

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

City of Toledo, Ohio  
3729 Twining Street  
Toledo, Ohio 43608

U.S. EPA NO. OHD 980 279 376

RESPONDENT

ACKNOWLEDGMENT OF  
TERMINATION AND  
AGREEMENT TO RECORD  
PRESERVATION AND  
RESERVATION OF RIGHTSUSEPA DOCKET NO.:  
RCRA-05-2015-0004Proceeding under Section  
3008(h) of the Resource  
Conservation and Recovery  
Act of 1976, as amended,  
42 U.S.C. § 6928(h).**I. JURISDICTION**

1. On January 22, 2015, the United States Environmental Protection Agency, Region 5 (EPA) and City of Toledo, Ohio (Toledo or Respondent) entered into an Administrative Order on Consent (Docket No. RCRA-05-2015-0004) (2015 Order). The 2015 Order is attached as Exhibit 1.

2. Prior to the 2015 Order, the facility at 3729 Twining Street, Toledo, Ohio, USEPA ID No. OHD 980 279 376 (Facility), was subject to a September 30, 2009, Administrative Order on Consent (Docket No. RCRA-05-2010-0001) (2009 Order) between EPA and Textileather Corporation (Textileather), a Delaware corporation. Toledo acquired the Facility from Textileather on December 30, 2014. The 2009 Order was terminated pursuant to an “Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights” executed by EPA and Textileather on January 22, 2015.

3. The 2015 Order required Toledo to implement final corrective measures, pursuant to Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h), at the Facility.

4. Toledo implemented the final corrective measures as required by the 2015 Order, in accordance with the Response to Comments and Final Decision (Final Decision) issued August 16, 2016. These final corrective measures included:

- i. Excavation and disposal of soil from specific areas,
- ii. Excavation and disposal of building foundations, and walls,
- iii. Removal of buried LNAPL,
- iv. Removal/replacement of the storm and sanitary sewer system,
- v. Removal of below ground storage tanks,
- vi. Establishment and maintenance of institutional controls,
- vii. Provision of financial assurance, and
- viii. Monitoring of groundwater conditions.

Toledo completed these remedies from 2015 to 2017 and documented these remedies as being complete in a Construction Completion Report dated September 8, 2017. Toledo established institutional controls in the form of an Environmental Covenant recorded with Lucas County, Ohio, on September 6, 2017. Financial assurance was submitted by Toledo to EPA through a letter containing a Financial Test Demonstration dated November 10, 2016. EPA sent Toledo a letter stating the Financial Test Demonstration was acceptable to meet the 2015 Order's financial assurance requirements dated April 19, 2017 (Exhibit 2). Toledo continues to maintain the Environmental Covenant and financial assurance required by the 2015 Order. On September 27,

2022, Toledo sent a request to terminate the groundwater monitoring program that was part of the Final Decision. After completing a technical review of all Toledo groundwater analytical data collected from 2017 to 2022, EPA approved the termination of Toledo's Groundwater Monitoring Program on September 12, 2023. Following this, EPA gave Toledo approval to abandon all remaining monitoring wells on August 14, 2024. Toledo abandoned all remaining monitoring wells and sent EPA a "Well Decommissioning Summary" on November 5, 2024. Via email dated January 31, 2025, EPA informed Toledo there were no further comments on the "Well Decommissioning Summary", thereby completing the well abandonment process.

5. After termination of the 2015 Order, the Ohio Environmental Protection Agency will be the agency undertaking primary regulatory oversight of the Facility.

6. Pursuant to Section XVIII (TERMINATION AND SATISFACTION) of the 2015 Order, that Order may be terminated upon execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", as written below.

