



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

REPLY TO THE ATTENTION OF:

**LU-9J**

**CERTIFIED MAIL:**  
**RETURN RECEIPT REQUESTED**

Mr. John Wu  
Operating Unit Manager  
Detroit Diesel Corporation  
13400 West Outer Drive  
Detroit, Michigan 48239-4001

RE: RCRA 3008(h) Consent Order  
Detroit Diesel Corporation, Detroit, MI 48239  
MID 005 356 803  
Docket No. **RCRA-05-2013-0008**

Dear Mr. Wu:

Enclosed for your records, is a fully executed copy of the Administrative Order on Consent proceeding under the authority of Section 3008(h) of the Resource Conservation and Recovery Act for the Detroit Diesel Corporation facility located at 13400 West Outer Drive in the City of Detroit, Michigan.

In accordance with Section V of the agreement, I am hereby designating Gregory Rudloff as the U.S. EPA project manager for this project. If you have any questions concerning the Consent Order, please contact him at 312-886-0455, or [rudloff.gregory@epa.gov](mailto:rudloff.gregory@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros".

Jose G. Cisneros, Chief  
Remediation and Reuse Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

13400 West Outer Drive  
Detroit, Michigan 48239

EPA ID# MID 005 356 803

RESPONDENT,  
DETROIT DIESEL CORPORATION



JUN 24 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

) ADMINISTRATIVE ORDER ON CONSENT

) EPA Docket No. **RCRA-05-2013-0008**

) Proceedings under Section 3008(h) of the  
) Resources Conservation and Recovery Act  
) as amended, 42 U.S.C. § 6928(h).

I. JURISDICTION

1. The United States Environmental Protection Agency ("EPA") is issuing this Administrative Order on Consent ("Order") to the Detroit Diesel Corporation (Respondent or Detroit Diesel) 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 authority vested in the Administrator to issue orders under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), has been delegated to the Regional Administrators, and further delegated to the Director, Land and Chemicals Division, EPA Region 5.

2. Respondent owns and operates the Facility to which this Order is applicable. Respondent's Facility is a diesel engine manufacturing facility located on 129.41 acres at 13400 West Outer Drive and is within Redford Township and the City of Detroit, Wayne County, Michigan (the Facility). General Motors Corporation (GM) operated the Facility under various divisions from 1937 until its divestiture from GM to Detroit Diesel in 1987 as a joint venture between GM and the Penske Corporation. The Facility property was sold to an investor in 1991 in a sale-leaseback transaction through which Detroit Diesel entered into a long-term lease of the property. GM sold its remaining interest in 1992 when Detroit Diesel became a publicly traded Corporation. DaimlerChrysler became 100% owner of Detroit Diesel on October 13, 2000. Detroit Diesel is currently an affiliate of Daimler Trucks North America LLC. Respondent currently conducts activities at the Facility similar to those conducted during GM's tenure including designing, machining, painting, assembling, testing, and repairing diesel engines and engine components within the approximately 3 million square-foot main manufacturing building and associated support buildings located at the Facility. Detroit Diesel also leases portions of the facility to other manufacturing companies.

Remediation activities conducted pursuant to RCRA to date include: determination of the nature and extent of the releases of hazardous waste and hazardous constituents at or from the Facility, including an evaluation of the risks; submission of a RCRA Facility Investigation (RFI) Report on December 12, 2003; and Implementation of interim corrective measures to stabilize the site and provide early protection to human health and the environment. These interim measures included installation and operation of a groundwater collection system, conducting in-situ chemical oxidation, recovery of Light Nonaqueous Phase Liquid (LNAPL) through on-site recovery wells, and groundwater and LNAPL monitoring. In addition, Respondent demonstrated on December 9, 1999, through submitting an Environmental Indicators Report and performing other necessary activities, that all current human

exposures to contamination at or from the facility are under control, and on September 2, 2003, through submitting an Environmental Indicators Report and by performing other necessary activities that migration of contaminated groundwater at or from the facility is stabilized.

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

4. Respondent waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as a Consent Order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

## 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.

6. "MDEQ" is the Michigan Department of Environmental Quality.

