

MRT.

STATE OF MICHIGAN

COUNTY OF BAY

ATTESTED

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CLERK OF CIRCUIT COURT

STATE OF MICHIGAN
CIRCUIT COURT FOR BAY COUNTY

Deputy

FRANK J. KELLEY, Attorney General
of the State of Michigan, ex rel,
the MICHIGAN DEPARTMENT OF NATURAL
RESOURCES, and ROLAND HARMES,
Director of the Michigan Department
of Natural Resources,

Plaintiffs,

v

GENERAL MOTORS CORPORATION,

Defendant.

Civil Action No. 92-3440-CE
Honorable

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CONSENT JUDGMENT

The plaintiffs are, Frank J. Kelley, Attorney General of the State of Michigan, ex rel, the Michigan Department of Natural Resources ("MDNR"), and Roland Harmes, the Director of the MDNR.

The defendant is General Motors Corporation ("GM").

The Consent Judgment requires GM to identify actions necessary to determine the vertical and horizontal extent of contamination, if any, including any off-site migration, at the General Motors Powertrain Plant ("GMPT Bay City Plant") located on approximately 130 acres at 100 Fitzgerald Street, Bay City Michigan 48708-5460 under the Michigan Environmental Response Act, 1982

PA 307, as amended, MCL 299.601-618; MSA 13.32(1) et seq. ("MERA"). The Consent Judgment also establishes interim measures necessary to alleviate alleged ongoing contamination until a final remedial plan is completely implemented, creates an enforceable and workable process to lead to final remediation of the site, sets stipulated penalties for violations of the Consent Judgment, and sets a settlement amount for alleged past violations of law. In particular, the Consent Judgment requires GM to comply with certain specific provisions of the Water Resources Commission Act, 1929 PA 245, as amended, MCL 323.1-12a; MSA 3.521-531(1) ("WRCA") and rules MAC R 323.1101 et seq., to comply with specific provisions of its National Pollutant Discharge Elimination System ("NPDES") permit M10001121 for the GMPT Bay City Plant, and sets stipulated penalties for failing to do so.

The Consent Judgment does not address the issue of natural resource damages or the issue of certain debris contaminated with polychlorinated biphenyls ("PCBs") and chromium which is alleged to have originated from concrete renovation projects at the GMPT Bay City Plant and is alleged to have been deposited off-site. These two issues are left to other proceedings.

The plaintiffs assert that the remedial actions set forth in the Consent Judgment are necessary to abate the alleged releases of hazardous substances into the environment, to control potential future releases of hazardous substances, to ensure compliance with permits, rules, and laws, and to protect the environment and the public health, welfare, and safety.

THEREFORE, before any testimony is taken, and without this Consent Judgment constituting an admission of any allegations in the complaint or as evidence of the same, and upon the consent of the parties by their attorneys,

IT IS ORDERED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions pursuant to the MERA, MCL 299.16, and the WRCA, MCL 323.10. This Court also has personal jurisdiction over GM and has venue over these proceedings. For purposes of the Consent Judgment, GM waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this Circuit.

2. The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the issues raised, and properly protect the interests of the people of the State of Michigan.

3. This Consent Judgment is the result of negotiations between GM and the MDNR and is in settlement of disputed issues of law and fact which are specific to the GMPT Bay City Plant. Nothing contained herein shall be construed as necessarily appropriate for or applicable to, circumstances which may arise, or occur at other GM facilities, or to other situations that may arise outside of this Consent Judgment at the GMPT Bay City Plant.

Neither entry of this Consent Judgment nor anything in this Consent Judgment shall constitute, or be construed as, an admission of law or fact or as evidence of some or all of the violations alleged in the complaint, or as a waiver of a defense except as provided in paragraph 1.

4. Prior to termination of this Consent Judgment, the Court shall retain jurisdiction over the parties and subject matter of these actions to enforce this Consent Judgment and to resolve disputes arising under this Consent Judgment, including those that may be necessary for its construction, execution, or implementation.

II. PARTIES BOUND

5. This Consent Judgment shall apply to and be binding upon plaintiffs and defendant, including defendant's officers, directors, or employees, and their respective successors and assigns. No change or changes in the ownership or corporate status of GM shall in any way alter GM's responsibilities under this Consent Judgment. GM shall provide the MDNR with written notice following the transfer of ownership of part or all of the GMPT Bay City Plant, and shall also provide a copy of this Consent Judgment to any subsequent owners or successors prior to the transfer of ownership rights. GM shall comply with the requirements of section 10c of MERA. MCL 299.610c. GM shall ensure that its primary contractor shall maintain a copy of the Consent Judgment at the GMPT Bay City Plant available to any other contractor or subcontractor. GM shall require all contractors to have reviewed the Consent Judgment prior to beginning work. Notwithstanding the terms of any contract, GM shall be responsible for compliance with this Consent Judgment and for ensuring that its contractors, subcontractors, laboratories, and consultants perform all work in conformance with the terms and conditions of this Consent Judgment.

6. The signatories to this Consent Judgment certify that they are authorized to execute and legally bind the parties they represent.

III. STATEMENT OF PURPOSE

7. In entering into the Consent Judgment, the objectives of the plaintiffs and defendant are: (a) in accordance with MERA, to conduct a remedial investigation to determine the nature and extent of soil and water contamination, if any, the threat to the environment, and the threat to the public health, safety, and welfare caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the GMPT Bay City Plant; (b) in accordance with MERA, to conduct a feasibility study at the GMPT Bay City Plant in order to determine, evaluate, and select alternatives for remedial action to prevent, mitigate, abate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, contaminants, or injurious substances from the GMPT Bay City Plant; (c) to develop detailed plans for implementing any selected remedial action through the preparation of an approved Remedial Action Plan

("RAP"); (d) to remediate all releases or threatened releases of hazardous substances, pollutants, contaminants, or injurious substances by implementing the RAP; (e) to ensure compliance with current NPDES permit MIO001121, the WRCA pretreatment rules, and WRCA; and (f) to resolve alleged violations of MERA and WRCA.

8. The MDNR shall have the right to approve, disapprove, or approve with modification any or all activities conducted under this Consent Judgment. GM shall provide all appropriate and necessary information for the remedial investigations and feasibility studies, for the selection of remedial actions, for the development of RAPs, for the implementation of the RAPs, for compliance with permit NPDES MIO001121, the WRCA pretreatment rules, and WRCA, that is consistent with MERA, the MERA rules, MAC R 299.5101 et seq., the WRCA, and the WRCA rules, MAC R 323.1001 et seq.

IV. DEFINITIONS

9. "Consent Judgment" means this Consent Judgment and any appendix hereto, including any future modifications and any reports, plans, specifications, and schedules required by the Consent Judgment which, upon approval of the MDNR, but subject to the dispute resolution provisions of Section XXIII Dispute Resolution, shall be incorporated into and are enforceable under this Consent Judgment. The technical documents which will be considered approved by the MDNR upon entry of the Consent Judgment and incorporated herein are identified in the MDNR's letter dated December 1, 1992, which is incorporated as Exhibit 5.

10. "Defendant" means the General Motors Corporation, a Delaware corporation, with its principal offices at 3044 West Grand Boulevard, Detroit, Michigan.

11. "Plaintiffs" mean Frank J. Kelley, Attorney General of the State of Michigan, ex rel, the MDNR, and Roland Harmes, Director of the MDNR.

12. "Parties" means the plaintiffs and defendant.

13. Unless otherwise stated, "days" shall mean calendar days.

14. The term "response costs" means costs incurred in taking or conducting a response activity and shall have the same meaning as the term "response activity costs" as defined in MERA. Costs incurred means costs that have been dispersed or paid out by the State of Michigan. It does not include costs which are due or owed by the State of Michigan.

15. The term "hazardous substances" shall have the same meaning as defined in MERA.

16. All other terms used in this Consent Judgment which are defined in MERA, the MERA rules, WRCA, and the WRCA rules shall have the same meaning in this Consent Judgment as in MERA, the MERA rules, WRCA, and the WRCA rules, as is appropriate to the context in which they are used.