## **II. ACKNOWLEDGMENT OF TERMINATION AND AGREEMENT TO RECORD PRESERVATION AND RESERVATION OF RIGHTS FOR THE 2015 ORDER**

7. Based upon the information presently available to EPA, the terms of the 2015 Order with Toledo, and Toledo's affirmation of its continuing obligation to preserve records under Section IX (RECORD PRESERVATION) of the 2015 Order, maintain any necessary institutional controls, and recognize EPA's reservation of rights as required in Section XIV (RESERVATION OF RIGHTS) of the 2015 Order, EPA acknowledges that Toledo has demonstrated to the satisfaction of EPA that the terms of the 2015 Order, including any additional tasks determined by EPA to be required pursuant to the 2015 Order, have been satisfactorily completed, and that the 2015 Order, as attached and identified in Exhibit 1, is

terminated.

8. Toledo agrees and acknowledges that it will meet its continuing obligations under Section IX (RECORD PRESERVATION) of the 2015 Order by preserving records covered by that Order in accordance with the requirements of the 2015 Order as though set forth herein.

9. Toledo agrees and acknowledges that it will maintain and implement the Environmental Covenant recorded September 6, 2017, in Lucas County, Ohio, pertaining to the Facility.

11. Toledo agrees and acknowledges that termination of the 2015 Order does not limit or in any way affect the reservation of rights set forth in Section XIV (RESERVATION OF RIGHTS) of the 2015 Order.

12. Each of the undersigned representatives of Toledo and EPA certifies that he or she is authorized to enter into the terms and conditions of this Acknowledgement of Termination and Agreement to Record Preservation and Reservation of Rights, and to execute and bind legally such Party to this document.

In the Matter of: City of Toledo, Ohio  
Toledo, Ohio

**Acknowledgement of Termination and Agreement to Record Preservation and Reservation  
of Rights for 2015 Order**

BY:


IT IS SO AGREED:

DATE: 10-23-2025

  
Wade Kapszukiewicz  
Mayor  
City of Toledo, Ohio

Approved as to Form:

Approved as to Content:

  
Eileen Granata  
Senior Attorney  
Dept. of Law

  
Brandon Sehlhorst  
Director  
Dept. of Economic Development

IT IS SO ORDERED:

\_\_\_\_\_  
Cecilia Alford

DATE: \_\_\_\_\_

BY:

Acting Division Director  
Land, Chemicals and Redevelopment Division  
U.S. Environmental Protection Agency  
Region 5

In the Matter of:      **City of Toledo, Ohio**  
                                 **3729 Twining Street**  
                                 **Toledo, Ohio 43608**  
                                 **U.S. EPA ID NO.: OHD 980 279 376**  
Docket Number:      **RCRA-05-2015-0004**

**CERTIFICATION OF SERVICE**

I certify that a true and correct copy of the foregoing *Acknowledgement of Termination and Agreement to Record Preservation and Reservation of Rights* was sent this day in the following manner to the following addressees:

Copy by email to Respondent:      **Brandon Selhorst**  
   **Director of Economic Development**  
   **City of Toledo, Ohio**  
   [brandon.sehlhorst@toledo.oh.gov](mailto:brandon.sehlhorst@toledo.oh.gov)

Copy by email to  
Attorney for Respondent:      **Eileen Granata**  
   **Senior Attorney**  
   **City of Toledo, Department of Law**  
   [eileen.granata@toledo.oh.gov](mailto:eileen.granata@toledo.oh.gov)

Copy by email to  
Attorney for U.S. EPA:      **Kevin Chow**  
   [chow.kevin@epa.gov](mailto:chow.kevin@epa.gov)

Copy by email to  
Regional Judicial Officer      **Ann Coyle**  
   [coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Jenny Balasa**  
**Program Analyst**  
**Land, Chemicals and**  
**Redevelopment Division**

**EXHIBIT 1**

**2015 ORDER**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF	)	U.S. EPA Docket No: <b>RCRA-05-2015-0004</b>
	)	
City of Toledo, Ohio	)	
3729 Twining Street	)	Proceeding under Section 3008(h) of the
Toledo, Ohio 43608	)	Resource Conservation and Recovery
	)	Act, as amended, 42 U.S.C. § 6928(h).
EPA ID No: OHD 980 279 376	)	
	)	
RESPONDENT	)	
	)	

**ADMINISTRATIVE ORDER ON CONSENT**

**I. JURISDICTION**

1. The Administrator of the United States Environmental Protection Agency (“EPA” or “Agency”) is issuing this Administrative Order on Consent (“Order”) to the City of Toledo (“Toledo” or “Respondent”) under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director, Land and Chemicals Division; EPA Region 5.