## III. PARTIES BOUND

7. This Order applies to and binds EPA, Respondent and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Respondent will be responsible for and liable for any violations of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform work required by this Order.

8. No change in ownership or corporate or partnership status relating to the Facility, (a diagram of current Facility boundaries is set forth in Appendix 1), will alter Respondent'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 Respondent's obligations under this Order. Respondent 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 Respondent 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 Respondent agree that this Order has terminated as to the Facility or any relevant portion of the facility.

## IV. DETERMINATIONS

9. 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. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- c. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, 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 and/or the environment.

#### V. PROJECT MANAGER

10. EPA and Respondent must 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 must provide prompt written notice whenever they change Project Managers.

#### VI. WORK TO BE PERFORMED

11. Pursuant to Section 3008(h) of RCRA, Respondent agrees to and is hereby ordered to implement the selected remedy and achieve the performance measures included in EPA's February 8, 2011 Final Decision (Final Decision) and set forth in this Paragraph; and the actions specified in this Section VI; in the manner and by the dates specified herein and in all plans and schedules developed by Respondent and approved by EPA pursuant to this Order. The Final Decision, Appendix 2 to this Order, is incorporated into and made an enforceable part hereof. Respondent represents that it has the technical and financial ability to carry out corrective action at the Facility. Respondent 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 consider all relevant EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Use of Institutional Controls in the RCRA Corrective Action Program, and relevant portions of the Model Scopes of Work for RCRA Corrective Action, OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Pathway from Groundwater and Soils (November 2002), RCRA Groundwater Monitoring Draft Technical Guidance (November 1992), Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action (April 2004), Results-based Approaches and Tailored Oversight Guidance for Facilities Subject to RCRA Corrective Action Under Subtitle C of RCRA (September, 2003); and EPA's risk assessment guidance.

The components of the selected remedy that the Respondent must implement are:

- a. Due Care Plan: Respondent must prepare and implement a Due Care Plan within thirty (30) days of the effective date of this Order consistent with Michigan Public Act 451, Part 201, to account for the necessary monitoring and personal protective equipment to limit potential exposure pathways for workers to LNAPL and impacted groundwater at the Facility.
- b. Groundwater Monitoring Program with Contingency Plan: Respondent must prepare and submit for approval within sixty (60) days of the effective date of this Order a long-term groundwater monitoring program which will confirm that concentrations of constituents remain below human health risk-based criteria at the property boundary monitoring wells, and at off-site monitoring wells downgradient of the Facility. Specifically, the long-term groundwater monitoring program must include semi-annual groundwater sampling at the facility's perimeter and off-site monitoring wells downgradient of AOI 25 to confirm that concentrations in these areas remain below the applicable human health risk-based criteria. Additionally, monitoring wells at the interior of the Facility must be sampled to confirm that concentrations of constituents remain at or below levels that are protective of human health and the environment under current and reasonably expected future land use at the Facility. Initially, the groundwater sampling must be conducted semi-annually for a period of two years. After two years, the sampling must be conducted annually for a period of three years. Subsequently, the frequency and details of the monitoring program will be re-evaluated and modified, as necessary. In addition, the contingency plan will be enacted if groundwater contaminant concentrations at the Facility's perimeter or off-site locations increase toward levels near applicable human health risk-based criteria. The contingency plan must include additional corrective measures that Respondent will implement to reduce groundwater contamination back to levels below applicable human health risk-based criteria. The contingency plan will be part of the long-term groundwater monitoring plan.
- c. Respondent must submit to EPA advance written notice of, and supporting information for, any proposed modification to the existing groundwater monitoring program. Respondent shall implement any modification to the existing groundwater monitoring program as approved by EPA.
- d. LNAPL Recovery Wells – Respondent must continue the operation of the eight existing LNAPL recovery wells until LNAPL thickness measures 0.1- feet or less at each well for two consecutive years as detailed in the Long-Term Operation and Maintenance Program.
- e. LNAPL Monitoring Program: Respondent must prepare and submit for approval within sixty (60) days of the effective date of this Order an LNAPL monitoring program to monitor the presence of LNAPL and verify that the LNAPL plumes beneath the facility remain stable and do not migrate. The LNAPL monitoring program must include semi-annual gauging events of the recovery and monitoring wells located within and near the identified LNAPL plumes. The long-term LNAPL monitoring plan will be part of the Long-Term Operation and Maintenance Plan.