V. IMPLEMENTATION OF REMEDIAL INVESTIGATIONS, FEASIBILITY
STUDIES, AND REMEDIAL ACTION PLANS

17. GM shall prepare and perform all response activities in accordance with the schedules set forth in this Section V. The MDNR shall have the right to approve, disapprove, or approve with modification all response activities conducted pursuant to this Section V in accordance with Section XVIII Submissions and Approvals. All interim, final, and other response activities shall comply with MERA, the MERA rules, WRCA, and the WRCA Rules.

18. Due to the size and complexity of the GMPT Bay City Plant, GM recognizes the following subdivisions of the GMPT Bay City Plant ("areas"), and boundaries for those areas as shown on the map attached as Exhibit 1. The areas are:

a) Machine Storage Area. The machine storage area ("MSA") is a peninsula of land located in the northwest portion of the site. The MSA is approximately five (5) acres in size.

b) Lagoon Area. The lagoon area ("LA") is the two lagoons located adjacent to the Saginaw River and the land immediately surrounding the lagoons. GM has or will route storm, purged groundwater, noncontact cooling and quench water through the east and west lagoons. The east lagoon has been out of service since 1990. The lagoon area is approximately five (5) acres in size and is located in the north-central portion of the site.

c) Perimeter Banks. The perimeter banks area is the strip of land approximately five (5) acres in size, located outside the deep soil mixing wall surrounding the MSA and the LA. The perimeter banks area consists of the higher of either the river bottom or the land above the low water (chart) datum level which is at an elevation of 577.5 feet above sea level (International Great Lakes Datum, 1985, Coordinating Committee on Great Lakes Basin Hydraulic and Hydrologic Data, January 1992).

d) Inlet Slip. The inlet slip area is a body of water and associated bottom lands, approximately two (2) acres in size, delineated by the perimeter banks of the MSA to the west and the perimeter banks of the LA to the east. It includes the location of the GMPT Bay City Plant's cooling water intake as of the effective date of this Consent Judgment.

e) Support Facilities Area. The support facilities area consists of approximately ten (10) acres located north of the plant and south of the MSA and the lagoon area.

f) Undeveloped Area. The undeveloped area is land located on the northeast part of the property. It is approximately thirty-nine (39) acres in size.

g) Parking and Former Residential Area. The parking and former residential area is approximately thirty-five (35) acres of land located to the east and south of the plant building.

h) Plant Area. The plant area is the manufacturing building along with an approximately fifty (50) foot wide perimeter strip around the building. The building is approximately one million square feet in size.

i) Other areas, if any, identified later.

GM shall use these areas, and the boundaries for these areas, in all submissions to the plaintiffs. In the event of any conflict between the map attached as Exhibit I and the written description of the areas, the map shall control.

19. The following conditions, which are further outlined in the approved RI/FS Work Plan, apply to the performance of work under this Consent Judgment. With respect to potential off-site releases of hazardous substances, soil contamination identified at the property boundary which is determined to be above method detection limits and local background concentrations, and which is determined to be the responsibility of the GMPT Bay City Plant, will be investigated across the property boundary. Any investigation to be performed across the property boundary will be presumed to incorporate an equivalent adjacent grid sampling pattern moving out from the property boundary, unless GM supports the use of an alternate grid sampling pattern and obtains MDNR approval. In defining the extent to which sampling will take place, the following factors will be considered: 1) local background concentrations; 2) chemical impacts associated with off-site property uses; and 3) existing environmental monitoring data for adjacent properties. In the event off-site investigation is required, an appropriate schedule for implementing such investigation will be developed and incorporated herein in accordance with Section VII below.

20. GM shall comply with the terms and conditions of the MDNR approved "RI/FS Work Plan" attached hereto as Exhibit 2 and incorporated herein as part of this Consent Judgment. GM shall implement the terms and conditions of the RI/FS Work Plan in accordance with the schedules in paragraphs 21-25 below.

21. Within ten (10) days after entry of this Consent Judgment, GM shall begin to implement the approved RI/FS Work Plan.

22. GM shall complete all remedial investigation and feasibility study activities in accordance with the schedule in the approved RI/FS Work Plan, but shall not take more than thirty-five (35) months after entry of this Consent Judgment.

23. After completing implementation of the Remedial Investigation in the approved RI/FS Work Plan, GM shall submit a Remedial Investigation Report ("RI Report") detailing and setting forth the results of the RI portion of

the RI/FS Work Plan. The MDNR shall provide comments to the RI Report within sixty (60) days after receiving the RI Report. Subject to the dispute resolution provisions of Section XXIII below, within thirty (30) days after receiving comments from the MDNR, GM shall submit a final RI Report. After completing implementation of the Feasibility Study in the approved RI/FS Work Plan, GM shall submit a Feasibility Study Report ("FS Report") detailing and setting forth the results of the FS portion of the approved RI/FS Work Plan. The MDNR shall provide comments to the FS Report within sixty (60) days after receiving the FS Report. Subject to the dispute resolution provisions of Section XXIII below, within thirty (30) days after receiving comments from the MDNR, GM shall submit a final FS Report.

24. Within ninety (90) days after submitting its final FS Report, GM shall submit a draft RAP to the MDNR. The MDNR shall review the draft RAP in accordance with section 11a-11g of MERA, MCL 299.611a-g. GM shall have all of the rights provided under section 11a of MERA. Stipulated penalties shall not apply to the process of approving the draft RAP except for the initial submittal date.

25. GM shall begin implementation of a RAP within thirty (30) days after the MDNR approval. Stipulated penalties shall apply to GM's failure to begin implementation of an approved RAP within thirty (30) days and to any other failure to implement the approved RAP. This paragraph 25 is subject to the dispute resolution provisions of Section XXIII Dispute Resolution and stipulated penalties shall not accrue until the dispute resolution process provided by Section XXIII Dispute Resolution is exhausted.

26. The MDNR recognizes that there is an ongoing business operation currently at the GMPT Bay City Plant facility. The MDNR will take into consideration in reviewing a RAP that there is an ongoing business operation at the GMPT Bay City facility, if there is, as far as the law and the rules permit.

VI. IMPLEMENTATION OF INTERIM RESPONSE ACTIVITIES

27. GM shall undertake the following interim response activities at the GMPT Bay City Plant to stop or prevent the release of PCBs to the environment:

a) Meet a daily maximum discharge limitation of nondetect for total PCBs at outfall 001A by May 15, 1993 by installing control equipment and taking any other necessary action.

b) Meet a daily maximum discharge limitation of nondetect for total PCBs discharged to the Bay City Publicly Owned Treatment Works ("POTW") (designated as Outfall 010) by March 15, 1993 by installing control equipment and taking any other necessary action.

c) For the purposes of this Consent Judgment, the term "nondetect for total PCBs" shall mean a concentration of total PCBs not to exceed 0.1 ug/l

for total PCBs unless higher levels are appropriate because of sample matrix interference. Total PCBs shall be defined as the sum of Aroclors 1242, 1248, 1254, and 1260. In addition, any detected Aroclor-specific measurements shall be reported.

d) For the purposes of determining compliance with subparagraphs 27(a) and (b), GM shall take weekly, 24 hour composite, samples for both outfall 001A and outfall 010. During events which cause a bypass of the treatment system for outfall 001A, GM shall take a grab sample during the first thirty minutes of the discharge, or as soon as practicable thereafter. If the event is of sufficient duration, a 24-hour composite sample will be collected. If the event exceeds 24 hours in duration, subsequent grab and composite samples will be collected as for the first 24 hours of the event. The sampling procedures, preservation and handling, and analytical protocol shall comply with EPA method 608. Samples taken in accordance with this subparagraph 27d) which detect PCB levels in noncompliance with the subparagraphs 27a) or 27b) shall create a rebuttable inference under the Consent Judgment that any discharges occurring after that result are above detection.

e) GM shall comply with the terms and conditions of Section 2.0 and Section 4.0 of the MDNR approved "Well Point Extraction System and Inlet Slip and Sediment Isolation Work Plan" ("Interim Response Activities Work Plan"), incorporated herein as part of this Consent Judgment and attached hereto as Exhibit 3, by installing a well point extraction system as described in that Section of the Interim Response Activities Work Plan in accordance with the schedule provided therein.