2. Toledo owns a facility which manufactured vinyl products at 3729 Twining Street, Toledo, Ohio (the “Facility”). The Facility is located within a mixed land-use area in northeast Toledo, which includes industrial, commercial and residential land use. The approximate 47-acre site is surrounded by a chain-link fence.

3. Toledo agrees not to contest EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations.

4. Toledo waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

**II. DEFINITIONS**

5. This Order incorporates the definitions in RCRA, and the regulations promulgated under RCRA unless otherwise specified.



### III. PARTIES BOUND

6. This Order applies to and binds EPA, Toledo, its successors, and assignees, and any trustees and receivers in their representative capacities. Toledo will be responsible for and liable for any violations of this Order, regardless of Toledo's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the Facility will alter Toledo's obligations under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect Toledo's obligations under this Order. Toledo will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify EPA in writing within fifteen (15) days of the transfer. This written notice will describe how Toledo has assured that, despite the transfer, all institutional controls required now or in the future for the Facility will be implemented and maintained. This paragraph will not apply if EPA and Toledo agree that this Order has terminated as to the Facility or any relevant portion of the Facility.

### IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Director, Land and Chemicals Division; EPA Region 5 has made the following conclusions of law and determinations:

- a. In August 1980, General Tire & Rubber Company submitted to EPA a notice of hazardous waste activity for the Facility as required by Section 3010(a) of RCRA. This notice described hazardous waste treatment, storage, and/or disposal activities for which a RCRA permit is required.
- b. On or around October 30, 1980, General Tire & Rubber Company submitted a RCRA Part A permit application for the Facility as required by Section 3005(b) of RCRA and 40 C.F.R. § 270.10(a).
- c. On or before November 19, 1980, the Facility was "in existence" as that term is defined in Section 270.2 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 270.2).
- d. The Facility qualified to operate as an interim status facility pursuant to Section 3005(e)(1) of RCRA and 40 C.F.R. § 270.70.
- e. In an April 19, 1985, letter, General Tire & Rubber Company notified EPA that as part of a corporate reorganization, the Facility would be owned and operated by DiversiTech General, Inc., a subsidiary of GenCorp Inc.

- f. On April 22, 1988, EPA requested that DiversiTech General, Inc. submit a Part B RCRA permit application for the Facility covering, among other things, RCRA corrective action.
- g. On November 7, 1988, DiversiTech General, Inc., d/b/a GenCorp Polymer Products, submitted a RCRA Part B permit application.
- h. On April 27, 1989, based on November 30, 1988 and February 1989 notices from Facility representatives, EPA changed its records to show the Facility was now owned and operated by GenCorp Inc., d/b/a GenCorp Polymer Products.
- i. On or about June 4, 1990, Textileather Corporation purchased the Facility from GenCorp Inc.
- j. On December 27, 1990, Textileather requested that the RCRA Part B permit application for the Facility be withdrawn.
- k. Textileather's request that the RCRA Part B permit application be withdrawn did not terminate the Facility's interim status. Interim status may be terminated only in accordance with the provisions of Section 270.73 of Title 40 of the Code of Federal Regulations (40 C.F.R. 270.73).
- l. Section 3008(h) of RCRA authorizes EPA to issue orders or initiate civil actions to compel corrective action for releases of hazardous wastes from RCRA interim status facilities.
- m. Section 3008(h) of RCRA applies to facilities currently under interim status, facilities that once had interim status, or facilities that should have had interim status. Therefore, EPA may issue a § 3008(h) RCRA order to an interim status facility that is operating (prior to receiving a permit), is closing, or is closed.
- n. Section 3008(h) orders may address releases to all media. EPA may use these orders to require study or cleanup actions where the Agency has made the determination that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility.
- o. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA and 40 C.F.R. Part 261.
- p. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility, including but not limited to, chloroethane, vinyl chloride, methyl ethyl ketone, methylene chloride, trichloroethylene, benzene, ethyl benzene, toluene, total xylenes, and other

volatile organic compounds, tetrahydrofuran and other furans, bis(2-ethylhexyl) phthalate, di-n-octylphthalate and other phthalates, other semi-volatile organic compounds, n,n-dimethylformamide, polychlorinated biphenyl compounds, chromium, arsenic, copper, nickel, beryllium, zinc, and lead.