Initially, the LNAPL monitoring program must be conducted semi-annually for a period of two years. After two years, the monitoring program must be conducted annually for a period of three years. Subsequently, the frequency and details of the monitoring program will be re-evaluated and modified, as necessary.

f. Concrete Floor and Epoxy Coating Maintenance – Respondent must maintain the existing concrete floor with an epoxy coating throughout the manufacturing area to act as a vapor barrier.

g. Exterior Paved Areas Maintenance in the Vicinity of AOI 25 – Respondent must maintain the exterior paved areas in the vicinity of AOI 25 to prevent infiltration of rain water.

h. Respondent must implement institutional controls on the relevant portions of the Facility property to prevent exposure to contaminants in groundwater and subsurface soils that exceed risk-based standards. Such institutional controls are specified in Paragraphs 13 and 14, below.

i. Respondent must implement additional corrective measures if necessary to ensure that the performance measures set forth in the Final Decision and in this Paragraph will be achieved and maintained, pursuant to Paragraph 14, below.

j. The Long-Term Operation and Maintenance Plan may be amended by agreement of the Parties' Project Managers in writing. The Long-Term Operation and Maintenance Plan shall be amended to include new or revised monitoring requirements and/or schedules if and when additional corrective measures are required to be implemented pursuant to Paragraph 12 or 17, below.

k. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (as may be amended), as appropriate for the Facility, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories which Respondent selects, or require Respondent to purchase and have analyzed any performance evaluation samples selected by EPA which are compounds of concern. At the request of EPA, Respondent must provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.

12. Respondent must implement the institutional and engineering controls, and monitoring requirements, and achieve the performance measures selected in the Final Decision, as provided in the approved Long-Term Operation and Maintenance Plan, and any amendments thereto, including the schedules contained therein. Review and approval of any major modifications to the Long-Term Operation and Maintenance Plan shall be in accordance with Section VII below.

13. In accordance with the Final Decision, Respondent shall implement additional (contingent) corrective measures as necessary to assure that performance measures shall be achieved and maintained, as specified in the Long-Term Operation and Maintenance Plan.

14. Respondent shall execute and record an Environmental Covenant in accordance with Part 111, Hazardous Waste Management, MCL 324.11101 et seq. (Part 111), and Part 201, Environmental Remediation, MCL 324.20101 et seq. (Part 201), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq. (NREPA) imposing the following activity and use limitations upon the Facility, or relevant portions of the Facility, as appropriate:

No use of groundwater  
No residential use of property  
Concrete Floor and Epoxy Coating Maintenance  
Exterior Paved Areas Maintenance in the Vicinity of AOI 25

15. A model format of the environmental covenant shall be provided to Respondent following execution of this Order. Respondent shall submit a draft environmental covenant to EPA for review within thirty (30) days of receipt of the model format from EPA. The schedule for executing and recording the Environmental Covenant and for providing to EPA a file and date-stamped copy of the recorded Environmental Covenant shall be included in the transmittal of environmental covenant model format.

- a. Respondent shall assure that the activity and use limitations set forth in the Environmental Covenant are continually maintained so long as Respondent owns the Facility.
- b. If Respondent conveys any interest in any portion of the Facility identified in the Environmental Covenant, including but not limited to easements, deeds, leases and mortgages, Respondent must include, in the instrument of conveyance, that portion of the Environmental Covenant that describes the activity and use restrictions imposed on the portion of the Facility to be conveyed.
- c. No later than fifteen (15) days prior to executing any instrument conveying any interest in any portion of the Facility, including but not limited to deeds, leases and mortgages, Respondent shall provide written notice of the conveyance to EPA at the address set forth in Section XIV, and to MDEQ at the following address:

Michigan Department of Environmental Quality  
Environmental Resource Management Division  
525 West Allegan Street  
Lansing, Michigan 48909

16. Respondent shall take all necessary measures to restrict the use of the Facility in any manner that may interfere with operation and maintenance, monitoring or other measures necessary to assure the effectiveness and integrity of the remedy to be implemented pursuant to this Order.

