



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2009

REPLY TO THE ATTENTION OF:

LU-9J

Michael J. O'Callaghan
Attorney at Law
Shumaker, Loop & Kendrick, LLP
Huntington Center
41 South High Street
Suite 2400
Columbus, Ohio 43215-6104

Re: Textileather Corporation, EPA ID # OHD 980 279 376 **RCRA-05-2010-0001**

Dear Mr. O'Callaghan:

Enclosed please find a signed original of the Administrative Order on Consent (Consent Order) requiring corrective action under Section 3008(h) of the Resource Conservation and Recovery Act at Textileather Corporation's Toledo, Ohio facility. EPA's signing of the Consent Order begins the schedule for a number of required activities. In accordance with Section V of the Consent Order, I am designating Carolyn Bury as the EPA Project Manager. Ms. Bury can be reached at 312-886-3020.

Sincerely,

A handwritten signature in black ink that reads "George J. Hamper".

George J. Hamper
Section Chief, Corrective Action Section 2
Remediation and Reuse Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF)	U.S. EPA Docket No:
Textileather Corporation)	RCRA-05-2010-0001
3729 Twining Street)	Proceeding under Section 3008(h) of the
Toledo, Ohio 43608)	Resource Conservation and Recovery
EPA ID No: OHD 980 279 376)	Act, as amended, 42 U.S.C. § 6928(h).
RESPONDENT)	

RECEIVED
SEP 30 2009

ADMINISTRATIVE ORDER ON CONSENT

**REGIONAL HEARING CLERK
USEPA
REGION 5**

I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") is issuing this Administrative Order on Consent ("Order") to Textileather Corporation ("Textileather" 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. Textileather 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. Textileather agrees not to contest EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations.

4. Textileather 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, Textileather, its successors, and assignees, and any trustees and receivers in their representative capacities. Textileather will be responsible for and liable for any violations of this Order, regardless of Textileather'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 Textileather'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 Textileather's obligations under this Order. Textileather 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 Textileather 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 Textileather 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 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. The actions required by this Order are necessary to protect human health and the environment.

V. PROJECT MANAGER

9. EPA and Textileather must each designate a Project Manager and notify each other 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, Textileather agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified. Textileather represents that it has the technical and financial ability to carry out corrective action at the Facility. Textileather 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. This guidance includes the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, EPA's ecological and human health risk assessment guidance (Risk Assessment Guidance for Superfund and Ecological Risk Assessment Guidance for Superfund), and other guidance documents found at or linked through EPA web sites primarily at <http://www.epa.gov/reg5rcra/ca/guidance.htm> and at http://www.epa.gov/oswer/riskassessment/risk_superfund.htm.

11. Textileather may proceed with interim measures to limit site investigation work, limit risk assessment analyses, or to attain the Environmental Indicator ("EI") measures as defined in paragraphs 12 through 15, below.

12. Textileather must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the Facility and assess their effects on human health and the environment. Textileather must:

- a. Provide to EPA, within seventy-five (75) days after the effective date of this Order, a brief Current Conditions Report that includes any recent sampling data from the Facility, and a summary of the historic operations and physical setting of the Facility. The Current Conditions Report must describe, at a minimum, conditions at all locations specified in the document entitled "Preliminary Assessment/Visual Site Inspection, Textileather Corporation (Formerly GenCorp Polymer Products)" dated March 28, 1994, and any other past or present locations at the Facility for which Textileather knows of past treatment, storage, disposal or releases of hazardous waste or hazardous constituents. The Current Conditions Report must include a preliminary conceptual site model including source identification, migration pathways, and potential complete exposure pathways to human and ecological receptors.
- b. Investigate the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Facility and provide a RCRA Facility Investigation ("RFI") Report to EPA. Textileather may focus early RFI data collection and analyses in order to meet the scheduled demonstrations described in paragraph 13, and to identify conditions that require interim measures. The final RFI Report and risk assessments must be submitted by July 31, 2011.
- c. Evaluate the releases for their potential to pose any unacceptable risk to human health and the environment and provide risk assessment document(s) to EPA. Risk screening steps may be completed with the data available at the appropriate risk assessment phases, such as for EI determinations, identifying a need for interim measures, the RFI, and the Corrective Measures Study ("CMS"), as appropriate. Generally, a screening risk assessment would be conducted during the RFI with additional, more detailed analysis, including appropriate cumulative risk analysis occurring as more data become available.
- d. As part of the initial stage of the RFI, Textileather shall investigate the indoor air vapor intrusion pathway along the eastern boundary of the Facility to off-site residential use. Textileather shall submit to the U.S. EPA for review and approval within two (2) months from the effective date of this Order, an investigation work plan for evaluation of the potential vapor intrusion pathway along the eastern boundary of the Facility. The investigation work plan shall be consistent with the OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance), November 2002, EPA530-D-02-004, and shall include the collection of groundwater quality data and, if applicable, subsurface soil gas at the eastern property perimeter nearest the residential neighborhood. An investigation summary report which includes all sampling data shall be submitted to EPA by no later than 120 days from the approval of the work plan. The summary report shall include an evaluation of whether the pathway is potentially complete, is likely not complete, or whether the data are inconclusive. In the event that the pathway is potentially complete or the data are inconclusive, Textileather shall submit a schedule for and undertake further investigation of the pathway. If the evaluation

determines that the pathway to off-site residential receptors is complete and that it potentially poses an unacceptable risk to human health, Textileather shall submit an interim measure plan and implement the interim measures. If the evaluation determines that the pathway is likely not complete, Textileather may make the EI determination required by Paragraph 13.a., based on all relevant human health exposure pathways, and then complete a full evaluation of the indoor air vapor intrusion pathway in the normal course of the RFI.