q. Textileather has conducted but not completed certain RCRA closure activities under Ohio Environmental Protection Agency ("OEPA") oversight. Consistent with OEPA's referral of this matter to EPA for implementation of Facility-wide corrective action, completion of those RCRA closure activities will be implemented through this Order.

r. On September 30, 2009, Textileather and EPA entered into a RCRA 3008(h) Administrative Order on Consent, RCRA-05-2010-0001 ("2009 Order"). Under the 2009 Order, Textileather conducted and completed certain RCRA corrective action activities, including but not limited to, a RCRA Facility Study, Environmental Indicator reports, and a Corrective measures Study ("CMS").

s. Toledo has acquired the Facility from Textileather and as the current owner and operator of the facility is responsible for completing RCRA corrective action at the facility.

t. Concurrent with this Order, EPA and Textileather executed an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights" which terminates the 2009 Order.

t. The actions required by this Order are necessary to protect human health and the environment.

#### V. PROJECT MANAGER

9. The current EPA Project Manager for the Site is Carolyn Bury. Toledo must designate a Project Manager and notify EPA in writing of the Project Manager selected within fourteen (14) days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Order. The parties must provide prompt written notice whenever they change Project Managers.

#### VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, Toledo agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified. Toledo represents that it has the technical and financial ability to carry out corrective action at the Facility. Toledo must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Facility.

11. With the prior approval of the EPA Project Manager, Toledo may proceed with interim measures at the Site or other activities that will not interfere with final corrective measures. In addition, Toledo agrees that EPA approvals of Textileather's actions and reports pursuant to the 2009 Order remain in effect and are binding on Toledo.

12. EPA is currently reviewing the CMS submitted by Textileather. EPA may request supplemental information from Toledo if EPA determines that the CMS and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. Toledo must provide any supplemental information that EPA requests in writing by the deadline established in the EPA request for supplemental information.

13. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures through a detailed description and justification for the proposal in the "Statement of Basis" document and other means of public outreach. Following the public comment period, EPA will select the final corrective measures, and will notify the public of the selected corrective measures and provide the basis for its decision in a "Final Decision and Response to Comments" ("Final Decision") document.

14. Upon notice by EPA, Toledo must implement the final corrective measures selected in EPA's Final Decision according to the schedule in the Final Decision.

15. Reporting and other requirements:

a. Toledo must maintain the existing publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities in accordance with the Textileather public outreach plan.

b. Toledo must provide monthly progress reports to EPA by the fifteenth day of each month unless EPA approves a reduced reporting frequency. The report must cover work performed to date, data collected, problems encountered, project schedule, and percent project completed.

c. Toledo shall establish, maintain, and provide EPA access to a web portal in order to facilitate the transfer of electronic information. Such information shall include sampling data, which Toledo shall post to the web portal on a continuous basis as such data becomes available.

d. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.

e. Toledo must provide a Final Remedy Construction Completion Report documenting that it has completed construction of the remedies pursuant to EPA's Final Decision document.

f. If ongoing monitoring or operation and maintenance are required after construction of the final corrective measures, Toledo must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Toledo must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Toledo must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

Any risk assessments Toledo conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Toledo will follow the Risk Assessment Guidance for Superfund ("RAGS"), Ecological Risk Assessment Guidance for Superfund ("ERAGS") and other appropriate EPA guidance. Toledo will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels, EPA EcoSSLs, EPA Region 5 Ecological Screening Levels, EPA Region 5 Risk Based Screening Levels, EPA vapor intrusion guidance, RAGS, or other sources of screening levels approved by the EPA Project Manager.

g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998), as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories Toledo selects or require Toledo to purchase and analyze any performance evaluation samples selected by EPA which are compounds of concern. Toledo must notify EPA in writing at least fourteen (14) days before beginning each separate phase of field work performed under this Order. At the request of EPA, Toledo will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Toledo collects under this Order.