17. EPA may require further corrective action for any release of a hazardous waste or hazardous constituent at a later date, if new information or subsequent analysis indicates that a release at the facility may pose a threat to human health or the environment.

18. Corrective Action for Newly Discovered Releases. Within thirty (30) days after discovery of a previously unidentified release of a hazardous waste or hazardous constituent that was not discovered during the RFI, Respondent must provide written notification to EPA. The written notification shall include all of the following information to the extent that it is available: The location of the release on the facility topographic map; the nature and extent of the release; and the date the discovery of the release. Within thirty (30) days after the notification by Respondent of a previously unidentified release of a hazardous waste or hazardous constituent, or if EPA receives information indicating there may be a release of a hazardous waste or hazardous constituent, at or from the Facility that was not discovered during the RFI, EPA may request Respondent to submit a plan and schedule within sixty (60) days of notification by EPA for performing an investigation of the nature and extent of such release and the impact of the release on human health or the environment and for submitting a report of its investigation and proposed corrective measures (“Newly Discovered Release Report”). The Newly Discovered Release Report shall document the basis for Respondent’s conclusion as to whether or not the release presents a threat to human health or the environment and, if Respondent concludes that it does, the Report shall also include an evaluation of corrective measures considered to address the release and Respondent’s recommended corrective measure(s), with supporting documentation. EPA shall review the Report and either approve the Report or require revisions to the Report, following the procedure set forth in Paragraph 24 below. EPA may request supplemental information from Respondent if necessary to fully evaluate the nature and extent of the release and/or corrective measures alternatives. Respondent shall provide any supplemental information that EPA requests in writing within 60 days of EPA’s request. During the remedy evaluation and selection process, Respondent shall implement interim measures as necessary to prevent exposure to contaminants above risk-based levels. The CMP shall be amended to include a plan and schedule for implementation of corrective measures as approved by EPA. Respondent shall implement the selected corrective measures in accordance with the approved implementation schedule.

19. Reporting and other requirements:

- a. Respondent must continue to maintain a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Respondent must provide semi-annual progress reports to EPA by the fifteenth day of the month after the end of each 6 month period. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. When Respondent believes that the criteria in the Long-Term Operation and Maintenance Plan have been met for permanent cessation of LNAPL recovery, Respondent shall submit a written report to EPA for approval demonstrating that the shutdown criteria have been met, including supporting data and analysis. If EPA disapproves the report



because it does not agree that the shutdown criteria have been met this matter shall be resolved through the dispute resolution process set forth in Section XII, below.

- d. Respondent shall provide written notice to EPA within five (5) days of its discovery of information indicating that: 1) LNAPL or dissolved contaminants not previously identified are migrating off-site; or 2) contaminants volatilized from the LNAPL layer or dissolved plume are in exceedance of the residential standards in the Long-Term Operation and Maintenance Plan at the soil surface.
- e. Within thirty (30) days after Respondent has determined that the groundwater performance standards in the Long-Term Operation and Maintenance Plan have been attained at the Facility, Respondent must submit a written report and certification to EPA for review and approval. A registered professional engineer and Respondent's Project Manager must state in the report that the groundwater performance standards have been attained in full satisfaction of the requirements of this Order.
- 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. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in EPA's Final Decision. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, sediment, vapor, aquifer formation, surface water, and materials in containers addressed or to be addressed by the response actions; and (2) an estimate of the mass of contaminants mitigated as part of those materials addressed.
- f. Any risk assessments Respondent 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, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS), the Ecological Risk Assessment Guidance for Superfund (ERAGS) and other appropriate EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA EcoSSLs, and/or other sources as agreed to by EPA.
- 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 Respondent

selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by EPA which are compounds of concern. Respondent must notify EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of EPA, Respondent will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.

