



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF:

LU-9J

CERTIFIED MAIL: 7001 0320 0006 0192 5800
RETURN RECEIPT REQUESTED

Lynn Dennison
Vice President
Tecumseh Products Company, Inc.
1136 Oak Valley Drive
Ann Arbor, Michigan 48108

RE: RCRA 3008(h) Consent Order
Tecumseh Products Company, Inc.
Tecumseh, MI 49286
MID 005 049 440

Dear Ms. Dennison:

RCRA-05-2010-0012

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent covering the completion of the corrective action work at the subject facility. This performance-based agreement will provide the flexibility that you need to complete the work expeditiously. In addition, we expect that it will lead to better communication between our two organizations and the public. We look forward to working cooperatively with your staff on this project.

In accordance with Section V of the agreement, I am hereby designating Michelle Mullin as the U.S. EPA project manager for this project. If you have any questions, please contact her at (312) 353-2470.

Sincerely,

for Jose G. Cisneros, Chief
Remediation and Reuse Branch

Enclosure

cc: Susan Perdomo

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AM 8: 10
REGION 5

IN THE MATTER OF) ADMINISTRATIVE ORDER ON CONSENT
)
Tecumseh Products Company, Inc.) U.S. EPA Docket No: RCRA-05-2010-0012
1136 Oak Valley Drive)
Ann Arbor, MI 48108)
EPA ID#: MID005049440,) Proceeding under Section 3008(h) of the
) Resource Conservation and Recovery Act,
RESPONDENT.) as amended, 42 U.S.C. § 6928(h).

I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") is issuing this Administrative Order on Consent ("Order") to Tecumseh Products Company, Inc. ("Tecumseh Products") 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, U.S. EPA Region 5.

2. Tecumseh Products owned and operated a manufacturing facility at 100 E. Patterson Street, Tecumseh, Michigan (the "facility"). The facility includes approximately 53-acres located approximately one-half mile west of the River Raisin in the southeastern quarter of the city of Tecumseh in Lenawee County, Michigan. The facility includes an expanse of interconnected buildings and building additions which occupy approximately 750,000 square feet. The facility has been an industrial-use facility since the turn of the century, being owned and operated by Tecumseh Products since 1934. Automotive parts, refrigeration systems, small tools and toys were manufactured at this location until June 2008. U.S. EPA granted the facility Interim Status for container and tank storage areas for solvent wastes on June 10, 1982. The facility submitted a closure plan which was approved and considered final by U.S. EPA following submittal of a certification of closure June 21, 1982. Certification for closure of the single, on-site tank was submitted November 12, 1982. TPC thereafter was a generator managed in accordance with 40 C.F.R. Part 262 until 2008.

3. Tecumseh Products agrees not to contest U.S. EPA's jurisdiction to: (a) issue this Order, (b) enforce its terms, or (c) impose sanctions for violations of the Order.

4. Tecumseh Products 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, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA, unless otherwise specified.

III. PARTIES BOUND

6. This Order applies to and binds U.S. EPA, Tecumseh Products and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Tecumseh Products. Tecumseh Products will be responsible for and liable for any violations of this Order, regardless of Tecumseh Products' 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 Tecumseh Products' obligations under this Order. Any conveyance of title, easement, or other interest in the facility, or a portion of the facility, will not affect Tecumseh Products' obligations under this Order. Tecumseh Products has transferred ownership of the facility to Tecumseh Bakery, LLC pursuant to a Deed dated December 18, 2009, recorded with the Lenawee County Register of Deeds on January 14, 2010 at Liber 2396, Page 0534. Concurrently with that transfer of title on December 18, 2009, Tecumseh Bakery, LLC, leased the facility to Consolidated Biscuit Co., its affiliate. At the same time, Tecumseh Bakery, LLC signed a Declaration of Environmental Restrictive Covenants which was recorded with the Lenawee County Register of Deeds on January 14, 2010, at Liber 2396, Page 0535. Tecumseh Products also signed a License Agreement Regarding Environmental Work, dated December 18, 2009, with Consolidated Biscuit Company and Tecumseh Bakery, LLC, which states at Paragraph 3 that Tecumseh Products "shall be solely responsible for the implementation of any Environmental Work it chooses to undertake, including, without limitation, complying with applicable laws, regulations, and/or future orders, and [Tecumseh Bakery, LLC] shall not be deemed to have accepted any responsibilities relating to the Environmental Work undertaken by [Tecumseh Products] by entering into or cooperating under this License Agreement." (Attachment 1.) This Paragraph will not apply if U.S. EPA and Tecumseh Products agree that this Order has terminated as to the facility or any relevant portion of the facility. Collectively, these documents which have been provided to the U.S. EPA, ensure that, despite the transfer, all institutional controls required now or in the future for the facility will be implemented and maintained.