16. Project Managers can agree in writing to extend, for ninety (90) days or less, any deadline in this section. However, extensions of greater than ninety (90) days require obtaining approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

## VII. ACCESS

17. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the Facility to, among other things: interview Facility personnel and contractors; review Toledo's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Toledo submits to EPA. Toledo will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work

undertaken under this Order and that are within the possession or under the control of Toledo or its contractors or consultants. Toledo may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

18. If Toledo must go beyond the Facility's boundary to perform work required by this Order, Toledo must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within thirty (30) days after Toledo knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. Toledo must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within thirty (30) days, Toledo must notify EPA in writing within fourteen (14) additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Toledo in obtaining access.

19. Nothing in this section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 to 9675.

#### VIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

##### 20. Estimated Cost of the Work

a. Within thirty (30) days after EPA issues the notice of Final Decision under paragraph 14 of this Order, Toledo shall submit to EPA for approval detailed written estimates, in current dollars, of the cost of hiring a third party to perform the work required by the Final Decision ("Cost Estimate"). The Cost Estimate must identify, itemize, and account for the costs of the work required by the Final Decision. All Cost Estimates shall be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the work to be performed under section VI of this Order.

b. Toledo shall annually adjust the Cost Estimate for inflation, work performed, revised estimates of cost, and additional work not in the original estimate. Toledo shall submit the annual adjusted Cost Estimates to EPA for review within thirty (30) days after the close of Toledo's fiscal years.

c. If at any time EPA determines that a Cost Estimate provided pursuant to this section is inadequate, EPA shall notify Toledo in writing, stating the basis for its determination. If at any time Toledo becomes aware of information indicating that any Cost Estimate provided pursuant to this section is inadequate, Toledo shall notify EPA in writing of such information within ten (10) days. Within thirty (30) days of EPA's notification, or within thirty (30) days of becoming aware of such information, as the case may be, Toledo shall submit a revised Cost Estimate to EPA for review.

21. Assurances of Financial Responsibility for Completing the Work

a. Within sixty (60) days after EPA approves the Cost Estimate, Toledo shall establish financial assurance for the benefit of the EPA. In the event that EPA approval of Respondent's Cost Estimate is not received within thirty (30) days after close of Respondent's fiscal year, Respondent shall establish and maintain the financial assurance in the amount of the Cost Estimate submitted under Paragraph 20.a. within ninety (90) days of the end of its fiscal year.

b. Within ninety (90) days after the close of the Respondent's fiscal year, Toledo shall update the financial instrument or financial test demonstration to reflect changes to the annual adjusted Cost Estimate required under Paragraph 20.b.

c. Respondent shall maintain adequate financial assurance until EPA releases Toledo from this requirement under Paragraph 22.c.

d. Toledo may use one or more of the financial assurance forms described in subparagraphs i – v, below. Any and all financial assurance documents provided pursuant to this Order shall be submitted to EPA for review in draft form at least thirty (30) days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

i. A trust fund established for the benefit of EPA, administered by a trustee;

ii. A surety bond unconditionally guaranteeing performance of the work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;

iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;

iv. An insurance policy that provides EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument;

v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Toledo (as defined in 40 C.F.R. § 264.141(h)), to perform the work to be performed under section VI of this Order or to establish a trust fund as permitted by subparagraph i above; provided, however, that any company providing

such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee;

vi. A demonstration by Toledo that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

f. Toledo shall submit all original executed and/or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within thirty (30) days after date of execution or finalization as required to make the documents legally binding. The EPA ID Number OHD 980 279 376 shall appear on all submitted documents. Respondent shall also provide copies to the EPA Project Manager.