20. The EPA Project Manager may extend any deadline in this Section for 90 days or less with written notice to the Respondent. Extensions of greater than 90 days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

#### VII. EPA APPROVAL OF DELIVERABLES

21. Respondent must submit deliverables required by Paragraphs 10.a, 10.b, 10.c, 10.e, 14, 17, 18, 23, and 31 of this Order to EPA for approval or modification pursuant to Paragraph 24. All deliverables must be received at EPA by the dates specified pursuant to this Order. EPA will make good faith efforts to act pursuant to this Section on deliverables required by Paragraphs 11.g, 12, and 14 and 20 within 60 days of receipt. If EPA extends the time frame to act beyond 60 days, EPA will not unreasonably withhold granting Respondent's request for an extension of any subsequent deadline that is affected.

22. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 days, except where EPA determines that to do so would cause serious disruption to the Work (as referred to in Section VI above) or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

23. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 24(a), (b), or (c), Respondent must proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 24(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XI (Penalties).

24. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 24(d), Respondent must, within 10 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XI (Penalties), shall accrue during the

10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 24 and 25.

25. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 24(d), Respondent must proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XI (Penalties).

26. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with Paragraphs 24 and 26. EPA also retains the right to modify or develop the plan, report or other item. Respondent must implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XII (Dispute Resolution).

27. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately unless Respondent invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XII (Dispute Resolution) and Section XI (Penalties) shall govern the implementation of the Section VI (Work To Be Performed) and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XI (Penalties).

28. All deliverables required to be submitted to EPA under this Order, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this Order. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

#### VIII. ACCESS

29. 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 Respondent'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 Respondent submits to EPA. Respondent 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 Respondent or its contractors or consultants. Respondent 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.

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

31. 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. §§ 9601-9675.

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

32. Estimated Cost of the Work To Be Performed (Section VI):

- a. Respondent must submit to EPA detailed written estimates, as described in this Section, in current dollars, of the cost of hiring a third party to perform the Work To Be Performed under Section VI of the Order (Cost Estimate). A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. Cost Estimates submitted under Paragraph 34 of this Order must 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 the Order.
- b. Within 120 days of the effective date of this Order, Respondent must submit to EPA for review and approval an initial Cost Estimate of the Work To Be Performed under Section VI of this Order. The initial Cost Estimate must account for the costs of the work necessary to meet the requirements of Paragraph 10 and 11 including, but not limited to, investigations, risk analyses, reports, and the construction and implementation of any foreseeable interim corrective measures necessary to protect human health and the environment. In addition, the initial Cost Estimate must account for foreseeable costs necessary to meet the requirements of Paragraphs 12 through 20, including, but not limited to, proposals, reports, construction work, implementation, monitoring, and other long term care work.
- c. Respondent must annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to Be Performed under Section VI of the Order. Within 30 days after the close of Respondent's fiscal year, Respondent must submit the annually adjusted Cost Estimate to EPA for review and approval.

- d. If Respondent is required to implement any additional corrective measure(s) pursuant to Paragraph 12 or 16 of this Order, within forty-five days of EPA approval of an additional corrective measure(s), Respondent shall submit to EPA for approval a revised Cost Estimate for the Work to be Performed that includes the cost of implementing such additional corrective measure(s).
- e. EPA will review each Cost Estimate submitted by Respondent and will notify Respondent of EPA's approval, approval with modifications, or disapproval of the Cost Estimate.
- f. If at any time EPA determines that a Cost Estimate provided pursuant to this Paragraph is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within thirty (30) days. Within 30 days of notifying EPA, Respondent must submit a revised Cost Estimate to EPA for review.

33. Assurances of Financial Responsibility for Completing the Work To Be Performed under Section VI of the Order:

- a. Within 60 days after EPA approves the initial Cost Estimate, Respondent must establish and maintain financial assurance for the benefit of the EPA in the amount of the approved initial Cost Estimate. In the event that EPA approval of Respondent's initial Cost Estimate is not received within 30 days after the close of Respondent's fiscal year ("fiscal year") during which the initial Cost Estimate was submitted, Respondent must establish and maintain the financial assurance in the amount of the initial Cost Estimate within 90 days after the close of such fiscal year. Respondent must adjust the financial instrument or financial test demonstration as necessary to reflect the most recent Cost Estimate approved by EPA within 90 days after the close of each fiscal year. In the event that EPA approval of a revised Cost Estimate is not received within 60 days after close of Respondent's fiscal year, Respondent must submit adjusted financial assurance instruments in the amount of the most recently submitted Cost Estimate. Respondent must use one or more of the financial assurance forms described in Paragraphs 32.a.i – vi, below. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA. Respondent must maintain adequate financial assurance until EPA releases Respondent from this requirement under Paragraph 33.c, below.
- i. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the EPA. The trust agreement must provide that the

trustee must make payments from the fund as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing to (1) reimburse Respondent from the fund for expenditures made by Respondent for work performed under Section VI of the Order, or (2) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work under Section VI of the Order. The trust agreement must further provide that the trustee must not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the work under the Order has been successfully completed.