IV. DETERMINATIONS

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

- a. Tecumseh Products is a "person" within the meaning of Section 1004(15) of RCRA.

- b. Tecumseh Products was the owner and operator of a facility that operated under interim status subject to Section 3005(e) of RCRA. Tecumseh Products has been identified as the responsible party for obligations under this Order. Tecumseh Bakery, LLC, and Consolidated Biscuit Co. are the current owner and operator, respectively, of the facility.
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

9. U.S. EPA and Tecumseh Products shall each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties shall provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, Tecumseh Products agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here ("Work"). Tecumseh Products represents that it has the technical and financial ability to carry out corrective action at the facility. Tecumseh Products shall 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 U.S. EPA guidance documents as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's risk assessment guidance.

11. Tecumseh Products shall identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the facility. In doing so, Tecumseh Products shall perform an investigation to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility which may pose an unacceptable risk to human health and the environment, and provide this information in the Remedial Investigation Report to U.S. EPA. The report shall also describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility which do

not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. The Remedial Investigation Report shall be submitted within 30 months of the effective date of this order, concomitant with the Migration of Contaminated Groundwater Under Control Environmental Indicator Report described in Paragraph 13.

12. Tecumseh Products may undertake remedial actions that may be implemented without extensive site investigation or risk assessment so long as Respondent demonstrates that human exposure and migration of contaminated groundwater are controlled in accordance with the requirements of Paragraphs 13 -15, below.

13. Tecumseh Products shall submit an Environmental Indicators Report and perform any other necessary activities, consistent with this Section, demonstrating that:

- a. All current human exposures to contamination at or from the facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors. This section of the Environmental Indicators Report shall be submitted within 18 months of the effective date of this order.
- b. Migration of contaminated groundwater at or from the facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Tecumseh Products shall collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized. This section of the Environmental Indicators Report shall be submitted within 30 months of the effective date of this order.

14. To prepare for and provide the demonstrations required by Paragraph 13, above, Tecumseh Products shall:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.

- c. Control any unacceptable current human exposures that Tecumseh Products identifies. This includes performing any corrective actions or other response measures (“corrective measures”) necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare a report, either prior to or as part of the Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of Section VI, Work to Be Performed, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

15. Tecumseh Products shall propose to U.S. EPA within 36 months of the effective date of this Order what final corrective measures are necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the “Final Corrective Measures Proposal”). The Final Corrective Measures Proposal shall describe all interim corrective measures implemented at the facility since the effective date of this Order. It shall also include a description of all other final corrective measures that Tecumseh Products evaluated, a detailed explanation of why Tecumseh Products preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The Final Corrective Measures Proposal shall also include a detailed schedule for constructing and implementing the final corrective measures, and for submitting a Final Remedy Construction Completion Report.