13. By the dates set forth in items (a) and (b) below, Textileather must demonstrate, through submitting EI Reports and by performing any other necessary activities, consistent with this section, that:

a. January 31, 2011. 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 or, for which there are complete pathways between contamination and human receptors.

b. July 30, 2011. 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. Textileather must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

14. To prepare for and provide the demonstrations required by paragraph 13, above, Textileather must:

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 Textileather or EPA identifies. This includes performing any corrective actions or other response measures ("interim 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 interim 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 EI Reports, which describes and justifies any interim measures including sampling documentation, construction completion documentation and/or confirmatory sampling results.

15. By December 31, 2012, Textileather must submit a CMS to EPA which proposes the final corrective measures necessary to protect human health and the environment from all current and future potential unacceptable risks from exposures to hazardous waste or hazardous constituents at or from the Facility. The CMS must describe any interim measures already begun or completed at the Facility and any final corrective measures proposed to be implemented at the Facility. The CMS must describe how the proposed corrective measures meet remedy selection criteria guidance found in the Advance Notice of Proposed Rule Making found at <http://www.epa.gov/epawaste/hazard/correctiveaction/resources/guidance/anprm.html>. The CMS must also include a description of all other final corrective measures that Textileather evaluated, a detailed explanation of why Textileather preferred the proposed final corrective measures to the alternative measures, and cost estimates for the final corrective measures evaluated. The CMS must also include a detailed schedule for the design, construction, and implementation of the final corrective measures, and the submission of a Final Remedy Construction Completion Report. Textileather must complete as much of the initial construction work as practicable within one year after EPA selects the final corrective measures. Textileather must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

16. As part of developing its proposal, Textileather must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

17. EPA may request supplemental information from Textileather 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. Textileather must provide any supplemental information that EPA requests in writing by the deadline established in the EPA request for supplemental information.

18. 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.

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

20. Reporting and other requirements:

a. Within 60 days of the effective date of this Order, Textileather must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities. A plan for how Textileather will conduct public outreach and involvement activities must be submitted to EPA by February 5, 2010.

b. Textileather 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. Textileather 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 Textileather 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. Textileather 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, Textileather must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Textileather 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, Textileather must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

Any risk assessments Textileather 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, Textileather will follow the Risk Assessment Guidance for Superfund ("RAGS"), Ecological Risk Assessment Guidance for Superfund ("ERAGS") and other appropriate EPA guidance. Textileather 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 Region 9 Preliminary Remediation Goals (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 Textileather selects or require Textileather to purchase and analyze any performance evaluation samples selected by EPA which are compounds of concern. Textileather 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, Textileather will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Textileather collects under this Order.

21. 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

22. 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 Textileather'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 Textileather submits to EPA. Textileather 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 Textileather or its contractors or consultants. Textileather 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.

23. If Textileather must go beyond the Facility's boundary to perform work required by this Order, Textileather must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within thirty (30) days after Textileather knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. Textileather 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, Textileather 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 Textileather in obtaining access.

24. 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

25. Estimated Cost of the Work

a. Within thirty (30) days after EPA issues the notice of Final Decision under paragraph 19 of this Order, Textileather 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 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. Textileather shall annually adjust the Cost Estimate for inflation. Textileather shall submit the annual adjusted Cost Estimates to EPA for review within thirty (30) days after the close of Textileather’s fiscal years.

c. If at any time EPA determines that a Cost Estimate provided pursuant to this section is inadequate, EPA shall notify Textileather in writing, stating the basis for its determination. If at any time Textileather becomes aware of information indicating that any Cost Estimate provided pursuant to this section is inadequate, Textileather 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, Textileather shall submit a revised Cost Estimate to EPA for review.

26. Assurances of Financial Responsibility for Completing the Work

a. Within sixty (60) days after EPA approves the Cost Estimate, Textileather 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 25.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, Textileather shall update the financial instrument or financial test demonstration to reflect changes to the annual adjusted Cost Estimate required under Paragraph 25.b.

c. Respondent shall maintain adequate financial assurance until EPA releases Textileather from this requirement under Paragraph 27.c.

d. Textileather 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 Textileather (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 Textileather 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. Textileather 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 Textileather provides financial assurance by means of a corporate guarantee or financial test, Textileather 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 Textileather 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. Textileather may combine more than one mechanism to demonstrate financial assurance.

j. Textileather 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, Textileather 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.