- ii. A surety bond unconditionally guaranteeing performance of the Work to Be Performed Under Section VI of this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 32.a.i, above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of Treasury.
- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, EPA Region 5, into a standby trust fund that meets the requirements of the trust fund in Paragraph 35.a.i, above. The letter of credit must be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- iv. An insurance policy that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction, and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy must be issued for a face amount at least equal to the Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 35.a. The policy must provide that the insurer shall make payments as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for work performed in accordance with this Order, or (ii) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy must also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 37 of this section.

- 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 Respondent (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 Paragraph 35.a.i, above; provided, however, that any company providing such a guarantee must 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 Respondent 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.
- b. Respondent must 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 30 days after date of execution or finalization as required to make the documents legally binding. A transmittal letter stating the name and RCRA ID number of the facility, Respondent’s name and address, and the EPA docket number of this Order must accompany the instruments. Respondent must also provide copies to the EPA Project Manager within 30 days.
  - c. If at any time Respondent provides financial assurance for completion of the Work To Be Performed under Section VI of the Order by means of a corporate guarantee or financial test, Respondent must 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 Respondent or corporate guarantor at any time.
  - d. 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, Underground Injection Control (UIC), the Toxic Substances Control Act (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.
  - e. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VI of this Order.
  - f. Respondent may satisfy its obligation to provide financial assurance for the Work To Be Performed under Section VI of the Order by providing a third party who assumes full responsibility for the Work To Be Performed under Section VI of the Order and otherwise

satisfies the obligations of the financial assurance requirements of this Order; however, Respondent 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 must be in one of the forms provided in Paragraphs 32.a.i through 32.a.iv, above.

- g. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 90 days of receipt of notice of EPA's determination, or within 90 days of Respondent's becoming aware of such information, Respondent must 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 must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.
- h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work To Be Performed under Section VI of the Order shall in no way excuse performance of any other requirements of this Order.

34. Modification of Amount and/or Form of Performance Guarantee:

- a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent 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 Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, or at any other time agreed to by EPA in writing, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal must specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and must satisfy all requirements set forth in this Section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Respondent must execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Respondent must 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, with a transmittal letter, as provided in Paragraph 35, above.



- c. Release of Financial Assurance. Respondent may submit a written request to the Director, Land and Chemicals Division, EPA Region 5, that EPA release Respondent from the requirement to maintain financial assurance under this Section once EPA and Respondent have both executed an “Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right” pursuant to Section XX (Termination and Satisfaction) of the Order. The Director, Land and Chemicals Division, EPA Region 5, shall notify both Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

35. Performance Failure:

- a. If EPA determines that Respondent (i) has ceased implementing any portion of the Work To Be Performed under Section VI of the Order, (ii) is significantly or repeatedly deficient or late in its performance of the Work To Be Performed under Section VI of the Order, or (iii) is implementing the Work To Be Performed under Section VI of the Order 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 Respondent and the financial assurance provider of Respondent’s failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide Respondent with a period of 20 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by Respondent to remedy the relevant Performance Failure to EPA’s satisfaction before the expiration of the twenty-day notice period specified in Paragraph 34.a. shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 32.a.i, 32.a.ii, 32.a.iii, 32.a.iv, or 32.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, Respondent must within 20 days deposit into a trust fund approved by EPA, a cash amount equal to the most recent Cost Estimate approved by EPA.

