

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. V-W-99-C-562
	)	
Textile Road Superfund Site	)	ADMINISTRATIVE ORDER BY
Ypsilanti Township, Michigan	)	CONSENT PURSUANT TO
	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
Holtzman-Silverman Realty Co.	)	LIABILITY ACT OF 1980,
General Motors Corporation	)	as amended, 42 U.S.C.
Ford Motor Company	)	§ 9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at the southeast corner of Textile Road and Bunton Road in Ypsilanti Township, Washtenaw County, Michigan (the "Textile Road Site" or the "Site"). This Order requires the Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Michigan, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondents participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to

enforce the terms of this Order. Respondents reserve the right to contest the Findings of Fact and conclusions of Law and Determinations in Parts III and IV, except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Textile Road Site is a closed gravel quarry located on a 62 acre parcel of land in Ypsilanti Township, Michigan. The property is bordered to the north by Textile Road, to the east by a Ford Motor Company facility, to the south by agricultural property and to the west by Bunton Road, followed by a trailer park.
2. Elma and Lenor Schultz sold the Site, in 1947, to Lamar Thumm. Mr. Thumm operated a gravel pit and unlicensed landfill on the Site until May of 1973. Mr. Thumm claimed that he accepted waste from Ford Motor Company and General Motors Corporation. The waste included wooden floor blocks, waste cutting oil, cinders and fly ash.
3. In 1973, Mr. Thumm entered into a 10 year land contract to sell the Site to the Holtzman-Silverman Realty Company, a real estate development company located in Southfield, Michigan. In 1983, Holtzman-Silverman Realty Co. withheld final payment on the land contract with Mr. Thumm.

4. On March 22, 1983, in response to a complaint from a local resident concerning drums on the Site, the Michigan Department of Natural Resources (MDNR) and the Washtenaw County Department of Public Health inspected the Site. Numerous drums were observed. On April 12, 1983, the MDNR returned to the Site to collect samples of soil and water, and material contained in approximately 40 drums. The analysis of soils and drum contents indicated the presence of polychlorinated biphenyls (PCBs) in concentrations greater than 50 parts per million.
5. On November 29, 1983, the MDNR notified Mr. Thumm and the Holtzman-Silverman Realty Company of the contaminants on the Site and requested that as potentially responsible parties they initiate a clean-up at the Site. Both parties declined to initiate the clean-up, denying ownership to the property. However, in February-March of 1984, the Holtzman-Silverman Realty Company arranged for the proper disposal of 49 drums from the Site.
6. On March 20, 1987, the MDNR collected five drum and two soil samples for additional site characterization.
7. On October 27, 1987, the MDNR met with three members of the Ecology and Environment, Field Investigation Team (FIT) at the Site to discuss monitoring well installation. The inspection team observed 13 fifty-five gallon drums on the Site.
8. On December 16, 1987, the U. S. EPA Technical Assistance Team (TAT) and the U. S. EPA On-Scene Coordinator, Peter D. Neithercut, conducted a site inspection and assessment. The team observed 21 fifty-five gallon drums. The site assessment team did not take samples but reviewed various MDNR analytical sampling results. The review of MDNR samples confirmed the presence of polychlorinated biphenyls (PCB) concentrations above 50 parts per million (ppm) at the Site.
9. On September 16, 1988, the U.S. EPA issued a Unilateral Administrative Order (docket number V-W-88-C-123) to Holtzman-Silverman Builders and Lamar Thumm requiring them to remove drums from the Site and remove soil contaminated with PCBs.
10. On September 19, 1991 an agreement was reached between EPA and Holtzman-Silverman Realty Company, and an Administrative Order by Consent (docket number V-W-91-C-123), was issued. The company agreed to fence the Site and remove the drums from the Site. The work was completed in November 1991.
11. On March 10, 1993, EPA issued an Administrative Order by

Consent, number V-W-93-C-18, to Holtzman-Silverman Realty Company and General Motors Corporation. The Order required the completion of an Extent of Contamination (EOC) Study and an Engineering Evaluation and Cost Analysis (EECA).

