

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY



ENVIRONMENTAL PROTECTION AGENCY
DIRECTOR'S JOURNAL

OCT 31 2005

OHIO E.P.A.

In the Matter of: :
: :
Century National Bank :
14 South 5th Street :
Zanesville, Ohio 43701-3511 :
: :
BP Products North America Inc. :
4850 E. 49th Street : Director's Final
Cuyahoga Heights, Ohio 43215 : Findings and Orders
: :
Pennzoil-Quaker State Company :
Pennzoil Place :
P.O. Box 4427 :
Houston, Texas 77210-4427 :
: :
Respondents :

I. JURISDICTION

1. These Director's Final Findings and Orders (Orders) are issued to Century National Bank, BP Products North America Inc., and Pennzoil-Quaker State Company pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 3745.01, 3745.12, and 6111.03 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law.

3. No change in ownership of the Property including, but not limited to, any transfer of assets or real or personal property, shall in any way alter Respondents' obligations under these Orders.

4. Work Respondents shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Work Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the applicable provisions of these Orders.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.

b. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

c. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

d. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.

e. "Parties" shall mean Respondents and the Ohio EPA.

f. "Property" shall mean the 1.038 acre property located at 701 Main Street in Malta, Morgan County, Ohio.

g. "Remedial Action Plan" or "RAP" shall mean the detailed plans and specifications for any remedial systems and their operations.

h. "Respondents" shall mean Century National Bank, BP Products North America Inc. and Pennzoil-Quaker State Company. "Landowner Respondent" shall mean Century National Bank. "Work Respondents" shall mean BP Products North America Inc. and Pennzoil-Quaker State Company.

i. "Response Costs" shall mean all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement - related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items, incurred by the Ohio EPA pursuant to these Orders to verify the Work, or otherwise to implement or to enforce these Orders.

j. "Section" shall mean a portion of these Orders identified by a Roman numeral.

k. "Unavoidable delay" shall mean an event beyond the control of Respondents that

prevents or delays performance of an obligation established by these Orders and that could not be overcome by due diligence on the part of Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

l. "Waste Material" shall mean (1) any "hazardous waste" under ORC Section 3734.01(J); (2) any "solid waste" under ORC Section 3734.01(E); (3) any "industrial waste" under ORC Section 6111.01(C); and (4) any "other waste" under ORC Section 6111.01(D).

m. "Work" shall mean all activities Work Respondents are required to perform under the Performance of Work Section of these Orders.

n. "Work Plan and Field Sampling and Analysis Plan" or "Work Plan" shall mean the plan for implementation of the Source Control and Ground Water Remediation at the Property, as set forth in Appendix A of these Orders.

IV. FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW

6. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to ORC Sections 3734.13, 3734.20, 3745.01, 3745.12 and 6111.03 have been made and are outlined below. Nothing in these findings shall be considered to be an admission by Respondents of any matter of fact or law. The Director of Ohio EPA has determined the following:

a. Century National Bank (Century), formerly known as Mutual Federal Savings Bank, is the current owner of the Property. The Property consists of approximately 1.038 acres of land. The Property is adjacent to the west bank of the Muskingum River directly across from the Village of McConnelsville well field. Malta Savings & Loan acquired the Property in 1981 from Pennzoil-Quaker State Company's predecessor, Pennzoil United, Inc. (Pennzoil). Malta Savings & Loan transferred the Property in 1982 to Mutual Federal Savings & Loan Association, later called Mutual Federal Savings Bank. The Property was purchased with the intent of building a branch banking office on the Property. The Property has remained vacant since it was purchased in 1981.

b. The Barkhurst Family owned the Property from 1935 until 1961. Beginning at least in 1955, Socony Mobil Oil Company, Inc. leased the Property for use as a retail petroleum station. The parent company of BP Products North America Inc. (BP), the Standard Oil Company, purchased the property in August, 1961 and sold the Property to Pennzoil in December 1971. Pennzoil owned the Property from December, 1971 until July, 1981. The Property was used as an automobile service station from at least 1940 to 1981. During that time, the Property was used to provide typical automotive services including petroleum sales and routine mechanical services.

c. In 1984, Mutual contracted with R.D. Paisley & Sons in Zanesville to remove the building and underground storage tanks (USTs) at the Property. No records

are available regarding the location or condition of the USTs at the time of removal.