#### X. RECORD PRESERVATION

36. Respondent 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. Respondent must notify EPA in writing 90 days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. Respondent’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

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

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

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

#### XI. STIPULATED PENALTIES

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

a. For failure to timely submit for approval an initial plan, schedule, report or draft financial instrument, or to timely revise an initial plan, schedule report or draft financial instrument in accordance with EPA's comments: one thousand dollars (\$1,000) per day for the first fourteen (14) days and two thousand dollars (\$2,000) per day thereafter.

b. For failure to timely implement any corrective measures described in paragraph 10 and 11 or any additional contingent corrective measure required by Paragraph 12, in accordance with the requirements therein or in the approved Long-Term Operation and Maintenance Plan: one thousand dollars (\$1,000) per day for the first fourteen (14) days and two thousand dollars (\$2,000) per day thereafter.

c. For failure to submit the Final Remedy Construction Completion Report as scheduled in Paragraph 18.g: \$1,500 per day for the first fourteen (14) days and \$3,000 per day thereafter.

d. For failure to submit written notification to EPA of previously unidentified releases within thirty (30) days of discovery as required by paragraph 17: \$750 per day for the first fourteen (14) days and \$1,500 per day thereafter.

e. For failure to submit the work plan and schedule for Newly Discovered Releases, or supplemental information as required by Paragraph 17 within sixty (60) days of EPA's request: \$750 per day for the first fourteen (14) days and \$1,500 per day thereafter.

f. For failure to timely comply with any requirement of Paragraphs 13 and 14 regarding the execution, recording and enforcement of an environmental covenant covering the Facility property and providing required notices to purchasers and EPA: five hundred dollars (\$500) for the first fourteen (14) days and one thousand five hundred (\$1,500) per day thereafter.

g. For failure to submit semi-annual progress reports by the dates scheduled in paragraph 18.d, above: five hundred dollars (\$500) per day for the first fourteen (14) days and one thousand dollars (\$1,000) per day thereafter.

h. For failure to provide a timely written notification to EPA as required by Paragraph 18.d, 31.d or 32.g: five hundred dollars (\$500) per day for the first five (5) days, one thousand five hundred dollars (\$1,500) per day for the next five (5) days, and three thousand five hundred dollars (\$3,500) per day thereafter.

i. For failure to comply with any requirement of Paragraph 29 regarding exercising best efforts to obtain agreements for access and/or use limitations with off-site property owners, and providing timely notifications to EPA: five hundred dollars (\$500) per day such failure continues.

j. For failure to timely submit any Cost Estimate or revised Cost Estimate required by Paragraph 31; five hundred dollars (\$500) per day for each day such failure continues.

k. For failure to establish the initial or any revised financial assurance mechanism required by and within the time period specified in Paragraph 32 of this Order: five hundred dollars (\$500) per day for the first fourteen (14) days and one thousand dollars (\$1,000) per day thereafter.

l. For failure to submit a financial test (if Respondent demonstrates financial assurance by means of the financial test pursuant to 32.a.5 or 32.a.6) which complies with the provisions of Paragraph 32.c and 32.d of this Order: five hundred dollars (\$500) per day for the first fourteen (14) days and one thousand dollars (\$1,000) per day thereafter.

m. For failure to provide all finalized financial instruments to EPA pursuant to Paragraph 32.f: five hundred dollars (\$500) per day for each day such failure continues.

n. For failure to deposit into a trust fund approved by EPA, a cash amount equal to the Cost Estimate within thirty (30) days of receipt of written notice from EPA pursuant to Paragraph 34.b of this Order: one thousand dollars (\$1,000) per day for the first fourteen (14) days, and two thousand dollars (\$2,000) per day thereafter.

40. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

41. Respondent 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 Respondent invokes the dispute resolution procedures under Section XII: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

42. Interest will begin to accrue on any unpaid stipulated penalty balance beginning thirty one (31) days after Respondent 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, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

43. Respondent 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:

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

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

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

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

46. 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 Respondent'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.

## XII. DISPUTE RESOLUTION

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

48. 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.

49. 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.

50. EPA and Respondent 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.

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

52. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement EPA's selected final corrective measures, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

### XIII. FORCE MAJEURE AND EXCUSABLE DELAY

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

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

55. 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.

#### XIV. MODIFICATION

56. This Order may be modified only by mutual agreement of EPA and Respondent, 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.