g. If at any time Toledo provides financial assurance by means of a corporate guarantee or financial test, Toledo shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Toledo or any other corporate guarantor at any time.

h. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, the Underground Injection Control ("UIC") program, the Toxic Substances Control Act ("TSCA"), 15 U.S.C §§ 2601 to 2695d and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

i. Toledo may combine more than one mechanism to demonstrate financial assurance.

j. Toledo may satisfy its obligation to provide financial assurance by providing a third party who satisfies the obligations of the financial assurance requirements of this Order; however, Toledo shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party shall be in one of the forms provided in subparagraphs 21(d)(i) through 21(d)(vi) above.

k. If at any time EPA determines that a financial assurance mechanism provided pursuant to this section is inadequate, EPA shall notify Toledo in writing. If at any time Toledo becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this section is inadequate,



Toledo shall notify EPA in writing of such information within ten (10) days. Within ninety (90) days of receipt of notice of EPA's determination, or within ninety (90) days of Toledo's becoming aware of such information, Toledo shall establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this section. Any and all financial assurance documents provided pursuant to this Order shall be submitted to EPA for review in draft form at least thirty (30) days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

1. Toledo's inability or failure to establish or maintain financial assurance for completion of the work shall in no way excuse performance of any other requirements of this Order.

22. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Financial Assurance. If Toledo believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Toledo may, at the same time that Toledo submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

b. Change of Form of Financial Assurance. If Toledo desires to change the form or terms of financial assurance, Toledo may, at the same time that Toledo submits the annual Cost Estimate, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal shall specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and shall satisfy all requirements set forth in this section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Toledo shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Toledo shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Comptroller's Office, with a copy to EPA's Project Manager, as provided in paragraph 21(f), above.

c. Release of Financial Assurance. Toledo may submit a written request to the Director, Land and Chemicals Division that EPA release Toledo from the requirement to maintain financial assurance under this section once EPA and Toledo have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to section XVIII (Termination and Satisfaction) of the Order. The Director, Land and Chemicals Division shall notify both Toledo and any other provider(s) of the financial assurance that Toledo is released from all financial assurance obligations under this Order.

d. Nothing in this section restricts or otherwise prevents the parties from agreeing to make written modifications to the financial assurance obligations under this Order that take into account the financial status of Toledo and are consistent with Agency guidance.

23. Performance Failure

a. If EPA determines that Toledo (i) has ceased implementing any portion of the work, (ii) is significantly or repeatedly deficient or late in its performance of the work, or (iii) is implementing the work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Toledo and the financial assurance provider of Toledo's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide Toledo with a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by Toledo to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in paragraph 23.a shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to subparagraphs 21.a.i, 21.a.ii, 21.a.iii, 21.a.iv, or 21.a.v. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Toledo shall within twenty (20) days deposit into a trust fund approved by EPA, a cash amount equal to the Cost Estimate.

IX. RECORD PRESERVATION

24. Toledo must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Toledo must notify EPA in writing ninety (90) days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. Toledo's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director  
Land and Chemicals Division  
EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

Toledo will also promptly give EPA's Project Manager a copy of the notice.

Within thirty (30) days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Toledo will enter into an agreement with the

agents to give Toledo a copy of all data and final non-privileged documents produced under this Order.

25. Toledo will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

#### X. STIPULATED PENALTIES

26. Toledo must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit progress reports by the dates scheduled in paragraph 15, above: \$500 per day for the first fourteen (14) days and \$1,000 day thereafter.
- b. For failure to implement according to the approved schedule, the selected final corrective measures as described in paragraphs 13 and 14: \$1,500 per day for the first fourteen (14) days and \$3,000 per day thereafter.
- c. For failure to submit the Final Remedy Construction Completion Report as scheduled in paragraph 15: \$500 per day for the first fourteen (14) days and \$1,000 per day thereafter.