f) GM shall comply with the terms and conditions of Section 3.0 of the approved Interim Response Activities Work Plan by isolating the inlet slip as described in that Section of the Interim Response Activities Work Plan in accordance with the schedule provided therein, including submitting a complete permit application to all appropriate agencies by January 31, 1993. If GM's permit application to isolate the inlet slip is not issued or is denied, then GM shall not be required to address the inlet slip as an interim response activity but remains obligated to address the inlet slip through the approved RI/FS Work Plan and RAP. If GM obtains a permit to isolate the inlet slip which authorizes isolation of the inlet slip on an interim basis only, it might be necessary for GM to seek an additional permit to isolate the inlet slip as part of a final RAP, if appropriate. Stipulated penalties shall not apply to GM's efforts to obtain a permit to isolate the inlet slip, except for GM's obligation to submit a complete permit application by January 31, 1993.

g) For purposes of subparagraph 27(f), "isolate" shall mean to prevent the movement of surface water or sediments from the inlet slip to and from the river at up to an elevation of 2 feet above the 100 year flood elevation.

h) GM shall comply with the terms and conditions of Sections 3 and 5 of the "Work Plan for End-of-Pipe Treatment and Recirculation

Implementation" ("Water Discharge Work Plan"), attached hereto as Exhibit 4 and incorporated herein as part of this Consent Judgment. The date for completion of implementation of all elements of Sections 3 and 5 of the Water Discharge Work Plan is May 15, 1993. For purposes of this Consent Judgment, the following elements of Sections 3 and 5 of the Water Discharge Work Plan are considered significant elements to which stipulated penalties shall apply:

<u>Elements</u>	<u>Dates for Completion</u>
Install and begin operation of end-of-pipe treatment at operational capacity of at least 4,000 gallons per minute to treat outfall 001A effluent	May 15, 1993
Reroute water from the lagoons to the powerhouse	May 15, 1993

i) GM shall comply with the terms and conditions of Sections 2 and 4 of the Water Discharge Work Plan. The date for completion of implementation of all elements in Sections 2 and 4 of the Water Discharge Work Plan is March 15, 1993. For purposes of this Consent Judgment, the following elements of Sections 2 and 4 of the Water Discharge Work Plan are considered significant elements to which stipulated penalties shall apply:

<u>Element</u>	<u>Date for Completion</u>
Install end-of-pipe treatment for process waste discharges from the plant's wastewater treatment plant	March 15, 1993
Install end-of-pipe treatment for sanitary waste discharges to the City of Bay City POTW	March 15, 1993

j) GM shall eliminate all known unpermitted outfalls within thirty (30) days after entry of the Consent Judgment either by permanently ceasing discharge from the unpermitted outfall or by submitting a complete application for a permit for the unpermitted outfall. GM shall eliminate any unpermitted outfalls discovered after entry of the Consent Judgment within sixty (60) days after the discovery of the unpermitted outfall in the same manner specified for known unpermitted outfalls. If an application for a permit is denied, then GM shall cease discharging immediately from the relevant outfall. Currently known unpermitted outfalls include only:

- a) What is commonly known as the emergency bypass sewer; and
- b) What is commonly known as the old city sewer west of the lagoons.

k) The Attorney General and the MDNR agree to use enforcement discretion, as determined in their joint judgment alone, in applying stipulated penalties for GM's failure to comply with the interim response activities and conditions in this paragraph, including the sampling specified in subparagraph 27d). They agree to consider whether the particular circumstances such as, but not limited to, unusual storm events warrant waiving or mitigating the application of stipulated penalties. The State's enforcement discretion under this subparagraph 27k) is not subject to the review of the Court, but GM retains all rights to argue that particular circumstances warrant waiving or mitigating the application of stipulated penalties to the Court.

28. The parties acknowledge and agree that this Consent Judgment does not constitute a warranty or representation of any kind by plaintiffs that the work performed by GM will result in achieving the remedial criteria established by law.

VII. ADDITIONAL RESPONSE ACTIVITY

29. As used in this Section, the term "additional response activity" shall mean all activities not specifically set forth in an approved remedial action plan, or work plans that MDNR determines are necessary to meet the performance and cleanup standards described in the MERA rules and all applicable federal and state requirements that do not fundamentally change the overall remedial approach outlined in an approved remedial action plan or work plan. The MDNR shall not require additional response activities covered by the approved RI/FS Workplan except based on material information not known to the MDNR at the date of entry of the Consent Judgment. These activities may include, but are not limited to, modifications to the components of an approved remedial action plan, remedial action, and to the type and cost of materials, equipment, facilities, services, and supplies used to implement the remedial action.

30. In the event that the MDNR determines that additional response activity is necessary, the MDNR will provide written notice of such additional response activity to GM's project coordinator. GM may also propose additional response activities which shall be subject to approval by the MDNR. GM shall complete any additional response activities determined to be necessary by the MDNR, or otherwise agreed to by the parties, in accordance with the standards, specifications, and schedules approved by the MDNR.

31. GM shall submit a plan for additional response activities to the MDNR for approval within sixty (60) days after receipt of the MDNR written notice that additional response activities are necessary unless the MDNR agrees to extend the time period.

32. Nothing in this Section VII shall limit the power and authority of the MDNR, or this Court, to take, direct, or order all appropriate action to protect the public health, welfare, and safety; the environment; or to prevent, abate, or minimize an actual or threatened release of contaminants,

hazardous substances, or pollution from the GMPT Bay City Plant and to prevent, abate, or minimize the direct or indirect discharge of injurious substances from the GMPT Bay City Plant.

VIII. COMPLIANCE WITH NPDES PERMIT MI0001121

33. By complying with subparagraphs 27a), 27d), 27f), 27g), 27h) and 27j) of this Consent Judgment by May 15, 1993, GM will be deemed to be compliant with Part I.A.1.1 of the current NPDES Permit MI0001121.

34. By complying with subparagraph 27a), GM will be deemed to have satisfactorily completed any obligation imposed by the special condition contained in Part I.A.6 of the current NPDES Permit MI0001121.

35. Upon completion of implementation of the interim response action of isolating the inlet slip and sediments or other interim response as outlined in subparagraph 27f) of this Consent Judgment together with implementation of the RI/FS Work Plan described at Section V of this Consent Judgment, and implementation of an approved RAP for the inlet slip and associated sediments, GM shall be deemed to have satisfactorily completed any obligation imposed by the special condition contained in Part I.A.5 of the current NPDES Permit MI0001121.

36. This Consent Judgment addresses alleged past violations of law. Nothing in this Consent Judgment shall prevent or prohibit the MDNR from establishing different standards or requirements pursuant to the permitting process under the WRCA and administrative rules.

IX. ENGAGEMENT OF A CONTRACTOR

37. GM has retained and received approval from MDNR of a qualified and experienced contractor for the purpose of performing the work required by this Consent Judgment. All work performed by said contractor pursuant to this Consent Judgment shall be under the general direction and supervision of a qualified individual with a minimum of five (5) years of direct experience in the investigation and clean-up of sites of environmental contamination. GM's contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A redacted copy of GM's contract with the contractor, including a statement of qualifications, identification of personnel designated for the project, and the contracted work to be performed, shall be provided to the MDNR within fifteen (15) days after the effective date of this Consent Judgment. For each subcontractor engaged prior to the entry of this Consent Judgment, GM has provided a list to MDNR regarding the identity and qualifications of each subcontractor and received MDNR approval. For all subcontractors engaged after the entry of this Consent Judgment, GM shall notify the MDNR regarding the identity and qualifications of all subcontractors as soon as each subcontractor is engaged or at least two (2) weeks prior to the subcontractor's commencement of GMPT Bay City Plant work, whichever occurs first. The MDNR shall have the right to disapprove any contractor, subcontractor, or project personnel

based on professional qualifications, conflicts of interest, and/or deficiencies in previous similar work within ten (10) days after GM notifying the MDNR of a contractor, subcontractor, or project personnel. The MDNR may notify GM prior to the expiration of the ten (10) day notification period that it will not disapprove a contractor. If the MDNR disapproves any such person(s), the MDNR will provide written notice to GM thereof, and GM shall have thirty (30) days to identify any replacement(s).