#### XV. RESERVATION OF RIGHTS

57. Nothing in this Order restricts EPA's authority to seek Respondent'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, Respondent 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.

58. 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.

59. If EPA determines that Respondent's 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 Respondent cannot perform any of the work ordered, EPA may order Respondent 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.

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

#### XVI. NOTICES AND SUBMISSIONS

61. Except as otherwise specifically provided in this Order, whenever, under the terms of this Order, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals

or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

U.S. EPA:

Gregory Rudloff  
EPA Project Manager  
Waste Pesticides and Toxics Division  
U.S. EPA, Region 5  
77 W. Jackson Blvd. LU-9J  
Chicago, IL 60604-3590

RESPONDENT:

Jeff Allen  
Head of Operations  
Detroit Diesel Corporation  
13400 West Outer Drive  
Detroit, Michigan 48239

#### XVII. OTHER CLAIMS

62. Respondent 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.

#### XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

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

#### XIX. SEVERABILITY

64. 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.

## XX. TERMINATION AND SATISFACTION

65. Respondent may request that EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the facility. Respondent 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 Fed. Reg. 9176, dated February 27, 2002.

66. The provisions of the Order will be satisfied upon Respondent’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.

67. Respondent’s execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section X, to maintain any necessary institutional controls or other long terms measures, and to recognize EPA’s reservation of rights as required in Section XV.

## XXI. CONSTRUCTION COMPLETION DETERMINATION

68. Completion of Construction. Respondent may request that EPA issue a determination that Respondent has met the requirements of this Order for all or a portion of the Facility that involve construction and installation of required remedial actions defined in the Final Decision and Response to Comments document dated February 8, 2011.

69. Corrective Action Complete with Controls. Pursuant to EPA’s Final Guidance on Completion of Corrective Action Activities at RCRA Facilities, 68 Fed. Reg. 8757-8764 (February 25, 2003), Respondent may request EPA to issue a determination that the corrective action is “complete with controls.” If Respondent wishes EPA to make this determination, it shall submit an application for such determination, including documentation that it has completed the Work to be Performed under Section VI of this Order. In addition, Respondent shall demonstrate in the application that it has executed and recorded the Environmental Covenant required by Paragraphs 13 and 14 of this Order. EPA will review Respondent’s submission and will determine whether the cleanup objectives set forth in the February 8, 2011, Final Decision have been met and that the enforceable land use restrictions are in place. If EPA agrees that the Work to be Performed under the 2011 Final Decision is complete and the cleanup objectives have been achieved, and that the required restrictive covenants have been executed and properly recorded, EPA will make a tentative determination of Corrective Action Complete with Controls (“CAC”) Determination as described in the above guidance, and will direct the Respondent as to the appropriate public involvement procedures it should follow in order to obtain a final CAC determination. The above application and determination process may be done for the whole Facility, or on a SWMU or Area basis, to facilitate reuse of portions of the Facility.

## XXII. EFFECTIVE DATE

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




IT IS SO AGREED:

DATE: 5-31-13

BY:   
Jeff Allen, Head of Operations  
Detroit Diesel Corporation

IT IS SO ORDERED:

DATE: 6/20/2013

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

  
JUN 24 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

CASE NAME: Detroit Diesel Corporation  
DOCKET NO: RCRA-05-2013-0008

RECEIVED

JUN 24 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

CERTIFICATE OF SERVICE

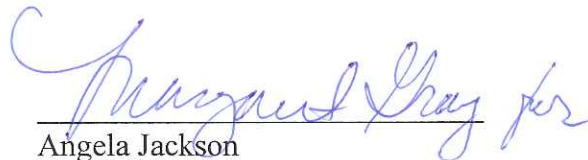
I hereby certify that today I filed the original of this **Administrative Order on Consent** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Mr. John Wu  
Operating Unit Manager  
Detroit Diesel Corporation  
13400 West Outer Drive  
Detroit, Michigan 48239-4001

Certified Mail #

Dated: June 24, 2013



Angela Jackson  
Administrative Program Assistant  
United States Environmental Protection Agency  
Region 5  
Land and Chemicals Division LU-9J  
Remediation and Reuse Branch  
77 W. Jackson Blvd, Chicago, IL 60604-3590