16. As part of developing its Final Corrective Measures Proposal, Tecumseh Products shall propose appropriate: a) risk screening criteria, b) cleanup objectives c) and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

17. U.S. EPA may request supplemental information from Tecumseh Products if U.S. EPA determines that the proposal 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. Tecumseh Products shall provide any supplemental information that U.S. EPA requests in writing within 30 days of the request.

18. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, U.S. EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

19. Upon notice by U.S. EPA, Tecumseh Products shall implement the final corrective measures selected in U.S. EPA's Final Decision in accordance with the schedule set forth in the Final Decision.

20. To fulfill reporting and other requirements of this Order:

- a. Tecumseh Products shall establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Tecumseh Products shall provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each quarter. The report shall list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. 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.
- d. Tecumseh Products shall provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision within 60 days of the date construction is completed.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Tecumseh Products shall include an operations and maintenance plan in the Final Remedy Construction Completion Report. Tecumseh Products shall implement and maintain the institutional controls referred to in Paragraph 3 of the Declaration of Restrictive Environmental Covenant between Tecumseh Products and Tecumseh Bakery, LLC. (Attachment 2) If the use of additional or revised institutional controls is required now or in the future for the facility, a plan will be developed to ensure that institutional controls will be implemented and maintained. Tecumseh Products shall revise and resubmit the Final Remedy Construction Completion Report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, Tecumseh Products shall implement the approved operation and maintenance plan according to the schedule and terms of the plan.

- f. Any risk assessments Tecumseh Products conducts shall 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, Tecumseh Products shall follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate U.S. EPA guidance. Tecumseh Products shall 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, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, RAGS, and Michigan's Department of Natural Resources and Environment (MDNRE) Part 201 criteria.
- g. All sampling and analysis conducted under this Order shall 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. U.S. EPA may audit laboratories Tecumseh Products selects or require Tecumseh Products to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Tecumseh Products shall notify U.S. EPA in writing at least fourteen (14) days before beginning each separate field work event performed under this Order. At the request of U.S. EPA, Tecumseh Products will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples Tecumseh Products collects under this Order.

21. Project Managers from both parties 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 written approval from the Remediation and Reuse Branch, Land and Chemicals Division.

VII. ACCESS

22. Consistent with Paragraph 4 of the Declaration of Environmental Restrictive Covenant between Tecumseh Products and Tecumseh Bakery, LLC, (Attachment 2), U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may, upon reasonable notice, and at reasonable times, enter and freely move about the facility to, among other things: interview facility personnel and contractors; review Tecumseh Products' progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Tecumseh Products submits to U.S. EPA. Moreover, the agreement between Tecumseh Products Company and Tecumseh Bakery, LLC, shall 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 Tecumseh Products or its contractors or consultants. Tecumseh Products may request split

samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releaseable under the Freedom of Information Act.

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

24. Nothing in this Section limits or otherwise affects U.S. 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. §§ 9601-9675.

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

25. Estimated Cost of the Work

- a. Initial Cost Estimate. Within thirty (30) days after the effective date of this Order, Tecumseh Products shall submit to U.S. EPA for approval a detailed, written Initial Cost Estimate, in current dollars, of the cost of hiring a third party to perform the Work to Be Performed under Section VI of this Order. The Initial Cost Estimate shall account for the costs of all foreseeable work, including all interim measures, remaining investigations and reports, construction work, monitoring, and other long term care work, etc. All Cost Estimates shall be consistent with the requirements of 40 C.F.R. Parts 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. Annually Adjusted Cost Estimate for Each Fiscal Year. Tecumseh Products shall submit an Annually Adjusted Cost Estimate, adjusted for inflation and for changes in the scope of the Work. The Annually Adjusted Cost Estimate must be submitted annually to U.S. EPA for review within thirty (30) days after the close of every fiscal year of Tecumseh Products until the Work required by this Order is completed.
- c. If at any time U.S. EPA determines that any Cost Estimate provided pursuant to this Paragraph is inadequate, U.S. EPA shall notify Tecumseh Products in writing, stating the basis for its determination. If at any time Tecumseh Products becomes aware of information indicating that any Cost Estimate provided pursuant to this

Section is inadequate, Tecumseh Products shall notify U.S. EPA in writing of such information within ten (10) days. Within thirty (30) days of U.S. EPA's notification, or within thirty (30) days of becoming aware of such information, as the case may be, Tecumseh Products shall submit a revised Cost Estimate to U.S. EPA for review.