X. QUALITY ASSURANCE/SAMPLING

38. On the 10th day of each month, GM shall submit the final results of all sampling or tests and all other analytical data received in the prior month by GM, its contractors, or others working on GM's behalf, in the course of implementing this Consent Judgment to the MDNR. This requirement shall not apply to sampling information otherwise required to be submitted by GM pursuant to its current NPDES permit M10001121. Such information shall continue to be submitted as required by that permit.

39. GM shall allow the MDNR or its authorized representatives to take split and/or duplicate samples of any samples collected by GM or its contractors pursuant to the implementation of Section V Implementation of Remedial Investigations, Feasibility Studies, and Remedial Action Plans, Section VI Interim Response Activities, Section VII Additional Response Activity, and Section VIII Compliance with NPDES Permit M10001121 and the WRCA Pretreatment Rules, of this Consent Judgment. Except as may be necessary for sampling required pursuant to Section XIII Creation of Danger, GM shall notify the MDNR not less than seven (7) days in advance of any sample collection activity. In addition, the MDNR shall have the right to take any additional samples it deems necessary for the purposes of monitoring or evaluating implementation of this Consent Judgment. GM may take split and/or duplicate samples of any samples collected by the MDNR pursuant to this paragraph. The MDNR will provide sample results to GM within seven (7) days after the results become available to the MDNR.

40. Notwithstanding any provision of this Consent Judgment, the MDNR shall retain all of its information gathering and inspection authorities under MERA, WRCA, and other applicable law, statute, rule, regulation, or permit.

XI. PROJECT COORDINATORS

41. MDNR's project coordinator shall be:

Allan Brouillet
Michigan Department of Natural Resources
Saginaw Bay District Headquarters
Environmental Response Division
503 N. Euclid Ave.
Bay City, MI 48706
Telephone (517) 684-9141 Ext. 8305

GM's project coordinator shall be:

Alvin P. Garwick, Jr.
General Motors Corporation
GM Powertrain Division
Bay City Plant
100 Fitzgerald Street
Bay City, Michigan 48708-5460
Telephone: (517) 894-7257

42. The MDNR's project coordinator will be the primary designated representative for the MDNR at the GMPT Bay City Plant. All communications between the plaintiffs and GM, including but not limited to all documents, reports, approvals, and other submissions and correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Judgment shall be directed through the project coordinators. If plaintiffs or GM decide to change its designated project coordinator, then the party changing its designated project coordinator shall provide, in writing, the name, address, and telephone number of the successor to the other parties seven (7) days prior to the effective date of the change. This paragraph does not relieve GM from any other reporting obligation under applicable law, statute, rule, regulation, or permit.

43. The MDNR may designate other authorized representatives, employees, contractors, and consultants to observe and monitor, in accordance with Section XII below, the progress of any activity done under this Consent Judgment.

44. GM's project coordinator shall have primary responsibility for implementing the response activities under this Consent Judgment at the GMPT Bay City Plant. GM's project coordinator may assign a representative, including a contractor or consultant, to serve as a Site Representative for oversight of performance of daily operations.

XII. ACCESS

45. To the extent access to the GMPT Bay City Plant and surrounding area is owned, controlled by, or available to GM from the effective date of this Consent Judgment, the MDNR, its authorized employees and representatives shall have access at all reasonable times to the GMPT Bay City Plant and surrounding area for the purpose of observing and monitoring the progress of any activity or inspecting documents under this Consent Judgment upon presentation of proper credentials. The MDNR's right to gain access under this provision shall include, but is not limited to:

a) Monitoring the response activities or any other activities taking place under this Consent Judgment on the GMPT Bay City Plant and surrounding area;

b) Verifying any data or information submitted to the MDNR under this Consent Judgment;

c) Conducting investigations relating to contamination at the GMPT Bay City Plant and surrounding area relevant to an activity conducted under this Consent Judgment;

d) Obtaining samples relevant to an activity conducted under this Consent Judgment;

e) Assessing the need for, or planning and implementing, response activities at the GMPT Bay City Plant and surrounding area; and

f) Inspecting and copying non-privileged records, operating logs, contracts, and other documents upon reasonable notice required to assess compliance with this Consent Judgment.

All persons granted access to the GMPT Bay City Plant and surrounding area pursuant to this Consent Judgment shall comply with all applicable health and safety laws and regulations, including, at a minimum, the Health and Safety Plan for this project and GM plant safety requirements. MDNR representatives shall provide their own personal protective equipment.

46. To the extent that the GMPT Bay City Plant or any other area where GM will perform response activities under this Consent Judgment is owned or controlled by persons other than GM, GM shall use its best efforts to secure from such persons access for plaintiffs and their authorized employees and representatives. Each access agreement entered into by GM in order to perform response activities under this Consent Judgment shall be embodied in a written document. GM shall provide the MDNR with a copy of the access agreement pursuant to this paragraph. If, after using best efforts, GM is unable to obtain access within forty-five (45) days after GM requests access for plaintiffs and their authorized employees and representatives, GM shall notify the MDNR within five (5) days. Plaintiffs may thereafter assist GM in obtaining access. GM shall reimburse the plaintiffs for all lawful costs not inconsistent with law incurred in obtaining access. GM shall pay such costs in the manner provided in Section XXV Reimbursement of Costs.

47. Notwithstanding any provision of this Consent Judgment, the MDNR shall retain all of its inspection and access authorities under applicable law, statute, rule, regulation, or permit.

XIII. CREATION OF DANGER

48. Upon obtaining information concerning the occurrence of any event arising during the performance of response activities conducted pursuant to this Consent Judgment that causes or threatens a reportable release as defined in Section 10a of MERA of a hazardous substance from the GMPT Bay City Plant or that may present an imminent and substantial endangerment to on-site personnel, to the public health, safety, and welfare, or the

environment, GM shall immediately undertake all appropriate action to prevent, abate, or minimize such release or endangerment and shall immediately notify the MDNR's project coordinator, or in the event of the project coordinator's unavailability, shall notify the Pollution Emergency Alerting System (PEAS, telephone number as of the effective date of the Consent Judgment was 1-800-292-4706). In such an event, any action undertaken by GM shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan. GM shall submit a written report setting forth the events that occurred, the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the incident, and the measures taken or to be taken to prevent recurrence of such an incident. Regardless of whether GM notifies the MDNR under this paragraph, if response activities pursuant to this Consent Judgment cause or threaten a reportable release as defined in Section 10a of MERA; or may present an imminent and substantial endangerment to on-site personnel, to public health, safety, and welfare, or to the environment; the MDNR may: (a) require GM to stop response activities at the GMPT Bay City Plant for such period of time as may be needed to prevent or abate such release, threat, or endangerment; (b) require GM to undertake any such activities that the MDNR determines are necessary to prevent or abate any such release, threat, or endangerment; and/or (c) undertake any actions that the MDNR determines are necessary to prevent or abate such release, threat, or endangerment. If the MDNR requires GM to stop response activities due to unforeseen events which are not attributable to the fault of GM, then delays caused by a cessation of activities will be considered a force majeure pursuant to Section XXII of this Consent Judgment. In the event that the MDNR undertakes any action to abate a release, threat, or endangerment, subject to the dispute resolution provisions of Section XXIII Dispute Resolution, GM shall reimburse the MDNR for all costs incurred by the MDNR that are not inconsistent with law. GM shall pay such costs in the manner provided in Section XXVI Reimbursement of Costs.

49. Nothing in this Section XIII shall limit the power and authority of the MDNR, the State of Michigan, or this Court, to take, direct, or order all appropriate action to protect the public health, welfare, and safety, or the environment; or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants on, at, or from the GMPT Bay City Plant. Such action shall be consistent with applicable law, statutes, rules, regulations, and permits.

XIV. COMPLIANCE WITH OTHER LAWS

50. The signing of this Consent Judgment does not relieve GM from complying with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including, but not limited to, MERA, the MERA Rules, WRCA, and the WRCA Rules, laws relating to occupational safety and health, and other state environmental laws. Other agencies may also be called upon to review the conduct of response activities under this Consent Judgment.

