Pipeline, Respondent shall reimburse the State \$5,000 to settle all claims for Past and Future Response Activities Costs except those costs incurred pursuant to Section XVII (Reservation of Rights by the State).

13.2 Respondent shall reimburse the MDEQ for all costs incurred pursuant to Paragraph 8.4 (MDEQ's Performance of Response Activities) and Section X (Emergency Response). MDEQ will invoice Respondent with an invoice for such costs. An invoice will include a summary report that identifies all costs, the nature of those costs, and the dates through which those costs were incurred by the State. Respondent shall reimburse the MDEQ for such costs within thirty (30) days of Respondent's receipt of an invoice from the MDEQ.

13.3 All payments made pursuant to this Order shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to:

Michigan Department of Environmental Quality  
Casher's Office  
P.O. Box 30657  
Lansing, MI 48909-8157

Via courier:  
Accounting Services Division  
Cashier's Office for DEQ  
1<sup>st</sup> Floor, Van Wagoner Building  
425 W. Ottawa Street  
Lansing, MI 48933-2125

The Muskegon River Pipeline-Bridgeton Site, the MDEQ Reference No. AOC-RRD-14-001, and the RRD Account Number RRD50056 shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Manager at the address listed in Paragraph 12.1(A) and to the MDAG at:

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

Costs recovered pursuant to this Section or payment of stipulated penalties pursuant to Section XIV (Stipulated Penalties) of this Order shall be deposited into the Environmental Response Fund in accordance with the provisions of MCL 324.20108(3).

13.4 If Respondent fails to make full payment of \$5,000.00 (five thousand dollars) to the MDEQ as specified in Paragraph 14.1, or full payment under Paragraph 14.2 of this Order, interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the unpaid balance on the day after payment was due, until the date upon which Respondent makes full payment of those costs and the accrued interest to the MDEQ. In any challenge by Respondent to an MDEQ demand for reimbursement of costs, Respondent shall have the burden of proof.

#### **XIV. STIPULATED PENALTIES**

14.1 If Respondent fails or refuses to comply with Section XIII (Reimbursement of Costs) of this Order, Respondent shall pay the MDEQ stipulated penalties of \$500.00 (five hundred dollars) a day for each and every failure or refusal to comply.

14.2 All penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue through the correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

14.3 Respondent shall pay stipulated penalties owed to the State no later than thirty (30) days after Respondent's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 13.3 of Section XIII (Reimbursement of Costs) of this Order. Interest, at the rate provided for in MCL 324.20126a(3), shall begin to accrue on the unpaid balance at the end of the thirty (30) day period on the day after payment was due until the date upon which Respondent makes full payment of those stipulated penalties and the accrued interest to the MDEQ.

14.4 The payment of stipulated penalties shall not alter in any way Respondent's obligation to perform the response activities required by this Order.

14.5 If Respondent fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Respondent violates this Order. For any failure or refusal of Respondent to comply with the requirements of this Order, the State also reserves the right to pursue any other remedies to which it is entitled under this Order or any applicable law including, but not limited to, seeking civil fines, injunctive relief, and the specific performance of response activities and reimbursement of costs.

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

#### **XV. INDEMNIFICATION AND INSURANCE**

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

15.2 Respondent shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of Respondent, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Order.

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

15.4 The State shall provide Respondent notice of any claim for which the State intends to seek indemnification pursuant, to Paragraphs 15.2 or 15.3 of this Order.

15.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be considered a party to any contract that is entered into by or on behalf of Respondent for the performance of activities required by this Order. Neither Respondent nor its contractor shall be considered an agent of the State.

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

15.7 Prior to commencing any response activities pursuant to this Order, and for the duration of this Order, Northern A-1 shall provide the MDEQ project manager and the MDAG with certificates evidencing it has procured comprehensive general liability insurance with limits of one million dollars (\$1,000,000.00) of combined single limit insurance and that MDEQ, the MDAG, and the State of Michigan have been added as additional insured parties. Such certificates shall specify the Muskegon River Pipeline-Bridgeton

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

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

- (a) Response activities Respondent performs under Paragraphs 8.1 and 8.2 of this Order.
- (b) Recovery of Past and Future Response Activity Costs.



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

(a) With respect to Respondent's liability for response activities performed pursuant to this Order, Respondent's completion of the response activities identified in Section VIII (Performance of Response Activities) of this Order.

(b) With respect to Respondent's liability for Past and Future Response Activity Costs, the covenant not to sue shall take effect upon payment of the \$5,000 as set forth in Paragraphs 13.1 and 13.4 of Section XIII (Reimbursement of Costs) of this Order.

16.3 The covenants not to sue extend only to Respondent and do not extend to any other person.

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

17.1 The covenants not to sue apply only to those matters specified in Paragraph 16.1 of Section XVII (Covenants Not to Sue by the State) of this Order. 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 Respondent with respect to the following:

(a) Response activity costs that are not covered by the covenant not to sue in Paragraph 16.1(b).