26. Assurances of Financial Responsibility for Completing the Work

- a. Financial Assurance for Initial Cost Estimate. Within sixty (60) days after U.S. EPA approves the Initial Cost Estimate, Tecumseh Products shall establish financial assurance for the benefit of U.S. EPA. In the event that U.S. EPA approval of Respondent's Initial Cost Estimate is not received within ninety (90) days of the Initial Cost Estimate submittal, Respondent shall establish and maintain the financial assurance in the amount of the Initial Cost Estimate submitted under Paragraph 25.a. In the event that U.S. EPA finds the Initial Cost Estimate inadequate, as referenced in Paragraph 25.c, Tecumseh Products shall update the Financial Assurance within thirty (30) days of submitting the amended Initial Cost Estimate.
- b. Financial Assurance for Each Annually Adjusted Cost Estimate. Tecumseh Products shall update the financial instrument or financial test demonstration to reflect changes to the Annually Adjusted Cost Estimate required by Paragraph 25.b within ninety (90) days after the close of each of Respondent's fiscal year. In the event that U.S. EPA does not approve any Annually Adjusted Cost Estimate, as referenced in Paragraph 25.c, Tecumseh Products has thirty (30) days from the date that it submits an amended Annually Adjusted Cost Estimate to update its Financial Assurance.
- c. Maintenance of Financial Assurance. Respondent shall maintain adequate financial assurance until U.S. EPA releases Tecumseh Products from this requirement under Paragraph 27.c.
- d. Forms of Financial Assurance. Tecumseh Products may use one or more of the financial assurance forms described in Subparagraphs i - vi below. Any and all financial assurance documents provided pursuant to this Order shall be submitted to U.S. 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 U.S. EPA.
 - i. A trust fund established for the benefit of U.S. 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

- U.S. 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 U.S. 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 U.S. 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 Tecumseh Products (as defined in 40 C.F.R. Part 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 U.S. EPA that it satisfies the financial test requirements of 40 C.F.R. Part 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
 - vi. A demonstration by Tecumseh Products 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.
- e. Tecumseh Products shall submit all original executed and/or otherwise finalized instruments to U.S. 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. Respondent shall also provide copies to the U.S. EPA Project Manager.
 - f. If at any time Tecumseh Products provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Tecumseh Products shall also comply with the other relevant requirements of 40 C.F.R. Part 264.143(f), 40 C.F.R. Part 264.151(f), and 40 C.F.R. Part 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by U.S. EPA from Tecumseh Products or corporate guarantor at any time.
 - g. For purposes of the corporate guarantee or the financial test described in Paragraph 26.d., references in 40 C.F.R. Part 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, UIC, TSCA 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.