XV. USE OF HAZARDOUS WASTE FACILITIES

51. GM shall only use facilities authorized in accordance with the applicable requirements of the Resource Conservation and Recovery Act ("RCRA"), 42 USC 6901, et seq., and, additionally for in-state facilities, the Michigan Hazardous Waste Management Act ("HWMA"), 1979 PA 64, as amended, MCL 299.501 et seq.; MSA 13.30(1), et seq., for the off-site transfer, treatment, storage, or disposal of hazardous wastes from the GMPT Bay City Plant.

XVI. RECORD RETENTION/ACCESS TO INFORMATION

52. GM and its representatives, consultants, and contractors shall preserve and retain all records, sampling or test results, charts, and other documents that are maintained or generated pursuant to this Consent Judgment for a period of three (3) years after the Consent Judgment's termination. After the three (3) year period of document retention expires, GM and its successors shall obtain the written permission from both the Environmental Response Division and the Surface Water Quality Division of the MDNR prior to the destruction of any documents. Upon request, GM and/or its successors shall relinquish custody of all non-privileged documents or provide copies of all non-privileged documents to the MDNR. Notwithstanding any other provision, GM's request for permission to destroy any document shall be accompanied by a copy of this Consent Judgment and sent to both the following addresses:

Chief
Environmental Response Division
Michigan Department of Natural Resources
P.O. Box 30028
Lansing, MI 48909

Chief
Surface Water Quality Division
Michigan Department of Natural Resources
P.O. Box 30028
Lansing, MI 48909

53. GM's obligation to make documents available to the MDNR shall be subject to its rights under the attorney-client privilege and work product doctrine. GM shall identify correspondence which it is claiming is subject to attorney-client privilege or work product doctrine between GM or GM-retained attorneys and the GMPT Bay City Plant or between the attorneys by a) number of documents, b) period of time when written, and c) the general subject matter. GM shall identify any other documents it is claiming are subject to the attorney-client privilege or the work product doctrine by a) the author and to whom the document was addressed; b) the date; and c) the general subject matter; and shall state the factual and legal basis for claiming the privilege. The MDNR shall respond in writing within one hundred eighty (180) days after receiving GM's request to destroy

any document. The MDNR shall confirm whether or not it will exercise its right to copy applicable records, and shall make arrangement for such copying within a reasonable period of time, not to exceed thirty (30) days after providing confirmation. If the MDNR does not exercise its right to copy applicable records within thirty (30) days after providing confirmation to GM pursuant to this subparagraph, GM shall have no obligation to retain such records.

54. Upon written request, GM shall provide copies to the MDNR of all non-privileged documents and information within its possession and/or control or, also to the extent it is within GM's control to do so, documents or information of its employees or authorized representatives relating to the response activities at the GMPT Bay City Plant pursuant to this Consent Judgment, including, but not limited to, all records, sampling or test results, charts, and other material documents that are maintained or generated pursuant to this Consent Judgment. Upon request and reasonable notice, GM shall make available GM's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the response activities at the GMPT Bay City Plant to the MDNR.

XVII. NOTICES

55. Whenever notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one party to another party under this Consent Judgment, the party giving notice or forwarding a document shall direct it to the following individuals at the following addresses unless specified otherwise in this Consent Judgment or subsequently changed in writing:

As to Plaintiffs:

Allan Brouillet
Michigan Department of
Natural Resources
Saginaw Bay District Headquarters
Environmental Response Division
503 N. Euclid Ave.
Bay City, MI 48706
Telephone: (517) 684-9141 Ext. 8305

As to Attorneys:

Todd B. Adams
Assistant Attorney General
Environmental Protection
Division
525 West Ottawa
Room 640, Law Building
Lansing, MI 48909
Telephone: (517) 373-7780

As to GM:

Alvin P. Garwick, Jr.
General Motors Corporation
GM Powertrain Division
Bay City Plant
100 Fitzgerald Street
Bay City, Michigan 48708-5460
Telephone: (517) 894-7257

Michael G. Cooke
Honigman Miller Schwartz & Cohn
2290 First National Building
Detroit, MI 48226
Telephone: (313) 256-7310

and

Laura R. Tucker
Office of General Counsel
General Motors Corporation
New Center One Building
3031 West Grand Boulevard
P.O. Box 33122
Detroit, MI 48232
Telephone: (313) 974-1572

XVIII. SUBMISSIONS AND APPROVALS

56. GM shall deliver all plans, reports, or other submissions ("submissions") to the MDNR in accordance with the schedule set forth in this Consent Judgment. Prior to approval by the MDNR, GM shall mark any report submitted to the MDNR for approval "Draft" and shall include, in a prominent location, the following disclaimer: "DISCLAIMER: This document is a DRAFT document prepared by GM pursuant to a Court Judgment, and which has not received final acceptance from the Michigan Department of Natural Resources ("MDNR"). The opinions, findings, and conclusions expressed are those of its authors and not those of the MDNR."

57. Within sixty (60) days after receipt of any submission relating to the response activities that is required to be submitted for approval under this Consent Judgment, the MDNR project coordinator will, in writing, either (a) approve the submission; (b) disapprove the submission, notifying GM of any deficiencies; or (c) approve the submission with modifications.

58. Upon receipt of a notice of approval or approval with modification from the MDNR, GM shall proceed to take any action required by the plan, report, or other submission as approved or as modified. GM shall also submit a new cover page marked "Final."

59. The MDNR shall specify all reasons for the disapproval or modification in any notice of disapproval or modification. Unless the notice of disapproval specifies a longer time period, GM shall correct the deficiencies and resubmit the submission ("revised submission") to the MDNR within thirty (30) days after receiving a notice of disapproval. Notwithstanding a notice of disapproval, GM shall proceed to take any response action not directly related to the deficient portion of the submission in accordance with the applicable approved schedule. If the MDNR disapproves the revised submission, then the MDNR will so advise GM in writing. GM shall be considered to have failed to complete the submittal in a timely manner or failed to have provided a submission of acceptable quality from the date of the first submission.

60. A finding of approval or of an approval with modifications shall not mean that the MDNR concurs with all conclusions, methods, or statements in the approved, or the approved with modifications, submission(s).

61. No informal advice, guidance, suggestions, or comments by the MDNR regarding any GM submission shall relieve GM of its obligation to obtain any approval required by this Consent Judgment. Nothing in this provision, however, limits GM's right to reply on verbal approvals provided by the MDNR's Project Coordinator, or a representative of the Project Coordinator designated by the MDNR. Verbal approvals shall be used solely for changes in the nature of necessary field changes, such as adjustments to borehole/well locations to avoid obstructions such as structures, buried objects, underground utilities or to allow access for drill rig (well/borehole adjustments); changes in sampling equipment or approach in order to achieve the objectives of the RI/FS Work Plan, such as changes that may be needed if there is insufficient sample recovery or difficult drilling conditions (sampling method changes); changes in sampling parameters such as interchanging Appendix IX and TCL/TAL sample locations based on poor sample recovery at proposed Appendix IX locations (sampling parameter changes); changes to the program which cannot be completed due to actual field conditions such as installation of deep sand well when no deep sand is encountered (Work Plan modifications based on actual field conditions). Such verbal approvals shall be confirmed in writing by GM within seven (7) days after receiving the verbal approval.

XIX. PROGRESS REPORTS

62. GM shall provide written semi-annual progress reports detailing the response activities at the GMPT Bay City Plant to the MDNR. The written semi-annual progress reports shall: (a) describe the actions that have been taken toward achieving compliance with the Consent Judgment during the previous six months and by whom; and (b) describe any potential or anticipated problems in meeting an approved schedule under this Consent Judgment. GM shall submit semi-annual progress reports to MDNR beginning June 1, 1993 and continuing thereafter until certification of completion as provided in Section XXX Certification of Completion.

XX. INDEMNIFICATION

63. GM shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of GM, its officers, employees, agents, contractors and any persons acting on its behalf or under its control in carrying out response activities pursuant to this Consent Judgment. The State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives shall not be held out as a party to any contract entered into by or on behalf of GM in carrying out actions pursuant to this Consent Judgment. GM, its contractors, and its subcontractors shall not be considered agents of the State of Michigan. GM shall not indemnify or hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives from their own negligence, gross negligence, as defined at MCL 691.1407(2)(c), or willful misconduct. This exclusion shall not apply

for negligence of the State of Michigan and its departments, agencies, officials, or employees in reviewing, modifying, approving, or denying Work Plans, reports or other documents submitted under this Consent Judgment.