d. In 1988, the Village of McConnelsville detected varying levels of Volatile Organic Chemicals (VOCs) in its well field. VOCs detected in the well field include Trichloroethylene (TCE), Cis-1,2-dichloroethene (DCE), and 1,1,1-trichloroethane (TCA). TCE concentrations as high as 21 µg/l were detected in the well field in 1991. The maximum concentration level (MCL) for TCE is 5 µg/l.

e. In 1993, Ohio EPA conducted groundwater sampling on the east side of the Muskingum River in close proximity to the well field. Based on sample results, Ohio EPA determined that a contamination plume may have migrated to the well field from a location on the west side of the river.

f. Between July and November, 1994, Ohio EPA conducted further studies on properties adjacent to the west bank of the Muskingum River. These studies were finalized in a report dated June 30, 1995. Based on data generated during these studies, Ohio EPA determined that the groundwater beneath the Property is contaminated with TCE that may be migrating to the Village of McConnelsville well field. Analysis of groundwater and soil samples collected from the Property in 1994 showed the presence of the following compounds above MCLs or action levels:

Chemical	Ground-Water (µg/l)	Soil (mg/kg)	MCL (µg/l)
Trichloroethylene	221	Non-detect	5
Benzene	126	14	5

g. In 1995 and 1996, Ohio EPA requested information from Century, BP and Pennzoil regarding the historical use of the Property. Century, BP and Pennzoil provided Ohio EPA with information available to them. Concurrently, BP and Pennzoil began to investigate the Property.

h. In 1996, BP and Pennzoil retained an environmental consultant to perform an investigation into the historical uses of the Property. In 1997, BP and Pennzoil retained another environmental consultant to conduct a technical review of the documentation of previous investigative activities in the vicinity of the Property. Since 1997, BP, Pennzoil and Century have retained other environmental consultants to perform additional investigation at and in the vicinity of the Property.

i. In December 1999, BP, Pennzoil and Century developed a Focused Site Characterization (FSC) Work Plan designed to evaluate potential source areas on the Property, to evaluate other potential sources in the vicinity of the Property, and to collect additional data which could be used to evaluate potential remedial alternatives for the

Property, if necessary. The FSC Work Plan was provided to Ohio EPA. BP, Pennzoil and Century implemented the Work Plan in May, 2000. Additional site characterization work was completed on the Property in July 2001, and in March 2003.

j. Respondents are "persons" as defined under ORC Section 3734.01(G).

k. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that TCE and BETX compounds in the groundwater found at the Property are "hazardous wastes" as defined under ORC Section 3734.01(J).

l. Conditions at the Property constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination.

m. Respondents are "persons" as defined under ORC Section 6111.01(I).

n. TCE and BETX compounds found at the Property are "industrial wastes" or "other wastes" as defined under ORC Section 6111.01.

o. The ground water and surface water at the Property are "waters of the state" as defined under ORC Section 6111.01(H).

p. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes emanating from the Property into the waters of the state.

q. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

7. Objective of the Parties

The objective of the Parties in entering into these Orders is to provide for the protection of public health and safety and the environment from the disposal, discharge or release of Waste Material at the Property through the performance of a source control remedial action, including preparation and implementation of a Work Plan and Field Sampling and Analysis Plan, to achieve attainment goals for certain COCs, including TCE, identified in these Orders.

8. Commitment of Work Respondents

Work Respondents shall perform the Work in accordance with these Orders including but not limited to the Work Plan, all relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Work Respondents shall also reimburse Ohio EPA for all Future Response Costs as provided in the Reimbursement of Costs section of these Orders.

9. Compliance With Law

a. All activities undertaken by Work Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.

b. Work Respondents shall perform the activities required pursuant to these Orders in a manner that is not inconsistent with the NCP. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, shall be considered consistent with the NCP.

c. Where any portion of the Work requires a permit or approval, Work Respondents shall submit applications in a timely manner and take all other actions necessary to obtain such permits or approval. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

VI. PERFORMANCE OF WORK

10. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Work Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in performing the Work under these Orders.