12. In February 1994, an EOC report for the Site was completed. The report confirmed the presence of PCBs at the Site.
13. In November 1994, the EECA report for the Site was completed and in February 1996 an addendum to the EECA report was completed.
14. In August 1997, the U.S. EPA issued a Proposed Plan, which described a recommended removal alternative for the Site, and on August 13, 1997, during a public comment period, the U.S. EPA conducted a public meeting regarding the Site. The U.S. EPA described the alternative actions or remedies that could be used to clean up the Site as identified and explained in the EECA report and indicated its proposed alternative for the Site.
15. Several comments were received during the public comment period and the U.S. EPA received additional information regarding the future use and zoning of the Site. As a result, in November 1998, the U.S. EPA issued a Revised Proposed Plan, which described a revised recommended removal alternative for the Site. A new public comment period was opened and another public meeting was held on November 23, 1998.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The Textile Road Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Polychlorinated biphenyls (PCBs) are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Holtzman-Silverman Realty Company is a past or present "owner" of the Textile Road Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondents General Motors Corporation and Ford Motor Company are persons who arranged for disposal or transport for disposal of hazardous substances at the Textile Road Site. Each Respondent therefore

may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

- a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

This factor is present at the Site due to the existence of PCBs in the soil and the past observation of local residents fishing in the two large ponds on the Site and wildlife in the area.

- b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

This factor is present at the Site based on the analytical results from samples that show PCBs in excess of 50 ppm in soils at or near the surface of the Site.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order, if properly performed under the terms of this Order, are consistent with the NCP, and identified applicable and relevant and appropriate regulations (ARARs). The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this

Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions required by this Order themselves or retain a contractor to implement the removal actions. Respondents shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of any of the contractors and/or subcontractors retained by the general contractor or the Respondents. U.S. EPA shall communicate any such disapproval to Respondents at least two business days prior to commencement of such work. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 4 business days following receipt of U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 5 business days of receipt of U.S. EPA's disapproval.

U.S. EPA consents to the Glenn Turchan, of Conestoga-Rovers & Associates as the Project Coordinator for the Respondents. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any future Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, U.S. EPA shall notify Respondents within 65 business days after Respondent's designation. Respondents shall retain a different Project Coordinator within 4 business days following receipt of notice of U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 5 business days of receipt of notice of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents. Notice may be sent by regular mail, overnight mail or fax.

The U.S. EPA has designated Partap Lall of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 9311 Groh Road, Grosse Ile, Michigan, 48138, by certified or express mail. Respondents shall also send a copy of all submissions to Peter Felitti, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

Respondents shall perform, at a minimum and consistent with the attached Work Plan, the following removal actions:

- a. Maintain and augment Site security;
- b. Implement a Site health and safety plan;
- c. Excavate and dispose off-site in appropriate landfills all soil, sediments and other materials on-site containing polychlorinated biphenyl (PCB) concentrations of equal to or greater than 26 parts per million (ppm). Disposal of all contaminated materials off-site shall be in accordance with federal, state and local regulations and consistent with EPA's off-site policy.
- d. Excavate, consolidate, and cover with an approved soil cover system all soil, sediments and other materials on-site containing PCB concentrations of equal to or greater than 1.2 ppm and less than 26 ppm. The covered area shall be located in the northern area of the Site on property that is zoned for commercial use at the time of implementation of the removal action.
- e. Conduct post removal testing for all contaminants of concern to demonstrate the effectiveness of the removal.
- f. Install groundwater monitoring wells, as described in the work plan.
- g. Implement appropriate operation and maintenance during the post removal phase of the removal (including groundwater monitoring).
- h. Implement institutional controls consistent with the work plan, the EE/CA and Part 201 of Michigan Public Act 451 of 1994, as amended, to insure the maintenance of the covered area.

2.1 Work Plan and Implementation

The Respondents have submitted to U.S. EPA a Work Plan for performing the removal activities set forth above. The Work Plan

provides a description of, and an expeditious schedule for, the actions required by this Order. The Work Plan is attached to this Order as Appendix 1.