64. GM waives any and all claims or cause of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from or on account of any contract, agreement, or arrangement between GM and any person for performance of response activities at the GMPT Bay City Plant or at any other property where response activities are performed under this Consent Judgment, including, but not limited to, claims on account of construction delays.

65. GM shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action for damages or reimbursement of or against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives arising from or on account of any contract, agreement, or arrangement between GM and any person for performance of response activities at the GMPT Bay City Plant or at any other property where response activities are performed under this Consent Judgment, including, but not limited to, claims on account of construction delays.

For any claim or threatened claim that plaintiffs receive for which plaintiffs believe GM shall provide indemnification pursuant to paragraphs 63 and 65, the plaintiffs shall provide GM with notice of such claim, including, but not limited to, a copy of the claim if it is made in writing, within sixty (60) days after receipt of the claim.

XXI. MODIFICATIONS/INCORPORATION BY REFERENCE

66. This Consent Judgment shall only be modified upon the written agreement of the MDNR by signature of the MDNR's legal counsel and of GM by signature of legal counsel for GM or a duly authorized representative of said legal counsel, except for submissions under Section XVIII Submissions and Approvals which will be incorporated as provided in paragraph 67.

67. Any submissions and attachments to submissions required by this Consent Judgment which the MDNR has approved are or shall be incorporated into this Consent Judgment by reference. Any delay or noncompliance with such approved submissions or attachments to a submission shall be considered delay or noncompliance with the requirements of the Consent Judgment and shall subject GM to penalties pursuant to Section XXV Stipulated Penalties except as expressly provided elsewhere in this Consent Judgment.

XXII. FORCE MAJEURE

68. Any delay attributable to Force Majeure shall not be deemed a violation of GM's obligations under this Consent Judgment in accordance with this Section.

69. For the purpose of this Consent Judgment, the term "Force Majeure" means an occurrence or nonoccurrence arising from causes beyond the control of GM, including, but not limited to, an act of God that could not have been avoided or overcome by due diligence. "Force Majeure" specifically does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, or failure to obtain a permit or license as a result of GM's actions or omissions, including, but not limited to, denial of a permit because the permit application is incomplete or not in compliance with law or regulations. If the MDNR fails to review and either approve or disapprove a complete permit application by GM within a reasonable period of time, then the unreasonable delay shall be considered an excusable delay. The MDNR is not responsible for the actions of any third party.

70. When circumstances occur which GM believes constitute a Force Majeure, GM shall notify the MDNR by telephone or telefax of the circumstances within forty-eight (48) hours after GM first becomes aware of those circumstances. Within seven (7) days after GM first became aware of such circumstances, GM shall supply a written explanation of the cause(s) of any actual or expected delay to the MDNR, the anticipated duration of the delay, the measures taken, and to be taken, by GM to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure by GM to comply with the written notice provision of this paragraph shall constitute a waiver of GM's right to assert a claim of Force Majeure with respect to the circumstances in question. The MDNR shall review GM's written report and respond within fourteen (14) days after receipt that it agrees or disagrees that the proposed delay was caused by Force Majeure.

71. If the MDNR agrees that a delay is or was caused by Force Majeure, then GM's delay shall be excused. The MDNR shall provide GM with such additional time as may be necessary to compensate for the Force Majeure event. In no event shall the additional time be longer than the duration of the Force Majeure and its consequences. Any determination by the MDNR that an event does not constitute a Force Majeure shall be subject to dispute resolution under Section XXIII Dispute Resolution. GM shall have the burden of demonstration (a) that the delay is or was caused by a Force Majeure event; and (b) that the amount of additional time requested is necessary to compensate for that event.

XXIII. DISPUTE RESOLUTION

72. Except for disputes resolved in accordance with paragraphs 24 or 27k) of this Consent Judgment, the dispute resolution procedures of this Section XXIII shall be the exclusive mechanism to resolve disputes arising between

the parties under this Consent Judgment. The dispute resolution procedures of this Section XXIII shall apply without limitation to all provisions of this Consent Judgment, including, to the extent appropriate, disputes otherwise addressed in accordance with paragraph 24 of this Consent Judgment.

73. GM and the MDNR shall initially negotiate informally any dispute that arises under this Consent Judgment. Informal negotiations shall end ten (10) days after GM or the MDNR advises the other that a dispute exists unless the parties agree otherwise in writing. In the absence of any written notice of dispute, the MDNR position shall be binding on the parties.

74. If GM and the MDNR cannot informally resolve a dispute under the Consent Judgment, then either party may initiate formal dispute resolution by sending written notice to the other within ten (10) days after the end of informal negotiations. The notice shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation on which the party relies. The other party shall serve a written reply on the party who initiated dispute resolution within ten (10) days after receiving the written notice of dispute. The written reply shall state the replying party's understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation on which the party relies.

75. If the parties fail to resolve a dispute within ten days after the exchange of the statements of positions, then the dispute shall be resolved in accordance with the position of the MDNR unless GM files a motion for resolution of a dispute with this Court within twenty (20) days after receipt of the MDNR's proposed resolution. The motion for resolution of a dispute shall set forth the matter in dispute, the parties' efforts to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved in order to insure orderly implementation of this Consent Judgment.

76. Except as to the payment of stipulated penalties assessed, the filing of a motion for resolution of a dispute with this Court shall not of itself extend or postpone any obligation of GM under this Consent Judgment.

77. GM shall not be assessed stipulated penalties for disputes resolved in its favor. In addition, if the Court expressly finds by clear and convincing evidence that GM, in good faith and with a reasonable basis, exercised its right to invoke dispute resolution under this Section and such dispute is not resolved in its favor, then stipulated penalties shall accrue only from the date such dispute is finally resolved as set forth herein, until compliance is achieved. Otherwise, stipulated penalties shall begin to accrue as provided in paragraph 87. In any event, the exercise of the dispute resolution procedures of this Section will stay the assessment of stipulated penalties pending resolution of the dispute.

78. In proceedings under this Consent Judgment on any dispute relating to MERA, the burden of proof and standard of review shall be as set forth in MERA Section 16(5), MCL 299.616(5).

79. In other proceedings under this Consent Judgment, nothing herein shall prevent the plaintiffs or defendant from arguing that the Court should apply some other burden of proof or standard of review.

XXIV. SETTLEMENT AMOUNT

80. GM shall pay to the State of Michigan the sum of \$1.2 million (\$1,200,000) in settlement of MERA and WRCA claims in the same manner as is provided for reimbursement of costs in paragraph 90. This sum shall be paid by January 31, 1993 and will be credited to the following accounts:

to the Environmental Response Fund	\$900,000
to the General Fund of the State of Michigan.	\$300,000

By January 31, 1994, GM shall pay the MDNR \$300,000 for the purchase of wetlands property in the Bay City area of the State of Michigan, \$250,000 for an environmental education or other project(s) directed to the Bay City community and \$350,000 for revising the Recreational Fishing and Boating model. By January 31, 1995, GM shall pay to the MDNR an additional \$400,000 for the purchase of wetlands property in the Bay City area of the State of Michigan. Any funds provided by GM under this provision to revise a model shall not be read as an endorsement of the model, and GM retains the right to challenge the model or its particular use, as it deems appropriate.