- h. Tecumseh Products may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VI of this Order.
 - i. Tecumseh Products may satisfy its obligation to provide financial assurance for the Work by providing a third party who assumes full responsibility for the Work and otherwise satisfies the obligations of the financial assurance requirements of this Order. However, Tecumseh Products 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 26(d)(i) through 26(d)(vi) above.
 - j. If at any time U.S. EPA determines that a financial assurance mechanism provided pursuant to this Section is inadequate, U.S. EPA shall notify Tecumseh Products in writing. If at any time Tecumseh Products becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section is inadequate, Tecumseh Products shall notify U.S. EPA in writing of such information within ten (10) days. Within ninety (90) days of receipt of notice of U.S. EPA's determination, or within ninety (90) days of Tecumseh Products' becoming aware of such information, Tecumseh Products shall establish and maintain adequate financial assurance for the benefit of the U.S. 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 U.S. EPA for review in draft form at least forty-five (45) days before they are due to be filed and shall be satisfactory in form and substance as determined by U.S. EPA.
 - h. Tecumseh Products' 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.
27. **Modification of Amount and/or Form of Performance Guarantee**
- a. **Reduction of Amount of Financial Assurance.** If Tecumseh Products believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Tecumseh Products may, at the same time that Tecumseh Products submits its annual Cost Estimate, submit a written proposal to U.S. 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 Tecumseh Products desires to change the form or terms of financial assurance, Tecumseh Products may, at the same time that Tecumseh Products submits the annual Cost Estimate, submit a written proposal to U.S. 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, Tecumseh Products shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Tecumseh Products 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 U.S. EPA Comptroller's Office, with a copy to U.S. EPA's Project Manager, as provided in Section 26(e) above.
- c. Release of Financial Assurance. Tecumseh Products may submit a written request to the Director, Land and Chemicals Division that U.S. EPA release Tecumseh Products from the requirement to maintain financial assurance under this Section once U.S. EPA and Tecumseh Products 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 the Tecumseh Products and the provider(s) of the financial assurance that Tecumseh Products is released from all financial assurance obligations under this Order.

28. Performance Failure

- a. If U.S. EPA determines that Tecumseh Products (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 ("Performance Failure"), U.S. EPA may issue a written notice ("Performance Failure Notice") to both Tecumseh Products and the financial assurance provider of Tecumseh Products' Performance Failure. The notice issued by U.S. EPA will specify the grounds upon which such a notice was issued and will provide Tecumseh Products with a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by Tecumseh Products to remedy the relevant Performance Failure to U.S. EPA's satisfaction before the expiration of the twenty-day notice period specified in Paragraph 28.a shall trigger U.S. EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Subparagraphs 26.d.i, 26.d.ii, 26.d.iii, 26.d.iv, or 26.d.v. If U.S. 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 U.S. EPA, Tecumseh Products shall within twenty (20) days deposit into a trust fund approved by U.S. EPA, a cash amount equal to the Cost Estimate.

IX. RECORD PRESERVATION

29. Tecumseh Products shall 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. Tecumseh Products shall notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. Tecumseh Products' notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

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

Tecumseh Products will also promptly give U.S. EPA's Project Manager a copy of the notice.

Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Tecumseh Products will enter into an agreement with the agents to give Tecumseh Products a copy of all data and final non-privileged documents produced under this Order.

30. Tecumseh Products will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

X. STIPULATED PENALTIES

31. Tecumseh Products shall pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit quarterly progress reports by the dates scheduled in Paragraph 20, above: \$1000 per day for the first 14 days and \$2000 per day thereafter.
- b. For failure to submit the Remedial Investigation Report required in paragraph 11 within 30 months of the effective date of the Order: \$500 per day for the first 14 days and \$1000 per day thereafter.
- c. For failure to adequately demonstrate through the Environmental Indicators

Report required in Paragraph 13.a that current human exposures are under control within 18 months of the effective date of this Order: \$3000 per day.

- d. For failure to adequately demonstrate through the Environmental Indicators Report required in Paragraph 13.b that groundwater migration is stabilized within 30 months of the effective date of this Order: \$3000 per day.
- e. For failure to submit the Final Corrective Measures Proposal required in Paragraph 15 within 36 months of the effective date of this Order: \$1000 per day for the first 14 days and \$2000 per day thereafter.
- f. For failure to implement, according to the approved schedule, the selected measures in the Final Corrective Measures Proposal, as described in Paragraphs 18 and 19: \$3000 per day for the first 14 days and \$6000 per day thereafter.
- g. For failure to submit the Final Remedy Construction Completion Report in Paragraph 15 within 60 days of the date construction is completed: \$1000 per day for the first 14 days and \$2000 per day thereafter.
- h. For failure to maintain the Assurances of Financial Responsibility for Completing the Work as required under Section VIII of the Order: \$1000 per day for the first 14 days and \$2000 per day thereafter.