27. Whether or not Toledo has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Toledo complies. For items c and d, above, stipulated penalties will not accrue during the period, if any, beginning thirty-one (31) days after the EI Report is due until the date that EPA notifies Toledo in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

28. Toledo must pay any stipulated penalties owed to the United States under this section within thirty (30) days of receiving EPA's written demand to pay the penalties, unless Toledo invokes the dispute resolution procedures under section XI (Dispute Resolution). A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

29. Interest will begin to accrue on any unpaid stipulated penalty balance beginning thirty-one (31) days after Toledo receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Toledo must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than ninety (90) days overdue.

30. Toledo must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

A transmittal letter stating the name of the Facility, Toledo's name and address, and the EPA docket number of this action must accompany the payment. Toledo will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

31. Toledo may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under section XI (Dispute Resolution). The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Toledo must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Toledo must submit such payment to EPA within thirty (30) days after receiving the resolution according to the payment instructions of this section.

32. Neither invoking dispute resolution nor paying penalties will affect Toledo's obligation to comply with the terms of this Order not directly in dispute.

33. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Toledo's violation of any terms of this Order. However, EPA will not seek both a stipulated penalty under this section and a statutory penalty for the same violation.

## XI. DISPUTE RESOLUTION

34. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

35. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

36. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

37. EPA and Toledo will in good faith attempt to resolve the dispute through formal negotiations within twenty-one (21) days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

38. If the parties are unable to reach an agreement through formal negotiations, within fourteen (14) business days after any formal negotiations end, Toledo and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Toledo's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 ("EPA Dispute Decision").

39. If, at the conclusion of the Dispute Resolution process, Toledo notifies EPA that it refuses to comply with the EPA Dispute Decision, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

## XII. FORCE MAJEURE AND EXCUSABLE DELAY

40. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Toledo's control that delays or prevents the timely performance of any obligation under this Order despite Toledo's best efforts.

41. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Toledo must notify EPA within two (2) business days after learning that the event may cause a delay. If Toledo wishes to claim a force majeure event, within fifteen (15) business days thereafter Toledo must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

42. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations.

## XIII. MODIFICATION

43. This Order may be modified only by mutual agreement of EPA and Toledo, except as provided in section VI (Work to be Performed). Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

## XIV. RESERVATION OF RIGHTS

44. Nothing in this Order restricts EPA's authority to seek Toledo's compliance with the Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective

actions or other response measures. In any later proceeding, Toledo shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

45. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

46. If EPA determines that Toledo's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituents, or a threat to human health or the environment, or that Toledo cannot perform any of the work ordered, EPA may order Toledo to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.

47. Toledo does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Toledo reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility, except for its right to contest EPA's jurisdiction to issue or enforce this Order. Toledo has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Toledo reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

## XV. OTHER CLAIMS

48. Toledo waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

## XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

49. Toledo maintains a Risk Management Fund (an internal service fund) pursuant to Ohio Revised Code Section 2744.08 *et seq.*, to account for and finance liability events and risks of loss. Liability events are fully covered by the City's Risk Management Fund, subject to Ohio Revised Code Chapter 2744. Only to the extent as provided by law and/or as might be established by final judicial determination, Toledo indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Toledo or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Toledo or

the United States under their various contracts. This indemnification will not create any obligation on the part of Toledo to indemnify the United States from claims arising from the acts or omissions of the United States.

#### XVII. SEVERABILITY

50. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

#### XVIII. TERMINATION AND SATISFACTION

51. Toledo may request that EPA issue a determination that Toledo has met the requirements of the Order for all or a portion of the Facility. Toledo may also request that EPA issue a “corrective action complete” or “corrective action complete with controls” determination for all or a portion of the Facility as described at 67 Federal Register 9176, dated February 27, 2002.

52. The provisions of the Order will be satisfied upon Toledo’s and EPA’s execution of an “Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights”, consistent with EPA’s Model Scope of Work.

53. Toledo’s execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by section IX (Record Preservation), to maintain any necessary institutional controls or other long terms measures, and to recognize EPA’s reservation of rights as required in section XIV (Reservation of Rights).