XXV. STIPULATED PENALTIES

81. Except as provided in Section XXII, Force Majeure, and Section XXIII Dispute Resolution, GM shall pay stipulated penalties for each day it fails or refuses to comply with any term or condition in Section V Implementation of Remedial Investigations, Feasibility Studies, and Remedial Action Plans, Section VI Implementation of Interim Response Activities and Section VII Additional Response Activity GM shall pay stipulated penalties for each day of each violation to the MDNR as follows:

Period of delay or noncompliance	Penalty Per Violation Per Day
1st through 15th day	\$1500
16th through 30th day	\$2,500
Beyond 30 days	\$10,000

82. Except as provided in Section XXII, Force Majeure, and Section XXIII Dispute Resolution, beginning on June 15, 1993, GM shall pay an additional stipulated penalty of \$10,000 for each "violation event" of subparagraphs 27a) or 27b) determined to be "chronic noncompliance." For purposes of this Consent Judgment, "violation event" and "chronic noncompliance" shall be

defined as follows. Beginning on June 15, 1993, for discharges to Outfall 010, and otherwise, beginning on August 15, 1993, for discharges to Outfall 001A, any weekly sample taken pursuant to subparagraph 27d) ("Required Weekly Sample") or any additional sampling undertaken by GM after the Required Weekly Sample but before the next Required Weekly Sample is taken which shows a result in excess of the discharge limitation specified in subparagraph 27a) or 27b), respectively, shall be considered one "violation event" subject to this paragraph, even if there are multiple samples in the week covering the Required Weekly Sample and any additional samples taken prior to the next Required Weekly Sample in excess of the specified discharge limitation. If during any twelve (12) month period beginning on June 15, 1993, for Outfall 010, or August 15, 1993, for Outfall 001A, GM has more than ten (10) violation events of subparagraphs 27a) or 27b), respectively, then GM shall be considered to be in "chronic noncompliance." A stipulated penalty of \$10,000 shall apply for each violation event above ten (10). If GM is determined to be in chronic noncompliance, then future violation events will be treated as follows: If a future violation event combined with prior violation events still results in GM having more than ten (10) violation events in a twelve (12) month period, then GM shall pay an additional \$10,000 for each such new violation event.

83. GM may assert, among others, the following defenses to the stipulated penalties accrued pursuant to paragraph 81 or 82:

a) GM reserves the right to assert the defense of single operational upset after a treatment facility is operational. A single operational upset may result in simultaneous exceedances of more than one pollutant parameter at a given discharge point. GM shall have the opportunity to demonstrate that such an event has occurred. If a single operational upset has resulted in simultaneous exceedances of multiple pollutant parameters at a given discharge point, stipulated penalties shall be calculated for that day of violation at the discharge point based on the one violation which results in the maximum stipulated penalty; and

b) GM reserves the right to assert the affirmative defense of bypass after a treatment facility is operational provided that the defense is applicable under state or federal law.

84. Except as provided in Section XXII, Force Majeure, and Section XXIII Dispute Resolution, GM shall pay stipulated penalties for each day it fails or refuses to comply with any other term or condition, except for paragraphs 50, 85 and 87, of the Consent Judgment not covered by paragraphs 81 and 82. GM shall pay stipulated penalties of \$500 per day to the MDNR for each violation under this paragraph.

85. GM shall notify the MDNR in writing of any violation of this Consent Judgment within seven (7) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDNR as required by this paragraph is not subject to penalties.

86. Except as expressly provided elsewhere in this Consent Judgment, stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred, and shall continue to accrue until the final day of noncompliance, but shall not include the day on which noncompliance was corrected unless it was corrected on the day it occurred. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment.

87. Except as provided in Section XXIII, Dispute Resolution, GM shall pay any stipulated penalties owed to the MDNR within forty-five (45) days after receiving a written demand from the MDNR. GM shall pay stipulated penalties accrued under paragraphs 82 and 84 to the MDNR in the same manner as for costs are paid under paragraph 89. Interest shall accrue on the unpaid balance of any and all stipulated penalties related to the MERA matters of this Consent Judgment at the end of the forty-five (45) day period at the rate provided for in Section 12(4) of MERA, MCL 299.612(4). Stipulated penalties shall not apply to the failure to pay stipulated penalties. Interest shall accrue on the unpaid balance of any and all other stipulated penalties at the end of the forty-five (45) day period at the rate specified in MCL 600.6013(6).

88. Except as follows, liability for or payment of stipulated penalties are plaintiffs' exclusive penalty remedy in the event GM violates this Consent Judgment. Plaintiffs, however, reserve the right to pursue any injunctive, cost reimbursement, or other remedies that they are entitled to under this Consent Judgment or any other applicable law for any failure or refusal of GM to comply with the requirements of this Consent Judgment. GM reserves the right to contest and defend against the plaintiffs' pursuit of any such remedy.

XXVI. REIMBURSEMENT OF COSTS

89. By January 31, 1993, the Defendant shall reimburse the State \$105,662.39 for reimbursement of costs incurred for the time period of up to and including September 26, 1992. As soon as possible after each anniversary of this Consent Judgment's effective date, the MDNR will provide GM with a written demand of response costs lawfully incurred by the State in overseeing or verifying the conduct of response activities, as defined by Section 3(bb) of MERA, MCL 299.603(bb), concerning the GMPT Bay City Plant, including, but not limited to, reviewing, developing, or modifying submissions, split sampling; undertaking an action to prevent or abate a release, threat, or endangerment; overseeing of field work by a reasonable number of people; entering into a contract with a contractor to oversee or verify any or all portions of the response activities at the GMPT Bay City Plant; enforcing this Consent Judgment, including reasonable attorneys fees, and monitoring compliance with this Consent Judgment. Such costs shall include all costs incurred prior to the effective date of the Consent Judgment excluding the cost of the room and supplies for the meetings from April 27, 1992 through May 4, 1992 which the MDNR and GM specifically agreed to split equally. The MDNR shall with reasonable specificity, set forth the

nature, and using appropriate documentation provide a full and complete accounting, of the costs incurred to date or in the future.

90. All costs recovered pursuant to this Section XXVI shall be deposited in the Environmental Response Fund in accordance with the provisions of section 9(3) of MERA, MCL 299.609(3). Except as provided in Section XXIII Dispute Resolution, GM shall reimburse the MDNR for such costs within forty-five (45) days after receipt of a written demand with supporting documentation as required by paragraph 89 from the MDNR. In any challenge by GM to a demand for recovery of costs by the MDNR, GM shall have the burden of establishing that the costs were not lawfully incurred in accordance with Section 12(2) of MERA, MCL 299.612(2)(a). GM shall make all payments pursuant to this Consent Judgment by check payable to the "State of Michigan." GM shall send the check by first-class mail to the following address:

Assistant Attorney General In Charge
Environmental Protection Division
P.O. Box 30212
Lansing, MI 48909

GM shall identify the GMPT Bay City Plant and the Court Docket number on each check. GM shall simultaneously provide a copy of the transmittal letter and the check to the MDNR Project Coordinator.

XXVII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY PLAINTIFFS

91. Except as otherwise explicitly provided in this Consent Judgment, neither the Plaintiffs nor GM waive any claims or rights they may have against any person or entity not a party to this Consent Judgment, and expressly reserve their rights to assert any and all claims either may have against any party who is not a party to this Consent Judgment. The Plaintiffs specifically retain the right and authority to enforce the terms of this Consent Judgment.

92. In consideration of the actions that will be performed and the payments that will be made by GM under the terms of this Consent Judgment, and except as specifically provided in this Section XXVII, plaintiffs covenant not to sue, agree not to assert any claim or cause of action, or to take administrative action against GM or its officers, directors, or employees for "Covered Matters." This covenant not to sue shall also be deemed to be a covenant not to sue under Section 14 of Act 307.

93. The term "Covered Matters" means, except as provided in paragraph 91, the following: all claims of the plaintiffs based upon the transactions or occurrences alleged in the Complaint, whether or not asserted in the Complaint and whether or not assertable against GM or its officers, directors, or employees, including, but not limited to, any and all claims for remediation for the Plant or the Site or otherwise under the Clean Water Act, 33 USC 1251 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq. ("CERCLA"); the Toxic Substances Control Act, 15 USC 2601 et seq.; the Resource Conservation and Recovery Act, 42 USC 6901 et seq.; the Michigan PCB Compounds Act, 1976 PA

60, MCL 299.351 et seq., MSA 13.28(1) et seq.; the Michigan Hazardous Waste Management Act, 1979 PA 64, as amended, MCL 299.501 et seq., MSA 13.30(1) et seq.; the Michigan Solid Waste Management Act, 1978 PA 641, as amended, MCL 299.401 et seq.; MSA 13.29(1) et seq.; the Michigan Goemaere-Anderson Wetland Protection Act, 1979 PA 203, MCL 281.701 et seq., MSA 18.585(51) et seq.; the Michigan Inland Lakes and Streams Act of 1972, 1972 PA 346, MCL 281.951 et seq., MSA 11.475(1) et seq.; the WRCA; the MERA, as amended by 1990 PA 233 and 1990 PA 234 and effective July 1, 1991; and any other statute, regulation or rule of the United States of America, the State of Michigan, or any local government body or agency and federal and state common law ("Covered Matters").