(b) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Site and that are not attributable to the Site.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Site by Respondent.

(d) Criminal acts.

(e) Any matters for which the State is owed indemnification under Section XV (Indemnification and Insurance) of this Order.

(f) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment, except to the extent caused by MDEQ

during any pipeline removal activities or otherwise, unless such activities are undertaken by MDEQ pursuant to Paragraph 8.4 and Section X (Emergency Response).

(g) The release or threatened release of hazardous substances (i) that are caused by Respondent during the performance of response activities by Respondent required by this Order or (ii) from the Pipeline (which were left in the Pipeline section to be removed by MDEQ) during any removal activities of that pipeline by MDEQ.

(h) Any issue addressed in MCL 324.20132(6) regarding unknown conditions.

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

17.3 To the extent that it is determined that more than 20 cubic yards of petroleum contaminated sediment/soil exist that must be removed as required by Part 201, nothing stated herein shall be construed as waiving any right that DEQ has under Part 201 to take any action or to compel CWC to take any action with respect to such additional contamination. CWC reserves all rights or defenses available to it under Part 201 and other law.

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

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

17.6 In addition to, and not as a limitation of any provision of this Order, the MDEQ and the MDAG retain all of their information-gathering, inspection, and access, enforcement authorities and rights under Part 201 to the extent not modified or limited by this Order, and any other applicable statute or regulation.

17.7 Failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this Order in a timely manner shall not:

(a) Provide or be construed to provide a defense for Respondent's noncompliance with any such term, condition, or requirement of this Order.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of the Order, or to seek any other remedy provided by law.

17.8 This Order does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Respondent in accordance with this Order will result in the achievement of the remedial clean-up criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

17.9 Except as provided in Paragraph 16.1(a) of Section XVI (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 MCL 324.20119 and MCL 324.20137, as provided for under 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 Site.

#### **XVIII. COVENANT NOT TO SUE BY RESPONDENT**

18.1 Respondent 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 the performance of response activities by Respondent under Paragraphs 8.1 and 8.2 of this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to MCL 324.20119(5) or any other provision of law.

18.2 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 other appropriate relief relating to the Site, Respondent 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 effects the enforceability of the covenants not to sue set forth in Section XVII (Covenants Not to Sue by the State) of this Order.

### **XIX. CONTRIBUTION PROTECTION**

Pursuant to MCL 324.20129(5), and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XVI (Covenants Not to Sue by the State) of this Order, Respondent shall not be liable for claims for contribution for the matters set forth in Paragraph 16.1 of Section XVI (Covenants Not to Sue by the State) of this Order, to the extent allowable by law. The Parties agree that entry of this Order constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the MDEQ for the matters set forth in Paragraph 16.1 of this Order. Entry of this Order does not discharge the liability of any other person that may be liable under MCL 324.20126 of the NREPA, or Section 9607 and Section 9613 of the CERCLA. Pursuant to MCL 324.20129(9) of the NREPA, any action by Respondent for contribution from any person that is not a Party to this Order shall be subordinate to the rights of the State of Michigan, if the State files an action pursuant to the NREPA or other applicable state or federal law.

### **XX. MODIFICATIONS**

20.1 The Parties may only modify this Order according to the terms of this Section. The modification of any Submission or schedule required by this Order may be made only upon written approval from the MDEQ.

20.2 Modification of any other provision of this Order shall be made only by written agreement between Respondent's Project Manager, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG.

### **XXI. SEPARATE DOCUMENTS**

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.

## **XXII. SEVERABILITY**

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.

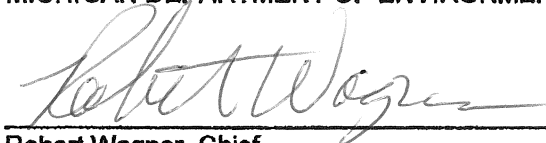
## **XXIII. TERMINATION**

Upon completion of Respondent's obligations under Section VIII, X, XII, XIII and XIV of this Order, Respondent may submit a Notice of Completion to the MDEQ. The MDEQ will review the Notice of Completion and any supporting documentation and provide notice to Respondent whether or not the MDEQ concurs. Upon Respondent's receipt of MDEQ concurrence with the notice of completion Respondent's obligations under Section VIII, X, XII, XIII, and XIV of this Order will terminate. All other provisions of this Order shall remain in full force and effect.

MDEQ Reference No. AOC-RRD-14-001

IT IS SO AGREED TO AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Robert Wagner, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

12/1/14  
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Richard Kuhl, P42042  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

12/1/14  
Date

IT IS SO AGREED BY:

Respondent



Mr. Erik L. Jepsen  
Director of Operations  
CWC Division of Textron

11/20/14

Date