XIX. EFFECTIVE DATE

54. This Order is effective on the date that EPA signs the Order.

IT IS SO AGREED:


DATE: 12/22/14

BY:




D. Michael Collins  
Mayor  
City of Toledo, Ohio

Toledo Approved as to Content:

  
Director, Economic Development

Toledo Approved as to Form:

  
Department of Law

IT IS SO ORDERED:

DATE: 1/22/2015

BY:



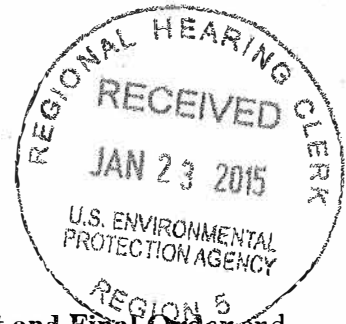
Margaret Guerriero  
Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5





CASE NAME: City of Toledo - EPA ID OHD 980 279 376

DOCKET NO: RCRA-05-2015-0004



### CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the **Consent Agreement and Final Order** and this **Certificate of Service** was filed with the office of the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 on \_\_\_\_\_.

I further certify that I then caused true and correct copies of the filed document to be mailed via Certified Mail, Return Receipt Requested to the following:


Eileen M. Granata  
Senior Attorney  
City of Toledo Law Department  
One Government Center, 22nd Floor  
Toledo, OH 43604

Return Receipt: 7009 1680 0000 7671 3825

And forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Brian Barwick, ORC/C-14J  
Connie Puchalski, ORC/C-14J  
Ignacio Arrazola, ORC/C-14J  
Carolyn Bury LCD/RRB/LU-9J

Dated:

  
Angela Jackson  
Administrative Program Assistant  
United States Environmental Protection Agency  
Land and Chemicals Division-RRB  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
(312) 353-8973

**EXHIBIT 2**

**EPA Financial Assurance Approval Letter (April 19, 2017)**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Via Certified Mail 7014 2870 0001 9577 5773  
and via E-mail

REPLY TO THE ATTENTION OF:

LU-16J

April 19, 2017

George Sarantou  
Director of Finance  
City of Toledo  
One Government Center, Suite 2050  
Toledo, OH 43604

Re: Financial Assurance, City of  
Toledo (formerly Textileather  
Corporation)  
RCRA 3008(h) AOC  
U.S. EPA ID NO OHD 980 279 376  
Docket No. RCRA-05-2015-0004

Dear Mr. Sarantou:

The U.S. Environmental Protection Agency, Region 5, has reviewed the City of Toledo's submittal of the financial test demonstration provided by your letter of November 10, 2016, and by the additional documents in support of the City's demonstration sent on January 6, 2017 by Mr. Dave Veinot of Haley and Aldrich (via e-mail), for purposes of addressing the financial assurance requirements of the RCRA 3008(h) Administrative Order on Consent, for the City of Toledo Site at 3729 Twining Street, Toledo, Ohio. The demonstration was based on information for the City's 2015 fiscal year. This letter is to inform you that EPA finds the City's 2015 fiscal year financial test demonstration acceptable.

Under 40 C.F.R. § 264.143(f)(5), after the submission of an initial financial test demonstration, an owner or operator is required to make an annual demonstration by submitting the documents identified in 40 C.F.R. § 264.143(f)(3), to EPA within 90 days after the close of the owner's or operator's fiscal year. The City's 2016 fiscal year ended on December 31, 2016. Please submit the City's fiscal year 2016 financial test demonstration as soon as you are able. Additionally, if any data used in the financial test changed such that it may have a material impact on passing the test, the calculation should be repeated and submitted to the EPA.

Please call me if you have any questions at 312-886-3020.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Bury".

Carolyn Bury  
Project Manager

Electronic cc: Bill Burkett, Commissioner, City of Toledo  
Dave Veinot, Project Manager, Haley and Aldrich, Inc.  
Kevin Chow, Associate Regional Counsel, EPA  
Justin Abrams, Comptroller's Office, EPA