

EPA for review and approval. This workplan, as subsequently modified by Respondent, described the procedures to be used in the remediation of Parcels 401, 215 and 216 and the unnamed tributary of Bailey's Branch Creek located on such parcels; the area of said unnamed tributary located on the East Plant Area and the ditch located on the East Plant Area from Outfall 003 to its terminus on Parcel 215; and Parcels 205, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and the unnamed tributary of Bailey's Branch Creek located on such parcels. After modification by GM to address EPA's comments, EPA approved this workplan on July 23, 2003 ("Upstream Workplan") (Appendix 4).

26. GM has pursued work under the Agreement, including determining the nature and extent of hazardous substances in sediments and soils at the Site and conducting corrective actions necessary to remediate PCB contamination at the Site, but has not been able to complete the work at the Site contemplated by the Agreement due to circumstances beyond its control, i.e., denial of access by affected property owners.

27. In July, 2003, the Director of the Superfund Division, EPA Region 5, approved the Action Memorandum concerning the removal action required under this Order and the selection of the clean-up criteria applicable to the Site consistent with TSCA, in particular, 40 C.F.R. § 761.61(c), as implemented under CERCLA and the NCP, and with the Agreement (which implements the corrective action requirements of RCRA), CERCLA and the NCP. The Action Memorandum is attached to this Order as Appendix 2.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact, above, includes a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and is liable for performance of response action and for response costs incurred and to be incurred at the Site.

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

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP, 40 C.F.R. 300.700(c)(3)(ii), the Agreement (which implements the corrective action requirements of RCRA), and TSCA as implemented under CERCLA.

g. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Work to be performed by Respondent pursuant to this Order shall constitute a response action taken or ordered by the President.

h. The Site is not an "eligible response site" as defined in Section 101(41) of CERCLA, 42 U.S.C. § 9601(41), because: (i) the Site is not a "brownfield site" as defined in Section 101(39) of CERCLA, 42 U.S.C. § 9601(39); and (ii) the President has conducted a preliminary assessment or site inspection at the Site.

i. Compliance with this Order shall be deemed to be compliance with the Agreement with respect to the Work.

VI. ORDER

29. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with