Respondents shall implement the Work Plan in accordance with the schedule contained therein. The Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

2.2 Health and Safety Plan

The Respondents have submitted to U.S. EPA a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan is attached as part of Appendix 1. This plan complies with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. Respondents shall implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondents shall submit a proposal for post-removal site control, consistent with Section 300.415(k) of the NCP, 40 CFR § 300.415(k), and OSWER Directive 9360.2-02. Upon U.S. EPA approval, Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

2.5 Reporting

Respondents shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order, until receipt of the Notice of Completion as described in Section XVII of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

2.6 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

Respondents shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all nonconfidential records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Michigan representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or

copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

Respondents may designate some of the information it submits to the U.S. EPA under this Order as confidential. Respondents may assert a business confidentiality claim covering part or all of the information provided, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. (See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1985).) If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the U.S. EPA without further notice to Respondents.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(I). In accordance with 40 CFR § 300.415(I), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents

shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. REIMBURSEMENT OF COSTS

Respondents shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. Within 45 days of the effective date of this Order Respondents shall pay \$194,882.30, in the manner described below, for reimbursement of past response costs paid by the United States. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to January 1, 1999.

In addition, U.S. EPA will send Respondents a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC.

"Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with

the Site between January 1, 1999 and the effective date of this AOC.

Respondents shall, within 45 calendar days of receipt of an oversight bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Textile Road Site" and shall reference the payor's name and address, the U.S. EPA site identification number 05 AM, and the docket number of this Order. Respondents shall use the same method to pay for the past response costs.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight costs submitted under this Order, if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds including interest within 20 calendar days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objections within 10 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section; provided that the foregoing does not preclude U.S. EPA from exercising its discretion to refrain from seeking penalties under Section X and/or agreeing to extensions of compliance dates for any of Respondents' obligations. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

IX. FORCE MAJEURE

Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their

contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondents obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondents fail to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

	<u>Penalty Per Violation</u> <u>Per Day</u>	
Failure to complete any project task within the timeframes described in the Work Plan	Days 1-30	\$ 700
	Over 30 days	\$ 2750
Failure to timely submit Progress Reports, or other submittals required by Section V, Paragraph 2.5	Days 1-30	\$ 250
	Over 30 days	\$ 1000

Failure to timely submit a	Days 1-30	\$ 500
draft or Final Report,	Over 30 days	\$ 2000
required by Section V, Paragraph 2.6		

Upon receipt of written demand by U.S. EPA, Respondents shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems

appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

XII. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VII of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of past and oversight costs incurred by the United States in connection with this removal action and this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XV. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken by U.S. EPA (not including oversight or approval of plans or activities of the Respondents).

XVI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. Any modification to a plan or schedule shall be limited to the OSC's authority under the NCP. If the OSC makes an oral modification, it will be

memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIX. EFFECTIVE DATE

This Order shall be effective upon receipt by Respondents of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

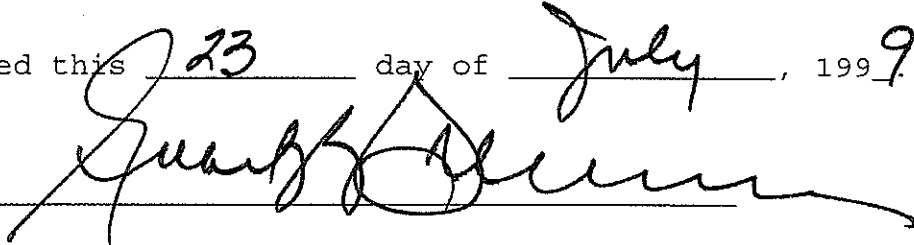
IN THE MATTER OF:

Textile Road Site
Ypsilanti Township, Michigan

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order by Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 23 day of July, 1999.

By 

Holtzman-Silverman Realty Co.

IN THE MATTER OF:

Textile Road Site
Ypsilanti Township, Michigan

Agreed this 10th day of September, 1999.

By Don A. Schiemann
Attorney
General Motors Corporation

IN THE MATTER OF:

Textile Road Site
Ypsilanti Township, Michigan

Agreed this 9th day of September, 1999.

By



Assistant Secretary
Ford Motor Company

IN THE MATTER OF:

Textile Road Site
Ypsilanti Township, Michigan
Administrative Order by Consent
Docket No. ~~V-W-'99-C-562~~

IT IS SO ORDERED AND AGREED

BY: _____

W. E. Munro
William E. Munro, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

DATE: 9/23/99