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

l. Textileather'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.

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

a. Reduction of Amount of Financial Assurance. If Textileather believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Textileather may, at the same time that Textileather 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 Textileather desires to change the form or terms of financial assurance, Textileather may, at the same time that Textileather 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, Textileather shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Textileather 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 26(f), above.

c. Release of Financial Assurance. Textileather may submit a written request to the Director, Land and Chemicals Division that EPA release Textileather from the requirement to maintain financial assurance under this section once EPA and Textileather 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 Textileather and any other provider(s) of the financial assurance that Textileather 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 Textileather and are consistent with Agency guidance.

28. Performance Failure

a. If EPA determines that Textileather (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 Textileather and the

financial assurance provider of Textileather's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide Textileather with a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by Textileather to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in paragraph 28.a shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to subparagraphs 26.a.i, 26.a.ii, 26.a.iii, 26.a.iv, or 26.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, Textileather shall within twenty (20) days deposit into a trust fund approved by EPA, a cash amount equal to the Cost Estimate.

IX. RECORD PRESERVATION

29. Textileather 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. Textileather 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. Textileather'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

Textileather 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, Textileather will enter into an agreement with the agents to give Textileather a copy of all data and final non-privileged documents produced under this Order.

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

X. STIPULATED PENALTIES

31. Textileather 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 20, above: \$500 per day for the first fourteen (14) days and \$1,000 day thereafter.
- b. For failure to submit the Current Conditions Report as scheduled by section VI.12.a.: \$500 per day for the first fourteen (14) days and \$1,000 per day thereafter.
- c. For failure to adequately demonstrate that current human exposures are under control as scheduled by section VI.13.a.: \$1,5000 per day.
- d. For failure to adequately demonstrate that groundwater migration is stabilized as scheduled by section VI.13.b.: \$1,500 per day.
- e. For failure to submit the Final Corrective Measures Proposal as scheduled by section VI.15.: \$500 per day for the first fourteen (14) days and \$1,000 per day thereafter.
- f. For failure to implement according to the approved schedule, the selected final corrective measures as described in paragraphs 18 and 19: \$1,500 per day for the first fourteen (14) days and \$3,000 per day thereafter.
- g. 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.

32. Whether or not Textileather has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Textileather 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 Textileather in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

33. Textileather 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 Textileather 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 thirty-one (31) days after Textileather 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, Textileather must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than ninety (90) days overdue.

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

36. Textileather 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. Textileather must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Textileather must submit such payment to EPA within thirty (30) days after receiving the resolution according to the payment instructions of this section.

37. Neither invoking dispute resolution nor paying penalties will affect Textileather's 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 EPA from pursuing any other remedies or sanctions which may be available to EPA for Textileather'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

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

42. EPA and Textileather 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.

43. If the parties are unable to reach an agreement through formal negotiations, within fourteen (14) business days after any formal negotiations end, Textileather 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 Textileather'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").

44. If, at the conclusion of the Dispute Resolution process, Textileather 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

45. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Textileather's control that delays or prevents the timely performance of any obligation under this Order despite Textileather's 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, Textileather must notify EPA within two (2) business days after learning that the event may cause a delay. If Textileather wishes to claim a force majeure event, within fifteen (15) business days thereafter Textileather must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

47. 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

48. This Order may be modified only by mutual agreement of EPA and Textileather, 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

49. Nothing in this Order restricts EPA's authority to seek Textileather'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, Textileather 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.

50. 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 EPA determines that Textileather'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 Textileather cannot perform any of the work ordered, EPA may order Textileather 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.

52. Textileather does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Textileather 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. Textileather has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Textileather 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

53. Textileather 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. Textileather 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 Textileather 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 Textileather or the United States under their various contracts. This indemnification will not create any obligation on the part of Textileather 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. Textileather may request that EPA issue a determination that Textileather has met the requirements of the Order for all or a portion of the Facility. Textileather 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.

57. The provisions of the Order will be satisfied upon Textileather'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.

58. Textileather'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

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

IT IS SO AGREED:

DATE: 09/21/09

BY: Nicole Zielinski
Nicole Zielinski
Environmental Coordinator
Textileather Corporation

IT IS SO ORDERED:

DATE: 9/30/09

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

RECEIVED
SEP 30 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

SEP 23 2009

OFFICE OF REGIONAL
COUNSEL

SCANNED



In the Matter of:
Textileather Corporations Toledo, Ohio facility
DOCKET NO: RCRA-05-2010-0001

CERTIFICATE OF SERVICE

I hereby certify that I filed the original and one copy of the Consent of Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, and that I mailed by Certified Mail Receipt No [], the second original to Respondent, addressed as follows:

Michael J. O'Callaghan
Attorney at Law
Shumaker, Loop & Kendrick, LLP
Huntington Center
41 South High Street Suite 2400
Columbus, Ohio 43215-6104

and that I delivered a correct copy by intr-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

on this 30 day of September, 2009


Angela Jackson

Administrative Program Assistant
United States Environmental Protection Agency
Land and Chemicals Division -RRB Branch

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 7996