32. Whether or not Tecumseh Products has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Tecumseh Products complies. For Subparagraphs b and c in Paragraph 31, stipulated penalties will not accrue during the period, if any, beginning 31 days after the Environmental Indicators Report is due until the date that U.S. EPA notifies Tecumseh Products in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

33. Tecumseh Products shall pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless Tecumseh Products 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.

34. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Tecumseh Products receives U.S. 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, Tecumseh Products shall pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

35. Tecumseh Products shall 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:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

A transmittal letter stating the name of the facility, Tecumseh Products' name and address, and the U.S. EPA docket number of this action shall accompany the payment. Tecumseh Products will simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

36. Tecumseh Products may dispute U.S. 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. Tecumseh Products shall pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Tecumseh Products shall submit such payment to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

37. Neither invoking dispute resolution nor paying penalties will affect Tecumseh Products' obligation to comply with the terms of this Order not directly in dispute.

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

XI. DISPUTE RESOLUTION

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

40. 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.

41. 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 shall state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

42. U.S. EPA and Tecumseh Products will in good faith attempt to resolve the dispute through formal negotiations within 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.

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

44. If, at the conclusion of the Dispute Resolution process, Tecumseh Products notifies U.S. EPA that it refuses to implement U.S. EPA's selected final corrective measures, U.S. EPA will pursue the action(s) it deems necessary within a reasonable period of time.

XII. FORCE MAJEURE AND EXCUSABLE DELAY

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

46. 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, Tecumseh Products shall notify U.S. EPA within two business days after learning that the event may cause a delay. If Tecumseh Products wishes to claim a force majeure event, within 15 business days thereafter Tecumseh Products shall provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

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

XIII. MODIFICATION

48. This Order may be modified only by mutual agreement of U.S. EPA and Tecumseh Products, 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 U.S. EPA, and will be incorporated into this Order.

XIV. RESERVATION OF RIGHTS

49. Nothing in this Order restricts U.S. EPA's authority to seek Tecumseh Products' compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. 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, Tecumseh Products 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 U.S. EPA.

50. U.S. 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.

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

52. Tecumseh Products does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Tecumseh Products reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Tecumseh Products has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Tecumseh Products reserves its right to seek judicial review of U.S. 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

53. Tecumseh Products 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

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

XVII. SEVERABILITY

55. 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

56. Tecumseh Products may request that U.S. EPA issue a determination that Tecumseh Products has met the requirements of the Order for all or a portion of the facility. Tecumseh Products may also request that U.S. 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.

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

58. Tecumseh Products’ execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA’s reservation of rights as required in Section XIV.

XIX. EFFECTIVE DATE

59. This Order is effective on the date that U.S. EPA signs the Order.

IT IS SO AGREED:

DATE: 3-23-2010
MM

BY:

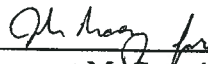


Lynn Dennison
Vice President – Law and Risk Management
General Counsel and Secretary
Tecumseh Products Company, Inc.

IT IS SO ORDERED:

DATE: 3/29/10

BY:



Margaret M. Guerriero, Director
Land and Chemicals Division

U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that an original signed copy of the Administrative Order on Consent for the Tecumseh Products Company was filed on March 30, 2010, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0192 5800, a second original signed copy to Respondent:

Ms. Lynn Dennison
Tecumseh Products Company, Inc.
1136 Oak Valley Drive
Ann Arbor, Michigan 48108

And forwarded copies (intra-Agency) to:

Susan Perdomo, Attorney Advisor, ORC/C14-J



Michelle Mullin
Remediation and Reuse Branch
U.S. EPA- Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Docket No. RCRA-05-2010-0012