94. The covenant not to sue set forth in this Section XXVII does not apply to or pertain to any matters other than those expressly specified in "Covered Matters" in paragraph 93. The Consent Judgment is without prejudice to all other rights that plaintiffs have against GM with respect to all other matters, and plaintiffs reserve all other rights against GM with respect to all other matters, including, but not limited to, the following:

a) Liability for remedial measures which are not completed in accordance with an approved RAP under the Consent Judgment, including, but not limited to, any liability for any response activities beyond the borders of the GMPT Bay City Plant except as covered and implemented by an approved RAP;

b) Liability for natural resource damages from any release or threatened release of hazardous substances, pollutants, or contaminants from the GMPT Bay City Plant;

c) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) removed from the GMPT Bay City Plant. The phrase, "removed from the GMPT Bay City Plant," as used in this subparagraph, is intended to include materials which physically are taken from the GMPT Plant, such as through off-site disposal of materials, and is not intended to cover discharges that may have been or be occurring at the GMPT Bay City Plant, such as water or air discharges;

d) Liability for criminal acts;

e) Liability for future violations of federal or state law which occur during or after implementation of remedial action;

f) Liability for the alleged past off-site disposal of debris contaminated with PCB and chromium alleged to have originated from concrete floor renovation projects at the GMPT Bay City Plant.

95. This covenant not to sue shall take effect on the effective date of this Consent Judgment with respect to liability for a) alleged violations of the WRCA, NPDES permit MIO001121, the WRCA pretreatment rules, and the terms and conditions of GMPT Bay City Plant's industrial pretreatment permit with the Bay City POTW; b) alleged violations of MERA; and c) alleged past violations of WRCA and MERA. The covenant not to sue shall take effect with

respect to liability for performance of response activities required to be performed under Section V Implementation of Remedial Investigations, Feasibility Studies, and Remedial Action Plans, Section VI Interim Response Activities, and Section VII Additional Response Activity, upon issuance of the certificate of completion in accordance with Section XXX Certification of Completion, by the MDNR. The covenant not to sue is conditioned upon the complete and satisfactory performance by GM of its obligations under this Consent Judgment, including payment of accrued penalties. The covenant not to sue extends only to GM and does not extend to any other person.

96. Plaintiffs' Pre-Certification of Completion Reservations: Notwithstanding any other provision of this Consent Judgment, the Consent Judgment is without prejudice to the following rights and plaintiffs reserve the following rights prior to issuance of a certificate of compliance:

The right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel GM:

a) to perform further response activities relating to the GMPT Bay City Plant; or b) to reimburse the State of Michigan for additional response costs, if, prior to the certificate of completion of the remedial action:

(1) Conditions at the GMPT Bay City Plant, previously unknown to the MDNR, and outside the scope of the Section V Implementation of Remedial Investigations, Feasibility Studies, and Remedial Action Plans, Section VI Interim Response Activities, and Section VII Additional Response Activities, are discovered after the effective date of this Consent Judgment; or

(2) New information previously unknown to the MDNR is received, in whole or in part, after the effective date of this Consent Judgment;

and these previously unknown conditions or this new information, together with any other relevant information, indicate that any remedial action is not protective of the public health, safety, welfare, or the environment.

97. Plaintiffs' Post Certification of Completion Reservations: Notwithstanding any other provision of this Consent Judgment, this Consent Judgment is without prejudice to the following right and plaintiffs reserve the following right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel GM:

a) to perform further response activities relating to the GMPT Bay City Plant; or b) to reimburse the State of Michigan for additional costs of response, if, subsequent to certification of completion of any remedial action:

(1) Conditions at the GMPT Bay City Plant, previously unknown to the MDNR, are discovered after the certification of completion; or

(2) New information, previously unknown to the MDNR is received, in whole or in part, after the certification of completion;

and these previously unknown conditions or this new information, together with any other relevant information, indicate that the remedial action is not protective of the environment or public health, safety, and welfare.

98. If the MDNR determines that GM has failed to implement any provisions of this Consent Judgment in an adequate or timely manner, the MDNR may perform, or contract to have performed, any and all portions of the response activity or activities as the MDNR determines necessary.

99. Notwithstanding any other provision of this Consent Judgment, the MDNR retains all authority and reserves all rights to take any and all response activity or activities authorized by law.

XXVIII. COVENANT NOT TO SUE BY GM

100. Except for claims by GM pursuant to Sections 11f or 11g of MERA, MCL 299.611f-g, or claims pursuant to the Michigan Underground Storage Tank Financial Assurance Act, M.C.L. 299.801 et seq., GM covenants not to sue and agrees not to assert any claim or cause of action against the State of Michigan with respect to the alleged environmental contamination at the GMPT Bay City Plant or response activities relating to the GMPT Bay City Plant arising from this Consent Judgment, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 10f(5) of MERA, MCL 299.610f(5), or any other provision of law.

XXIX. CONTRIBUTION PROTECTION

101. Pursuant to Section 12c(5) of MERA, MCL 299.612c(5), Sections 113(f)(2) and 122(h)(4) of CERCLA, and to the full extent provided by other applicable law, and consistent with Section XXVII Covenant Not to Sue and Reservation of Rights by Plaintiffs, GM shall not be liable for claims of contribution regarding matters addressed in this Consent Judgment. Entry of this Consent Judgment does not discharge the liability of any other person(s) liable under Section 12 of MERA. MCL 299.612. In any action by GM for contribution from any person not a party to this Consent Judgment, GM's cause of action shall be subordinate to the rights of the State of Michigan if the State of Michigan files an action pursuant to MERA, to the WRCA, or to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq.

XXX. CERTIFICATION OF COMPLETION

102. When GM determines that it has completed all response activities required by this Consent Judgment, GM shall submit to the MDNR a notification of completion and a draft final report. The draft final report shall summarize all response activities performed under this Consent Judgment. The draft final report shall include or reference any supporting documentation.

103. Upon receipt of the Notification of Completion, the MDNR will review the notification of completion, the draft final report, any supporting documentation, and the actual response activities performed pursuant to this Consent Judgment. Within ninety (90) days after receipt of the notification of completion, the MDNR will determine whether GM has satisfactorily completed all requirements of the Consent Judgment, including, but not limited to, eliminating all illegal discharges, completing the response activities required by this Consent Judgment, and paying any and all cost reimbursement and stipulated penalties owed to the MDNR. The MDNR will provide GM with written notification of its determination. After conducting this review, the MDNR will issue a Certificate of Completion upon a determination by Plaintiffs that GM has satisfactorily completed all requirements of this Consent Judgment. Denial by the MDNR is subject to GM's right to invoke dispute resolution under Section XXIII Dispute Resolution. This Consent Judgment shall terminate upon motion to this Court after issuance of the Certificate of Completion.

XXXI. SEPARATE DOCUMENTS

104. This Consent Judgment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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Dated: 3 December 1992

For Defendants -- General Motors Corporation

By: Laura R. Tucker

Dated: December 1, 1992

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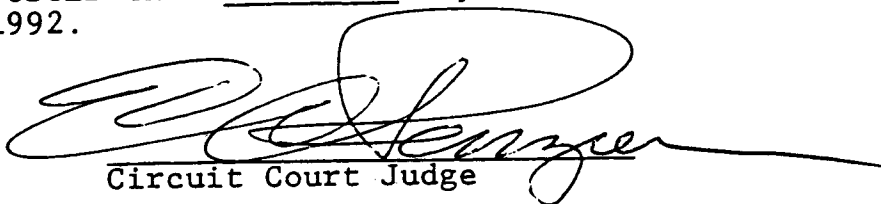
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Dated: December 1, 1992

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A3769I

It ~~is so~~ ORDERED and ADJUDGED this 14 day
of Dec, 1992.


Circuit Court Judge