11. Source Control Remedial Action

a. Chemicals of Concern (COCs). The following Chemicals of Concern have been identified for the Property by Ohio EPA:

Benzene
Toluene
Ethylbenzene
Total Xylenes
Tetrachloroethene (PCE)

Trichloroethylene (TCE)

These COCs and their associated breakdown compounds shall be addressed by the Work Plan and Field Sampling and Analysis Plan (Work Plan), which is attached as Appendix A to these Orders and incorporated herein by reference.

b. Work Plan and Field Sampling and Analysis Plan. Within thirty (30) days after the effective date of these Orders, Work Respondents shall commence implementation of the Work Plan. Work Respondents shall implement the Work Plan in accordance with the schedule contained in the Work Plan.

c. Risk Based PRGs and Attainment Goals. Work Respondents shall develop Property-specific risk based preliminary remedial goals (PRGs) and attainment goals for the COCs in accordance with the Work Plan. Work Respondents shall use MCLs, or background concentrations in ground water established in accordance with the Work Plan, whichever is greater, as the PRGs for ground water. Property-specific PRGs shall be developed for the COCs in the soil in accordance with the Work Plan. Work Respondents shall submit to Ohio EPA, for review under Section X, Review of Submittals, a Work Plan Report that describes the results of the work performed pursuant to the Work Plan. Once this Work Plan Report is approved by Ohio EPA, the PRGs shall be known as attainment goals.

d. Remedial Action Plan. Within ninety (90) days after the effective date of these Orders, Work Respondents shall submit to Ohio EPA for review under Section X, Review of Submittals, a Remedial Action Plan (RAP) for the implementation of the remediation alternative(s) selected to remediate the COCs, including TCE, to achieve the attainment goals developed pursuant to these Orders. The RAP shall include: detailed plans and specifications for any remedial system(s); a schedule for implementation of the selected remedy(ies); an operation and maintenance plan; and a Health and Safety Plan (HASP). The RAP shall also include a projected cleanup timeline that describes when attainment goals are expected to be achieved. This timeline shall be evaluated at least annually, and an updated timeline submitted to Ohio EPA annually, until the attainment goals are achieved.

e. Implementation of RAP. Upon approval of the RAP by Ohio EPA, Work Respondents shall implement the RAP in accordance with the schedules contained within the RAP.

f. Construction Report. Within sixty (60) days after completion of construction activities identified in the RAP, Work Respondents shall submit to Ohio EPA a construction certification report (Construction Report). The Construction Report shall (i) describe the construction work as completed; (ii) explain any difference between the construction work as completed and the construction work as described in the RAP; and (iii) certify that the remedial system is operating within design specifications.

g. Certification. Within sixty (60) days after the achievement of attainment goals, and confirmation thereof as required by the operation and maintenance plan component of the RAP, Work Respondents shall provide to Ohio EPA a written certification that all Work, other than payment of Ohio EPA's final invoice, required to be performed under these Orders has been completed.

VII. SAMPLING AND DATA AVAILABILITY

12. Unless otherwise agreed to by the Site Coordinators, Work Respondents shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Work Respondents shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Work Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Work Respondents' implementation of the Work.

13. Within seven (7) days of a request by Ohio EPA, Work Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Work Respondents with respect to the Property and/or the implementation of these Orders. An electronic copy shall also be provided in either Microsoft Word or PDF format. Work Respondents may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Work Respondents subsequently discover an error in any report or raw data, Work Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

VIII. ACCESS

14. Ohio EPA shall have access at all times to the Property and any other property to which access is required for the implementation of these Orders, to the extent that the Property is owned or controlled by Landowner Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to, the following:

- a. Monitoring the Work;
- b. Conducting sampling; and
- c. Conducting investigations and tests related to the implementation of these Orders.

In addition, Ohio EPA shall be allowed by Work Respondents to inspect and copy non-privileged records, operating logs, contracts, and/or other documents related to the

implementation of these Orders, and to verify any data or other information submitted to Ohio EPA.

15. To the extent that the Property or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Work Respondents shall use their best efforts to secure from such persons access for Work Respondents and the Ohio EPA as necessary to implement these Orders. Copies of all access agreements obtained by Work Respondents shall be provided promptly to Ohio EPA, upon request. If any access required to implement these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Work Respondents in writing that additional access beyond that previously secured is necessary, Work Respondents shall promptly notify Ohio EPA in writing of the steps Work Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Work Respondents in obtaining access.

16. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

IX. DESIGNATED SITE COORDINATORS

17. Ohio EPA and Work Respondents shall each designate a Site Coordinator and an Alternate Site Coordinator. Within five (5) days of the effective date of these Orders, Work Respondents and the Ohio EPA shall notify each other, in writing, of the name, address and telephone number of their respective designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.

18. To the maximum extent practicable, except as otherwise specifically provided in these Orders, communications between Work Respondents and Ohio EPA concerning the implementation of these Orders shall be between the Site Coordinators. Work Respondents' Site Coordinator shall be available during normal business hours for communication with Ohio EPA regarding the implementation of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Work Respondents' Site Coordinator or Alternate Site Coordinator shall be present on the Property or available by telephone during all hours of Work at the Property.

19. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to, the following:

- a. Directing the type, quantity and location of samples to be collected by Work Respondents pursuant to an approved Work Plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- d. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Property may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Inspecting and copying non-privileged records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- g. Assessing Work Respondents' compliance with these Orders.

X. PROGRESS REPORTS AND NOTICE

20. Unless otherwise directed by Ohio EPA, Work Respondents shall submit a written progress report to Ohio EPA by the tenth (10th) day of every month. At a minimum, the progress reports shall, if applicable:

- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
- b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
- c. Describe activities planned for the next month;
- d. Identify changes in key personnel;
- e. List target and actual completion dates for each element of activity, including project completion;
- f. Provide an explanation for any deviation from any applicable schedules; and
- g. Indicate the quantity of contaminated soil that was treated and/or removed, and

contaminated groundwater that was pumped and treated, and indicate where such contaminated media were disposed, if applicable.

21. Progress reports (one copy each) and all other documents (two copies) required to be submitted to Ohio EPA pursuant to these Orders shall be sent to the following Agency address, or to such other address as directed by Ohio EPA:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
ATTN: Century National Bank Site Coordinator, DERR

All written correspondence to Respondents shall be directed to:

Thomas Lyall
Century National Bank
14 South 5th Street
Zanesville, Ohio 43701-3511

William Taylor, Esq.
Kincaid, Taylor & Geyer
50 N. 4th Street
Zanesville, Ohio 43702

BP Products North America Inc.
c/o BP America Inc., Legal - HSSE
4101 Winfield Road
Warrensville, Illinois 60555

BP Products North America Inc.
4850 E. 49th Street
Cuyahoga Heights, Ohio 44125

Dan McQuillen
Pennzoil-Quaker State Company
P.O.Box 4427
Houston, Texas 77210-4427

A Party may designate an alternative contact name or address upon written notification to the other Parties and in accordance with the Designated Site Coordinator section of these Orders, if applicable.

XI. REVIEW OF SUBMITTALS

22. Ohio EPA shall review any work plan, report, or other document required to be submitted pursuant to these Orders. Upon review, Ohio EPA may, in its sole discretion: (a) approve, in writing, the submission in whole or in part; (b) approve, in writing, the submission upon specified conditions; (c) disapprove the submission in whole or in part, notifying Work Respondents in writing of deficiencies; or (d) any combination of the above.

23. In the event of approval or conditional approval of any submission by Ohio EPA, Work Respondents shall proceed to take any action required by the submission as approved, or conditionally approved by Ohio EPA.

24. In the event that Ohio EPA disapproves a submission, in whole or in part, and notifies Work Respondents of the deficiencies in writing, Work Respondents shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and submit a revised submission to Ohio EPA for approval. The revised submission shall address all of the changes, additions, and/or deletions specified by Ohio EPA in its disapproval. To the extent that Work Respondents contest any changes, additions, and/or deletions specified by Ohio EPA, Work Respondents shall initiate the procedures for dispute resolution set forth in the Dispute Resolution section of these Orders, within thirty (30) days after receipt of Ohio EPA's disapproval. Notwithstanding the disapproval, Work Respondents shall proceed to take any action required by a non-deficient portion of the submission, unless such action is clearly affected by the allegedly deficient portion of the submission.

25. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Work Respondents shall correct the deficiencies and address all changes, additions, and/or deletions within thirty (30) days, or such period of time as specified by Ohio EPA in writing. If Work Respondents fail to submit a revised submission incorporating all changes, additions and/or deletions within thirty (30) days, or such period of time specified in writing by Ohio EPA, Work Respondents shall be considered in breach and/or violation of these Orders. If Work Respondents are in breach and/or violation of these Orders, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial source control and ground water remedial action, and/or enforce the terms of these Orders.

26. All work plans, reports, or other documents required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report or other document, the approved portion shall be incorporated in and made an enforceable part of these Orders.

XII. UNAVOIDABLE DELAYS

27. Work Respondents shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay.

28. Work Respondents shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event that Work Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Respondent to minimize the delay, and the timetable under which those measures will be implemented. Work Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

29. If Ohio EPA does not agree that the delay has been caused by an

unavoidable delay, Ohio EPA will notify the Work Respondents in writing. Ohio EPA reserves the right to: 1) terminate these Orders; 2) perform any additional remediation, or conduct a partial or complete Source Control and Ground Water Remedial Action, as provided in the Work Plan and RAP for these Orders; and/or 3) enforce the terms of these Orders, in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Work Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

XIV. REIMBURSEMENT OF COSTS

30. Ohio EPA has incurred and continues to incur Response Costs in connection with the Property.

31. With respect to Past Response Costs, i.e., costs incurred prior to August 20, 2003, Ohio EPA intends to refer this claim to the Ohio Attorney General.

32. With respect to Future Response Costs, i.e., costs incurred after August 20, 2003, Ohio EPA will submit to Work Respondents on an annual basis an itemized invoice of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized invoice, Work Respondents shall remit payment for all such Response Costs for the previous year.

33. Work Respondents shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by corporate check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front St., Columbus, Ohio 43216-1049, or to such other address as directed by Ohio EPA.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front St., Columbus, Ohio 43216-1049, and to the Site Coordinator.

XIV. ACCESS TO INFORMATION

34. Work Respondents shall provide to Ohio EPA, upon request, copies of all non-privileged documents and information within their possession or control or that of their contractors or agents relating to events or conditions at the Property including, but not limited to, manifests, reports, correspondence, or other documents or information related to the Work.

35. Work Respondents may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders is confidential under the provisions of

OAC 3745-50-30(A) or ORC 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Work Respondents.

36. Work Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Work Respondents make such an assertion, they shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Work Respondents.

37. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical monitoring, or laboratory reports.

38. Work Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after its termination, all documents and other information within their possession or control, or within the possession or control of their contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Work Respondents may preserve such documents by microfiche, or other electronic or photographic device.

XV. DISPUTE RESOLUTION

39. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other document required to be submitted pursuant to these Orders, the Work Respondents shall have fourteen (14) days from the date of receipt of Ohio EPA's written response to Work Respondents' submittal to invoke the dispute resolution procedures of this Section by notifying the Ohio EPA Site Coordinator in writing of the dispute. Within thirty (30) days of Ohio EPA's receipt of Work Respondents' notification of the dispute, Respondent shall submit to the Ohio EPA Site Coordinator a written statement of the technical, legal or other rationale supporting the Work Respondents' position.

40. If Ohio EPA concurs with the Work Respondents' position, or otherwise resolves the dispute with Work Respondents, then the work plan, report, or other document required to be submitted pursuant to these Orders shall be modified accordingly.

41. If Ohio EPA does not concur with or otherwise resolve the dispute with Work Respondents, Ohio EPA's Site Coordinator shall notify Work Respondents in writing that Ohio EPA does not concur. Upon receipt of such written notice, the Work Respondents shall have fourteen (14) days from the receipt of such nonconcurrency notice to submit a written statement of the dispute to the Division of Emergency and Remedial Response (DERR) District Manager and request a formal resolution of the dispute. The Work

Respondents' written statement shall include the rationale supporting the Work Respondents' position. If the Work Respondents do not submit such a statement, rationale and request within fourteen (14) days of receipt of the nonconcurrency notice from Ohio EPA's Site Coordinator, Ohio EPA will adopt the written position of its Site Coordinator and the work plan, report or other document at issue shall be modified accordingly. If the Work Respondents submit such a statement, rationale and request within fourteen (14) days of receipt of the nonconcurrency notice from Ohio EPA's Site Coordinator, the DERR District Manager will review the written positions of the Parties and resolve the dispute based upon and consistent with these Orders, any applicable approved work plan, and applicable federal and state laws and regulations.

42. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and timeframes. The opportunity to invoke dispute resolution under this Section shall be available to Work Respondents with respect to the following provisions of these Orders: VI. Performance of Work; VIII. Access; XI. Review of Submittals; XII. Unavoidable Delays; XIII. Reimbursement of Costs; and XXI. Termination.

XVI. MODIFICATIONS

43. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representatives of Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

XVII. INDEMNITY

44. Work Respondents agree to indemnify, save and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to the implementation of the Work under these Orders, including acts or omissions of Work Respondents, their officers, employees, agents or assigns, except for such claims or causes of action that are solely related to restricted or lost access to the Property. In addition, all Respondents agree to indemnify, save and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to events or conditions at the Property, including acts or omissions of Respondents, their officers, employees, agents or assigns. Such indemnification shall not apply to acts or omissions of Ohio EPA, its employees or agents, at, on or related to the Property if such acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wonton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondents within thirty (30) days of receipt of any claim that may be subject to indemnity as provided in this Section, and to

cooperate with Respondents in the defense of any such claim or action against Ohio EPA.

XVIII. OTHER CLAIMS

45. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Property.

XIX. RESERVATION OF RIGHTS

46. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Except as provided herein, Respondents reserve any rights they may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders. Ohio EPA also reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

47. Subject to the Agreement Not to Refer section of these Orders, Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to ORC chapters 3734, 3745 or 6111, or any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Property. Notwithstanding the Agreement Not to Refer section of these Orders, Ohio EPA reserves the right to take any action to recover Past Response Costs, i.e., costs incurred prior to August 20, 2003, pursuant to ORC section 3745.12, CERCLA section 107, 42 U.S.C. section 9607, or any other applicable legal authority.

XX. AGREEMENT NOT TO REFER

48. During the term of these Orders so long as Work Respondents perform the Work and Respondents comply with the requirements of these Orders, and upon termination of these Orders pursuant to the Termination section of these Orders, Ohio EPA agrees not to refer Respondents to the Ohio Attorney General's Office for Work or other requirements of these Orders. This provision does not apply to Ohio EPA's claims for Past Response Costs.

XXI. TERMINATION

49. Respondents' obligations under these Orders shall terminate upon Ohio EPA's approval in writing of Work Respondents' written certification to Ohio EPA that all Work

Indemnity, Other Claims, Reservations of Rights, and Agreement Not to Refer sections of these Orders.

XXII. WAIVER AND AGREEMENT

50. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents consent to the issuance of these Orders, and agree to comply with these Orders.

51. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waive any and all rights that they may have to seek administrative or judicial review of these Orders either in law or equity.

52. Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other person to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XXIII. EFFECTIVE DATE

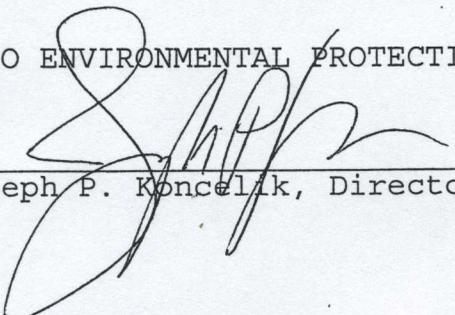
53. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XXIV. SIGNATORY AUTHORITY

54. Each undersigned representative of a Party to these Orders certifies that he or she is authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY



Joseph P. Koncelik, Director

Date 10/20/05

IT IS SO AGREED:

Respondents

CENTURY NATIONAL BANK

J. M. Lyall _____ Date 10-5-05
President _____
Title

BP PRODUCTS NORTH AMERICA INC.

Date

Title

PENNZOIL-QUAKER STATE COMPANY

Date

Title

IT IS SO AGREED:

Respondents

CENTURY NATIONAL BANK

Date

Title

BP PRODUCTS NORTH AMERICA INC.

Patricia Gallery
7-30-04

Date

DEPUTY REGIONAL MANAGER-US MIDWEST

Title

PENNZOIL-QUAKER STATE COMPANY

Date

Title